

General Information Letter: Petition for alternative apportionment contained insufficient information to allow a determination.

December 26, 2006

Dear:

This is in response to your letter dated October 3, 2006, in which you request permission for CORPORATION, Inc., to either treat only 50% of the gross receipts from contracts performed in Illinois as sales in this State or to use a three-factor (payroll, property and sales) apportionment formula, rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter 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.revenue.state.il.us. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

The taxpayer is a construction subcontractor, with construction contracts in multiple states. Taxpayer is a Missouri Corporation with its offices located in Missouri. The taxpayer has no permanent offices in any other state. Historically, Missouri revenues have been 90% of the total, with a current trend of larger out of state amounts. Under Missouri's treatment of sales, construction contracts performed out of the state are allocated 50% Missouri and 50% out of state. The theory of this treatment is that the management and other supporting activities are performed from the Missouri office and that a partial allocation to Missouri should be made. Illinois has no partial allocation mechanism in its allocation rules. The result of the above is that the sales allocation amount is above 100%, and for fiscal year ending July 2006, the Illinois factor is 38% and Missouri is 81%. In addition, Illinois does not have a multiple factor allocation option, which could be used in Missouri to eliminate the partial sales allocation treatment. Clearly, a 119% apportionment factor would be evidence of an unfair allocation method. In addition, not being allowed to have a partial sales allocation method results in an inaccurate indicator of the taxpayer's Illinois business percentage.

The taxpayer would request that they be allowed to treat the Illinois contract jobs as 50% Illinois, 50% out of state, which would result in a more consistent treatment between the states and, which, would result in the allocation percentage being 100%.

In the alternative, the taxpayer would request that they be allowed to use a three factor apportionment of sales, property and payroll to determine the Illinois percentage. This would allow the taxpayer to utilize this method for each state, and certainly result in a more accurate allocation to each state and an allocation percentage of 100.

Response

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may 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 in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at www.tax.illinois.gov.

86 Ill. Adm. Code Section 100.3390(c) provides:

A departure from the required apportionment method is allowed only where such methods do not accurately and fairly reflect business activity in Illinois. 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 cogent evidence that the statutory formula results in the taxation of extraterritorial values and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income which is out of all proportion to the business transacted in this State. 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.

Nothing in your petition provides any evidence that the sales factor apportionment formula prescribed in Section 304(a) and (h) of the IITA does not fairly represent the extent of the business activities of CORPORATION, Inc. within the State of Illinois, or that the requested alternatives fairly and accurately apportion income to Illinois based on the business activity of CORPORATION, Inc. within this State. The fact that the Illinois and Missouri apportionment methods, taken together, apportion more than 100% of the business income of CORPORATION, Inc. to the two states is not evidence that the Illinois method does not fairly represent the extent of the business activities of CORPORATION, Inc. within the State of Illinois.

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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. A petition filed October 3, 2006 will allow a taxpayer to use the requested method on original returns due on or after January 1, 2007, if granted.

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 still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 524-3951.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax