

General Information Letter: An electing small business trust is, as a shareholder in a Subchapter S corporation, taxable on its share of the business income apportioned to Illinois by the corporation.

December 19, 2007

Dear:

This is in response to your letter dated November 14, 2007. The nature of your letter requires 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](http://www.tax.illinois.gov).

In your letter you have stated the following:

We are writing to you as tax professionals for the above referenced Trust, in response to the Notice BTR-45-B that they have received from the State of Illinois. A copy of the Notice is enclosed for your reference.

Please be advised that The TRUST is an "Electing Small Business Trust", a special type of Trust that is able to function as a "Complex Trust" and is qualified to be the shareholder of a Subchapter S corporation. The TRUST is a STATE Resident Trust and is also an "Electing Small Business Trust" for STATE tax purposes. As such, the Trust is subject to STATE tax only on 100% of its income.

An Electing Small Business Trust pays income tax at the highest Federal level and at the highest flat rate for STATE tax purposes as well. This particular Trust has no tax filing requirement with any other State besides STATE. A copy of the Trust's STATE income tax return for 2005 is also enclosed for your reference. Please use this information to close this inquiry.

Response

Section 308(a) of the Illinois Income Tax Act (35 ILCS 5/308) provides:

Allocation of Subchapter S corporation business income by shareholders other than residents. The respective shares of shareholders other than residents in so much of the business income of the Subchapter S corporation as is allocated or apportioned to this State in the hands of the Subchapter S corporation shall be taken into account by such shareholder pro rata in accordance with the requirements of Section 1366 of the Internal Revenue Code for the Subchapter S corporation's taxable year and allocated to this State.

As stated in our notice dated October 15, 2007, the Subchapter S corporation in which The TRUST is a shareholder has filed an Illinois income tax return showing business income apportionable to Illinois. As provided in Section 308(a) of the Illinois Income Tax Act, The TRUST is subject to Illinois income tax on its shareholder's share of the business income apportioned to Illinois by the Subchapter S corporation. The fact that STATE taxes The TRUST on 100% of its income from the Subchapter S corporation is not relevant to the Illinois tax liability of the trust.

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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, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax