

IT 19-0017-GIL 12/10/2019 NEXUS

Whether taxpayer has nexus with Illinois is extremely fact-specific. Department does not issue rulings regarding nexus with the State. (This is a GIL.)

December 10, 2019

Re: Illinois income tax

Dear XXX:

This is in response to your letter received October 23, 2019, in which you request information regarding Illinois income tax. The nature of your request 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 2 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.tax.illinois.gov](http://www.tax.illinois.gov).

Your letter states as follows:

**Information:** I have a client whose situs is located in CITY. They file 1120S form for federal purposes for their business. They do conventions in the Illinois for approximately four to five times a year. Their order and contract took place in CITY. They build the products in STATE and then ship it to Illinois to have it installed for the convention. Please note that our client employees travel to Illinois for the duration of convention time period, but their job is to only oversee the installation and uninstallation of the product assembly. The labor work during the process of installation and uninstallation of the product is completely done by the convention union employees. After the convention, our client employees travel back to the STATE along with the products. Our client does not have any physical presence nor do they have any employee in the Illinois.

During my research, I found out Sec 13.75 "Activities that Do Not constitute transacting Business" includes obtaining orders if order require acceptance outside the Illinois before they become contract. I have enclosed A guide for Qualifying Foreign Corporations for your reference that include the citation of Sec 13.75 on page 5.

**Question:** Does my client have to file the Illinois income tax return for their business, i.e. file form IL-1120ST based on the above listed facts?

#### **RULING**

The determination whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. See IT-03-0010-GIL (March 14, 2003); IT-03-114-GIL (April 14,

2003): IT-03-0017-GIL (May 12, 2003); IT-05-0025-GIL (May 19, 2005); IT-07-0036-GIL (November 9, 2007); IT-08-0020-GIL (July 3, 2008); and IT-13-0013-GIL (November 4, 2013). For information regarding nexus, see Department of Revenue Regulations Section 100.9720 (accessible from the Department's web site). In addition, the following general information may be provided.

The United States Constitution restricts a state's power to subject to income tax foreign corporations and other nonresidents. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax. (*Quill Corp. v. N. Dakota*, 504 U.S. 298 (1992)) The Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state. (*Id.*) In the case of foreign corporations, Illinois may assert nexus to tax unless the corporation falls under the protection conferred by Public Law 86-272. (15 U.S.C. § 381) Public Law 86-272 precludes any state from subjecting a nondomiciliary corporation to a net income tax where such corporation's only activities within the state for the taxable year consist of solicitation activities for sales of tangible personal property.

Department Regulations Section 100.9720(c)(1) states, in pertinent part:

Public Law 86-272. In 1959, Congress enacted PL 86-272 (15 USC 381-384), which prohibits states and their political subdivisions from imposing a net income tax on nonresident taxpayers who operate primarily in interstate commerce and whose activity within a state is limited. PL 86-272 provides in pertinent part:

(A) No state or political subdivision thereof shall have the power to impose . . . a net income tax on the income derived within such state by any person from interstate commerce if the only business activities within such state by or on behalf of such person during such taxable year are either, or both of the following:

(i) the solicitation of orders by such person, or his representative, in such state for sales of tangible personal property, which orders are sent outside the state for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the state;

(ii) and the solicitation of orders by such person, or his representative, in such state in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in subsection (c)(1)(A)(i).

(C) For the purposes of subsection (c)(1)(A) of this Section, a person shall not be considered to have engaged in business activities within a state during any taxable year merely by reason of sales in such state, or the solicitation of orders for sales in such state, of tangible personal property on behalf of such person by one or more independent contractors whose activities on behalf of such person in such state consist solely of making sales, or soliciting orders for sales, of tangible personal property.

Department Regulations Section 100.9720(c)(4) lists specific activities that are considered to be beyond "mere solicitation" and, therefore, unprotected by PL 86-272. Section 100.9720(c)(5) lists specific "protected activities" that will not cause the loss of immunity for otherwise protected sales.

Your letter contains no information regarding the products sold by the taxpayer, so it is impossible to provide any guidance on whether or not the products could be considered tangible personal property within the scope of Public Law 86-272. Also, your letter contains no detailed information regarding the scope and nature of the activities the taxpayer's employees conducts at trade shows in Illinois besides overseeing installation and uninstallation of the product assembly. Accordingly, it is not possible to give you more detailed guidance.

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 are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions regarding this letter, you may contact me at (217) 782-2844.

Sincerely,

Michael D. Mankowski  
Associate Counsel - Income Tax