

ST 15-0015 (PLR) September 26, 2015 LOCAL TAXES:

The occupation of selling is comprised of the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price. Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. 86 Ill. Adm. Code 270.115. (This is a PLR.)

September 26, 2015

Dear Xxxxx:

This letter is in response to your letter dated May 8, 2015, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC Corporation for the issue(s) presented in this ruling and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC Corporation, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, ABC Corporation ("ABC" or the "Company"), we request the Illinois Department of Revenue to issue a Private Letter Ruling with respect to the factual situation discussed below. Our request is pursuant to 2 Ill. Adm. Code 1200.110. We request a ruling that for purposes of determining the correct "sourcing" for local retailer's occupation tax ("ROT") on sales of aviation fuel, ABC's sales are subject to home rule municipal retailer's occupation tax in

Sycamore, Illinois regardless of where fuel is delivered or used. The relevant facts are outlined below.

GENERAL INFORMATION

1. Enclosed please find an original Form IL 2848, Power of Attorney, authorizing ATTORNEYS and ACCOUNTANTS to represent ABC before the Illinois Department of Revenue (the “Department”).
2. This Private Letter Ruling (“PLR”) is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the ROT consequences of the actual business practices of the Company.
3. The Company is not currently engaged in litigation with the Department in regard to this or any other tax matter.
4. The Company is not currently under audit by the Department in regard to this or any other tax matter.
5. The company received a PLR relating to local tax sourcing well over a decade ago. In the interim, the authorities (cases, regulations) governing local ROT sourcing have changed significantly. As such, to the best knowledge of the Company and its tax representatives, the Department has not previously ruled regarding this matter for the Company. In addition, the Company has not submitted the same or similar issue to the Department.
6. The Company requests that certain information be redacted from the PLR prior to dissemination to others. The Company requests that its name, address, the location of its sales office, the names of its representatives, all references to Exhibits, and the Exhibits themselves be redacted.
7. The Company knows of no authority contrary to the authorities referred to and cited below.

STATEMENT OF MATERIAL FACTS

1. **General Overview:** ABC is a Corporation qualified to do business in Illinois. It has been in business since 19XX. ABC is a wholly owned subsidiary of ABC Inc. (“ABC”). ABC’s global headquarters is located in CITY Illinois. **[See Exhibit A for photos of this facility]**

ABC sells aviation fuel (“fuel”) and certain fuel-related consulting services to XYZ. All material aspects of the procurement of XYZ global fuel needs are either provided or coordinated by ABC.

2. **Employees and Locations:** ABC currently has X employees at Y physical locations. Effective MONTH DAY, YEAR, ABC will have XX employees at the same Y physical locations. [See Exhibit B for an Organizational Chart] The current and future personnel make up and location footprint is as follows:
 - a. *The CITY, Illinois headquarters location.* ABC leases office space and owns the furniture and fixtures that are located in the office space. ABC has Z full-time employees at this location:
 - i. Three ABC officers:
 1. President: The President is located in CITY. The President, while in CITY, negotiates and contracts for all fuel sales. As described below, the President travels to CITY 1 from time to time, primarily to meet with fuel suppliers and refined product (jet fuel) pipeline transportation companies. The president spends approximately 50 – 70 percent of his time in CITY.
 2. Vice President, Domestic Fuel Supply and Treasurer: Travels seldom, if ever
 3. Vice President, Controller and Secretary: Travels seldom, if ever.
 - ii. Manager – Fuel Supply;
 - iii. Two Fuel Financial Control Analysts;
 - iv. In addition, ABC has engaged accountants who work periodically in the CITY office and who report to ABC's Vice President/Controller/Secretary. These individuals are employed by an unrelated third party accounting firm.
 - b. *Office Space in downtown CITY 1, STATE.* There are presently three employees in CITY 1. The office space, furniture and fixtures for these individuals are leased from ABC, the legal terms for which are set forth in the Services Contract referenced below. This location is used for back-office accounting and data processing functions and is the office location of the Vice President, Global Fuel Supply when she is not travelling to CITY or to other global locations to perform her duties.
 - i. ABC's three full-time employees in this CITY 1, STATE are:
 1. Vice President, Global Fuel Supply

2. Senior Manager, Fuel Financial Controls
 3. One Fuel Financial Controls Analyst
- c. Effective MONTH DAY, YEAR, ABC will add the following employees in CITY 1:
- i. Manager, Fuel Accounting
 - ii. Two Analysts, Fuel Accounting
- d. Effective MONTH DAY, YEAR, ABC will add the following employees in this CITY1:
- i. Manager, Fuel Accounting Operations
 - ii. Ten Analysts, Fuel Accounting Operations
 - iii. One Accounting Clerk
- e. All of the employees to be added in May and June as discussed above are currently XYZ employees, but they currently report to CITY based Vice President, Controller and Secretary. They will continue to do so following transfer of their employment to ABC.

3. Responsibilities of ABC Officers and Management:

- a. *President:* ABC's President and, through delegation of authority, his three Vice Presidents, manage all aspects of the day-to-day operations of ABC. **[See Exhibit C for Delegation of Authority documentation.]** Further, as authorized by ABC's bylaws, the President negotiates, executes, delivers and causes to be performed, as applicable, all agreements and documents (and any obligations thereunder (sic)) related to the operations of ABC. These include (i) the procurement of fuel from refineries and other suppliers; (ii) the sale of fuel to ABC's customers, including, without limitation, XYZ or other third parties (in each case of clause (i) and (ii) above, as determined by ABC to be sufficient to meet the requirements of XYZ or such other customers); and (iii) with respect to fuel purchased by XYZ, including negotiating and arranging XYZ's purchases as and when requested by XYZ. The only restriction on the President's authority is that he is required to obtain ABC board approval prior to entering into (1) a fuel purchase agreement (i) with a term of more than 2 years or (ii) that obligates ABC to pay more than \$50 million for fuel, or (2) certain long term or large volume contracts for the sale of fuel to third parties other than XYZ or its code share partners.

Notwithstanding the delegation of authority provisions the organization has put in place, the President, in this CITY, performs all solicitation and negotiation of fuel sale contracts and signs all contracts that bind ABC to the sales.

As noted above, the President travels between 30 percent and 50 percent of his time, primarily to this CITY 1, but also throughout the U.S. and globally to conduct his duties in connection with purchasing fuel. When in CITY1, he also meets with the Vice President, Global Fuel Supply concerning global fuel procurement matters and with the ABC staff located in CITY 1.

- b. *Vice President, Domestic Fuel Supply and Treasurer:* This CITY-based officer reports directly to the President. This officer is responsible for coordinating the procurement and delivery of fuel to XYZ's domestic non-hub locations. This includes issuing and coordinating annual fuel requests for bid ("tender") to potential suppliers, preparing recommendations concerning which suppliers will be awarded fuel supply contracts, managing the process of submitting monthly fuel orders ("nominations") to suppliers, and managing the monthly process of receiving and accepting fuel orders from XYZ.
- c. *Vice President, Controller, and Secretary:* This CITY based officer reports directly to the President. This officer is a Certified Public Accountant and is responsible for managing and overseeing all ABC accounting processes and preparing ABC's monthly and annual financial statements. This officer oversees the back-office personnel in CITY 1 who collect raw fuel delivery ("fuel ticket") data and input it into the information systems. This officer oversees consolidation of the data by jurisdiction, application of fuel prices (per gallon sold) and tax rates, and preparation of monthly invoices for her review and transmission via email to XYZ and other customers.
- d. *Vice President, Global Fuel Supply:* This CITY 1 based officer reports directly to the President. This officer is responsible for coordinating the procurement and delivery of fuel to XYZ's domestic hub locations (including the annual tender for the procurement of the fuel sold to XYZ for use at AIRPORT) and all international locations ("stations"). This includes issuing and coordinating the annual tender requests to potential suppliers and preparing recommendations concerning which suppliers will be awarded fuel supply contracts. This officer is also responsible more generally, together with the President, for development and maintenance of relationships with major global fuel suppliers.
- e. *Manager, Fuel Supply:* This CITY-based manager reports to the Vice President, Global Fuel Supply. This manager is responsible for assisting in

the procurement, along with other members of her Fuel Supply Team, of fuel for XXX stations worldwide. The Fuel Supply Manager performs financial and operational analysis of a portfolio of fuel supplier contracts.

