

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.)

October 6, 2016

Dear Xxxxx:

This letter is in response to your letters dated July 31, 2015 and December 21, 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](http://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 COMPANY 1, COMPANY 2, COMPANY 3, and COMPANY 4 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 COMPANY 1, COMPANY 2, COMPANY 3, or COMPANY 4 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:

The purpose of this letter ("Letter") is to request a private letter ruling under 86 Ill. Admin. Code § 1200.110 on behalf of COMPANY 1 ("COMPANY 1"), COMPANY 2 ("COMPANY 2"), COMPANY 3 ("COMPANY 3") and COMPANY 4 ("COMPANY 4," and together with COMPANY 1, COMPANY 2, and COMPANY 3, "COMPANY" or the "Company") on which COMPANY may rely. Specifically, COMPANY

requests a private letter ruling that, for purposes of the Home Rule Municipal Retailers' Occupation Tax (the "Tax"), it is "engaged in the business of selling" (within the meaning of 86 Ill. Admin. Code § 270.115(b)(1) in CITY, Illinois. COMPANY also requests a ruling that the same result will apply for purposes of allocating the local government portions of the Tax under 35 ILCS 120/3 and 30 ILCS 105-6z-18 and 105/6z-20.

No audit or litigation is pending with the Illinois Department of Revenue (the "Department") involving COMPANY regarding the issues presented below. Neither COMPANY nor any representative of COMPANY has previously submitted the same or similar issues to those presented below to the Department but withdrew them before a letter ruling was issued. Attached as Exhibit A hereto is a copy of the private letter ruling dated June 18, 2001 that COMPANY received as to the proper sourcing of its sales under the former "order acceptance" test.

#### STATEMENT OF FACTS

COMPANY is a leading multi-brand technology solutions provider to business, government, education and healthcare customers in the U.S. and Canada, providing comprehensive and integrated solutions for its customers' technology needs through its extensive hardware, software and value-added service offerings. COMPANY offers over 100,000 products from over 1,000 brands and a multitude of advanced technology solutions. Its offerings range from discrete hardware and software products to complex technology solutions such as virtualization, collaboration, security, mobility, data center optimization, and cloud computing. COMPANY makes, on average, over 30,000 separate sales per day, and collects and remits sales and use tax in 45 states and the District of Columbia.

*Current Location of COMPANY Employees in Illinois.* COMPANY is currently headquartered in CITY, where approximately 1,400 of its employees are located. Approximately 500 of those employees work in the COMPANY distribution center (where COMPANY's primary inventories for the Illinois market are maintained), with the remaining 900 or so working principally in corporate functions such as legal, IT, marketing a wide array of finance activities (including purchasing, pricing, credit management, marketing and similar finance functions) and executive positions (including COMPANY's chief executive office, chief financial officer, general counsel, chief information systems officer, chief marketing officer and chief human resources officer). Generally, all COMPANY executive committee and board meetings are held at COMPANY's headquarters in CITY.

COMPANY also has offices in CITY 1 and CITY 2 where COMPANY's sales personnel are located. While the Company's sales personnel are responsible for soliciting and negotiating sales, they have no authority to bind the Company to any sales. Rather, as described further below, COMPANY becomes bound to a sale only when it is accepted by the COMPANY credit department (the "Credit Department"), which also handles all credit checks and credit approvals. The Credit Department is located entirely at COMPANY's CITY office.

The CITY 1 office has over 1,800 employees, almost all of which are sales personnel.<sup>1</sup> The CITY 2 office has over 600 employees, almost all of which are sales personnel.<sup>2</sup> The CITY 1 and CITY 2 offices are not showrooms and customers do not visit those offices for the purpose of submitting purchase orders.

In addition to the employees located at CITY, CITY 1 and CITY 2 offices, COMPANY employs a small field sales force in Illinois (approximately 60 people). The field sales force teams with sales account managers to call on customers to further their relationship with COMPANY and focus on larger, more complex technology solution opportunities. The field sales force does not have the authority to bind the Company to any sales.

*New COMPANY Headquarters in CITY 3.* COMPANY will be moving its headquarters from CITY to CITY 3 in late 2015 or early 2016. The new CITY 3 office will house COMPANY's chief executive officer, legal department, tax department, finance management team, purchasing and marketing functions, and human resources team. Though the headquarters will be relocating to CITY 3, COMPANY's CITY's facility will remain open and will continue to house COMPANY's primary distribution center for the Illinois market (where COMPANY's inventory is stored and shipped from), the Credit Department (including accounts receivable, cash application, credit servicing and the credit and fraud teams), the main computer servers that process all sales transactions, and the IT Department. The sales-related activities that take place in the CITY office (described below under "*The Sales Process*") will not change as a result of the relocation of the COMPANY headquarters to CITY 3. No order acceptance will take place in CITY 3.

In connection with the headquarters relocation, COMPANY will be closing its CITY 2 office, and all CITY 2 office sales personnel will be

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<sup>1</sup> There are approximately 100 CITY 1-based employees that work in various non-sale related positions, such as CWS, IT, marketing, legal and finance (including payroll and commissions).

<sup>2</sup> There are approximately 30 CITY 2-based employees that work in various non-sale related positions, such as CWS, IT and legal.

moving to COMPANY's new headquarters in CITY 3. The personnel makeup of the CITY 1 office generally will not change.

