

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

August 22, 2011

Dear Xxxxx:

This letter is in response to your letter dated July 25, 2011 in which you requested 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 to obtain an exempt status for submitting monthly Form ST-1 Sales and Use Tax Returns.

COMPANY is located in the STATE, which has no sales tax

COMPANY manufactures medical devices such as hemorrhage control bandages and nasal plugs

Inventory is manufactured and warehoused from STATE

COMPANY contracts with distributors to resale [sic] our products

Distributor agreements involve drop shipments to locations throughout the US

COMPANY has a Sales Associate residing in the Sate [sic] of Illinois. Employee does not have authority to sign or enter into any binding legal agreements, she only sells to commercial accounts that resell to the end consumer, she is assigned a region that includes Illinois and other states

COMPANY does not have a warehouse located in Illinois, no inventory is located in Illinois, and we have no principal business located in Illinois or maintain a place of business in Illinois.

All orders for products are communicated to our Customer Service Department located in Oregon for which a decision is made to accept order.

For these reasons, it appears COMPANY does not have nexus in the State [sic] of Illinois; COMPANY does not purposely avail itself of the benefits of an economic market in Illinois, and COMPANY does not have a physical presence in Illinois.

I am writing to request that you provide a binding Private Letter Ruling to provide exempt status to remove COMPANY from future Sales and Use Tax Return filings.

Please let me know if you have any questions.

DEPARTMENT'S RESPONSE:

Nexus

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.

Sales Exclusively for Resale

If a person or entity makes sales that are exclusively (*i.e.*, 100%) for resale, that person or entity is not required to register under the Illinois Retailers' Occupation Tax Act when making such sales. See *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill.2d 471 (1980). However, if a person or entity engages in making both wholesale and retail sales, they are required to register under the Retailers' Occupation Tax Act and file monthly sales tax returns and document the exempt status of their wholesale transactions. See *Tri-America Oil Company v. Department of Revenue*, 102 Ill.2d 234 (1984).

Medical Appliances

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal State rate of 6.25% plus applicable local taxes. These items are taxed at a reduced State rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.311. The definition of a medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." See 86 Ill. Adm. Code 130.311(d). Please note that sterile band-aids, dressings, bandages and gauze qualify for the low rate as medical appliances because they serve as a substitute for skin. See 86 Ill. Adm. Code 130.311(d)(3).

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,

Terry D. Charlton
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TDC:msk