

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

June 3, 2010

Dear Xxxxx:

This letter is in response to your letter dated May 14, 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](http://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:

As a follow up to our request for a Voluntary Disclosure dated March 31, 2010 we have been advised by your department to contact you for a 'nexus ruling' AND PROSPECTIVE NEXUS SETTLEMENT.

We have a client which is a company, based in New York that would like a ruling/determination/settlement as to whether or not it has nexus in Illinois ('State'). The facts are as follows:

Our client began business shortly after January 2, 2009. Our client is a general contractor who typically performs light maintenance and repair services for businesses such as retail stores and shopping center. Customers will call our client for certain maintenance or repairs and our client will outsource or subcontract the work to in-state subcontractors or companies.

As the general rule (outside of New York) our client did not charge the customer sales tax. However, the subcontractor charges our client sales tax on materials.

*For example*, a typical scenario is that a retail store will call our client to replace and change a light bulb. Our client will contact an in-state independent contractor. The contractor will charge our client the following:

Charge by in-state independent contractor to our client:

Parts and tax: \$8.00

Labor: \$72.00

Our client will then charge the customer the following:

Charge by our client to customer:

Parts: \$10

Labor: \$90

To date, the amount of in State work has not been a material portion of the client's revenue. They do not believe that their presence in the State has exceeded the 'de minimis' threshold to create nexus. As of March 31, 2010 our client was not registered, nor did the client collect ANY State tax or issued any State exemption documents. However we are currently reviewing this position and would like to register, collect and remit tax as soon as reasonably possible.

Our client has had no prior contact with the State revenue authorities and is not currently under audit by the State.

Please provide us with a ruling on whether or not our client has nexus in your state.

**WE RESPECTFULLY REQUEST, to be allowed to enter into an agreement where the client voluntarily comes forward and agrees to register, collect, pay and remit all applicable state sales and use taxes from the period from July 1, 2010 into perpetuity. In return, we are looking for the state to agree that no returns were due for the period January 2, 2009 through June 30, 2010.**

**Additionally, the client would agree to file state income tax returns for the calendar year 2010 and into perpetuity.**

Thank you for your time and effort regarding this matter. Please address all inquiries or requests for information to my attention at the address above. Furthermore, I can be reached by phone, by fax, or by email.

#### **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. If a vendor attends an Illinois trade show and

accepts a purchase order at that show, that vendor would be making an Illinois retail sale subject to Retailers' Occupation Tax. This would be true even if the vendor later shipped the item or goods from an out-of-State location to the Illinois customer.

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 a 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 see Brown's Furniture, Inc. v. Wagner, 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. In such instances, those customers must remit their Illinois Use Tax along with a completed Form ST-44, Illinois Use Tax Return unless they are otherwise registered or are required to be registered with the Department and remit their Illinois Use Tax with a Form ST-1, Illinois Sales and Use Tax Return. Many retailers that do not have nexus with the State have chosen to voluntarily register as Use Tax collectors as a courtesy to their Illinois customers so that those customers are not required to file returns concerning the transactions with those retailers.

We are forwarding a copy of your letter regarding your proposed agreement to our litigators in the Department's Chicago Office. They will contact you shortly about your proposal.

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

Very truly yours,

Terry D. Charlton  
Senior Counsel, Sales & Excise Taxes

TDC:msk