

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, 2016

RE: ABC: Private Letter Ruling Request

Dear Xxxxx:

This letter is in response to your letter dated April 13, 2016 and the supplemental information you provided on August 9, 2016, 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, for the issue or issues 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 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:

As counsel for and on behalf of ABC, we hereby formally request a Private Letter Ruling, pursuant to 2 Ill. Admin. Code § 1200.110, from the Illinois Department of Revenue ("Department"), confirming that (a) ABC has 3 sales locations, one located outside of Illinois and two located in Illinois; (2) for sales from the out-of-state location ABC should continue to remit tax to the Department on sales to Illinois customers at the rate of 6.25%; and (3) for sales from the new Illinois locations, depending on where the selling activities occur, ABC should source the sales to either its principal offices in Illinois which are in CITY 1, Illinois or to its warehouse which is in CITY 2, Illinois. To the best of the knowledge of both ABC and ABC's representative the department has not previously ruled on the same or a similar issue for ABC or a predecessor and ABC

or any representatives have not previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

ABC is not currently under audit by the Department regarding this issue. In addition, ABC is unaware of any authority contrary to its views expressed in this request. Furthermore, we ask that our client's name, address, and any contract or exhibits attached be kept confidential and deleted from the publicly disseminated version of the private letter ruling.

FACTS

ABC is a green industry distributor offering fertilizers, chemicals, grass seed, athletic field products, ice melt, and accessories to the golf, lawn care, landscape, and athletic field markets. Headquartered in CITY 3, STATE, ABC has expanded to service eight states with its various warehouses. ABC's inventory is stored at the warehouses located outside of Illinois, with some stored at headquarters. In addition, some of ABC's sales representatives have inventory stored on hand.

ABC has dozens of sales representatives whom work out of home offices, none of which are located in Illinois. Solicitation activities occur at and sales are primarily generated by on-site customer visits by sales representatives. An order is given by the customer to the sales representative (in person, by e-mail, text or phone). ABC does not engage in any conditional sales.

Invoices are issued by and payment is tendered to the STATE office. ABC engages in activities to procure goods for sale from its STATE office. In addition, the location of ABC's officers, executives and employees with authority to set prices are at the STATE office. Purchase orders are received, accepted and processed at the STATE Office and title passes at the STATE office. Finally, ABC displays goods to prospective customers at the STATE office.

ABC is currently registered with the Department as an out-of-state retailer and remits tax to the Department on sales to Illinois customers of at a rate of 6.25%.

As of March 1, 20XX, ABC acquired 100% of the stock of XYZ of Illinois. XYZ of Illinois now operates as a division of Taxpayer and is known as ABC dba XYZ. XYZ's home office is based in CITY 1, Illinois and XYZ services primarily the state of Illinois. XYZ has a warehouse which was previously located in CITY 4, Illinois and has been recently relocated to CITY 2, Illinois ("Warehouse"). To inform the Department of the acquisition of XYZ that will operate at locations in Illinois in which ABC was not previously registered, ABC will file Form Reg-3-C, Business Information Update, to add the XYZ CITY 1, Illinois location as a second location (the first of which is in the state of Illinois) and the XYZ CITY 2, Illinois location as the third location.

As for XYZ, a large percentage of its inventory is in the Warehouse. In addition, some of XYZ's sales representatives have inventory stored on hand.

XYZ has 6 sales representatives whom work out of home offices, and report to the CITY 1 headquarters. Solicitation activities occur at and sales are primarily generated by on-site customer visits by sales representatives. These activities are supported by sales and marketing efforts directed from the CITY 1 office. An order is processed as follows: (1) the customer gives the sales representative an order (in-person, by e-mail, text or phone); (2) the sales representative enters the order into the system as a "Quote" and then notifies the CITY 1 office to turn the "Quote" into an "Order"; and (3) the order is then processed and sent to the Warehouse for delivery scheduling. Most administrative activities, i.e., expense management, sales order entry, invoicing, etc. are performed at the CITY 1 office. XYZ does not engage in any conditional sales.

In substantially all cases, invoices are issued by the CITY 1 Office though payment is remitted to the CITY 3, STATE office. There is 1 exception with respect to "Walk In" customers at the Warehouse. A small percentage of XYZ's business will drive to the Warehouse to pick up product. In these cases the order is generated via a phone call ahead of the pick up or in-person. These customers pay with credit, cash or check. Here, the "order" is entered in the system by the Warehouse manager, the invoice is issued by the Warehouse and the money is collected at the Warehouse. The money is then sent to CITY 3, STATE to be deposited into the bank.

