

This letter responds to a survey on series LLCs. See 86 Ill. Adm. Code Parts 130 and 150. (This is a GIL.)

September 10, 2013

Dear Xxxxx:

This letter is in response to PERSON'S letter dated July 26, 2013, in which he requested information. The Department issues two types of letter rulings. Private Letter Rulings ("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 on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

As you may be aware, your Department was nice enough to respond to a questionnaire from a COMPANY concerning the state tax treatment of Series Limited Liability Companies in light of the IRS Proposed Treasury Regulations issued on September 14, 2010. The task force's findings and comments as submitted by the COMPANY April 30, 2013 is attached. This report was discussed at the COMPANY's Meeting and received a bit of 'tax press.' We appreciate your participation.

Since the COMPANY started soliciting information many more states have enacted series LLC statutes and a greater awareness of Series LLCs is developing. We are again enclosing the same questionnaire (both in blank form and a copy of what you submitted) and request that you consider updating any responses that may have changed with the passage of time, greater familiarity with the Series LLC, and their tax treatment by other states. We welcome additional comments, observations or input as well as well.

Again, we want to thank you for your past participation and appreciate any additional feedback from your Department is applicable. If your Department does not handle the employment tax matters and we do not have a response concerning your state's employment tax treatment, could you refer us to the appropriate person with such person's contact information so that we may follow up on that issue with them.

We will respond to Questions 16 through 22 concerning sales and use taxes and rental and lease taxes. Your attachment states, in part, as follows:

**QUESTIONS TO STATE DEPARTMENTS OF REVENUE/FINANCE REGARDING THEIR INTENT TO CONFORM WITH THE CLASSIFICATION OF SERIES LLCs AS DISCUSSED IN TREASURY DEPARTMENT/IRS PROPOSED REGULATIONS**

**TASK FORCE ON PROPOSED SERIES LLCs REGULATIONS**

**March 2011**

As you may know, on September 14, 2010, the U.S. Department of Treasury and the Internal Revenue Service (IRS) issued proposed regulations dealing with 'series' entities such as series limited liability companies (Series LLCs), series business or 'statutory' trusts, and segregated portfolio companies. A copy of those regulations is attached for your reference (herein called the 'Proposed Series LLC Regulations'). Generally, the Proposed Series LLC Regulations classify each series within a Series LLC as a separate entity, which can then make the same tax elections as a regular LLC itself, e.g., to be classified as a partnership (if that has more than one member), to be disregarded (if it has only one member), or to be taxed as a 'C' or 'S' corporation. Under these Proposed Series LLC Regulations, the Series LLC itself (as opposed to the series within the Series LLC) is considered a separate tax reporting unit independent of the various series within it, but is not required to file a federal income tax return (partnership return) unless it has its own income, deductions or credits (independent of that of the series within it) in any given taxable year.

The Proposed Series LLC Regulations govern only federal income tax issues; they expressly reserve a determination as to the federal (and state) employment tax issues. The Proposed Series LLC Regulations request comments from interested parties, and the IRS has specifically requested comments. To that end, a joint Task Force was recently formed at the request and this questionnaire to the states is part of the Task Force's effort to inform the IRS as to whether or to what extent the states plan to conform with its proposed tax classification of series within a Series LLC and also to educate our members and taxpayers generally. For convenience, we have aggregated each form of series entities into the term 'Series LLC' in the questions below. In the event your state differentiates between some of the series forms with respect to one or more of the below taxes, please complete a questionnaire for each differentiated form of series entities.

Each of the following questions are designed to be answered Yes, No, Not Applicable (NA) or Not Yet Determined (ND) by checking the appropriate box. However, we encourage any additional comments or observations you wish to make and therefore encourage you to provide supplemental information referring to the specific question(s) by number.

**Questions on Sales/Use Taxes:**

16. Does your state levy a 'traditional' sales and use tax on tangible or mixed tangible/intangible personal property? **If not, please skip to Question 19 below.**       **Y**    **N**    **NA**    **ND**
17. For purposes of its sales and use tax, will your state conform to the Proposed Series LLC Regulations by classifying each series as a separate reporting unit that can make its own sales and use tax elections?  
 **Y**    **N**    **NA**    **ND**
- a. If so, will you treat transfers of taxable property between two series or between a series and the Series LLC itself as a potential taxable transaction, unless there is a generally applicable exemption, e.g., wholesale sale or occasional sale?  
 **Y**    **N**    **NA**    **ND**
- b. If so, will you treat the nexus-creating activities in your state of one series to be attributed to:  
i. Another series?       **Y**    **N**    **NA**    **ND**  
ii. The Series LLC itself?    **Y**  **N**    **NA**    **ND**
- c. If so, will you treat the nexus-creating activities in your state of the Series LLC itself (independent of activities of any of the series within the Series LLC) to be attributed to each series within the Series LLC?    **Y**    **N**    **NA**    **ND**
18. For purposes of its sales and use tax, if your state does not conform to the Proposed Series LLC Regulations and treat the Series LLC and each series therein as a single sales and use tax reporting entity, will you treat transfers of taxable property between two series or between a series and the series LLC itself as a potential taxable transaction, unless there is a generally applicable exemption, e.g., wholesale sale or occasional sale?  
 **Y**    **N**    **NA**    **ND**

**Questions Concerning Rental/Lease Taxes:**

19. Does your state levy a sales tax or separate rental tax on leases of tangible personal property ('TPP')? **If not, please skip to the conclusion below.**  
 **Y**    **N**    **NA**    **ND**
20. Will your state treat each series as a separate reporting entity for purpose of the TPP leasing tax as opposed to the Series LLC itself?  
 **Y**    **N**    **NA**    **ND**

- a. If so, will your state impose its sales or rental tax on leases of TPP between two series?  **Y**  **N**  **NA**  **ND**
  - b. If so, will the answer differ if the lease is between the Series LLC itself and one of its series?  **Y**  **N**  **NA**  **ND**
  - c. If so, will the TPP leasing actions of one series in your state be imputed to the other series of the Series LLC or to the Series LLC itself?  **Y**  **N**  **NA**  **ND**
  - d. If so, will the TPP leasing actions of the Series LLC itself be imputed to each of the series of the Series LLC?  **Y**  **N**  **NA**  **ND**
  - e. If not, will your state disregard rentals between or among the various series of the Series LLC?  **Y**  **N**  **NA**  **ND**
  - f. If not, will your state disregard rentals between a series of the Series LLC and the Series LLC itself?  **Y**  **N**  **NA**  **ND**
21. If our state does not treat each series as a separate reporting entity for purposes of the TPP leasing tax, will the Series LLC be the reporting entity even if it has no activity in the state?  **Y**  **N**  **NA**  **ND**
22. If your state treats each series as a separate reporting entity for purposes of the TPP leasing tax, will the Series LLC itself be required to file a return if the Series LLC itself (independent of the series) does not have leasing activity in the state?  **Y**  **N**  **NA**  **ND**

## **DEPARTMENT'S RESPONSE:**

### **Questions on Sales/Use Taxes:**

16. Does your state levy a "traditional" sales and use tax on tangible or mixed tangible/intangible personal property? **If not, please skip to Question 19 below.**

The Illinois Retailers' Occupation Tax (commonly known as sales tax) is imposed upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. *See 35 ILCS 120/1 et seq.* This tax is measured by the seller's gross receipts from such sales made in the course of such business. *See 86 Ill. Adm. Code 130.101.* Transactions which do not involve the sale of tangible personal property at retail are not subject to the Retailers' Occupation Tax. In addition, Use Tax is imposed on the privilege of using, in

this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. *See* 35 ILCS 105/1 *et seq.* and 86 Ill. Adm. Code 150.101.

17. For purposes of its sales and use tax, will your state conform to the Proposed Series LLC Regulations by classifying each series as a separate reporting unit that can make its own sales and use tax elections?

No determination has been made whether Illinois will conform to the Proposed Series LLC Regulations for sales tax purposes.

- a. If so, will you treat transfers of taxable property between two series or between a series and the Series LLC itself as a potential taxable transaction, unless there is a generally applicable exemption, e.g., wholesale sale or occasional sale?

Not applicable.

- b. If so, will you treat the nexus-creating activities in your state of one series to be attributed to:

i. Another series?

ii. The Series LLC itself?

Not applicable.

- c. If so, will you treat the nexus-creating activities in your state of the Series LLC itself (independent of activities of any of the series within the Series LLC) to be attributed to each series within the Series LLC?

Not applicable.

18. For purposes of its sales and use tax, if your state does not conform to the Proposed Series LLC Regulations and treat the Series LLC and each series therein as a single sales and use tax reporting entity, will you treat transfers of taxable property between two series or between a series and the series LLC itself as a potential taxable transaction, unless there is a generally applicable exemption, e.g., wholesale sale or occasional sale?

No determination has been made whether Illinois will conform to the Proposed Series LLC Regulations for sales tax purposes. Generally, for sales tax purposes, each legal entity is treated separately.

#### **Questions Concerning Rental/Lease Taxes:**

19. Does your state levy a sales tax or separate rental tax on leases of tangible personal property (“TPP”)? **If not, please skip to the conclusion below.**

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if a lessor is guaranteed at the time of the lease that the leased property will be sold, that transaction is considered to be a conditional sale at the outset of the transaction. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010. The lessors/retailers generally owe Retailers' Occupation Tax on any installment payments when they are received by the lessors/retailers. The lessees/purchasers owe corresponding Use Tax on the amount of the installment payments that are collected by the lessors/retailers.

A true lease generally has no buy out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors of a true lease owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

20. Will your state treat each series as a separate reporting entity for purpose of the TPP leasing tax as opposed to the Series LLC itself?

No determination has been made whether Illinois will treat each series as a separate reporting entity for purpose of sales tax. Generally, for sales tax purposes, each legal entity is treated separately.

- a. If so, will your state impose its sales or rental tax on leases of TPP between two series?
- b. If so, will the answer differ if the lease is between the Series LLC itself and one of its series?
- c. If so, will the TPP leasing actions of one series in your state be imputed to the other series of the Series LLC or to the Series LLC itself?

- d. If so, will the TPP leasing actions of the Series LLC itself be imputed to each of the series of the Series LLC?

Subsections (a)-(d) are not applicable.

- e. If not, will your state disregard rentals between or among the various series of the Series LLC?

- f. If not, will your state disregard rentals between a series of the Series LLC and the Series LLC itself?

Generally, for sales tax purposes, each legal entity is treated separately.

- 21. If your state does not treat each series as a separate reporting entity for purposes of the TPP leasing tax, will the Series LLC be the reporting entity even if it has no activity in the state?

Not applicable.

- 22. If your state treats each series as a separate reporting entity for purposes of the TPP leasing tax, will the Series LLC itself be required to file a return if the Series LLC itself (independent of the series) does not have leasing activity in the state?

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.]

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:mzk