IT 01-0032-GIL 03/21/2001 ALTERNATIVE APPORTIONMENT

> General Information Letter: Separate accounting under IITA Section 304(f) cannot be granted on the mere assertion that separate accounting is accurate without any factual evidence regarding distortion by the statutory apportionment formula.

March 21, 2001

Dear:

This is in response to your letter dated February 23, 2001, in which you request permission for xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx to use separate accounting rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). 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), which may be found on the Department's web site at www.revenue.state.il.us. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx respectfully requests to use the direct or separate accounting method for the Illinois Partnership Replacement Tax Return (Form IL-1065) for the taxable year ended December 31, 2000 (and all subsequent years, if applicable). The partnership's federal employer identification number is xx-xxxxxxx. The partnership will also be filing an Illinois Composite Income and Replacement Tax Return (Form IL-1023-C) on behalf of all eligible nonresident individual partners who elect to be included. The partners are residents of several different states, but the majority are residents of Texas.
>
> The partnership's business activities consist of acquiring or developing nonresidential rental real estate, then operating, financing, leasing, and disposing of such real estate. Although the properties are located in many different states, separate accounting records are maintained for each and every rental real estate property.
>
> We believe the direct or separate accounting method more clearly reflects the taxable income to be reported in Illinois than the apportionment of net rental income and gains on sales of properties because of separate accounting records maintained on a property by property basis.

<u>Response</u>

Section 304(f) of the IITA provides:

> If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) 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.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at www.revenue.state.il.us.

Your request contains no evidence that the statutory apportionment methods do not fairly represent the extent of the business activity of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx in Illinois, nor that the separate accounting you request would fairly represent those activities. In the absence of a showing of both of these facts, your request cannot be granted.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed February 23, 2001 will allow a taxpayer to use the requested method on original returns due on or after June 23, 2001, if granted.

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 still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax