

DEPARTMENT OF STATE REVENUE
Revenue Ruling # 2008-01IT
May 7, 2008

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ISSUE

Income Tax – P.L. 86-272

A single-member LLC is seeking a determination of whether it is subject to Indiana corporate income tax

STATEMENT OF FACTS

The taxpayer, hereinafter "taxpayer", is a single member LLC that is owned 100% by a non-Indiana domiciled, U.S. corporation. The taxpayer employs a sales force for the purpose of promoting its clients' products to doctors, hospitals, and clinics. The activities of the sales force are limited to solicitation of products. Specifically, solicitation of products includes visiting doctor's offices and distributing promotional materials and free samples and requesting that doctors write prescriptions for their clients' products. The sales force work out of home offices located inside and outside of Indiana and have home-based computers, printers, and hand held devices which are all used as part of the solicitation activities. The sales force drive leased automobiles to their respective destinations to solicit the products. The activities of the sales force are exclusively promotional in nature and do not include any procuring or accepting of orders for products. The approval and the filling of sales orders occur outside Indiana by the taxpayer's clients.

DISCUSSION

The Interstate Income Act of 1959 ("P.L. 86-272") prohibits a state or political subdivision from imposing a net income tax on income derived within such state from certain limited business activities. 15 U.S.C.A. § 381. According to P.L. 86-272, a company is not considered to be engaged in business activities within a state merely by reason of salespeople making sales, or the solicitation of orders for sales in such State, of tangible personal property. A corporation's agent or employee merely engages in solicitation of orders when the order is approved out of state and filled from a point out of state.

The United States Supreme Court provided further guidance on what constitutes "solicitation of orders" in Wisconsin Dept't *[sic]* of Revenue v. William Wrigley, Jr., Co 505 U.S. 214 (1992). In Wrigley, the Court noted that solicitation of orders includes activities associated with the invitation of an order as well as activities which are ancillary to requests for purchases. The Court continued that a "solicitation" includes not only explicit verbal requests for orders, but also any speech or conduct that implicitly invites an order, such as a salesman who extols the virtues of his company's product. The Court, however, did not make a distinction between the solicitation of a company's own product or the solicitation of product on behalf of a third-party client or customer.

A "solicitation of orders," the Court continued, includes the entire process associated with the invitation of an order-even extending to nonessential request-related activity by a salesman such as driving, lodging, or displaying samples. However, the maintenance of a company office within a state is beyond the solicitation of orders

However, the test of determining whether a single-member limited liability company is subject to Indiana corporate income tax is whether the corporate member is subject to income tax. If the corporate member's activities exceed the threshold established by P.L. 86-272, then the LLC's activities are subject to Indiana corporate income tax regardless of the level of activities of that LLC.

However, if the corporate member is not subject to Indiana corporate income tax due to the application of P.L. 86-272 based on the corporate member's separate activities in Indiana, then the single-member limited liability company's activities are determinative of whether the corporate member is subject to Indiana corporate income tax.

RULING

The taxpayer's activities in Indiana, standing alone, do not subject the corporation to Indiana income tax. However, if the corporation has other activities in Indiana sufficient to subject the corporation to Indiana corporate income tax, then the taxpayer's activities are subject to Indiana corporate income tax as part of the corporation.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer

any protection.

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