

Private Letter Ruling: Intercompany transactions between members of a unitary group and a unitary partnership wholly-owned by members of the unitary business group should be eliminated in computing income and the sales factor.

April 22, 2003

Dear:

The purpose of this letter is to correct an error in the private letter ruling issued to you, dated March 4, 2003, and published as IT 03-0003-PLR. You had requested a ruling that sales to COMPANY1 by COMPANY2 should be eliminated. COMPANY1 is a partnership, in which COMPANY2 owns a 4.9% general partnership interest. The remaining 95.1% general partnership interest in COMPANY1 is owned indirectly by COMPANY2 through subsidiaries.

The private letter ruling stated that sales to COMPANY1 by COMPANY2 should be eliminated, based on the rule stated in 86 Ill. Admin. Code Section 100.5270(b)(1). However, 86 Ill. Admin. Code Section 100.3380(d)(2)(A) provides an exception to that rule, stating that transactions between a unitary partner and the partnership are not eliminated.

The rule in 86 Ill. Admin. Code Section 100.3380(d)(2)(A) is generally appropriate because eliminating sales between a unitary partner and the partnership in the computation of the partnership's business income and sales factor would affect the net income of the other partners. This rule is not appropriate in the present case, where all of the partnership interests in COMPANY1 are owned directly or indirectly by COMPANY2. To the contrary, allowing the members of a unitary business group to "create" a sales factor by forming a partnership among themselves and making sales to that partnership would permit manipulation and distortion of the sales factor.

86 Ill. Admin. Code Section 100.3380(a) requires that any taxpayer wishing to depart from the rules stated in that section to file a petition for alternative apportionment under 86 Ill. Admin. Code Section 100.3390. Because your initial ruling request was actually made before the effective date of the provision in 86 Ill. Admin. Code Section 100.3380(d)(2)(A), and meets all the requirements for a petition under 86 Ill. Admin. Code Section 100.3390, your ruling request may be treated as a properly filed petition.

Accordingly, the ruling in IT 03-0003-PLR that sales to COMPANY1 by COMPANY2 must be eliminated pursuant to 86 Ill. Admin. Code Section 100.5270(b)(1) is revoked. However, your request that sales to COMPANY1 by COMPANY2 should be eliminated is granted pursuant to 86 Ill. Admin. Code Section 100.3390.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax