

General Information Letter: Apportionment of income derived from purchases of automobile loans.

May 20, 1999

Dear:

This is in response to your letter dated May 11, 1999, in which you request a letter ruling. The nature of your letter and the information you have provided require 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), enclosed.

In your letter you have stated the following:

Does xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (hereinafter referenced as xxxxx) have any corporate income tax responsibility to the State of IL?

I have been told by the IL Department Of Revenue personnel that this is a complex question and the answer is not clear in the information they had available. As a result, I am requesting a letter ruling to the question, and if there is a corporate income tax responsibility for xxx, please provide the documentation and reference upon which the determination is based.

Here is the information I believe you need in order to answer the question:

xxx has registered and will be receiving a certificate of authority to purchase installment sales contracts sold by IL auto dealers. xxx is a California finance company, with corporate office located in Nevada. xxx has branch offices with employees in several states, but there are no offices or employees in IL. xxx purchases retail installment contracts from dealers, such as auto dealers, normally during the early portion of the contract term. Once the contracts are purchased, xxx services the customer accounts. This includes processing the customers' payments, which they mail directly to the Nevada office. The customer's vehicle is collateral for the contract with the auto dealer, and this is assigned to xxx.

There are three scenarios to consider:	Subject to Corporate income tax, Y/N?
IL auto dealer and IL customer	_____
IL auto dealer and Non-IL customer	_____
Non-IL auto dealer and IL customer	_____

Please identify which, if any, of the above scenarios are subject to IL corporate income tax, and provide the tax references and documentation supporting the determination.

**Response**

In your letter, you state that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxd will be receiving a certificate of authority to purchase installment contracts from Illinois auto dealers. I assume this means that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx will be registered to do business in Illinois and that it will be licensed as a sales

finance agency under Section 3 of the Sales Finance Agency Act. (205 ILCS 660/3).

Section 502(a) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) provides:

In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

(2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Accordingly, qualifying to do business in this State will cause xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx to be required to file an Illinois income tax return, even if it has no tax liability.

Regarding the tax liability of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, you have not provided us with sufficient facts to determine whether or not any of its business income will be apportioned to Illinois. There are two apportionment rules that could apply. First, there is the single-factor formula provided for "financial organizations" under Section 304(c)(1) of the IITA. That section provides:

In general. Business income of a financial organization shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is its business income from sources within this State, and the denominator of which is its business income from all sources. For the purposes of this subsection, the business income of a financial organization from sources within this State is the sum of the amounts referred to in subparagraphs (A) through (E) following, but excluding the adjusted income of an international banking facility as determined in paragraph (2):

(A) Fees, commissions or other compensation for financial services rendered within this State;

(B) Gross profits from trading in stocks, bonds or other securities managed within this State;

(C) Dividends, and interest from Illinois customers, which are received within this State;

(D) Interest charged to customers at places of business maintained within this State for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

(E) Any other gross income resulting from the operation as a financial organization within this State. In computing the amounts referred to in paragraphs (A) through (E) of this subsection, any amount received by a member of an affiliated group (determined under Section 1504(a) of the Internal Revenue Code but without reference to

whether any such corporation is an "includible corporation" under Section 1504(b) of the Internal Revenue Code) from another member of such group shall be included only to the extent such amount exceeds expenses of the recipient directly related thereto.

Section 1501(a)(8)(A) of the IITA defines "financial organization" to include a "sales finance company." Section 1501(a)(8)(C) provides:

For purposes of subparagraph (A) of this paragraph, the term "sales finance company" means a person primarily engaged in the business of purchasing or making loans upon the security of retail installment contracts or retail charge agreements or the outstanding balances under such contracts or agreements. The term includes but is not limited to persons: (i) to whom the Sales Finance Agency Act is rendered inapplicable by subsection (b) of Section 17 thereof; (ii) engaged in consumer sales finance activities governed by the Sales Finance Agency Act or that would be governed by that Act if conducted in this State; (iii) engaged in activities governed by the Retail Installment Sales Act, including the making or purchasing of retail installment contracts or retail charge agreements for "goods" or "services" as defined in that Act, or activities that would be governed by that Act if conducted in this State; (iv) engaged in activities governed by the Motor Vehicle Retail Installment Sales Act or that would be governed by that Act if conducted in this State; (v) engaged in commercial finance activities governed by the Illinois Uniform Commercial Code or that would be governed by that Code if conducted in this State; or (vi) engaged in the finance leasing of tangible personal property where "finance leasing" is activity that is the economic equivalent of an extension of credit and for which a deduction for depreciation under Section 167 of the Internal Revenue Code of 1986 is not available to the lessor.

From your letter, it appears that the primary business of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx may be the purchase of retail installment contracts within the meaning of Section 1501(a)(8)(C), making it a financial organization. If that is the case, the interest income received in Nevada will be excluded from the numerator of the Illinois apportionment formula under Section 304(c)(1)(C) because it will not have been received in Illinois from an Illinois customer. Other income would be sourced according to the other provisions of Section 304(c)(1), and you have given us no information about any other income that would allow us to give you guidance on the application of these provisions.

Second, if xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx is not a financial organization, there is the three-factor (payroll, property and sales) apportionment formula prescribed for taxpayers in general under Section 304(a) of the IITA. Under that formula, it is possible that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx will have payroll in Illinois, even though you have stated that it will have no offices or employees in Illinois. See Section 304(a)(2)(B) for the standards for determining when payroll is included in the numerator of the sales factor. It is also possible that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx will have tangible personal property in Illinois, especially if an automobile securing a loan is repossessed in Illinois. Finally, gross receipts from transactions other than sales of tangible personal property are Illinois sales if a greater portion of the income-producing activities related to those gross receipts is performed in Illinois than outside Illinois. See Section 304(a) of the IITA and 86 Ill. Admin. Code §§ 100.3350, 100.3360, and 100.3370. Also, please note that the payroll and property factors are being phased out, and that for taxable years

IT 99-0056-GIL

May 20, 1999

Page 4

ending on and after December 31, 2000, only the sales factor will be used to apportion business income. See Section 304(h) of the IITA.

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 the enclosed copy of Section 1200.110(b).

Sincerely,

Paul S. Caselton  
Associate Chief Counsel -- Income Tax