

IT-21-0004 08/31/2021 Apportionment-Virtual Currency.

For purposes of Section 304 of the IITA and accompanying regulations, bitcoin is considered "intangible personal property." Bitcoin is not considered a "patent, copyright, trademark, or similar item of intangible property" to which 35 ILCS 5/304(a)(3)(B-1) and (B-2) and accompanying regulations would apply. (This is a GIL.)

August 31, 2021

Re: Illinois Income Tax

Dear NAME:

This is in response to your letter dated April 28, 2020, 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 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.tax.illinois.gov.

Your letter states as follows:

We respectfully request a General Information Letter on the classification of bitcoin for purposes of 35 ILCS § 5/304 (the "Illinois apportionment statute"). Specifically, please confirm that bitcoin is an item of "intangible personal property" as that term is used in the Illinois apportionment statute and accompanying regulations. Assuming bitcoin is intangible property please confirm it is not a 'patent, copyright trademark or similar item of intangible property" for purposes of the same statute and accompanying regulations.

For purposes of this request, bitcoin is a "digital representation of value that functions as a medium of exchange a unit of account and/or a store of value" but is not considered coin or paper money issued by the United States or coin or paper money of any government.¹ Transactions involving bitcoin are typically stored and verified on a digital distributed ledger known as the bitcoin blockchain technology. This ledger records and organizes transactions involving bitcoin in "blocks ' of data that are chained" together using cryptography to secure the record and prove the identities of the parties to the transaction. Bitcoin's blockchain technology is decentralized meaning that the data from the digital ledger is maintained and stored on numerous servers and hard drives in various locations of unrelated person rather than in one central data center.

¹ Notice 2014-21, 2014-16 I.R.B. 938.

Bitcoin may be used to purchase goods or services, or purchased and held as an investment. However, bitcoin does not confer an ownership interest in anything other than itself. Although specific guidance has not been promulgated with respect to bitcoin, the Internal Revenue Service ("IRS") has determined that convertible virtual currency "is treated as property" rather than as currency, and "[g]eneral tax principles applicable to property transactions apply to transactions using virtual currency."²

Issue 1: Bitcoin is considered "intangible personal property" for purposes of the of the Illinois apportionment statute.

The Illinois apportionment statute and accompanying regulations provide specific sourcing rules for items of intangible personal property.³ Illinois Department of Revenue ("Department") regulations addressing apportionment provide that "an item of 'intangible personal property' includes only an item that can ordinarily be resold or otherwise reconveyed by the person acquiring the item from the taxpayer[...]."⁴ In application, the Department has interpreted the term "intangible" in this context expansively to cover items such as event tickets, software, and membership interests.⁵ Additionally, the Department issued a General Information Letter that provides certain "tokens" that have a similar function to bitcoin described herein are items of intangible property for sales tax purposes.⁶

Moreover, Illinois generally requires that "any term used in [the Illinois Income Tax Act] shall have the same meaning as when used in a comparable context in [the Internal Revenue Code] in effect for the taxable year."⁷ The IRS confirmed that convertible virtual currency "is treated as property"; and, as bitcoin (and other convertible virtual currency) clearly is not tangible, it must therefore be intangible "property."⁸

Here, bitcoin can be ordinarily resold or otherwise reconveyed by the person acquiring the item, and is not tangible in nature. Accordingly, please confirm that the Department treats bitcoin as intangible property for purposes of the Illinois apportionment statute and accompanying regulations.

² *Id.*

³ See 35 ILCS § 5/304(a)(3)(C-5)(iii); 86 Ill. Admin. Code 100.3370(c)(6)(C)(ii).

⁴ 86 Ill. Admin. Code 100.3370(c)(6)(C)(ii).

⁵ See, e.g., 86 Ill. Admin. Code 100.3370(c)(6)(C); General Information Letter IT 08-0031-GIL (Oct. 8, 2008); General Information Letter IT 08-0028-GIL (Sept. 19, 2008).

⁶ See General Information Letter IT 18-0025-GIL (Sept. 13, 2018).

⁷ 35 ILCS § 5/102.

⁸ Notice 2014-21, 2014-16 I.R.B. 938.

Issue 2: Bitcoin is not considered a patent, copyright, trademark, or similar item of intangible personal property.

The Illinois apportionment statute provides that "[g]ross receipts from the license, sale, or other disposition of patents, copyrights, trademarks, and similar items of intangible personal property...may be included in the numerator or denominator of the sales factor only if gross receipts from licenses, sales, or other disposition of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years[.]"⁹ Illinois regulations generally define "patents," "copyrights," and "trademarks" as items registered or eligible to be registered under applicable provisions of the U.S. Code, and define a "similar item" of intangible property as "an item of intellectual property that is registered or otherwise enforceable under a law equivalent to 35 USC 151, 17 USC 408 or 15 USC 1051 or that is otherwise recognized in the country under whose law the sale or license agreement would be enforced, or under which an infringement claim would be brought."¹⁰

Bitcoin is not registered as a patent, trademark, copyright or other similar item of intellectual property under the U.S. Code. Accordingly, please confirm that bitcoin would not be treated as a patent, trademark, copyright or similar item of intangible property for purposes of the Illinois apportionment statute.

RULING

35 ILCS 5/304 and 86 Ill. Adm. Code 100.3370 provide specific sourcing rules for items of intangible personal property. 35 ILCS 5/304(a)(3) states, in pertinent part, as follows:

(3) Sales factor.

(A) The sales factor is a fraction, the numerator of which is the total sales of the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

* * *

(B-1) Patents, copyrights, trademarks, and similar items of intangible personal property.

(i) Gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of

⁹ 35 ILCS § 5/304(a)(3)(B-2), *see also* 86 Ill. Admin. Code 100.3370(a)(2)(F).

¹⁰ 86 Ill. Admin. Code 100.3370(a)(2)(F)(v)-(viii).

intangible personal property, other than gross receipts governed by paragraph (B-7) of this item (3), are in this State to the extent the item is utilized in this State during the year the gross receipts are included in gross income.

* * *

(B-2) Gross receipts from the license, sale, or other disposition of patents, copyrights, trademarks, and similar items of intangible personal property, other than gross receipts governed by paragraph (B-7) of this item (3), may be included in the numerator or denominator of the sales factor only if gross receipts from licenses, sales, or other disposition of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years; provided that, when a taxpayer is a member of a unitary business group, such determination shall be made on the basis of the gross receipts of the entire unitary business group.

* * *

(C-5) For taxable years ending on or after December 31, 2008, sales, other than sales governed by paragraphs (B), (B-1), (B-2), (B-5), and (B-7), are in this State if any of the following criteria are met:

* * *

(iii) In the case of interest, net gains (but not less than zero) and other items of income from intangible personal property, the sale is in this State if:

(a) in the case of a taxpayer who is a dealer in the item of intangible personal property within the meaning of Section 475 of the Internal Revenue Code, the income or gain is received from a customer in this State. For purposes of this subparagraph, a customer is in this State if the customer is an individual, trust or estate who is a resident of this State and, for all other customers, if the customer's commercial domicile is in this State. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this State if the billing address of the customer, as shown in the records of the dealer, is in this State; or

(b) in all other cases, if the income-producing activity of the taxpayer is performed in this State or, if the income-producing activity of the taxpayer is performed both within and without this State, if a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state, based on performance costs.

* * *

86 Ill. Adm. Code 100.3370(c)(7) provides, in pertinent part, as follows:

- 7) For taxable years ending on or after December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3), (4), (5) or (6) *are in this State if any of the following criteria are met:*

* * *

- ii) For purposes of this subsection (c)(7)(C), an item of "intangible personal property" includes only an item that can ordinarily be resold or otherwise reconveyed by the person acquiring the item from the taxpayer, and does not include any obligation of the taxpayer to make any payment, perform any act, or otherwise provide anything of value to another person.

* * *

For the purposes of 35 ILCS 5/304 and 86 Ill. Adm. Code 100.3370, the Department treats bitcoin as an item of "intangible personal property." Likewise, for the purposes of 35 ILCS 5/304 and 86 Ill. Adm. Code 100.3370, the Department does not consider bitcoin a "patent, copyright, trademark, or similar item of intangible property."

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)

cc: Daily File
Correspondence file:

IT-20-GC-0033-GIL