

Request to use separate accounting cannot be granted without evidence that the statutory apportionment formula does not fairly reflect the market for the taxpayer's services.

August 14, 2014

RE: Petition for Alternative Apportionment

Dear Xxxx:

This is in response to your letter dated July 30, 2014, in which you request permission to use separate accounting to determine the taxpayer's Illinois business income rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. *See* 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

The purpose this letter is regarding the above referenced Taxpayer who recently began business activities in the State of Illinois. Upon review of the Form IL-1120 and respective instructions, we would like to request your approval of our proposed alternative apportionment method. To help give you a background, this company owns commercial rental real estate throughout the United States. In 2013 the Taxpayer purchased a commercial rental property which is located in the State of Illinois. As we can identify the specific activity related to the property held in Illinois, we believe we should qualify for an alternative apportionment method.

As the apportionment formula in Step 4 on page 2 of Form IL-1120 return does not fairly and accurately represent the sources and uses of the business income, we believe we should qualify for an alternative apportionment formula. The formula in Step 4 distorts the actual results of our Illinois activity and we are hopeful you will agree based on your review of the enclosed documents. I have enclosed a schedule which reflects the specific activity related to the property owned in Illinois.

Response

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not, for taxable years ending before December 31, 2008, fairly represent the extent of a person's business activity in this State, or, for

taxable years ending on or after December 31, 2008, fairly represent the market for the person's goods, services, or other sources of business income, the person may petition for, or the Director may, without a petition, permit or require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

Nothing in your request or in the income statement attached provides any showing that the apportionment formula prescribed in Section 304(a) of the IIITA fails to reflect the market for the taxpayer's sources of business income, or that the separate accounting requested reflects a more equitable apportionment of the taxpayer's business income. Accordingly, your request cannot be granted without additional information.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. Your petition was filed July 30, 2014, and will allow the taxpayer to use the requested method on original returns due on or after November 27, 2014, if ultimately granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 524-3951.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax