

Whether insuring risk in Illinois constitutes nexus (This is a GIL).

May 31, 2023

NAME/ADDRESS

Dear NAME:

This letter is in response to your letter dated May 14, 2021, in which you requested information about whether a foreign insurer has nexus and would be required to file an Illinois income tax return. 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 to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are an insurance agency based in STATE with a small amount of our receipts allocated from Illinois. We never travel to the state and do not have any physical presence here. We hold non-resident insurance licenses (one for me, and one for the agency) allowing us to service IL clients.

Other facts:

- We are an LLC with S-Corp Election with the IRS. The only owners of the LLC are my wife and I.
- We have 2 clients in Illinois which have given us YEAR revenues of \$\$\$\$ and which is %% of our annual nationwide revenue.
- All clients were obtained by them contacting us by phone and/or email. We are attempting to determine if we must file state equivalent of the 1120S.

I contacted NAME (Badge number #####) at ###-###-#### and was unable to get a firm answer. He said it was a pretty gray area.

Please reply by phone or email if you have any questions.

We would appreciate a speedy reply as we need to file the tax return, if necessary. We would also like to know what would trigger nexus in the state.

DEPARTMENT'S RESPONSE:

Section 201(a) of the Illinois Income Tax Act (IITA) imposes a tax measured by net income on individuals, corporations, trusts and estates for the privilege of earning or receiving income in or as a resident of this State. Pursuant to IITA Section 304(b), insurance company receipts are sourced to Illinois based on direct premiums written. IDOR's administrative rules on nexus, 86 Ill. Admin. Code 100.9720(a), further provide:

Activity conducted in interstate commerce may establish sufficient nexus with Illinois to permit imposition of these taxes on a non-resident taxpayer, as well, when the non-resident earns or receives income in this State within the meaning of the IITA. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076 (1977); *Quill v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992). However, the fact that Article 3 of the IITA requires a non-resident taxpayer to allocate or apportion income to this State does not create a presumption that the taxpayer has nexus.

Nexus determinations are inherently fact specific, and IDOR does not issue letter rulings on nexus. In *Scioto Ins. Co. v. Oklahoma Tax Comm'n*, 279 P.3d 782 (Okla. 2012), the Oklahoma Supreme Court held that merely receiving payments from an in-state customer with no other contacts in the taxing jurisdiction was insufficient to constitute nexus under the Due Process Clause. In *State Bd. Of Ins. v. Todd Shipyards Corp.*, 82 S. Ct. 1380 (1962), the U.S. Supreme Court ruled that insuring risk on property located in the state without more is not a valid basis to assert nexus. In support of its decision, the Court found:

The insurance transactions involved in the present litigation take place entirely outside Texas. The insurance, which is principally insurance against loss or liability arising from damage to property, is negotiated and paid for outside Texas. The policies are issued outside Texas. All losses arising under the policies are adjusted and paid outside Texas. The insurers are not licensed to do business in Texas, have no office or place of business in Texas, do not solicit business in Texas, have no agents in Texas, and do not investigate risks or claims in Texas.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,
Brian Fliflet
Deputy General Counsel