IT 14-0012 GIL 09/19/14 Definitions
An entity that is disregarded for federal income tax purposes and treated as part of its parent corporation is treated identically for Illinois income tax purposes.

September 19, 2014

Re: Check-the-box – Disregarded entity (DE) state tax compliance

Dear Xxxx:

This is in response to your letter dated June 12, 2013 in which you request a legal tax ruling whether regarding the treatment of certain foreign disregarded entities. The Department's regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding against the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret or prescribe the tax laws and are not binding against the Department. See 2 Ill. Adm. Code 100.1200(b) and (c). The nature of your letter and the information provided require that we respond with a General Information Letter.

Your letter states as follows:

> IRS has just approved 2 of our controlled foreign companies (CFC) as disregarded entities; COMPANY 1 and a newly formed COMPANY 2, organized and incorporated in COUNTRY. For federal corporation income tax purposes, the IRS would treat both companies as a branch/division or to be an entity not separate from its owner.
>
> **Facts:** COMPANY 2 is a wholly owned by COMPANY 1 and COMPANY 1 is a wholly owned by COMPANY 3 a STATE company, head quarter in CITY, respectively. COMPANY 3 registered and has been filing the corporation income tax return in the state of Illinois.
>
> Both, COMPANY 2 and COMPANY 1 operates entirely in COUNTRY and they have no permanent business establishment in the US, such as no property or employees or any related business activity transactions with our COMPANY 3. The management of their activities and book and records are operated and maintained outside US respectively. COMPANY 1 has been filing form 5471 with COMPANY 3 tax return as of 12/31/2012.
>
> **Tax compliance:** For federal tax purposes, our calendar year beginning 2013 operating income or loss from COMPANY 1 and COMPANY 2 will be included and combined with COMPANY 3 in filing Form 1120. We have done a tax research and read the tax instructions with respecting to the state tax compliance on this subject issue, but we are not able to reach a clear understanding as to what we should do to meet the tax compliance regulations in the state. We request that you help to provide answers and further guidance as follows:
>
> 1) Does the state conform to federal laws by allowing the DE operating income or loss combined and reported with US parent company?, if not, what is the requirement for tax filing?

2) Are apportionment factors percentage included DE in denominators?
3) Is DE required to file a separate return or annual report and pay the fee accordingly? If yes, what form should be used?
4) Are there any other ILL. tax compliance issues on this subject we should be aware of it?

RESPONSE

Section 102 of the Illinois Income Tax Act ("IITA") provides:

> Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Department of Revenue Regulations Section 100.9750(b)(1) states that any entity treated as a corporation for federal income tax purposes must be treated as a corporation for all purposes of the IITA, and that no entity (other than a cooperative) that is not treated as a corporation for federal income tax purposes may be treated as a corporation for purposes of the IITA. Any entity that elects not to be treated as a corporation separate and distinct from its owners is not a corporation separate and distinct from its owners for Illinois income tax purposes. Consequently, an entity that elects to be disregarded as an entity separate and distinct from its corporate owner pursuant to Treasury Regulations Section 301.7701-3(a) and its corporate owner are a single corporation for all purposes of the IITA. 86 Ill. Adm. Code § 100.9750(b)(1)(A).

Section 304(a) of the IITA provides:

> For tax years ending on or after December 31, 1998, and except as otherwise provided by this Section, persons other than residents who derive business income from this State and one or more other states shall compute their apportionment factor by weighting their property, payroll, and sales factors as provided in subsection (h) of this Section.

Under IITA Sections 102 and 203, the federal treatment of a disregarded entity and its owner applies for Illinois income tax purposes. An entity that is disregarded for federal income tax purposes is disregarded as an entity for Illinois purposes, and the items of base income of the disregarded entity are considered the items of the owner and are taken into account in computing the Illinois base income of the owner. The same treatment extends to the determination of the apportionment factor of the owner of a disregarded entity. The activities of the disregarded entity are considered the activities of the owner for purposes of applying the apportionment provisions of Article 3 of the IITA.

For purposes of the IITA, the disregarded entities are treated as disregarded. All items of income and loss, as well as the apportionment factors of the disregarded entities, would be included on the parent company's return. As for registration, annual report and fee issues, you should contact the Illinois Secretary of State.

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 have any further questions, you may contact me at (217) 524-7580.

Sincerely,

Matthew Crain
Associate Counsel (Income Tax)