- f. *Senior Manager, Fuel Financial Controls:* This CITY1-based senior manager reports to the President. This manager is responsible for daily preparation of ABC wire transfer prepayments, for approval by the President or his delegate, to fuel suppliers based on usage and current fuel rates, preparation of monthly pipeline schedules for shipment of fuel to the east coast and west coast, coordination with scheduling counterparts at various oil companies to maintain up-to-date origin information, monitoring of pipeline activity in the U.S. pipeline scheduling system, preparation of forecasts of estimated XYZ monthly fuel usage at all airports served based on historical activity and information provided by XYZ, preparation of periodic cash forecasts and preparation of draft XYZ prepayment wire transfer requests for review and approval by XYZ.
 - g. *Manager, Fuel Accounting:* This CITY1-based manager reports to the Vice President, Controller and Secretary. This manager is responsible for supervision of two fuel accounting analysts, approval of their fuel reconciliations work, approval of fuel purchase journal entries they prepare and preparation of quarterly reconciliation meeting reports. This manager also performs fuel vendor reconciliations, performs month-end closing procedures and works with technology personnel on fuel system enhancements.
 - h. *Manager, Fuel Accounting Operations:* This CITY1-based manager reports to the Vice President, Controller and Secretary. This manager is responsible for supervision of ten fuel accounting operations analysts and one accounting clerk, approval of their fuel reconciliation work, approval of fuel purchase journal entries they prepare, and review of general ledger account reconciliations. This manager also manages the month-end fuel inventory reconciliation and the close of the fiscal fuel system and works with technology personnel on fuel system enhancements.
4. **Board of Directors:** ABC's board of Directors is comprised of three individuals: a Non-Executive Chairman and two other Board Members. These three individuals are also senior executive officers of XYZ. The ABC Board of Directors (as a group and individually) are not involved with day to day operation and management of ABC.
 5. **Sales Activity:** ABC sells fuel to XYZ and also, at times, to unrelated entities. ABC also sells services to XYZ.

- a. *Fuel.* In the United States, ABC currently sells fuel to XYZ at stations in Illinois and two other states and provides consulting services to coordinate third-party supplier sales of fuel directly to XYZ in all other U.S. States. Effective in YEAR, ABC intends to commence selling fuel to XYZ for all of its U.S. stations. ABC's President began negotiating, in CITY, the fuel procurement supplier contracts for this U.S.-wide expansion in MONTH 2, YEAR.
- b. *Services.* ABC provides fuel consulting and procurement related services to XYZ and its code share and alliance partners at stations for which ABC does not presently directly sell fuel. After ABC completes its U.S.-wide fuel sales expansion, it will continue to provide XYZ with consulting and procurement related services at stations outside the U.S.

6. Solicitation, Annual Contracts and Contracting Procedures:

- a. *Contracting Process:* ABC's fuels sales to XYZ are contractually governed by a fuel supply agreement and its sales of services to XYZ are governed by an administrative services agreement (the "Services Contract"). The President negotiates for ABC all terms (including pricing) of the fuel supply agreement and the Services Contract. He negotiates these agreements principally in CITY, Illinois (with the exception of some *de minimis* calls or emails that might occur during the course of a negotiation and that happen while he is travelling). He executes all final contracts in CITY, Illinois. [See **Exhibit D for the fuel supply agreement**]
- b. *Pricing of Fuel Sales.* ABC sells its fuel at an arm's-length per gallon price that exceeds the price it pays for the fuel. The fuel supply agreement sets forth the pricing and other provisions governing the sales.
- c. *Pricing of Services.* ABC's services are provided on a fee-for-services basis. The service fees are the expected cost of providing the services plus a markup. The Services Contract sets forth the pricing and other provisions governing the sales of services.

ABC's earnings are sufficient to result in net income for the company, without regard to the receipt of tax incentives that it receives from the CITY, Illinois.

7. **Order Acceptance Procedures:** All customer purchase orders for fuel sold by ABC at any station in the U.S. are sent to ABC's CITY office and accepted by ABC in CITY, Illinois. The purchase orders detail the amount of the customer's estimated fuel needs by station for the period. XYZ emails its monthly nomination (purchase order) to the attention of a CITY-based Fuel Financial Controls Analyst who reports to the Vice President, Domestic Fuel Supply.

Following purchase order acceptance, ABC management and analysts in CITY coordinate the delivery and sale of the fuel to the customer.