XYZ engages in activities to procure goods for sale from its CITY 1 office. In addition, the location of XYZ's employees with authority to set prices are at the CITY 1 office, though XYZ does get direction and pricing from ABC in the form of Price List Masters. XYZ does have discretion to change prices based on local competitive issues.

Purchase orders are received, accepted and processed at the CITY 1 office and with exception of the orders for Walk-In customers, title passes at the CITY 1 office. Finally, XYZ displays goods to prospective customers at both the CITY 1 office and the Warehouse.

ILLINOIS LAW AND ANALYSIS

The Illinois Retailers' Occupation Tax is a gross receipts tax imposed on the privilege of engaging in the business of selling at retail. 35 ILCS 120/2. For the tax to apply, the retailing must occur in the state. In-state retailing activity is subject to the 6.25% state-level Retailers' Occupation Tax. Many local governmental units also impose their own additional local Retailers' Occupational Taxes. Sourcing is generally to the location where the retailing activity is considered to have occurred. The retailer collects the applicable amount of tax from the customer.¹ The retailer reports the gross receipts and tax amounts to the Illinois Department of Revenue on a jurisdiction-by-jurisdiction basis, which allows the state to distribute the 1.25% local share of the 6.25% state Retailers' Occupational Tax rate, and any additional local Retailers' Occupation Taxes, to the appropriate local government entities in whose jurisdiction the retailing activity was sourced.

¹ Technically, what is collected from the customer is the 6.25% Use Tax plus reimbursement for any applicable local Retailers' Occupation Taxes.

Out-of-state retailing activity is not subject to Retailers' Occupation Tax, since the potentially taxable privilege of selling at retail is occurring outside of the state's jurisdiction. The use of tangible personal property in the state, however, is still subject to Use Tax. An out-of-state retailer having nexus with Illinois must collect and remit 6.25% Use Tax on sales for use in Illinois. 35 ILCS 105/3-45. There are no additional local use taxes administered by the Department of Revenue on sales of general merchandise; the rate of Use Tax paid to the state on such sales is always 6.25%. The 1.25% local portion of the 6.25% Use Tax rate is distributed according to a formula that benefits all localities in Illinois, and with the City of Chicago and the Regional Transportation Authority receiving set percentages of statewide Use Tax revenue.² The sourcing of sales for Retailers' Occupation Tax and Use Tax purposes thus determines which local governments will receive distributions of tax monies.

Illinois sources sales for local tax purposes based on where the seller's predominant and most important sales activities take place. There are several factors which should be taken into consideration according to the Department's rules.

Specifically, the Department adopted new sourcing rules on June 25, 2014. 86 Ill. Admin. Code §§ 270.115 and 693.115. The rules implement retailers' occupation tax (i.e. sales tax) statutes, which allow municipalities, counties and other municipal corporations to impose taxes on persons "engaged in the business of selling" in their jurisdictions. The new regulation applies on both interstate and intrastate commerce.

These rules were adopted in response to the Illinois Supreme Court's decision in *Hartney Fuel Oil Co. V Hamer*, 376 Ill. Dec. 294 (11/21/13) in which the court held that a determination of whether a seller is "engaged in the business of selling" in a particular jurisdiction within the meaning of the retailers' occupation tax acts requires an analysis of where the retailer engages in the "composite of activities" that comprise its business. Under the rule, the seller incurs local tax in the jurisdiction where the seller's predominant and most important sales activities takes [sic] place.

Under the rule, a retailer is "engaged in the business of selling in" a particular taxing jurisdiction if it conducts at least three of the following five "primary selling activities" there:

1. The location of sales personnel who can both solicit and make sales;
2. The location where the seller takes action that binds it to the sale (i.e. the location where the seller's personnel perform the final action necessary to commit the seller to the sale);
3. The location where payment is tendered and received, or from which invoices are issued;
4. The 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
5. The location of the retailer's headquarters or principal place of its business of selling.

² See 35 ILCS 105/9 (transferring 20% of Use Tax revenue to the State and Local Sales Tax Reform Fund); 30 ILCS 105/6z-17 (providing for the distribution of monies in the State and Local Sales Tax Reform Fund.)

86 Ill. Admin. Code § 270.115(c)(1)(2). If no single Illinois jurisdiction is the place of three or more primary selling activities, the sale will be sourced to either the locality where its inventory is located or where its principle place of business is located and the following six additional or “secondary” selling activities 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:

1. The location where marketing and solicitation occur;
2. The location of the seller’s own product procurement activities;
3. The location where the retailer sets its prices;
4. The location where purchase orders are received;
5. The location where title passes; and
6. The showroom or other display location.

Id. In addition to the above guidelines, the regulations also provide that there is a presumption that when sales occur over the Internet, the predominant selling activities occur outside the state. However, if a seller satisfies these criteria outside Illinois, but sells inventory located within Illinois at the time of sale, the location of the inventory serves as the sole test as to where the sale occurred.

