**Section 100.5220 Designated Agent for the Members (IITA Section 304(e))**

a) Qualification. The controlling corporation of a combined group is the designated agent for the group if the controlling corporation is a member of the combined group. Otherwise, the members of the combined group shall choose any Illinois taxpayer member of the combined group to be the designated agent. Designation of the agent is made on Schedule UB. Instances in which a controlling corporation is not a member of the combined group include:

1) The combined group is comprised of corporations that are wholly owned by an individual. In this instance, there is no controlling corporation.

2) A manufacturing corporation required to apportion its business income under IITA Section 304(a) owns a unitary business group of financial organizations required to apportion their business income under IITA Section 304(c). IITA Section 1502(a)(27) provides that, for taxable years ending prior to December 31, 2017, corporations that use different apportionment formulas under IITA Section 304 shall not be included in the same unitary business group. Accordingly, the controlling corporation in this example is not a member of the combined group comprised of its financial organization subsidiaries.

3) The controlling corporation does not have nexus with Illinois, and thus is not an Illinois taxpayer. Only Illinois taxpayers may be members of a combined group.

b) Scope of Agency. The designated agent, for all purposes other than the making of the consent required by Section 100.5210(a)(2), shall be the sole agent for each member of the combined group, duly authorized to act in its own name in all matters relating to the tax liability for the combined return year. Except as provided in the preceding sentence, no member shall have authority to act for or to represent itself in any Illinois income tax matter. For example, all correspondence between the Department and the combined group shall be carried on directly with the designated agent; the designated agent shall file for all extensions of time; notices of deficiencies will be mailed only to the designated agent, and the mailing to the designated agent shall be considered a mailing to each member in the group; notice and demand for payment of taxes will be given only to the designated agent and the notice and demand will be considered a notice and demand to each member. All taxes, including estimated taxes, shall be paid in the name of the designated agent. The designated agent shall participate in investigations and hearings on behalf of each member; it shall make available the information necessary to conduct those proceedings; and it may execute a power of attorney on behalf of itself and the other members of the combined group. The designated agent shall file combined returns and claims for refund or credit of the combined group. Any refund will be made directly to and in the name of the designated agent and will discharge any liability of the State to any member of the combined group. The designated agent, in its name, shall give waivers and execute closing agreements and all other documents. Any waiver so given, or agreement or any other document so executed, will be considered as having also been given or executed by each member of the combined group. Notwithstanding the preceding provisions of this subsection (b), if the Department deals in good faith with a member representing itself to be designated agent for a combined group, any action of that member or of the Department in the course of that dealing shall have the same effect as if the member were the designated agent.

c) Notices from the Department. Notwithstanding the provisions of subsection (b), any Notice of Deficiency, in respect to the tax for a combined return year, will identify each corporation that was a member of the combined group during any part of the period covered by the notice. A failure to properly list all members of the combined group will not affect the validity of the Notice of Deficiency as to any member. Any notice and demand for payment will be sent to the designated agent and the Department will, if requested by the designated agent, identify each corporation that was a member of the combined group during any part of the period for which the notice and demand is issued. Any levy, any notice of a lien, or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which the collection is to be made.

d) Continuity of Agency. The provisions of subsections (b) and (c) shall apply to those tax years for which a combined return is required to be made, whether or not a combined return is made for any subsequent year, and whether or not one or more persons have become or have ceased to be members of the combined group at any time.

1) Once a member of a combined group is appointed as the designated agent for that combined group, it remains the designated agent for all future years unless:

A) the designated agent ceases to be an eligible member of the combined group. A new designated agent shall be appointed for purposes of common taxable years ending after the date the designated agent ceases to be an eligible member;

B) the controlling corporation of the unitary business group either becomes an eligible member or is replaced as controlling corporation by an eligible member, at which time the controlling corporation becomes the designated agent for purposes of common taxable years ending thereafter; or

C) a combined group, for its first taxable year ending on or after December 31, 2017, is comprised of two or more combined groups that were not included in the same unitary business group in the previous taxable year because the members of each group used a different apportionment formula under IITA Section 304, and the controlling corporation is not a member of the combined group. The combined group shall choose any member of the combined group as the designated agent for that taxable year, whether or not that member was the designated agent of any of the combined groups in the previous taxable year.

2) The designated agent that files a return for a common taxable year shall continue to act as designated agent for the combined group for that common taxable year.

A) If the designated agent is being dissolved or a new designated agent has been appointed for the combined group under subsection (d)(1), the designated agent shall notify the Department in writing that another member of the combined group (or a successor corporation of any member of the combined group) will thereafter act as designated agent for that common taxable year. The member appointed as the substitute designated agent for this purpose need not be the new designated agent appointed under subsection (d)(1). The substitute designated agent will succeed to the rights and responsibilities of the former designated agent under subsections (b) and (c) and may, in turn, appoint another substitute designated agent under this subsection (d)(2)(A).

B) If the designated agent is unable or unwilling to satisfy the tax liability of the combined group or is unresponsive, the Department may, upon notifying the designated agent, deal directly with any member of the combined group in respect to its liability, in which event that member shall have full authority to act for itself.

e) Notification of Deficiency to Corporation that has Ceased to be a Member of the Combined Group. If a corporation that joined in the filing of a combined return has ceased to be a member of the combined group, and if that corporation files written notice of the cessation with the Department, then the Department, upon request of that corporation, will furnish the corporation with a copy of any Notice of Deficiency in respect of the tax for a combined return year for which it was a member of the combined group and information regarding any notice and demand for payment of that deficiency. The written notice of cessation should be mailed to the address stated in the instructions to Illinois Schedule UB. The filing of the written notification of cessation and the request by a corporation does not have the effect of limiting the scope of the agency of the designated agent provided for in subsection (b) with respect to those tax years during which the corporation was a member of the combined group. Failure by the Department to comply with the corporation's written request does not have the effect of limiting the liability of the corporation provided for in Section 100.5250.

f) Appointment of Designated Agent for Purposes of Resolving Disputes Over Membership in a Combined Group. If the Department determines that one or more corporations that did not join in the filing of a combined return are members of a combined group, or that one or more corporations that did join in the filing of a combined return are not members of the combined group that filed the return, then, for purposes of resolving disputes over the membership of the combined group and any separate company item of any such corporation:

1) if no combined return was filed, the corporations may appoint a member of the combined group that meets the requirements of subsection (a) as the designated agent solely for purposes of contesting the Department's determination. The Department may accept a written representation made by any member of the combined group that it has been appointed the designated agent. The appointment of a designated agent under this subsection (f)(1) is not a concession by either the corporations or the Department regarding the proper composition of the combined group. The designated agent appointed under this subsection (f)(1) shall have all the rights and responsibilities of a designated agent under this Section. The designated agent appointed under this subsection (f) shall continue to act as designated agent for the combined group under subsection (d).

2) if a combined return was filed, the designated agent that filed the return shall represent all corporations that joined in the filing of the combined return and all corporations the Department asserts are members of the combined group.

A) However, the Department may allow any corporation that the Department asserts should be added to or eliminated from the combined group included in the return to represent itself after receipt of a written request from that corporation.

B) In that case, the corporation shall be bound by any action taken by the designated agent (including, for example, extensions of the statute of limitations, settlements, stipulations or concessions of fact) before the request of the corporation to represent itself has been accepted by the Department.

(Source: Amended at 43 Ill. Reg. 10124, effective August 27, 2019)