*The Sales Process.* COMPANY sells its products and offerings throughout Illinois via telephone sales representatives (currently located in CITY 1 and CITY 2) who make outbound calls and handle inbound calls from customers. In certain cases, COMPANY's sales are made via computer, either through (i) customer-specific extranet sites or electronic data interchanges set up for COMPANY's regular customers or (ii) in a very limited number of cases, COMPANY's general website. A more detailed discussion of COMPANY's online sales via extranet, electronic data interchanges and COMPANY's general website is set forth below, under "*Computer-Based Sales.*"

The significant majority of COMPANY's sales are made on credit terms directly with COMPANY. The customer's credit limit and other credit terms are set by the Credit Department in CITY. The sales force has limited range within which it can negotiate prices and generally does not have authority to bind COMPANY to a sale; instead, orders are reviewed and accepted in CITY through individual or automated approval processes in accordance with algorithms written and maintained by the Credit Department in CITY.<sup>3</sup> This process will remain in CITY after the relocation of COMPANY's headquarters to CITY 3.

To begin the sale process, phone contact is generally made between a COMPANY telephone sales representative and the customer. If the customer wants to place an order, the sales representative enters the information into COMPANY's computer system. The sales representative enters the order information into COMPANY's computer system located in CITY. The computer system performs a check to determine if the sale meets COMPANY's predetermined requirements (including a determination that (i) the sale is within the customer's predetermined credit limits, (ii) the sale does not exceed the account representative's dollar thresholds, (iii) a confirmation that the customer's account is not past due, and (iv) the sale passes the fraud verification checks). If the particular order meets COMPANY's predetermined requirements, it passes the computer check, at which point the sale is sent to the Credit Department in CITY, where the Credit Department examines the order and can either release it or investigate it further.

If the order fails the computer check (the customer is new, the order would cause the customer to exceed its credit limit, the customer's

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<sup>3</sup> A sales manager in CITY 1 or CITY 2 can, on an exception basis, authorize sales below a pre-determined price range, but that happens on a very infrequent basis.

account is past due, or the order does not fall within COMPANY's predetermined requirements), the Credit Department manually reviews the sales request and if it determines to approve the sale, the order is accepted. Upon approval, the order is released and the COMPANY computer system located in CITY send the order to the distribution center for the order to be "picked" and shipped from COMPANY's CITY distribution facility and/or, if necessary, causes a request to be sent to COMPANY's vendor to drop ship the relevant product(s) directly to the customer.<sup>4</sup>

If a customer wishes to pay via corporate purchase card or credit card at the time an order is placed (rather than placing its order on credit terms directly through COMPANY), the sale is similarly reviewed for fraud verification and other purposes through the automated approval process described above in accordance with the algorithms written and maintained by the CITY Credit Department. If the sale is rejected or flagged for further review due to fraud or other concerns, it is sent on to the CITY Credit Department for manual review, as described above.

When a sale is accepted by COMPANY's Credit Department, the merchandise is generally shipped from COMPANY's primary distribution facility for the Illinois market, located in CITY.<sup>5</sup> In some cases, however, COMPANY has its vendors drop ship one or more products from the customer's purchase order directly to the customer.<sup>6</sup> Customers generally request that COMPANY provide a quote (including applicable sales tax) at the time the purchase order is created, even though COMPANY may not know at the time the purchase order is created where each item comprising the purchase order will be shipped from (*i.e.*, whether any particular item will be shipped from CITY or drop shipped by the vendor from another location). For sales made to Illinois customers, COMPANY's billing and sales tax systems are programmed to charge Tax based on the CITY rate, regardless of whether the item is shipped from COMPANY's

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<sup>4</sup> See FN's 5-6, *infra*.

<sup>5</sup> COMPANY customers have the option of substituting their own carrier or picking up the inventory with their own trucks at COMPANY's primary distribution facility in CITY. In addition, a small amount of inventory is shipped to Illinois customers from COMPANY's other distribution facility located in CITY 4, STATE. COMPANY estimates the percentage of Illinois shipments coming from its CITY 4 warehouse to be less than 1% of all Illinois sales.

<sup>6</sup> COMPANY estimates that the percentage of Illinois orders involving one or more drop shipped products to be approximately 50% of all Illinois orders. Of those, COMPANY estimates that approximately 40% involve electronic delivery of software that meets the so-called "five-part test" set forth in 86 Ill. Admin. Code § 130.1935(a)(1), under which a license of software is not treated as a taxable retail sale. Notably, COMPANY's vendors are increasingly storing their inventory in a section of COMPANY's CITY warehouse specially designated for the vendor until the time the inventory is shipped (with title transferring to COMPANY immediately before the sale to COMPANY's customer occurs). See FNs 7 and 8, *infra*, and accompanying text.

primary distribution facility for Illinois customers located in CITY or drop shipped by the vendor.<sup>7</sup>

Inventory is generally purchased and held by COMPANY 2 in CITY. Title to the inventory transfers to COMPANY 3 or COMPANY 4, as applicable, in CITY at the time of the sale to the customer, and the inventory is then generally shipped by common carrier to the customer's destination. Recently, COMPANY's vendors have increasingly stored inventory in COMPANY's CITY warehouse on a consignment basis and then transferred title to the inventory to COMPANY 2, which in turn transfers title to COMPANY 3 or COMPANY 4, immediately before the sale to COMPANY's customer.<sup>8</sup> Although neither COMPANY 3 nor COMPANY 4 carry an inventory balance on their balance sheets (as they resell the goods – at a markup – immediately upon acquisition from COMPANY 2 (or the manufacturer in the case of a drop shipment)), the revenues from the sale of the goods are recorded in COMPANY 3 and COMPANY 4, and the cost of those goods is included in their cost of goods sold.

The billing and invoice process is directed and managed from COMPANY's office in CITY, Illinois. Once an order is shipped from COMPANY's CITY location to a customer (or picked up by a customer from CITY), a COMPANY computer system located in CITY automatically inputs the relevant information from the customer's purchase order (including customer information, description of the purchase and price) into a data file with relevant information from other customer purchase orders that is sent to a third-party billing company located outside of Illinois, which emails and/or physically prints and mails individual invoices to customers. The third-party billing company has no power to manipulate or edit the composite invoice data file provided by COMPANY. The entire invoice process (including COMPANY's relationship with the billing company) is managed from COMPANY's CITY office.<sup>9</sup> Employees in the CITY office are responsible for reconciling the information in the composite invoice data file sent by COMPANY to the billing company with a post-invoice production report sent by the billing company to COMPANY, and working with the billing company to correct any errors.

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<sup>7</sup> As mentioned above in FN 6, it is becoming more common for vendors to store inventory in a designated section of COMPANY's CITY warehouse, in which case the inventory is shipped from CITY (rather than from the vendor's location).

<sup>8</sup> See FNs 6 and 7, *supra*.

<sup>9</sup> For example, the contract with the billing company was negotiated by employees located in the CITY office, and the design and style of the actual invoices emailed or mailed by the billing company was determined by employees located in the CITY office.

In the case of a drop shipment, the COMPANY computer system in CITY does not input relevant information into the composite invoice data file that is sent to the third-party billing company until it receives a corresponding invoice from COMPANY's vendor, but the invoicing process is otherwise the same as described above for non-drop shipments. For purchase orders involving products shipped from COMPANY's distribution facility in CITY as well as products that are drop shipped by COMPANY's vendor from another location, although the customer will receive separate invoices for each shipment, a single rate of Tax is applied and the invoices denote that they relate to a single purchase order.

There are certain customers that require COMPANY to use alternative billing processes, rather than the process described above. Although the exact method of billing such customers varies depending on the customer's request, in each case the alternative invoicing process is handled entirely in COMPANY's CITY office.

The invoicing process described above will not change as a result of the relocation of the COMPANY headquarters to CITY 3, and will remain in CITY.

Finally, accounts receivable, credit, collection and cash application activities related to COMPANY's Illinois sales are handled in CITY. All customer payments (other than ACH transfers made directly to COMPANY's bank account) are sent to CITY or to a lock box for which CITY employees are responsible.

*Computer-Based Sales.* The majority of COMPANY's sales are made by contacting COMPANY's sales representatives via telephone. The remaining sales are made through one of three computer-based methods: (i) customer-specific, password-protected extranet sites, (ii) electronic data interchanges set up between COMPANY and a customer's computer systems (referred to herein as "EDI") or (iii) COMPANY's general Internet site that is available to the public.

In certain instances, a regular COMPANY customer may want the ability to place an order online, rather than needing to contact its regular COMPANY account manager by telephone. For example, a customer may want the ability to quickly place routine orders for specific items where the assistance of the customer's regular COMPANY account manager is not required. In these cases, a customer can place an order via a customer-specific extranet site set up by COMPANY that a customer can access showing its account information, prior orders, the name of its COMPANY sales account manager and any particular pricing arrangement the customer has with COMPANY. Orders through any customer-specific extranet site are generally placed on the same credit

terms available to the customer for orders placed via telephone with COMPANY's sales representatives. Similarly, customers sometimes request that COMPANY set up EDI between COMPANY and the customer's computer systems, so that customers can send automated orders directly to COMPANY's computer systems. All extranet and EDI sales are credited to the customer's COMPANY account manager, and the process regarding sale approval, inventory shipment and invoicing is otherwise the same as that which is described above under "*The Sales Process.*"

In addition to EDI and customer-specific extranet sites, customers (and the general public) have the ability to place orders for certain items on COMPANY's general Internet website ([www.COMPANY.com](http://www.COMPANY.com)). COMPANY estimates that approximately 2% of its sales are made via its general Internet website. For these sales, users select a product or offering from COMPANY's Internet website and place their order via a standard online shopping cart/checkout process (similar to orders placed on websites such as Amazon). These general COMPANY website orders require payment at the time of sale via credit card (either through entering the credit card information into the website or by giving the information to a COMPANY representative over the phone). The vast majority of sales made via COMPANY's general Internet website (nearly 90%, as measured by number of orders) are shipped from COMPANY's CITY warehouse.<sup>10</sup>

### RULINGS REQUESTED

1. For periods before COMPANY opens its new headquarters in CITY 3, COMPANY will be "engaged in the business of selling" (within the meaning of 86 Ill. Admin. Code § 270.115(b)(1)) in CITY, and not in CITY 1 or CITY 2.
2. For periods after COMPANY opens its new headquarters in CITY 3, COMPANY will be "engaged in the business of selling" (within the meaning of 86 Ill. Admin. Code § 270.115(b)(1)) in CITY, and not in CITY 1 or CITY 3.
3. The results under Ruling Requests 1 and 2, above, apply for purposes of allocating the local government portions of the Tax under 35 ILCS 120/3 and 30 ILCS 105/6z-18 and 105/6z-20.

### ANALYSIS

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<sup>10</sup> The remaining orders involve drop shipments shipped directly from the vendor and/or shipments from COMPANY's smaller distribution facility located in CITY 4, STATE.



### **Applicable Law**

Under 86 Ill. Admin. Code § 270.115 (the “Regulation”), the municipality where a retailer is “engaged in the business of selling” is the municipality that can impose Tax. A retailer incurs Tax in a particular municipality if its predominant and most important selling activities take place in the municipality. 86 Ill. Admin. Code § 270.115(b)(5). A retailer is instructed to determine the taxing jurisdiction in which it is engaged in the business of selling with respect to each of its sales by analyzing its “primary selling activities.”

A taxpayer’s primary selling activities include:

- the location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
- the location 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;
- the location where payment is tendered and received, or from which invoices are issued with respect to each sale;
- 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
- 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.

86 Ill. Admin. Code § 270.115(c)(1). A retailer engaging in three or more primary selling activities in one municipality in the State is considered to be engaged in the business of selling in that municipality. 86 Ill. Admin. Code § 270.115(c)(2).

For sales of tangible personal property made through a consumer-based retailer website available without limitation on the world wide web, the Department will presume that the retailer’s selling activities take place outside of the state. Therefore, such sale will be subject to use tax unless there is “clear and convincing” evidence that the retailer’s predominant

and most important selling activities take place in the state. 86 Ill. Admin. Code § 270.115(d)(3). There is “clear and convincing evidence” sufficient to overcome the use tax presumption if the tangible personal property that is sold is in an inventory in the possession of the retailer located within a jurisdiction in Illinois at the time of the sale. In that case, the retailer will be treated as engaged in the business of selling with respect to such sale where the property is located at the time of the sale. 86 Ill. Admin. Code § 270.115(d)(3)(A).

In General Information Letter ST 15-00010-GIL (01/07/15) (the “GIL”), the Department addressed the meaning of the first three “primary selling activities” under these local sourcing rules.<sup>11</sup> In the GIL, the Department stated that the “primary selling activities” are so designated because they are “nearly universal.” Moreover, the “primary selling activities” serve as “proxies for a composite of activities critical to the business of selling” and the locations of each of the “primary selling activities” are “generally physical structures where employees come and go on a daily basis, taking advantage of ... core services provided by local governments.” Thus, the “primary selling activities” test satisfies important practical criteria: it is predictable for retailers and administrable for the Department. General Information Letter ST 15-00010-GIL (01/07/15).

To meet the first primary selling activity in a particular location, the GIL confirms that the retailer must have sales personnel in that location with “actual power to determine whether or not a retailer will do business with a given customer.” Thus, the first of the primary selling activities refers to the location of individuals to whom the retailer has delegated significant authority to decide when, where, and to whom the retailer will sell the goods, and who hold the power to “bind the seller to the sale.” If there is no single location where sales personnel exercise discretion and authority to both solicit customers *and* complete sales, the retailer will not meet the first primary selling activity in any location when determining where to source its sales.

The GIL confirms that the secondary primary selling activity occurs where the retailer’s personnel perform the “final action necessary to commit the retailer to a contractually binding relationship.”

With respect to the third primary selling activity, the GIL states that, if payment is not “tendered or received” at the seller’s place of business, the third primary selling activity occurs at the location where the retailer “engages in the conduct necessary to prepare and submit an invoice.”

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<sup>11</sup> The GIL addressed the rules contained under 86 Ill. Admin. Code 320.115, which relate to the Regional Transportation Authority portion of the Tax. The rules contained in the Regulation are identical to those contained in 86 Ill Admin. Code 320.115, but relate to the Home Rule Municipality portion of the Tax.

The GIL also addresses certain sales of tangible personal property over the Internet, stating that such sales are generally presumed to be subject to use tax when the consumer places an order “through a consumer-based retailer website available without limitations on the world wide web.” On the other hand, sales made through web-based applications accessible only to established members or customers would not be subject to the use tax presumption, and would instead appear to be sourced based on the retailer’s primary selling activities, as described in the Regulation.

Under 35 ILCS 120/3, the Department is required to pay into the Local Government Tax Fund 16% of the 6.25% general state rate on the selling price of tangible personal property, and into the County and Mass Transit District Fund 4% of the net revenue realized for the preceding month from such 6.25% general state rate. Under 30 ILCS 105/6z-18, a portion of the money paid into the Local Government Tax Fund from the 6.25% general state rate is distributed to the municipalities based upon the sales which occurred in that municipality, with the remainder distributed to each county based upon the sales which occurred in the unincorporated area of such county. Under 30 ILCS 105/6z-20, distribution of the money paid into the County and Mass Transit District Fund from the 6.25% general state rate is to be made to the Regional Transportation Authority tax fund based upon the retail sales occurring in a county have [sic] more than 3,000,000 inhabitants, with the remainder of such money being distributed to each county having 3,000,000 or fewer inhabitants based upon the retail sales occurring in each such county.

### **Application of Law to Facts**

For periods both before and after COMPANY relocated its headquarters to CITY 3, COMPANY should be treated as “engaged in the business of selling” in CITY, since at least three out of five of the primary selling activities set forth in the Regulation (referred to as the “primary factors”) will take place in CITY. An explanation of the application of each of the primary factors to COMPANY’s selling activities is set forth below.

- 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.

COMPANY currently maintains approximately 1800 sales coworkers and their supervisors in CITY 1 and approximately 600 sales coworkers and their supervisors in CITY 2. These employees have the authority to solicit sales for COMPANY’s full range of products, but do *not* have the authority to bind COMPANY to the sales they solicit. As

described above, COMPANY becomes bound to a sale only when the sale is accepted by its Credit Department (which also handles all credit checks and credit approvals), and that team is located entirely at COMPANY's CITY headquarters. COMPANY's order acceptance process has not changed materially since PLR ST 01-0020 was issued to COMPANY in 2001.<sup>12</sup> Thus, there is no single location where sales personnel exercise discretion and authority to *both* solicit customers and to bind COMPANY to a sale. As described in the GIL, if there is no single location where sales personnel exercise discretion and authority to both solicit customers *and* complete sales, the retailer will not meet the first primary selling activity in any location when determining where to source its sales. See General Information Letter ST 15-0001-GIL (January 7, 2015).

Following the relocation of COMPANY's headquarters to CITY 3, although the CITY 2 office will be closing, the CITY 2 sales personnel will still lack the ability to the [sic] bind COMPANY to any sales. Thus, the analysis described above with respect to the primary factor A should remain the same following the headquarters relocation and the closing of COMPANY's CITY 2 office. Accordingly, primary factor A is not met with respect to any COMPANY location both before and after COMPANY's headquarters relocation.

- 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.

As described above, COMPANY *only* becomes bound to a sale when COMPANY's Credit Department in CITY accepts the sale. COMPANY does not become bound to a sale in any other manner. This fact will not change following COMPANY's headquarters relocation or the closure of its CITY 2 office. Thus, primary factor B occurs in CITY at all times.

- C. The location where payment is tendered and received, or from which invoices are issued with respect to each sale.

All accounts receivable, credit, collection and cash application activities related to COMPANY's sales are handled in CITY. All customer payments (other than ACH transfers made directly to COMPANY's bank account) are sent to CITY or to a lock box that is controlled by CITY employees. Thus, payments should be treated as tendered and received at its CITY location. Furthermore, all conduct necessary to prepare and submit an invoice occurs in CITY. (Although only one of these two tests

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<sup>12</sup> See Exhibit A attached hereto.

need be met, COMPANY meets both.) This fact will not change following COMPANY's headquarters relocation or the closure of its CITY 2 office. Thus, primary factor C occurs in CITY. See General Information Letter ST 15-00010-GIL (01/07/15).

- 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.

COMPANY's primary distribution facility for the Illinois market is located in CITY.<sup>13</sup> Although COMPANY's sales sometimes include items that are drop shipped directly by vendors to customers from locations other than COMPANY's CITY warehouse, for the reasons described below, primary factor D should be treated as occurring in CITY for all of COMPANY's Illinois sales.

Primary factor D unquestionably occurs in CITY with respect to items shipped from COMPANY's CITY distribution facility. Primary factor D should *also* be treated as occurring in CITY, however, for sales involving items that are drop shipped by COMPANY's vendors directly to its customers, since COMPANY's primary distribution facility for the Illinois market is located in CITY.<sup>14</sup> If primary factor D was not treated as occurring where a seller maintains its primary inventories (CITY, in the case of COMPANY), then primary factor D would not be taken into account in instances where items are drop shipped by a vendor or are shipped from a remote location other than where the seller generally maintains its inventory. If that were the case, retailers and their customers could be faced with situations where a single invoice, or multiple invoices related to a single customer purchase order, could have two or more different Illinois Tax rates on it. In the case of COMPANY, this could happen, for instance, for periods after it relocates its headquarters to CITY 3, when only 3 of the 5 primary factors (including, for this purpose, primary factor D) will likely be treated as occurring in CITY.<sup>15</sup> If primary factor D

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<sup>13</sup> As described above, COMPANY also maintains a distribution facility in CITY 4, STATE. COMPANY estimates the percentage of Illinois shipments coming from its CITY 4 warehouse, however, to be less than 1% of all Illinois sales. See FN 5, *supra*.

<sup>14</sup> Note, however, that, as described above, COMPANY's vendors are increasingly storing their inventory in a section of COMPANY's CITY warehouse specially designated for the vendor until the time the inventory is shipped (with title transferring to COMPANY immediately before the sale to COMPANY's customer occurs). See FN 6-8, *supra*.

