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*Illinois Regulation provides
guidance on sales factor
sourcing for publishing and
advertising services*

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In brief

When Illinois went to a market based sourcing regime for services for tax years ending on or after December 31, 2008, the General Assembly granted authority to the Illinois Department of Revenue (DOR) to promulgate regulations to determine where specific types of services are received. Although the DOR has yet to adopt regulations on where general services are received, on June 5, 2012, the DOR adopted a regulation providing guidance on sourcing sales for publishing and advertising services, including Internet publishing. The regulation provides for the use of a "circulation factor," which includes a taxpayer election to use Internet rating statistics to compute the circulation factor. The regulation is applicable for tax years ending on or after December 31, 2008. [[86 Ill. Admin Code § 100.3373](#)]

In detail

Effective for tax years on or after December 31, 2008, gross receipts derived from: (1) sales of published materials in a form other than tangible personal property; (2) advertising; and (3) sales or rentals or other use of a taxpayer's customer lists for a particular publication are sourced using a taxpayer's "circulation factor" for that publication.



Measures for calculating circulation factor

A taxpayer's "circulation factor" means, for each individual publication by the taxpayer of published material containing advertising, ***the ratio that the taxpayer's in-state circulation to purchasers and subscribers of the published material bears to its total circulation of the published material to purchasers and subscribers everywhere.*** The circulation factor calculation is further refined as follows:

- If the geographic location of purchasers and subscribers of a publication is determined by the taxpayer for a business purpose (for example, in determining advertising rates), the circulation factor shall be determined for that publication using the geographic information used by the taxpayer for that purpose;
- If such a business purpose does not exist, then the circulation factor is determined in one of two ways:
 - from the taxpayer's books and records; or
 - if the taxpayer's books and records are inadequate to allow the determination of the circulation factor of a publication, or if the taxpayer so elects, the circulation factor for a publication shall be determined by reference to the rating statistics as reflected in such sources as the Audit Bureau of Circulations, Internet World Stats, or other comparable sources, provided that the source selected is consistently used from year to year for that purpose.

Publications include items on the Internet

A "publication" is defined as the physical embodiment or printed version of any thought or expression. It may be contained on any property or medium, including an electronic medium such as the Internet. However, it does not include broadcasting media, which is subject to a different provision of Illinois Income Tax Act.

Other sourcing rules, including throwout

The regulation applies rules similar to Illinois' general service sourcing rules, including:

- When the circulation factor is determined by the taxpayer's own books and records:
 - Gross receipts from the performance of publishing services provided to a corporation, partnership, or trust may be attributed only to a state where that corporation, partnership, or trust has a fixed place of business;
 - If the state where the publishing services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the services does not have a fixed place of business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business; and

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- If the ordering office cannot be determined, the publishing services shall be deemed to be received at the office of the customer to which the services are billed.
 - If the taxpayer is not taxable in the state in which the publishing services are received, the sale must be excluded from both the numerator and the denominator of the sales factor.

Actions to think about

Publishers and advertisers doing business in Illinois have a lot to consider following the adoption of this regulation. While Illinois has been a market state for tax years ending on or after December 31, 2008, this regulation introduces concepts that may not have been considered when a taxpayer filed returns in prior years. For example, the election to use internet rating statistics and the requirement to calculate a circulation factor for each individual publication could impact how a publisher or advertiser calculates its Illinois factor. As for the election, the DOR has not provided any guidance on how the election should be made. The regulation does state that once made it should be consistently applied from year to year.

Publishers and advertisers should review prior and current year methodologies based on the guidance provided in the new regulation. Since the new regulation is the DOR's interpretation of the law changes that are applicable to all taxable years ending on or after December 31, 2008, taxpayers should determine whether refund opportunities as well as understatement of tax liabilities exist.

Let's talk

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