The instructions to Form ST-1, Sales and Use Tax and E911 Surcharge Return, provide that if a taxpayer has one business that sells items at more than one location (site), the taxpayer must collect and remit sales and use taxes according to the rates of each particular location. The taxpayer must complete and attach Form ST-2, Multiple Site Form, to your ST-1 to show the breakdown of taxes collected and paid from each site. In addition, Step 3 of Form ST-1 provides for two separate calculations of tax for sales from locations within Illinois and sales from locations outside Illinois.

Because Illinois determines tax based on where sales were made (from locations within or outside of Illinois), the determination of how to source the sales of the out-of-state locations will be made on a separate basis from the in-state locations. With respect to sales from the out-of-state location to Illinois customers, ABC should continue to remit tax to the Department on those sales at a rate of 6.25%. However, with respect to sales from the in-state-locations, ABC should source all of its sales, except with respect to sales to Walk-In customers, to CITY 1, Illinois. For sales to Walk-In customers at the Warehouse, those sales should be sourced to CITY 2, Illinois.

Specifically with respect to the sourcing of a majority of the sales of XYZ, except for the sales to Walk-In Customers, a review of XYZ’s activities shows that 2 of the primary selling activities occur in CITY 1. The location from which invoices are issued is CITY 1, Illinois. In addition, the location of XYZ’s principal place of business of its selling is in CITY 1. However, since there is no single Illinois jurisdiction where three or more primary selling activities occur, sales will be sourced to either the locality where the Warehouse is located or to CITY 1 (headquarters) depending on the six “secondary” selling activities. A review of the six secondary selling activities of XYZ shows that a majority of those activities occur in CITY 1, rather than at the locality where the Warehouse is located. Specifically, all of the following activities occur in CITY 1:

product procurement, setting of prices, receipt of purchase orders, passage of title, and display of goods. Therefore, based on the facts presented herein, pursuant to Illinois law, with the exception of sales to Walk-In Customers, ABC should source the sales of XYZ for local tax purposes to CITY 1.

As for sales to Walk-In Customers, a review of the activities for these sales shows that 3 of the primary selling activities occur in CITY 2, Illinois. Specifically, the location where XYZ takes action to bind itself to the sale, the location where payment is tendered and invoices are issued and the location where inventory is at the time of sale to these Walk-In Customers is CITY 2. Therefore, with respect to the sales to Walk-In Customers, ABC should source these sales for local tax purposes to CITY 2.

REQUEST FOR RULING

Pursuant to 2 Ill. Admin. Code Section 1200.110, ABC respectfully requests that the Department of Revenue Issue a private letter ruling declaring that (1) ABC has 3 sales locations, one located outside of Illinois and two located in Illinois; (2) for sales from the out-of-state location ABC should continue to remit tax to the Department on sales to Illinois customers at a rate of 6.25%; (3) for sales to Walk-In Customers only, ABC should source the sales to CITY 2, Illinois, where the Warehouse is located, and (4) for all other sales by XYZ, ABC should source the sales to the principal offices of XYZ which are in CITY 1, Illinois.

If you concur, please issue your favorable ruling to the undersigned. If you do not concur, please advise so that we may discuss your reasoning before an adverse ruling is issued. A Power of Attorney authorizing our representation of ABC is enclosed.

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, for example, 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)). 86 Ill. Adm. Code 270.115(b)(2)

Based on a review of the activities described in your letter and the supplemental information provided to the Department, and an analysis of the Department's regulations found at 86 Ill. Adm. Code 270.115, the Department finds that, with respect to walk-in customers at the warehouse in CITY 2, Illinois, ABC is engaged in three or more primary selling activities in CITY 2 and therefore these sales should be sourced to CITY 2. See 86 Ill. Adm. Code 270.115(c)(2). For all other Illinois sales,

you represent that ABC does not engage in three or more primary selling activities in one location. Therefore, under the regulation, we also look at ABC' secondary selling activities to determine where ABC is engaged in the business of selling with respect to these sales. Based on a review of the primary and secondary selling activities described in your letter and the supplemental information provided to the Department, and an analysis of the Department's regulations found at 86 Ill. Adm. Code 270.115, the Department finds that, for all Illinois sales other than walk-in sales at the CITY 2 warehouse, ABC is engaged in the business of selling in CITY 1, Illinois and therefore these sales should be sourced to CITY 1, Illinois. Finally, the Department finds that, with respect to sales from its out-of-state location to Illinois customers, ABC should collect Use Tax at the rate of 6.25%. See 86 Ill. Adm. Code 150.801.

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

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