During the course of the month, the CITY- based Fuel Financial Controls Analyst will thereafter monitor the level of fuel consumed by XYZ and, when it appears that XYZ's fuel levels will drop below the minimum required in-tank fuel balance, will coordinate the transfer of additional fuel to XYZ. Occasionally, airport fuel operations personnel will notify the CITY based Fuel Financial Controls Analyst that fuel is about to drop below the minimum required in-tank fuel balance. To the extent that the total fuel transferred for the month exceeds the amount listed on the monthly nomination sent by XYZ to ABC, there has historically been no additional written nomination. Rather, ABC simply charges XYZ for the total fuel transferred and XYZ has paid for the additional fuel along with that fuel originally ordered on the monthly nomination. **[See Exhibit E for the MONTH YEAR Nomination (Purchase Order)]**

8. Invoicing and Payment Procedures:

- a. *Prepayment Funds Request:* Because of the volume of fuel ordered, ABC requires XYZ to make prepayment deposits to ABC for the fuel XYZ will purchase from ABC. ABC generally requires XYZ to make prepayment deposits on a daily basis. ABC is, likewise, required to make its own prepayment deposits with most of its fuel suppliers. ABC's suppliers generally require ABC to make prepayment deposits either weekly or twice a week. ABC's Senior Manager of Fuel Financial Controls, located in ABC's, CITY1, STATE office, prepares daily draft wire request for total estimated prepayment deposits required of XYZ for its total U.S. fuel purchases (not jurisdiction-specific) and submits the draft wire to XYZ in CITY2. Two XYZ management personnel are required to review and approve the wire. Following receipt of the required XYZ approvals, XYZ's Treasury Department wires prepayment funds directly to ABC's bank account.
- b. *Invoicing:* Accounting staff and Analyst data processors in ABC's CITY1 back-office location track fuel tickets and the quantity of fuel sold during the months. On a monthly basis, under the supervision of the CITY-based Vice President, Controller and Secretary, third party accountants in CITY, Illinois access the fuel ticket raw data and prepare invoices for fuel sold during the prior month. ABC's Vice President, Controller and Secretary reviews the invoices and then emails the invoice from CITY to XYZ and other customers. **[See Exhibit F for Invoices]**

- c. *Reconciliation Statements:* On a monthly basis, ABC's third party accounting firm prepares a statement that reconciles prepayment deposits received to invoiced fuel sales, accounting for over/under payments of deposits relative to invoices amounts due for the fuel the customer purchased. These services are performed at the third party firm's own offices within the CITY2. ABC's Vice President and Controller in CITY, Illinois reviews the statements and then emails them from CITY to customers.
9. **Inventory and Title Transfer:** Transfer of title of fuel to XYZ for needs at AIRPORT occurs in either CITY 3, Illinois or at AIRPORT. ABC coordinates shipment of fuel from refineries in various states to the CITY3 fuel depot in CITY3, Illinois. In some cases, ABC owns the fuel in transit, and in others, ABC buys the fuel once it arrives at CITY3. Title to ABC owned fuel coming in from the refineries is transferred to XYZ when it comes to rest at the CITY3 storage site. As necessary to meet its contractual fuel sale agreements with XYZ, ABC also purchases and then immediately transfers title and risk of loss for fuel to XYZ in bulk "in-tank" at the CITY3 fuel depot and at AIRPORT. Fuel sold is also transferred to customers in CITY4, CITY5 and CITY6, Illinois. ABC owns fuel inventory at the CITY5 and CITY4 stations. Legal title transfers to customers at the point that it is supplies to an aircraft at-wing in CITY4, CITY5 and CITY6, Illinois.
10. **Fuel Procurement:** Annually, ABC solicits tenders to supply fuel to U.S. stations from approximately 30 fuel suppliers in the United States; it generally awards contracts to approximately XX suppliers. ABC purchases fuel from YY suppliers for Illinois airports. As noted above, the annual tender process for fuel shipped via pipelines to CITY3 is negotiated by ABC's President, from his office in CITY, Illinois and the Vice President, Global Fuel Supply who may, during the process be in CITY, Illinois or in CITY1, STATE. The tender process for procurement of fuel purchased for non-hub airport locations in the U.S. (including Illinois) is conducted by the Vice President, Domestic Fuel Supply from her office in CITY, Illinois. All final decisions on supplier selection are made and fuel supply contracts are signed by the President in CITY, Illinois.

Thereafter, on a monthly basis, a ABC Fuel Analyst based full-time in CITY, Illinois, who reports to the Vice President, Domestic Fuel Supply, issues purchase orders to the suppliers for ABC's anticipated monthly fuel needs in all states (including Illinois) and coordinates pipeline shipments and other delivery methods to the station (airport or fuel storage depot as the case may be).

