

This letter discusses nexus. See Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992). (This is a GIL.)

June 2, 2010

Dear Xxxxx:

This letter is in response to your letter dated May 24, 2010, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to you for confirmation as to whether my company, ABC, has Nexus in Illinois or not. We are being audited by the STATE Department of Revenue, who is questioning our Nexus status and believes we no longer qualify.

ABC, a Value-Added Reseller of CAD/CAM Software, Training, and Services, is a STATE company, established in 1990. We were told by the Illinois Department of Revenue that as soon as we entered your state and began working with companies in our industry, we needed to register with the State of Illinois, which we did. As a result, we have been paying Sales Tax collected from customers and filing Corporate Income Tax Returns. We did open an office in CITY, Illinois, from 09/01/1998 through 05/31/2000, but closed it and merged operations back into our facility in CITY/ STATE.

I called The Illinois Department of Revenue at 2:41 PM on Friday, 05/21/10, and discussed our Sales Tax situation with INDIVIDUAL (Phone #800-732-8866). She indicated that because we have no location in Illinois, the sales to Illinois companies should be considered Interstate Commerce and sales taxes due should be the consumers', our customers' responsibility, not ours. She elaborated that we have been paying the Sales Tax to Illinois voluntarily, and we can stop collecting it. We were audited by the Illinois Department of Revenue for Sales Tax several years ago and were told we were doing everything correctly. We just needed to update some of the customer Exemption Certificates we had on file. Can you tell me which is correct as it

applies to us? Please provide a ruling as to whether we should continue to collect and pay Sales Tax or not.

STATE doesn't believe we have Nexus because we haven't had 30 man-hours per year in Illinois, and all the hours we have accumulated haven't been by a representative with the authority to close sales. The Auditor has informed me that based on this determination, I may have to have to request the State of Illinois to refund any Income/Franchise Taxes we've paid in the past and pay them to STATE instead.

I spoke with PERSON at the Illinois Business Hotline (Phone #217-524-4772) at 2:14 PM today. He told me Illinois doesn't have a time frame to satisfy to qualify for Nexus, and that we would have Nexus due to the fact have [sic] gone into Illinois to do business and we are registered with the Revenue Department. It is at PERSON'S recommendation that I'm writing to you to request an opinion on these issues, too.

Would you please provide me with something in writing I can give to the State of STATE to clarify our Nexus position and responsibility for filing and paying Sales and Corporate/Franchise Income Tax to the State of Illinois?

Should you have questions or want to discuss this further, please contact me via mail, phone, fax, or email me. Thank you in advance for your assistance.

DEPARTMENT'S RESPONSE:

The Department declines to make nexus determinations in the context of Private Letter Rulings or General Information Letters because the amount of information required to make those determinations is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause.

A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Zehnder*, 171 Ill.2d 410, (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax liability on the purchase of the goods and have a duty to self-assess and remit their Use Tax liability directly to the State.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

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