<sup>15</sup> As described above, primary factors B and C will still occur in CITY, but primary factor E (location of company's headquarters) will not. Thus, for periods after COMPANY's headquarters relocation, COMPANY will only be able to meet 3 of the 5 primary factors in CITY if primary factor D was treated as occurring in CITY. For periods prior to COMPANY's headquarters relocation, all of COMPANY's sales (even those involving drop shipments) should be sourced to CITY because primary factors B, C and E always occur in CITY.

was not treated as occurring in CITY with respect to one item of a larger purchase order (because, for instance, the item was drop shipped directly from the vendor's location), while all of the other items that comprise the same purchase order were shipped from CITY, COMPANY could be required to charge one rate of Tax for the item not shipped from CITY, and another rate of Tax for the other items that are shipped from CITY, even though all of the items (regardless of shipping location) relate to a single customer purchase order.<sup>16</sup>

For periods after COMPANY's headquarters relocation, treating primary factor D as not occurring in CITY with respect to COMPANY's sales involving vendor drop shipments would lead to the absurd result of sourcing such sales to COMPANY's headquarters in CITY 3, even though there is no order acceptance and no inventory maintained in that location.

It would also lead to unpredictability for customers (in not knowing which Illinois Tax rates will apply or why)<sup>17</sup> and significant complexity and difficulty for both retailers (in charging and collecting the appropriate amount of tax)<sup>18</sup> and the Department (in auditing and administering the Tax). If, instead, primary factor D was treated as occurring in all cases where a seller maintains its primary inventories (CITY, in the case of COMPANY), it would relieve these administrative difficulties for both retailers and the Department, and provide necessary predictability for a retailer and its customers, each of which result in an environment that is more friendly to businesses locating their distribution facilities in Illinois. See General Information Letter ST 15-00010-GIL (01/07/15) (stating that the "primary selling activities" test satisfies two important practical criteria: (i) it is predictable for retailers and (ii) it is administrable by the Department).<sup>19</sup>

Finally, determining the location of primary factor D based upon the location of the retailer's primary inventories avoids the potential for manipulation of the selling factors in certain cases. In instances where the

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<sup>16</sup> This would result because, under this construct, COMPANY would have only two of the primary factors occurring in CITY (primary factors B and C), with one factor in CITY 3 (primary factor E) and two factors essentially disregarded (primary factors A and D).

<sup>17</sup> As described above, customers generally request that COMPANY quote a single price (including applicable sales tax) at the time the purchase order is created (even if the order involves multiple products that may be shipped from CITY and/or drop shipped by the vendor from another location).

<sup>18</sup> As described above, for sales made to Illinois customers, COMPANY's billing and sales tax systems are programmed to charge Tax based on the CITY rate, regardless of whether the item is shipped from COMPANY's primary distribution facility for the Illinois market located in CITY or drop shipped directly by the vendor to the customer.

<sup>19</sup> As described above, COMPANY makes in excess of 30,000 sales per day.

various selling activities are divided amongst multiple locations, a retailer could ensure that a sale was sourced to a particular locality for purposes of the Tax simply by shipping the item from a remote distribution facility maintained by the retailer (or by requesting that its vendor drop ship the item). Such abuse is exactly the type of behavior that the Regulation was trying to correct from the prior rules, under which sales were sourced based solely on the location of “order acceptance.” Instead, primary factor D should be treated on a consistent basis (*i.e.*, with respect to each of a taxpayer’s sales), as occurring where the retailer maintains its primary inventories.

Accordingly, with respect to all of COMPANY’s Illinois sales, for periods both before and after COMPANY’s headquarters relocation, primary factor D should be viewed as occurring in CITY.

- 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.

As described above, COMPANY’s headquarters is currently located in CITY, where its principal executives are located. COMPANY’s chief executive officer, chief financial officer, general counsel, chief information systems officer, chief marketing officer, and chief human resources officer all have their offices in CITY. Generally, all executive committee and board meetings are also held in CITY. Thus, for periods before COMPANY relocates its headquarters, primary factor E occurs in CITY. Following the relocation of COMPANY’s headquarters to CITY 3, primary factor E will be treated as met in CITY 3.

Based on the foregoing, primary factors B, C, and D occur in CITY at all times, and primary factor E occurs in CITY until COMPANY relocates its headquarters to CITY 3. Under the Regulation, if a [sic] three out of five primary factors occur in a single location, the taxpayer is treated as “engaged in the business of selling” at such location. Thus, for the reasons described above, COMPANY should be treated as “engaged in the business of selling” (within the meaning of the Regulation) at its CITY location, both before and after it relocates its headquarters to CITY 3.

#### *Computer-Based Sales*

Sales of tangible personal property over the Internet are subject to a rebuttable use-tax presumption if made “through a consumer-based

retailer website available without limitation on the world wide web.” 86 Ill. Admin. Code 270.115(d)(3). Sales made through web-based applications accessible only to established members or customers, however, are not subject to the use tax presumption, and would instead be sourced based on the retailer’s primary and secondary selling activities, as described in the Regulation. General Information Letter ST 15-00010-GIL (01/07/15). Thus, COMPANY sales made through EDI and customer-specific extranet sites should be treated the same as COMPANY’s general sales made via its telephone representatives (and thus, sourced to CITY).

As to sales made through COMPANY’s general Internet website, the use tax presumption may be rebutted if there is clear and convincing evidence that the predominant and most important selling activities take place in the state. The Regulation states that the retailer’s possession of the item of tangible personal property in its inventory located in Illinois constitutes sufficient evidence to rebut the presumption, in which case the sale is sourced to the location of the item. As the vast majority of sales made via COMPANY’s general website (nearly 90%, as measured by number of orders) are shipped from COMPANY’s CITY warehouse, sales to Illinois customers over COMPANY’s general Internet website should also be sourced to CITY.

