

General Information Letter: “Retail lending” is not “retailing” for purposes of the replacement tax investment credit.

October 16, 2008

Dear:

This is in response to your letter dated September 30, 2008 in which you state the following:

I have an issue of clarification regarding Illinois Replacement Tax Investment Credit Program for corporations.

Issue: What kind of business industry will qualify for Illinois Replacement Tax Investment Credit? Does service retail like bank and lending (NAICS 522291 Consumer lending) business will qualify?

As per my understanding of the Illinois regulations Title 86 Part 100, Section 100.2101, IITA 201(e), Retail business qualifies for the Replacement Tax Credit. Based on that service Retail will qualify.

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.tax.illinois.gov/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 210(e) of the Illinois Income Tax Act (“IITA”; 35 ILCS 5/101 et seq.) allows a credit against the Illinois Personal Property Tax Replacement Income Tax imposed by Sections 201(c) and (d). The Act defines “retailing” as “the sale of tangible personal property or services rendered in conjunction with the sale of tangible consumer goods or commodities.” 35 ILCS 5/201(e)(3). Banking and lending services are clearly not tangible personal property. The only question is whether banking and lending services might somehow qualify as “services rendered in conjunction with” sales of tangible goods or commodities.

Illinois Department of Revenue Regulations discusses the definition of Retailing in more detail at 86 Ill.Admin.Code 100.2101(e)(9):

(9) Retailing. Retailing is defined as *the sale of tangible personal property or services rendered in conjunction with the sale of tangible consumer goods or commodities* (IITA Section 203(e)(3)). It is required that such tangible personal property be finished consumer goods, and the property be sold to its ultimate consumer. For example, sales of tangible personal property for resale are not included in the definition of retailing. The following activities are not considered retailing operations:

....

C) Other service professions which do not involve the transfer of tangible

personal property other than as an incident to the service performed. For guidance in distinguishing service professions from retailing professions, the Department will rely on rules promulgated under the Service Occupation Tax Act at 86 Ill.Admin.Code 140.

Examples of Service Occupation taxable transactions can be found at 86 Ill.Admin.Code 140.140 and include banking and lending services under subsection (r):

r) sales made by servicemen as an incident to sales of service to national banks or State-chartered banks or to Federal or State savings and loan associations, and sales made by State-chartered banks or Federal and State savings and loan associations as an incident to sales of service. Sales by national banks as an incident to sales of service are also subject to Service Occupation Tax.

Based on the above regulatory language, banking and lending are considered more of a service profession than a retailing profession. As a result, banks and lending businesses will generally not qualify for the Illinois Replacement Tax Investment Credit.

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