

March 28, 2018

Kentucky Department of Revenue
Attn: Office of Tax Policy & Regulation
501 High St., Mail Station 1
Frankfort, KY 40601

*Re: General Information Letter Request
Tax Type: Corporation Income Tax*

Dear Kentucky representative:

The purpose of this letter is to request a general information letter (“GIL”) from the Kentucky Department of Revenue (“The Department”) to address the issue of whether Company O and Company A are doing business in Kentucky, and if Company O’s apportionment factors should be reported as part of Company A’s apportionment factors.

Statement of Facts

Company O is in the business of leasing aircraft. Company O’s most significant customer is Company P, a cargo transporter that serves a large international courier. The international courier has a significant presence and a series of major sorting facilities in the area around the Cincinnati/Northern Kentucky International Airport (“CVG Airport”). Company P thus operates a significant number of flights through the CVG airport. Company P uses the leased aircraft from Company O for picking up packages at CVG Airport and delivering the packages to locations outside of Kentucky and for picking up packages at locations outside of Kentucky and delivering the packages to CVG Airport.

Company O is a single-member limited liability company (“SMLLC”) wholly owned by Company A, and is disregarded for federal income tax purposes. Other than owning Company O, Company A has no activity in Kentucky.

Questions to be addressed

1. Whether Company O is doing business in Kentucky.
2. If the answer to question 1 is yes, i.e., Company O is doing business in Kentucky, is Company A considered doing business in Kentucky as the single member owner of Company O, a disregarded limited liability company?
3. If the answers to questions 1 and 2 are both yes, i.e., Company O and Company A are doing business in Kentucky, does Company O's apportionment factors flow up to Company A?

Related Authorities

Ky. Admin. Regs. 16:240 (Section2)(1)

Ky. Rev. Stat. Ann. §141.010(25)(f)

Ky. Rev. Stat. Ann. §141.208

Explanation of Grounds for Question 1

We have been engaged by Company A to determine where it is doing business for income tax purposes. After reviewing Company A and Company O's business operations in Kentucky, we have a concern that Company O is doing business in Kentucky and as Company O's single member owner, Company A is also doing business in Kentucky. We examined Kentucky Revised Statutes and Kentucky Administrative Regulations, but were unable to locate an authority that clearly addresses this issue and therefore, we seek the guidance of the Department.

Ky. Admin. Regs. 16:240 (Section2)(1) defines "doing business" for Kentucky corporation income tax purpose broadly as any profit-seeking enterprise or activity in Kentucky and it is immaterial whether the activities actually result in a profit or loss.

Ky. Rev. Stat. Ann. §141.010(25)(f) states "deriving income from or attributable to sources within this state" as a specific example of activity that Kentucky considers doing business.

As discussed above, Company O leases aircraft that are used by Company P to pick up and deliver cargo to CVG Airport and that activity may fall into the category of profit-seeking activity, and may be considered doing business by deriving income from a Kentucky source. However, other than the leased aircraft that Company P flies into and out of CVG Airport, Company O does not have any other property nor does it have any employees physically located in Kentucky. Again, after reviewing all relevant authorities it is unclear if Company O is doing in Kentucky.

Explanation of Grounds for Question 2 and 3

Ky. Rev. Stat. Ann. §141.010(25)(f) states “deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes” as a specific example of an activity that Kentucky considers doing business.

We believe if Company O is considered doing business in Kentucky (Question 1), Company A, the sole owner of the SMLLC, should also be considered doing business in Kentucky.

Moreover, Ky. Rev. Stat. Ann. §141.208 states that a limited liability company shall be treated for Kentucky income tax purposes in the same manner as its tax treatment elected for federal income tax purposes. Therefore, since Company O is a disregarded entity for federal tax purposes it is disregarded for Kentucky tax purposes and consequently its apportionment factors should flow up and be included in the Kentucky return filed by Company A.

Relevant Documents

There are no relevant documents related to this request.

Disclosures

Company O and Company A are not under audit, appeal or involved in a Voluntary Disclosure Agreement with the Department or any other Kentucky taxing or revenue authority, and has not been notified that an examination is pending.

The issues are not being litigated by Company O or Company A or about to be litigated.

The Department, or any other taxing or revenue authority, has not previously issued guidance on the same issue. The Attorney General's office has not been, and will not be, requested to issue an opinion concerning this matter.

Company O and Company A want to maintain the confidentiality of their identity.

If upon your review there are questions or if additional information is needed please contact me at the telephone number or email address provided below.

Sincerely,



Wayne A. Trumbull

Andersen Tax LLC

Phone: 516.962.2561

Email: wayne.trumbull@andersentax.com