

General Information Letter: Brokerage business conducted in Missouri with only connection to Illinois by telephone would have no Illinois sales factor.

May 2, 2006

Dear:

This is in response to your letter that we received on April 10, 2006. Your letter states the following:

Do I have to pay taxes for doing business in Illinois when I don't live there? Here are the facts. I live and do business in my home in CITY, MO. There is no contact between me and the clients, it is strickly over the phone. It is a work at home business. I am the only worker in it. It is finding buyers for seller who want to sell their trustee note. They give me the information and I do the rest from my home in CITY, MO. There is no stores in Illinois or Missouri associated with it.

I have not started it yet in Illinois. But I will soon. Thank you.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill.Adm.Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 201 of the Illinois Income Tax Act ("ITA"), 35 ILCS 5/101 et seq, imposes a tax measured by net income on taxpayers 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 Illinois to subject foreign taxpayers to Illinois 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.

Your question is whether you will owe Illinois income taxes as a result of your Missouri at-home business that consists of making telephone calls to find buyers for trustee notes. The answer depends on whether you have sufficient nexus with Illinois. Enclosed please find a copy of 86 Ill.Admin.Code 100.9720 that specifically addresses nexus. This will provide you with a helpful guideline in determining whether your activities will subject you to Illinois income taxation. Specifically, section 100.9720(c)(4) provides a list of certain activities that constitute sufficient nexus to subject a taxpayer to taxation by Illinois and section 100.9720(c)(5) provides a list of activities that would not subject a taxpayer to taxation by Illinois.

The question of nexus is highly fact-dependent. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and circumstances. Based on the limited facts presented in your letter, it seems unlikely that phone calls from your home in Missouri to locations within Illinois will subject you to Illinois income taxation. Please keep in mind that Illinois laws prohibit certain telephone solicitation (for example, see Illinois'

Restricted Call Registry Act, 815 ILCS 402/1 et seq.) so we encourage you to consult an attorney regarding the legality of your intended telephone calls to Illinois residents prior to starting your business in Illinois.

It is generally beyond the scope of a letter ruling to give precise guidance on nexus issues. However, the facts recited in your request indicate you may not apportion any income to Illinois even if you have nexus with Illinois. Based on the information in your letter, IITA Section 304(a)(3)(C) is most applicable to your situation. This is because telephone solicitation performed in another state that results in the sale of trustee notes in Illinois would be considered sales other than the sales of tangible personal property. Accordingly, a more pertinent question is whether you have income producing activity in Illinois. The Illinois Income Tax Act (hereinafter "IITA," 35 ILCS 5/101 et seq.) Section 304(a)(3)(C) states as follows:

- (C) Sales, other than sales governed by paragraphs (B) and (B-1), are in this State if:
  - (i) The income-producing activity is performed in this State; or
  - (ii) The income-producing activity is performed both within and without this State and a greater proportion of the income-producing activity is performed within this State than without this State based on performance costs.

Income producing activity is further discussed in 86 Ill.Adm.Code Section 100.3370(c)(3):

3) Sales other than sales of tangible personal property in this State. The sales factor includes gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government); gross receipts are attributed to this State if the income producing activity which gave rise to the receipts is performed wholly within this State. Also, gross receipts are attributed to this State if, with respect to a particular item of income, the income producing activity is performed in this State, based on costs of performance.

A) Income producing activity defined. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a person, such as those conducted on its behalf by an independent contractor. The mere holding of intangible personal property is not, of itself, an income producing activity. Accordingly, the income producing activity includes but is not limited to the following:

- i) The rendering of personal services by employees or the utilization of tangible and intangible property by the person in performing a service.
- ii) The sale, rental, leasing, licensing or other use of real property.
- iii) The rental, leasing, licensing or other use of tangible personal property.

iv) The sale, licensing or other use of intangible personal property.

B) Costs of performance defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the person.

C) Application. Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this State if:

- i) the income producing activity is performed wholly within this State; or
- ii) the income producing activity is performed both in and outside this State and a greater proportion of the income producing activity is performed in this State than without this State, based on costs of performance.

D) Special Rules. The following are special rules for determining when receipts from the income producing activities described below are in this State.

...

- iii) Gross receipts for the performance of personal services are attributable to this State to the extent such services are performed partly within and partly without this State, the gross receipts for the performance of such services shall be attributable to this State only if a greater portion of the services were performed in this State, based on costs of performance. Where services are performed partly within and partly without this State and the services performed in each state constitute a separate income producing activity, the gross receipts for the performance of services attributable to this State shall be measured by the ratio which the time spent in performing such services in this State bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

Example: Corporation X, a road show, gave theatrical performances at various locations in State X and in this State during the tax period. All gross receipts from performances given in this State are attributed to this State.

Example: A public opinion survey corporation conducted a poll by its employees in State X and in this State for the sum of \$9,000. The project required 600 man hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man hours were expended in this State. The receipts attributable to this State are \$3,000, calculated as follows:

200/600 x \$9,000

Your letter states that you will perform telephone calls to find buyers for the sellers of trustee notes. Assuming that the entire transaction is performed outside Illinois, then very little, if any, income producing activity will be performed in Illinois. If this is true, there will be no Illinois income tax consequences for you.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott  
Staff Attorney -- Income Tax