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Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions, or would like any additional information. *We respectfully request a conference in the event you tentatively conclude that an adverse ruling would be warranted.* Powers of attorney authorizing the undersigned to represent COMPANY in this matter are attached as Exhibit B. This ruling request pertains only to periods beginning after the date hereof.

In your letter of December 21, 2015 you stated as follows:

The purpose of this letter (“Letter”) is to supplement COMPANY’s original request for a private letter ruling dated July 31, 2015 (the “Ruling Request”), in which COMPANY requested a private letter ruling that, for purposes of the Home Rule Municipal Retailers Occupation Tax (the “Tax”), it is “engaged in the business of selling” (within the meaning of 86 Ill. Admin. Code § 270.115(b)(1) (the “Regulation”)) in CITY, Illinois. In the Ruling Request, COMPANY also requested a ruling that the same result would apply for purposes of allocating the local government portions of the Tax under 35 ILCS 120/3 and 30 ILCS 105/6z-20. A copy of the Ruling Request is attached hereto as Exhibit A for your reference.



This Letter supplements, and should be read in conjunction with, the Ruling Request. Accordingly, this Letter does not repeat the facts or the applicable law set forth in the Ruling Request. Capitalized Terms used but not defined herein have meanings ascribed to them in the Ruling Request.

### QUESTIONS

Upon reviewing the Ruling Request, you asked that we address the following questions:

1. Why should primary factor D be treated as occurring in CITY with respect to COMPANY's drop shipments, even though such items will be delivered by COMPANY's vendor directly to the customer, rather than by COMPANY from its CITY distribution facility?

2. Why should primary factor D be treated as occurring in CITY with respect to COMPANY's sales involving inventory held in its CITY distribution facility under co-location and consignment arrangements (where title to the property does not pass to COMPANY until shortly before it is shipped out of COMPANY's CITY distribution facility)?

### DISCUSSION

#### **1. Primary Factor D and Drop Shipments**

The present situation includes the following facts:

- COMPANY has a single Illinois distribution facility, which is located in CITY, IL. The distribution facility is roughly 450,000 square feet and covers all of COMPANY's shipments to customers located east of the Mississippi River. COMPANY has maintained its distribution facility in CITY (its only distribution facility in Illinois) since 1998.
- COMPANY's CITY locations also houses COMPANY's Credit Department, the main computers and servers that process all of COMPANY's sale transactions, and the IT Department. All sales are accepted in CITY and customer invoices are generated in CITY.
- Following the opening of COMPANY's CITY 3 office, COMPANY will have only 2 other business locations in all of Illinois: CITY 1 and CITY 3. The CITY 1 office is made up almost primarily of sales personnel. The CITY 3 office will house a variety of COMPANY's functions including sales and COMPANY's principal executives (including its chief executive officer).

- Customers typically order multiple items at the same time. Most of those items will be fulfilled from COMPANY's CITY distribution facility, but others may be drop shipped from the vendor's location directly.
- An item may be filled from the CITY distribution Facility on one order and the same item re-ordered by a customer may be drop shipped in the subsequent order (or vice versa) depending on the vagaries of COMPANY's inventory availability.
- At the time a price quote is provided, customers generally require that COMPANY quote a firm price (including applicable Tax).
- At the time COMPANY provides its customer with a requested price quote or accepts an order from a customer, it is not always known whether one or more of the items will ultimately be shipped by COMPANY from its sole Illinois distribution facility in CITY or drop shipped directly by COMPANY's vendor. Even in cases where COMPANY knows that an item will be drop shipped, COMPANY does not always know where the drop shipment will come from. Moreover, in many cases, a single customer order involves items that are shipped by COMPANY from CITYs and items that are shipped by COMPANY's vendor directly to the customer via drop shipment.
- Due to the high volume of transactions, the need to fill and ship customer orders as quickly as possible, and to provide consistency to COMPANY's sales representatives, COMPANY does not charge different shipping rates solely based on where an item is shipped from (i.e., whether the items are drop shipped by the vendor or shipped from CITY).

Given these complex and unique set of commercially dictated circumstances, common sense and administrability-by COMPANY, its customers, and the Department-require the conclusion that primary factor D occurs in CITY for all of COMPANY's Illinois sales, including any items that are drop shipped directly by the vendor to COMPANY's customer. COMPANY unquestionably meets at least 3 out of the 5 primary factors in CITY for sales involving items shipped from COMPANY's CITY distribution facility; requiring COMPANY to charge a different Tax rate for sales involving items that are drop shipped, or multiple tax rates for different items on a single order, or different Tax rates for the same item ordered at different times, based simply on the shipping locations of the items on the particular order, will lead to unpredictability for, and questions from, customers,<sup>1</sup> and significant difficulty and complexity for COMPANY to charge and collect the appropriate amount of Tax, for customers to self assess any portion of the Tax

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<sup>1</sup> As described in the Ruling Request and above, customers generally request the COMPANY Quote a single price (including applicable sales tax) at the time the purchase order is created (even if the order involves multiple products that may be shipped from CITY and/or drop shipped by the vendor from another location).

not properly collected, and for the Department to audit and administer the Tax.<sup>2</sup> This would also be inconsistent with the purpose of the “primary selling activities” test in the Regulation, which is to provide a test that is both predictable for retailers and administrable for the Department. See General Information Letter ST 15-00010-GIL (01/07/15).

