

General Information Letter: Under sales factor statute in effect for taxable years ending on or after December 31, 2008, income from rental of advertising space on sides of buses in Illinois will be sourced to Illinois.

December 29, 2008

Dear:

This is in response to your letter dated November 24, 2008 in which you state the following:

We are writing in request of your opinion as to whether a STATE1 LLC should be required to register as a Foreign LLC in Illinois by filing a Form 45.5 Application for Admission to Transact Business, as a result of rental income derived from media space leased in the State of Illinois.

Statement of Facts

COMPANY, LLC (herein “COMPANY”) is a registered STATE1 Limited Liability Company conducting business in STATE2 and STATE3. The company is in the business of leasing media space from property owners and selling such space to advertisers across the world.

COMPANY has recently signed an agreement with a Chicago-based bus company to rent space on said buses to sell to advertisers. The advertisers from which the revenue is derived may be, but are usually not, located in the State of Illinois. COMPANY does not have any office or employees in the State of Illinois, nor does it currently conduct any other business in the state.

Requested Ruling

Would COMPANY be required to pay income tax generated from this media rental business and therefore register as a Foreign LLC in the State of Illinois?

Representations

To the best of the knowledge of COMPANY and its representative, the Illinois Department of Revenue (IDOR) has not previously ruled on the same or a similar issue for the taxpayer or a predecessor. Neither has the taxpayer or representative previously submitted the same or similar issue to the IDOR but withdrew it before a letter ruling was issued.

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/LegallInformation/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.

You ask whether COMPANY will be required to pay income tax generated from the sales of rental space on Chicago-based buses for advertisements. Your letter indicates that the advertisers buying the rental space on Illinois-based buses may be located in Illinois. Whether or not your clients are from Illinois, the sales discussed in your letter are governed by IITA Section 304(a)(3)(C-5)(ii):

(C-5) 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:

...

- (ii) Sales from the lease or rental of tangible personal property are in this State if the property is located in this State during the rental period. Sales from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment are in this State to the extent that the property is used in this State.

You mention that the buses are based in Chicago which indicates that the property will be "used" in the State of Illinois, regardless of whether the bus routes include locations outside of Illinois. As a result, it is likely that COMPANY will be required to file an Illinois income tax return.

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, as well as how to obtain Form 45.5 Application for Admission to Transact Business, 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

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,

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