

Income/Franchise:

Illinois DOR Denies Alternative Apportionment Request to Include Royalties in Sales Factor

General Information Letter IT 23-0018-GIL, Ill. Dept. of Rev. (9/21/23). Responding to a global consumer products company's request to use an alternative apportionment method on its Illinois combined corporate income tax return with US subsidiaries who all received royalties from foreign affiliates through licensing arrangements for the intangibles they owned, the Illinois Department of Revenue (Department) denied the request to include royalties in its sales factor because such royalty income did not comprise more than 50% of the taxpayer's total gross receipts included in gross income as required by Illinois statutes. The Department explained that Illinois' standard apportionment formula allows gross receipts from the licensing of intangible property (e.g., royalties) to be included in the sales factor only if gross receipts from licensing of such items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the two immediately preceding tax years. In this case, the taxpayer's sales factor consisted primarily of sales of tangible personal property representing consumer goods sold by members of the Illinois combined group; accordingly, it was deemed unable to include the royalties earned from licensing the use of intangible personal property in its single sales factor apportionment computation.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/it/documents/2023/it23-0018-gil.pdf>

Referencing a 2023 Michigan apportionment case [see *State Tax Matters*, Issue 2023-31, for more details on this Michigan case], the Department noted that alternative apportionment relief in Illinois is only proper where the income allocated to Illinois by the otherwise applicable statutory formula is unfairly disproportionate to the business activity conducted in Illinois. According to the Department, "there is nothing inherently distortive or unfair in excluding from the sales factor those royalties that do not comprise more than 50% of gross income gross receipts from royalties earned from the licensing of intangible property based on the activities of the taxpayer." Please contact us with any questions.

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_4.html

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