Ruling Requested

On behalf of the Company, we respectfully request the Department to rule that ABC's sales are appropriately sourced to CITY, Illinois for purposes of local ROT.

Relevant Authorities

Description of Relevant Taxes

The tax commonly known as the Illinois "sales tax" is composed of the ROT, the service occupation tax ("SOT"), the use tax ("UT"), and the service use tax ("SUT").

The Illinois ROT Act imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 Illinois Compiled Statutes 120/2 (hereinafter "ILCS"); 86 Ill. Adm. Code §130.10 (hereinafter "ILAC"). In accordance with Section 2-10 of the Act, this tax is measured by the seller's gross receipts. 35 ILCS 120/2-10; 86 ILAC 130.101. The legal incidence of the ROT falls on the seller, who effects reimbursement by collecting UT from its customer. 86 ILAC 130.101(d).

Generally speaking, all sales of tangible personal property, including fuel, are presumed subject to the ROT unless it can be established that the transfer of property is incident to a service or an exemption applies. The seller has the burden of proving that a transaction is not taxable or otherwise not subject to the ROT. 86 ILAC 130.801(f).

The ROT authorizes municipalities to impose corresponding local ROT. 65 ILCS 5/8-11-1. Pursuant to that authorization, the CITY imposes a 1.75% home rule municipal ROT. CITY, Ill. City Code X (YEAR). This local ROT is imposed "upon all persons engaged in the business of selling tangible personal property" excluding certain sales of titled property and thus extends to sales of fuel. *Id.* The CITY Ordinance contains no provisions addressing a method of sourcing sales to its local jurisdiction.

The Illinois Supreme Court recently addressed the method by which an Illinois sale is sourced to a local jurisdiction in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (Nov. 21, 2013). The *Hartney Oil* decision invalidated long-standing local tax sourcing regulations, emphasizing a business-specific, fact-intensive sourcing methodology. The Court noted:

[T]he location of the business of selling inside or outside the state controls, and not the location of transfer of title, *Standard Oil Co. v. Department of Finance*, 383 Ill. 136, 142 (1943). The business of selling itself is:

“the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consumption of the sale by the passing of title and payment of the purchase price. It is obvious that such activities are as varied as the methods which men select to carry on retail business and it is therefore not possible to prescribe by definition which of the many activities must take place in Illinois to constitute it an occupation conducted in this State. Except for a general classification that might be made of the many retail occupations, it is necessary to determine each case according to the facts which reveal the method by which the business is conducted.” *Ex-Cell-O Corp.*, 383 Ill. at 321-22.

The Court also noted other important points:

- The business of selling is distinct from the business of mere solicitation, as the Retailers’ Occupation Tax Act did not authorize a tax on mere solicitation. *Allis-Chalmers Manufacturing Co. v. Wright*, 383 Ill. 363, 366 (1943).
- In parsing the many activities making up the business of selling, some combinations of activities within the state are insufficient for the ROT to apply and “each case, of necessity, rests completely and entirely on the foundation of its own facts.” *Automatic Voting Machine Corp.*, 409 Ill. 438, 447 (1951).
- In determining whether the business of selling has taken place in the state, courts may look through the form of a putatively interstate transaction to its substance, in determining whether enough of the business of selling took place within the state to subject it to the ROT. *Marshall & Huschart Machinery Co. v. Department of Revenue*, 18 Ill. 2d 496, 501 (1960).
- In evaluating Legislative intent as regards application of the ROT, Illinois courts have concluded that the General Assembly intended to link application of the Retailer’s Occupation Tax to consumption of government services. *Svithiod Singing Club*, 11 Ill. 2d 402, 406-407 (1957); *Gilligan v. Korzen*, 56 Ill. 2d 387, 391-92 (1974).

In response to the *Hartney Oil* decision, the Illinois Department of Revenue promulgated new regulations to aid retailers in performing a fact-specific analysis for purposes of determining in which jurisdiction a sale should be subject to local ROT. 86 ILAC 270.115 is the regulation that governs the Home Rule Municipal Retailer’s Occupation Tax.

