

General Information Letter: Taxpayer doing business in Illinois and having nexus is required to register and file tax returns.

November 5, 1999

Dear:

This is in response to your letter dated October 8, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

Hi, we've just recently started doing business indirectly involving Illinois and I need to find out for sure whether we need to register, pay taxes, etc. I downloaded some info from your web site and exchanged some email with someone mentioned there that suggested that a 1.5% tax on the relevant net income might apply but I wanted to make sure - I found the NUC-1 form on your web site which said:

Should I file this form? Yes, if your business is a partnership, a small business corporation, or a corporation and you conduct business in Illinois or with Illinois customers.

In our situation, it's not clear whether we're conducting business in Illinois or with Illinois customers or not.

We're a computer consulting firm, we normally do offsite projects in our own offices, and sometimes we supply consultants for onsite projects at client sites all over the US. Often we get these contracts through larger consulting firms by subcontracting to them, as in this case. We're a xxxxx Limited Liability Company taxed as a partnership. We have no direct customers in Illinois but one of our members/partners does some computer programming, usually onsite in Illinois for a customer of our client. Our direct client, the prime contractor, is another consulting firm here in xxxxx and it's their customer that's in Illinois and for which we have provided the services of our own consultant. He lives in xxxxxxxx, has family there, maintains permanent residence and pays taxes there, and flies home almost every weekend, and does not maintain or intend to maintain any kind of residence status in Illinois.

Consultants in this situation typically stay in hotels until the project is finished or cancelled (clients usually can cancel any time). When that happens, he will return home and find another contract either there or possibly in another state. He's not likely to be in Illinois again and we're not likely to have any more dealings (even indirectly) with this client unless a specific opportunity arises to do so. This is just a 6-month contract, and again, it's not even our direct client but the client of our client who is here in Texas, and presumably they're already registered in Illinois.

Given this situation, is it necessary for us to register in Illinois or pay any kind of taxes on this portion of our income derived from this activity? Will our partner need to pay any Illinois personal income taxes (he's not an employee)? Is our limited liability status recognized for legal purposes? We don't even intend to establish any kind of nexus or other presence in Illinois as this is just a one-time deal and it's not even our direct client anyway.

This has just started a few weeks ago and I've finally had time to write and ask about it. We hadn't even received our first payment until recently and we mail our partner's checks to his home in xxxxxxxx. Thanks for your time in answering these questions. For now, based on the documents I've seen on your web site and pending more definite answers, we'll wait for a reply before registering, etc., as it's not clear whether this is required. Thank you.

Response

From your description of your activities in Illinois, it is clear that you are "doing business" here and should file Form NUC-1. Sections 3, 4, and 5 of that form are most relevant to your situation, as the discussion below should indicate.

Registration of foreign corporations and issuance of certificates of authority to do business in Illinois under 805 ILCS, Article 13 are administered by the Secretary of State. All inquiries regarding that registration should be directed to the Secretary of State at the following address:

Illinois Secretary of State
Dept. of Business Services
328 Howlett Bldg.
Springfield, IL 62756
(217) 782-7880.

Any company doing business in this State is subject to the Illinois Income Tax Act (IITA). The IITA does recognize the pass-through character of an LLC or partnership for corporate income tax purposes, but a Personal Property Tax Replacement Tax is imposed at the entity level (IITA §201(c) and (d)). That tax is measured as a percentage of net income. For a multi-state taxpayer, only that income properly apportioned to this State will be subject to the tax. You will need to file Form IL-1120-ST and pay the Personal Property Tax Replacement Tax as calculated.

You have also asked whether the person providing the service must pay Illinois income tax. You write that the partner providing the service is not an employee of the partnership. This State follows the federal determination of employment as set out at 26 USC §3401(a) and the regulations pertaining thereto (IITA §701(a)). If your company is required by the Internal Revenue Service to withhold tax from the wages of the partner operating in Illinois, then Illinois requires such withholding from all the income he receives for the service performed in this State. As a non-resident, he will file an IL-1040 with an accompanying Schedule NR, upon which the amount of his Illinois income will be calculated.

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If the person actually providing the service receives a share of LLC income, then a properly completed Illinois Schedule K-1-P will indicate an amount of business income that is properly apportioned to Illinois as a result of the corporation's business activity in Illinois. As indicated on the shareholder's instructions for Schedule K-1-P, the shareholder must report any Illinois income on Schedule NR and IL-1040 and pay any Illinois income tax calculated thereon. This will apply in the same way to any other shareholder of your LLC.

You may obtain all the necessary forms and instructions on the Department of Revenue's web site, or ask that they be mailed to you when you return Form NUC-1.

As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. 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,

Kent R. Steinkamp
Staff Attorney -- Income Tax