

General Information Letter: Nexus issues are not a proper subject for letter ruling.

October 31, 2008

Dear:

This is in response to your letter that our office received on October 6, 2008 in which you state the following:

My business, COMPANY, LLC, is interested in providing services to customers in your state and we require some information about any taxes or registrations that would apply to us for that purpose.

Our company, which is a single-owner LLC, provides medical physics services to hospitals and diagnostic imaging centers throughout the United States and abroad. Our team of medial physicists visits these facilities and performs equipment testing and technical consulting, typically for 1-2 days at a time. We anticipate providing services in your state for between 1 and 30 days per calendar year, depending on demand. Our company and all of our physicists are based in CITY, STATE and we do *not* maintain a mailing address, office or any other property in your state – the physicists fly in for each appointment; all of our employees reside in STATE. We also do not maintain a sales force of any kind, either in CITY or any other location. Our visits are exclusively to provide services and a portion of the services are actually performed in CITY, since report-writing, research, and other activities would be performed here instead of at the client site.

We do not typically sell products; however, occasionally our service customers may purchase a physics-related product through us since we receive discounts from some product companies (we resell these items and mark them up – we do not *produce* any products). The products we resell would typically be in the \$250-\$950 range and we may sell none or perhaps 1 or 2 in your state per year. Those products would typically be shipped from either CITY or directly from the manufacturer in another state.

We have the following questions:

- 1) Does your state have a sales tax, gross receipts tax, or any similar tax on *medical physics services* provided by a firm meeting our description, and if so, please describe the tax and the tax rate applicable to us.
- 2) Does your state have a sales tax for the products we sell and if so, would we have nexus in your state (and on what basis) and what tax rate would be applicable to us if we do?
- 3) Are we subject to filing an income tax return in your state or subject to any type of income tax withholding?
- 4) Are there any other business taxes we would be subject to in your state or business registrations that we would be required to get?

Your questions relating to sales taxes has been assigned to a different attorney and will be answered

separately. This letter addresses income taxes only.

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 201 of the Illinois Income Tax Act ("IITA"), 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 medical physicists from your LLC visiting Illinois hospitals and diagnostic imaging centers to perform equipment testing and technical consulting with occasional products sales. Your letter indicates that at times, various Illinois hospitals and diagnostic imaging centers purchase tangible personal property from your medical physicists. Such product sales are governed by Section 304(a)(3)(B) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.):

(B) Sales of tangible personal property are in this State if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other conditions of the sale.

IITA Section 304 provides for taxable years ending on or after December 31, 2000 that the apportionment factor for a foreign corporation deriving business income from Illinois and one or more other states shall be equal to its sales factor. Section 304(a)(3)(A) defines the sales factor:

(A) The sales factor is a fraction, the numerator of which is the total sales of the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

With respect to the services provided by the medical physicists in Illinois hospitals and diagnostic imaging centers, the applicable portions of the IITA are Sections 304(a)(3)(C) and (C-5) which state the following:

(C) For taxable years ending before December 31, 2008, sales, other than sales governed by paragraphs (B), (B-1), and (B-2), 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.
- (C-5) For taxable years ending on or after December 31, 2008, sales, other than sales governed by paragraphs (B), (B-1), (B-2), and (B-5), are in this State if any of the following criteria are met:

...

- (iv) Sales of services are in this State if the services are received in this State. For the purposes of this section, gross receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where that corporation, partnership, or trust has a fixed place of business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed. If the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor. ...

Your letter states that your company anticipates providing services to hospitals and diagnostic imaging centers located throughout Illinois. Should medical physicists provide their services in the State of Illinois, those services will be viewed as "received in" Illinois. As a result, it is likely that your LLC will have Illinois income tax consequences for services provided by your medical physicists.

Considering possible future Illinois product sales and services, you should be aware of when Illinois requires the filing of income tax returns. Pursuant to Section 502(a), an Illinois income tax return is required in two situations. The first situation is when a taxpayer is liable for Illinois income tax. The second situation is, in the case of a corporation qualified to do business in Illinois, when the taxpayer is required to file a federal income tax return, regardless of whether such person is liable for Illinois income tax.

Should you believe COMPANY will be required to file an Illinois income tax return, COMPANY must register with the state of Illinois and the Illinois Department of Revenue. All inquiries regarding how to register as a foreign corporation should be directed to the Illinois Secretary of State at the following address:

Office of the Illinois Secretary of State
Department of Business Services
Howlett Building, Room 328
Springfield, Illinois 62756
(217) 782-7880

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Enclosed please find a copy of Form REG-1, which is used to register businesses with the Illinois Department of Revenue.

As stated above, this is a general information letter which does not constitute a statement of policy that 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

Enclosure