

Department does not issue rulings on nexus, however the taxpayer may not be required to file an Illinois Income tax return if they do not meet the requirements of Section 502(a) of the IITA. (This is a GIL.)

August 31, 2021

Re: Illinois income tax

Dear NAME:

This is in response to your letter received June 5, 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 are writing this letter on behalf of our client, BUSINESS., to request a letter ruling regarding state nexus for corporate income tax purposes.

BUSINESS is incorporated in STATE and elects to be treated as S-Corp for federal income tax return. This company is an independent agent and provider of voice, data, and internet services to customers located in multiple states, except for customers in Illinois State.

However, BUSINESS currently has a full-time employee who works remotely out of her home office and is resident of the state of Illinois. Below are additional information on her roles within the company.

- Duties: employee is project management and data base management for the company. She also provides customer support including assisting with trouble tickets and orders.
- Home office: employee maintain an office in her home.
- Office equipment value: the company provided her a computer, internet, and small office supplies for the total value approximate of \$3500.
- Sales: the company does not have customers within the State. Therefore, it has zero sales income from Illinois State.

Please let us know if BUSINESS. establishes income tax nexus within the state and is required to file an annual Corporate Income Tax Return even though the company has zero sales.

If you have any questions or need additional information, please feel free to contact us at the address listed above.

RULING

Section 502(a) of the Illinois Income Tax Act (“IITA,” 35 ILCS 5/101 et seq.) describes when an Illinois income tax return is required. Pursuant to Section 502(a), an Illinois income tax return is required in two situations. The first situation is when a taxpayer is liable for Illinois income tax. IITA Section 502(a)(1). The second situation is, in the case of a corporation qualified to do business in Illinois, when the taxpayer is required to file a federal income tax return, regardless of whether such person is liable for Illinois income tax. IITA Section 502(a)(2).

Section 201 of the IITA, imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. The Due Process and Commerce Clauses of the Federal Constitution limit the power of States to subject foreign corporations to tax. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction it seeks to tax. *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992). Similarly, the Commerce Clause requires that the tax be applied to an activity with a substantial nexus with the taxing state. *Id.* The determination as to 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. For information regarding nexus, see Department of Revenue Regulations Section 100.9720, 86 Ill. Adm. Code 100.9720, which is accessible from the Department’s web site.

A nonresident is liable for Illinois income tax under Section 201 of the IITA if it computes “net income” as defined under IITA Section 202. IITA Section 202 defines Illinois net income as that portion of the taxpayer’s “base income” as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. Under Article 3 of the IITA, business income is apportioned to Illinois based on an apportionment ratio in which the numerator is the amount of the taxpayer’s sales in Illinois and the denominator is the amount of the taxpayer’s sales everywhere.

If the taxpayer has no sales in Illinois, then their numerator would be zero meaning that they have no business income and no net Illinois income. If a foreign corporation has no Illinois net income under section 202, there is no liability for tax under section 201. Therefore, the requirement to file found in Section 502(a)(1) of the IITA would not apply. However, this does not necessarily mean that they will not have to file a Corporate Income Tax return.

Your letter states that the taxpayer in question does not have customers or sales in Illinois but is silent as to whether the taxpayer is registered to do business in Illinois. If the taxpayer is registered to conduct business in Illinois and is required to file a federal income tax return, then under Section 502(a)(2) of the IITA, they would be required to file an Illinois income tax return. If the taxpayer has no Illinois income tax liability and is not registered to business in Illinois, then they likely are not required to file an Illinois income tax return.

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: