



Taxpayers' Federation of Illinois

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January 5, 2015

Paul Caselton
Deputy General Counsel – Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, IL 62796

Dear Mr. Caselton:

The Taxpayers' Federation of Illinois ("TFI") submits the following comments regarding the Department of Revenue's proposed amendments to 86 Ill. Admin. Code §100.3450. These proposed amendments relate to those taxpayers required to use the apportionment method for transportation companies, pursuant to Illinois Income Tax Act ("IITA") §304(d) (35 ILCS 5/304(d)).

TFI applauds the Department for providing additional guidance to these taxpayers, and we appreciate the Department's past efforts to incorporate industry comments and concerns into the drafting process. We are concerned, however, that the Department has in some instances contradicted the statute or created requirements not contemplated by the legislature.

Our specific comments are as follows:

1. The term "freight" is used throughout the proposed regulation. We understand the term to mean all non-human cargo, but occasionally the phrase "goods, oil, gas or any other substance" is used instead. This could lead to some confusion—does "freight" actually mean a transportation mode instead of a broad category of cargo? We suggest using the term consistently throughout the regulation.
2. The very last sentence of subsection (a) (beginning "For purposes of this subsection (a),...") appears to apply not only to subparagraph (a)(2)(B), where it is currently housed, but perhaps also paragraph (a)(1). If so, that sentence should be a separate paragraph (C), rather than tucked into the end of subparagraph (a)(2)(B). In the alternative, the sentence should begin "For purposes of this subparagraph (a)(2)(B)...". The term "revenue mile" is specifically defined in (b)(2), in a manner consistent with this sentence, so perhaps it could be deleted entirely.
3. In paragraph (b)(2), the definition of "revenue mile" does not incorporate all possible combinations of transportation methods and items transported. For example, oil and gas are frequently transported by pipeline, and subparagraphs (C) and (D) specifically deal with that situation. However, oil and gas are also transported in other ways over land and sea, so (C) and (D) as written don't apply, yet industry practice does not measure these goods in terms of tons, so subparagraph (A) cannot be used either. We suggest striking the phrase "by pipeline" from subparagraphs (C) and (D), or in the alternative adding a subparagraph (F) that incorporates the concept of (E)—transporting specific quantities of a substance—without limiting it to a particular mode of transportation.

4. In paragraph (b)(4), the term “transaction” should be in the plural – “transactions” – rather than the singular. Subparagraph (A) does allow “any other reasonable method supported by its books and records for allocating gross receipts from the transaction between airline transportation and the other modes of transport,” but even there the focus is inappropriately on an individual transaction. The guidance in the regulation should not suggest that a per-transaction requirement is mandated by the IITA or is even necessary for administering the transportation apportionment provisions of the IITA.
5. Also in paragraph (b)(4), the terms “miles traveled” and “total miles traveled” should be clarified to “revenue miles traveled” and “total revenue miles traveled”, consistent with proposed subparagraph (a)(2)(B), which recites statutory language from IITA §304(d)(4).
6. The percentage of miles traveled to characterize a transaction as transportation by airline in paragraph (b)(4) should be lower, in the absence of qualifying language in the IITA, such as “primary” or “primarily.” A lower threshold could be reasonable if supported by administrative custom or precedent, whereas there is no objective support for the 95% threshold in the proposed regulation.
7. Paragraph (c)(1) is the regulatory counterpart to IITA §304(d)(3)(a), calculating the numerator for non-airline transportation services. The second portion of the numerator, set forth in IITA §304(d)(3)(a)(ii) and Reg 100.3450(c)(1)(B), requires its own apportionment calculation, and here the proposed regulation differs from the statute. The statute provides, in the last phrase of IITA §304(d)(3)(a)(ii), that the denominator of that fraction is to be “total miles everywhere.” This is not ambiguous language. The proposed regulation, however, provides in (c)(1)(B)(ii) that the denominator of that fraction is to be total interstate miles. This may have been a drafting error in the statute itself, but such an error cannot be corrected by adopting a regulation that is inconsistent with the clear language of the law. We believe that Reg 100.3450(c)(1)(B)(ii) should be rewritten to simply state “the total miles traveled in providing transportation services in all states,” or something similar.
8. Subsection (d) elaborates on the statutory guidance to companies providing a mix of transportation services in two particular scenarios: 1) freight plus passengers and 2) air plus other transportation modes. The proposed regulation takes the statutory calculation for freight/passenger combinations and could be interpreted to be mandating that it apply to other mixed situations. This is not contemplated by the statute. We urge the Department to change the heading of this subsection so that it clearly applies only to the specific combinations covered by the statute. In addition, the phrases “or by pipeline and by other means” and “within each type” should be deleted, to avoid any confusion as to the applicability of this subsection. At most, taxpayers not required to use the methodology set out in subsection (d) could be allowed to do so, but other reasonable methods should be acceptable as well. This is consistent with the letter and spirit of the law, and the overall unitary business concept mandated by the Illinois Income Tax Act.
9. Our final comment also relates to subsection (d). Example A deals with a railroad transporting freight and passengers. The relevant data to use in that calculation is “operating income,” as reflected in the example. The numbers listed as “income” in Column A, however, should not

equal "operating income," which is given in Column B. Total or gross income in almost all cases will exceed operating income by a large margin, and the example should reflect that reality.

Thank you for the opportunity to comment on these proposed regulations. Let me know if you have any questions or want to talk about these or any other points.

Regards,

A handwritten signature in cursive script that reads "Carol S. Portman". The signature is written in black ink and is positioned below the "Regards," text.

Carol S. Portman
President

cc: Brian Fliflet