The regulation provides guidance for retailers who conduct selling activities in multiple jurisdictions, providing that “[a] retailer is engaged in the business of selling in only one location for each sale, but may be engaged in the business of selling in different locations for different sales”. 86 ILAC 270.115(c). The regulation then sets forth five primary selling activities and provides that “[a] retailer engaging in three or more primary selling activities in one location in the State after a particular sale shall remit the retailers’ occupation tax imposed by the taxing bodies with authority to impose retailers’ occupation tax on those engages in the business of selling in that location.” *Id.* The primary selling activities are set forth in section (c)(1):

- A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
- B) Location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale;
- C) Location where payment is tendered and received, or from which invoices are issued with respect to each sale;
- D) Location of inventory if tangible personal property that is sold is in the retailer’s inventory at the time of its sale or delivery; and
- E) The location of the retailer’s headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters/

With regard to a particular sale, if no single Illinois jurisdiction is the place of three or more primary selling activities, the regulation provides that the sale will be sourced to either the locality where its inventory is located or where its headquarters is located and the Regulation provides a list of six additional or “secondary” selling activities that must be considered along with the primary selling activities to determine in which of the two locations the retailer engaged in the business of selling with respect to the given sale. *Id.* The secondary selling activities are set forth in section (c)(4):

- A) Location where marketing and solicitation occur;
- B) Location where the seller engages in activities necessary to procure goods for sale;

- C) Location of the retailer’s officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A);
- D) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;
- E) Location where title passes; and
- F) Location where the retailer displays good to prospective customers, such as a showroom.

Discussion and Analysis

To implement the Illinois Supreme Court’s decision in *Hartney Oil* and the “business of selling” principles set forth in the cases that preceded *Hartney Oil*, the Department enacted new regulations. The provisions of 86 ILAC 270.115, which governs local sourcing for home rule municipal retailers’ occupation taxes are analyzed below. As noted above, the regulation sets forth five primary selling activities. If three or more of these primary activities apply to a sale and occur in the same location, the sale will be sourced to the location where the activities occur. 86 ILAC 270.115(c)(2)

Primary Selling Activities

First Primary Selling Activity Test

The first primary selling activity is the “[l]ocation of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale.” 86 ILAC 270.115(c)(1)(A). ABC’s President solicits and negotiates all sales to XYZ and any other potential customers. The President’s sales and solicitations and negotiations all occur at the CITY, Illinois headquarters of ABC (with exception of some *de minimis* calls or emails that might occur during the course of a negotiation and that happen while he is travelling). The fuel supply agreement and Services Contract with XYZ is negotiated by the President from his office in CITY, Illinois. Signature of the contract, the act that binds ABC to the sale, is performed in CITY, Illinois. Under the first primary selling activity, ABC is engaged in the business of selling in CITY, Illinois.

Second Primary Selling Activity Test

The second primary selling activity is the “[l]ocation where the seller takes action that binds it to the sale, which may be the acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale.” 86 ILAC 270.115(c)(1)(B). As noted above, ABC’s President

negotiates and executes all of its fuel sale agreements in CITY. In addition, all customer purchase orders under those agreements are sent to the CITY, Illinois headquarters, are accepted in CITY, and delivery of fuel based on those orders is directed from CITY. Fuel orders are emailed to the CITY-based Fuel Analyst where they are received, accepted, and acted upon by ABC. ABC actions to supply fuel that exceeds the amount of XYZ's nomination order, in cases where XYZ's fuel consumption exceeds the order amount, are exclusively undertaken by ABC in CITY. Under the second primary selling activity, ABC is engaged in the business of selling in CITY, Illinois.

Third Primary Selling Activity Test

The third primary selling activity is the “[l]ocation where payment is tendered and received, or from which invoices are issued with respect to each sale.” 86 ILAC 270.115(c)(1)(C). Cash prepayments are wired by XYZ to a ABC account, not made by check or bank draft. Due to all prepayments being effected via wire prior to the transfer of fuel, there is no *locus* for payments for purposes of this test. The applicable test for this business is the location from which invoices are issued. Personnel in CITY1, STATE capture raw fuel ticket information on the volume of fuel consumed and enter it into an information system where it resides until needed for analysis and invoice preparation. Accountants in CITY, Illinois access the data, analyze it, summarize it, and prepare all ABC invoices for fuel sold during the preceding month. The CITY-based Vice President, Controller and Secretary supervises the invoice preparation process, reviews and approves the invoices, and then emails them to XYZ from CITY, Illinois. While some raw data entry work is performed in STATE, the actual preparation, review and dispatch of invoices occurs in CITY, Illinois. ABC is engaged in the business of selling in CITY, Illinois for purposes of the third primary selling activity.

