

General Information Letter: Alternative apportionment not allowed unless taxpayer demonstrates sales factor does not fairly reflect market for goods or services. (GIL)

March 18, 2024

NAME  
TITLE  
COMPANY  
ADDRESS

Re: Petition for Alternative Apportionment – Separate Accounting  
COMPANY  
FEIN: ##-#####  
Tax Year Ended: YYYY

Dear NAME:

This is in response to your letter dated January 16, 2024, in which you petition the Department to use an alternative method of allocation or apportionment, specifically separate accounting. 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 Section 1200.120(b) and (c), which may be found on the Department's web site at <https://tax.illinois.gov/>. For the reasons discussed below, your petition cannot be granted based on the information provided.

Your petition states as follows:

We are submitting a request for separate accounting for tax period YYYY and after pursuant to Illinois Admin. Code 86. The normal allocation and apportionment provisions do not fairly represent the market for the company's goods, services, and other sources of business income.

COMPANY1 ("The partnership) is a concert promotion company that operates both inside and outside of Illinois. The majority of the partnership's activity is outside of Illinois. For the taxable year ending MONTH DAY, YEAR, the gross receipts for the partnership were \$\$\$\$\$, of which \$\$\$\$\$\$ were derived from Illinois and \$\$\$\$\$\$ were derived outside of Illinois. The YYYY total taxable income for the partnership was \$\$\$\$\$\$ (per M-3 line 26).

The partnership owns 50% of a separate partnership, COMPANY2 operates solely in Illinois and 100% of their gross receipts are derived from Illinois. For the taxable year ending MONTH DAY,

YEAR, the gross receipts for COMPANY2 were \$\$\$\$\$\$. The YYYY total taxable income for COMPANY2 was \$\$\$\$\$\$ (per M-3 line 26).

In general, for tax years ending on or after MONTH DAY, YEAR, persons other than residents who derive business income from Illinois and one or more other states shall compute their apportionment factor based on the sales factor. Therefore, the partnership's YYYY Illinois apportionment factor was computed by taking the 50% of total gross receipts from COMPANY2 (\$\$\$\$\$\$) plus the actual Illinois gross receipts of the partnership (\$\$\$\$\$\$) divided by the total gross receipts from COMPANY2 (\$\$\$\$\$\$) plus the total gross receipts of the partnership (\$\$\$\$\$\$). See attached calculation enclosed.

This standard apportionment results in Illinois apportionment factor that far exceeds the actual Illinois activity of the business. We request that for tax year YYYY and beyond, the partnership be allowed to use separate accounting to compute the actual Illinois income derived from its investment in COMPANY2. See attached calculation enclosed. This would result in an overall Illinois apportionment factor that more correctly reflects the partnership business activities in Illinois.

Please contact me at PHONE or E-MAIL should you have any questions or require additional information.

CALCULATION CHART HAS BEEN REDACTED

### **RULING**

Section 304(a) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/304) provides that when a nonresident derives business income from Illinois and one or more other states, such income shall be apportioned to Illinois by multiplying the income by the taxpayer's apportionment factor. For taxable years ending on and after December 31, 1998, except in the case of an insurance company, financial organization, transportation company, or federally regulated exchange, the apportionment factor is equal to the sales factor. IITA Section 304(a)(3) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

Section 304(f) of the IITA states:

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 or market in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

86 Ill. Adm. Code Section 100.3380(a)(2) states:

The Director has determined that, in the instances described in this Section, the apportionment provisions provided in IITA Section 304(a) through (e) and (h) do not fairly represent the extent of a person's business activity or market within Illinois. For tax years beginning on or after the effective date of a rulemaking amending this Section to prescribe a specific method of apportioning business income, all nonresident taxpayers shall apportion their business income employing that method in order to properly apportion their business income to Illinois. Taxpayers whose business activity or market within Illinois is not fairly represented by a method prescribed in this Section and who want to use another method for a tax year beginning after the effective date of the rulemaking adopting that method may obtain permission to use that other method by filing a petition under Section 100.3390. For tax years beginning prior to the effective date of the rulemaking adopting a method of apportioning business income, the Department will not require a taxpayer to adopt that method; provided, however, if any taxpayer has used that method for any of those tax years, the taxpayer must continue to use that method for that tax year. Moreover, a taxpayer may file a petition under Section 100.3390 to use a method of apportionment prescribed in this Section for any open tax year beginning prior to the effective date of the rulemaking adopting that method, and that petition shall be granted in the absence of facts showing that that method will not fairly represent the extent of a person's business activity or market in Illinois.

Taxpayers who wish to use an alternative method of apportionment under these provisions are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390. Subsection (c) of that regulation provides:

A departure from the required apportionment method is allowed only when those methods do not accurately and fairly reflect business activity in Illinois (for taxable years ending before December 31, 2008) or market in Illinois (for taxable years ending on or after December 31, 2008). An alternative apportionment method may not be invoked, either by the Director or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. However, if the application of the statutory formula will lead to a grossly distorted result in a particular case, a fair and accurate alternative method is appropriate. The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method has the burden of going forward with the evidence and proving by clear and convincing evidence that the statutory formula results in the taxation of extraterritorial values or operates unreasonably and arbitrarily in attributing to Illinois a percentage of income that is out of all proportion to the business transacted in this State (for taxable years ending before December 31, 2008) or the market for the taxpayer's goods, services or other sources of business income in this State (for taxable years ending on or after December 31, 2008). In addition, the party seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon business activity in this State (for taxable years ending before December 31, 2008) or the market for the taxpayer's goods, services or other sources of business income in this State (for taxable years ending on or after December 31, 2008).

In order to make a determination under IITA Section 304(h) as to whether or not the apportionment provisions of subsections (a) through (e) and of subsection (h) reflect the market for the person's goods, services, or other sources of business income, it is necessary that the taxpayer first determine its apportionment under such sections. If the apportionment under such sections does not fairly reflect the taxpayer's market, then an alternative apportionment method may be permitted. Your petition contains no information relative to the market for the taxpayer's goods or services, nor does it contain information by which a determination can be made as to whether the apportionment resulting under IITA Section 304 fails to fairly reflect that market. Your request contains no evidence that the statutory apportionment formula does not fairly represent the extent of the taxpayer's business activities in Illinois or that the proposed alternative method of separate accounting does produce a reasonable result. The facts stated in your petition are not sufficient to satisfy the burden set forth in 86 Ill. Adm. Code Section 100.3390(c). Because your request merely states that separate accounting for the taxpayer's Illinois income more accurately reflects its Illinois activity, your petition for alternative apportionment does not meet the regulatory requirement and cannot be granted at this time.

Accordingly, your petition for alternative apportionment for tax year ended YYYY cannot be granted. However, if you have additional information related to this request that was not previously submitted, you may supplement your petition and we will reconsider your request. 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.

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.

Sincerely,

Jennifer M. Uhles  
Associate Counsel (Income Tax)