DEPARTMENT OF STATE REVENUE

Revenue Ruling #2013-03 IT
December 3, 2013

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ISSUES

Income Tax – "Adjusted Gross Income From Sources Within Indiana"

A company ("Taxpayer") is seeking an opinion as to whether its storage of its clients' advertising catalogs at Taxpayer's Indiana facilities creates nexus such that Taxpayer's clients will have an income tax filing and reporting requirement.

Authority: IC 6-3-2-1, IC 6-3-2-2, 45 IAC 3.1-1-38

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, which is located in Indiana, is in the business of storing and distributing catalogs for its clients. In particular, Taxpayer asks:

> Does storage by an out-of-state retailer of catalogs at Taxpayer's facilities in Indiana, prior to the distribution of those catalogs by Taxpayer to recipients throughout the United States, including Indiana, constitute "substantial nexus" for the retailer in the state or otherwise require the out-of-state retailer to collect, remit, or report Indiana sales/use taxes or business activity taxes?

DISCUSSION

In general, Indiana imposes a tax upon the adjusted gross income of every nonresident person on that part of their adjusted gross income that is derived from sources within Indiana. I.C. 6-3-2-1(a). With regard to corporations and nonresident persons, I.C. 6-3-2-2(a) defines the term "adjusted gross income from sources within Indiana" to mean the following:

> (1) Income from real or tangible personal property located in this state;
> (2) Income from doing business in this state;
> (3) Income from a trade or profession conducted in this state;
> (4) Compensation for labor or services rendered within this state; and
> (5) Income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intellectual property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section. (Emphasis added.)

While the term "doing business" is not statutorily defined, it has been defined in 45 I.A.C. 3.1-1-38 as follows:

> Sec. 38. Doing Business. For apportionment purposes, a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state including, but not limited to:
> (1) Maintenance of an office or other place of business in the state
> (2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods
> (3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
> (4) Rendering services to customers in the state
> (5) Ownership, rental or operation of a business or of property (real or personal) in the state
> (6) Acceptance of orders in the state
> (7) Any other act in such state which exceeds mere solicitation of orders so as to give the state nexus under P.L. 86-272 to tax its net income

Based upon the limited facts as presented by Taxpayer and as understood by the Department, the only

semblance of a business activity that Taxpayer's clients are conducting in the state consists of the presence of the clients' advertising catalogs. The mere presence of these advertising catalogs, in and of themselves, is not generating any income for the Taxpayer, nor does the presence of these advertising catalogs in the state constitute "doing business" within the above regulatory definition. Accordingly, based upon the limited facts with which the Department has been presented, Taxpayer's clients do not appear to have adjusted gross income derived from sources within Indiana. As such, Taxpayer's clients do not, based upon these facts, have any Indiana income tax filing requirement derivative of the presence of their advertising catalogs within the state.

RULING

Taxpayer's clients do not have adjusted gross income derived from sources within Indiana exclusively derivative of the presence of their advertising catalogs within the state. Accordingly, Taxpayer's clients do not have any Indiana income tax filing requirement based solely upon the presence of their advertising catalogs within the state.

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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