Fourth Primary Selling Activity Test

The fourth primary selling activity is the “[l]ocation of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery.” 86 ILAC 270.115(c)(1)(D). ABC owns inventory at the CITY5 and CITY4 stations. ABC does not own any inventory in CITY, or CITY3, or at AIRPORT. Thus the fourth primary test would be sourced to two locations, neither of which are CITY for purposes of this analysis.

Fifth Primary Selling Activity Test

The fifth primary selling activity is the “[l]ocation of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the office of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters.” 86

ILAC 270.115(c)(1)(E). ABC's headquarters are located in CITY, Illinois, and this is where ABC's principal executives are located. Although some may travel for business, the regular, and assigned, working location for all of the executives of ABC, save one, is in CITY. The President, who directs, manages, and performs the business of selling tangible personal property is located in CITY and performs his duties and functions from that location. While some back-office functions are performed in CITY1, STATE , and the Vice President, Global Fuel Supply, works from CITY1 when not in CITY or otherwise travelling, the principal executives are located, and the direction and management of ABC occurs, in CITY, Illinois. The two executives that seldom or never travel, the Vice President, Domestic Fuel Supply and Treasurer and the Vice President, Controller and Secretary, are both based in CITY.

CITY is also the place where overall "daily operational decision making" activities occur for ABC's global activities and where the vast majority if not all "daily operational decision making" activities associated with Illinois sales occur. In CITY, the President solicits and negotiates ABC's sales and signs the contracts that bind it to its sales. In CITY, ABC personnel receive and accept all fuel orders under those contracts and perform many activities necessary for the global procurement of fuel, including procurement of the fuel coming into Illinois. Also, in CITY, ABC personnel perform many activities necessary to select suppliers who will provide global pipeline fuel transportation, perform many activities involving global pipeline scheduling and perform all activities associated with pipeline scheduling for fuel coming into Illinois. In CITY, the President makes the final decision on which vendors will be selected to provide fuel or pipeline transportation. In CITY, ABC personnel perform most complex and some clerical level accounting activities. In CITY, the Vice President, Controller and Secretary manages all of the company's accounting activities, and prepares and issues all of the company's invoices. Under the fifth primary selling activity test, ABC's headquarters in CITY, Illinois, and ABC is engaged in the business of selling in this CITY, Illinois.

CONCLUSION

"A retailer engaging in three or more primary selling activities in one location in the State after a particular sale shall remit the retailers' occupation tax imposed by the taxing bodies with the authority to impose retailers' occupation tax on those engaged in the business of selling in that location." 86 ILAC 270.115(c)(2). Although inventory is maintained in CITY4 and CITY5, ABC is not engaged in the business of selling at those locations under the Department's regulation. A retailer can only be engaged in the business of selling in one jurisdiction for each sale. 86 ILAC 270.115(b)(8). ABC engages in four of the five primary selling activities in one location – CITY, Illinois. Therefore, ABC is obligated to remit home rule municipal ROT to CITY, Illinois as that is the location where ABC is engaged in the business of selling under the regulation for all its Illinois sales.

We respectfully request that the Department issue a ruling stating that, under the provisions of 86 ILAC 270.115, ABC is engaged in the business of selling in CITY with regard to the business activities set forth above and that its associated sales of fuel in Illinois must be sourced to, and home rule municipal ROT paid to, CITY, Illinois.

If the Department cannot conclude that ABC is engaged in the business of selling in this CITY, Illinois for the reasons outlined above, we respectfully request that the Department contact the undersigned at (XXX) XXX-XXXX to determine what additional information is required or to allow the taxpayer to rescind this ruling request.

DEPARTMENT'S RESPONSE:

In response to the Illinois Supreme Court decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, 376 Ill. Dec. 294 (2013), the Illinois Department of Revenue revised the administrative rules that govern the sourcing of local retailers' occupation taxes. See 86 Ill. Adm. Code 270.115. The rules provide that:

The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)).

Based on a review of the activities described in your letter and an analysis of the Department's regulations found at 86 Ill. Adm. Code 270.115, the Department finds that with respect to ABC's fuel sales discussed above, ABC is engaged in three or more primary selling activities in CITY, Illinois and therefore those sales should be sourced to CITY, Illinois. See 86 Ill. Adm. Code 270.115(c)(2).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

RSW:bk1