

Private Letter Ruling: Petition is granted to eliminate sales between a partnership and other members of its unitary business group in computing the apportionment factor.

May 19, 2008

Dear:

This letter is in response to your letter dated September 7, 2006, petitioning the Department for authority for your client to use an alternative method of apportioning business income. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to CORPORATION1 and Subsidiaries for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither CORPORATION1 and Subsidiaries nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

CORPORATION 1("CORPORATION1") currently files an Illinois unitary corporate income and replacement tax return. The following wholly-owned subsidiaries are included in the Illinois unitary group:

<u>Name</u>	<u>FEIN:</u>
COMPANY1	XX-XXXXXXX
CORPORATION2	XX-XXXXXXX
CORPORATION3	XX-XXXXXXX

In addition, the unitary group owns 100% of COMPANY2, L.P. ("COMPANY2"), a Texas-based limited partnership. COMPANY3 owns a 99% interest in COMPANY2 while CORPORATION2 owns the remaining 1% interest. CORPORATION3 and CORPORATION2 have no activity other than their interest in COMPANY2. The COMPANY2 business is a member of the CORPORATION1 unitary business group, as described in IITA Section 1501(a)(27). The flow-through income or loss generated by COMPANY2 is included in taxpayer's Illinois unitary base. In addition, since COMPANY2 is included in the taxpayer's unitary group, the taxpayer's unitary apportionment factors include the COMPANY2 apportionment factors in accordance with 86 Ill. Adm. Code 100.3380(d)(1).

***Current Apportionment Method:***

Currently, inter-company sales made from CORPORATION1 to COMPANY1 are eliminated for purposes of computing the Illinois apportionment factor in accordance with 86 Ill. Adm. Code 100.5270(b)(1). However, inter-company sales from CORPORATION1 to COMPANY2 are not eliminated from the taxpayer's determination of its Illinois apportionment factors, in accordance with apportionment guidelines concerning unitary partners pursuant to 86 Ill. Adm. Code 100.3380(d)(2)(A).

***Requested Apportionment Method:***

The taxpayer believes that eliminating the inter-company sales between CORPORATION1 and COMPANY2 for purposes of computing the Illinois apportionment factor will more accurately reflect the business activity in Illinois. This position is supported by Private Letter Ruling, IT-03-0007-PLR dated April 22, 2003. The private letter ruling states that the general rule of not eliminating sales between a unitary partner and the partnership is not appropriate in the case where the unitary partnership is wholly-owned by corporate members of the unitary group.

As a result of the information provided above, the taxpayer requests a change to an apportionment method that eliminates inter-company sales from CORPORATION1 to COMPANY2 for the taxpayer's March 31, 2006 Illinois Corporation Income and Replacement Tax Return and for prospective tax years.

**DEPARTMENT'S RESPONSE:**

Section 304(f) of the Illinois Income Tax Act (the "IITA", 35 ILCS 5/101 *et seq.*) provides:

"If the allocation and apportionment provisions of subsections (a) through (e) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income."

Section 100.3390 of the Department's administrative rules set out the procedures for a taxpayer wishing to obtain the permission of the Department to use an alternative method of apportioning its business income. See 86 Ill. Adm. Code Section 100.3390. Petitions to use an alternative method of apportioning business income will be granted, partially granted, or rejected through the issuance of a letter ruling. Subsection (e)(1) of Section 100.3390 provides that a petition to use the alternative

method on a taxpayer's original return must be filed at least 120 days before the due date (including extensions) for filing the return.

Section 304(e) of the IITA provides:

“Where 2 or more persons are engaged in a unitary business as described in subsection (a)(27) of Section 1501, a part of which is conducted in this State by one or more members of the group, the business income attributable to this State by any such member or members shall be apportioned by means of the combined apportionment method.”

This provision applies to partnerships as well as to other entities. However, as noted in your request, 86 Ill. Adm. Code Section 100.3380(d) contains an exception to the application of Section 304(e) for partnerships. The regulation is an application of the Department's authority under Section 304(f) to require alternative methods of apportionment. Section 100.3380(d)(1) states that the alternative method prescribed in that subsection is required because the inclusion of a partnership in a unitary business group, as required by Section 304(e), would distort the apportionment to Illinois of the business income of the partnership that is passed through to partners who are not members of the unitary business group. This rationale does not apply when all partners in a partnership and the partnership are members of the same unitary business group.

You have represented that COMPANY2, L.P. and both of its partners are members of the same unitary business group, together with CORPORATION1 and its other subsidiary. Because the rationale for Section 100.3380(d) does not apply in this situation, COMPANY2, L.P. and the other members of the unitary business group should use the combined apportionment method prescribed by Section 304(e).

In applying Section 304(e), 86 Ill. Adm. Code Section 100.5270(b)(1) generally requires sales between members of a unitary business group to be eliminated in computing the numerator and the denominator of the sales factor of a combined return or of a separate unitary return. Accordingly, sales between COMPANY2, L.P. and other members of the unitary group should be eliminated.

#### Grant of Section 304(f) Petition

The petition of CORPORATION1 and Subsidiaries under Section 304(f) of the IITA to use the alternative apportionment formula described in this ruling is hereby granted, and CORPORATION1 and Subsidiaries may use that apportionment formula for Illinois Income Tax returns due (including extensions) on or after January 5, 2007, which is 120 days after September 7, 2006, the date the petition was filed. This grant does not apply to prior taxable years. Please attach a copy of this ruling to the returns.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

IT 08-0001-PLR

May 19, 2008

Page 4

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Terry D. Charlton  
Chairman, Private Letter Ruling Committee