Following your review of the Ruling Request, you asked whether COMPANY encounters similar issues with respect to its quotation of shipping charges. Specifically, you asked whether there are instances in which COMPANY needs to revise an estimated shipping charge after its initial quotation to the customer, and why any such change would not lead to similar unpredictability for, and questions from customers. For the reasons described below, COMPANY does not encounter similar issues with respect to its shipping charges, as there are significant differences between COMPANY’s quotation of shipping charges and Tax rates.

COMPANY’s customers do not have the same sensitivity or ability to look behind COMPANY’s quoted shipping charges as they do Tax rates. To the extent a customer determines that a retailer has failed to charge any or all of the applicable tax due on its purchase, the customer has an independent legal obligation to self-assess and remit the tax to the applicable taxing authority. Many of COMPANY’s customers therefore have their own internal controls or computer programs in place to confirm that the proper sales and use taxes are being charged and collected on their purchases, and customers raise questions or concerns when the invoiced tax rates do not match the originally quoted or expected rates. Customers simply cannot be expected to be able to track and independently determine the correctness-and hence their own legal liabilities- of varying Tax rates that depend solely on COMPANY’s internal shipping methodologies.

In contrast, shipping charges are not mandated by law, and are not required to be self-assessed at a statutory rate by the customer. Shipping rates are not standardized and most customers have limited ability to benchmark the quoted shipping rates. COMPANY’s sales representatives have discretion in determining the amount that is charged for shipping (including waiving shipping charges altogether in certain circumstances) if the customer does not choose to pick up the items in CITY. In cases where the COMPANY sales representative does not know from where (or by whom) an item will be shipped, the sales representative is provided a shipping quote that makes no distinction whether the item is dropped [sic] shipped from the vendor or shipped from CITY. This process is required by the high volume of transactions and the need to fill and ship customer’s orders as quickly as possible and provide consistency to COMPANY’s sales representatives. If the ultimate shipping charge incurred by

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<sup>2</sup> As described in the Ruling Request, for sales made to Illinois customers, COMPANY’s billing and sales tax systems are programmed to charge Tax based on the CITY rate, regardless of whether the item is shipped from COMPANY’s primary distribution facility in CITY or drop shipped directly by the vendor to the customer.

COMPANY is higher or lower than what was quoted to the customer, COMPANY generally does not then revise the originally quoted shipping charge when preparing the customer's invoice.

You also asked us to consider the application of the secondary selling activities listed in the Regulation to COMPANY's drop shipments. An analysis of the secondary factors is unnecessary, however, because COMPANY meets 3 out of the 5 primary factors in CITY with respect to its drop shipments.<sup>3</sup>

A conclusion that COMPANY may treat primary fact D as met in CITY for its Illinois sales (including any items that are drop shipped) should not lead to the sort of manipulative situations or abusive results that the Department was trying to avoid by its promulgation of the Regulation. In this regard, COMPANY's only distribution facility in the state of Illinois is located in CITY. As such, the only place that COMPANY could ever meet primary factor D is in CITY. In addition, as described above, COMPANY's shipping charges are not directly tied to where an item is shipped from (i.e., whether it is shipped from COMPANY's Illinois distribution facility located in CITY or it is drop shipped by the vendor). Thus, again, as a matter of common sense, all of COMPANY's Illinois sales (including those items that are drop shipped) should be consistently sourced to CITY and subject to a singular rate of Tax.

## **2. Primary Factor D and Co-Location/Consignment Arrangements**

For all of the reasons described with respect to drop shipments, sales of consigned and co-located inventory should also be treated as occurring in CITY. Moreover, under the Regulation, primary factor D is the "[l]ocation of inventory if tangible personal property that is sold is the retailer's inventory *at the time of its sale or delivery.*" 86 Ill. Admin. Code § 270.115(c)(a)(D). (Emphasis supplied.) As described in the Ruling Request, in some cases, COMPANY's vendors store inventory at COMPANY's CITY warehouse on a consignment or co-location arrangement. Under a consignment arrangement, the inventory is held in COMPANY's possession and comingled together with COMPANY's own inventory, but title to the inventory remains with the vendor until it is ready to be shipped by COMPANY to its customer (at which time, title to the inventory transfers to COMPANY prior to shipment by COMPANY to its customer). In a co-location arrangement, the vendor effectively "rents" storage space in COMPANY's warehouse and stores its inventory items in the designated location. Similar to the consignment arrangement, title to the inventory transfers to COMPANY upon the item being removed from the vendor's co-location space and readied for shipment by COMPANY. In each case, COMPANY meets with

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<sup>3</sup> If it were determined the COMPANY did not meet primary factor D in CITY with respect to its drop shipments, an analysis of the secondary factors could not advance the analysis because the secondary factor test assigns the sales to either the location of the headquarters or the inventory, and if there is deemed to be no location of inventory in Illinois, then the secondary factors would automatically default the sales to the headquarters.

requirements of primary factor D in the Regulation in that it has both title and possession to the inventory “at the time of its...delivery.” *Id.*<sup>4</sup>

Further, COMPANY has a 95% same day shipment rate from its CITY warehouse—meaning that 95% of the time COMPANY ships out an item to a customer the same day that the order is accepted, and the item is generally pulled from the co-location or consignment inventory concurrently with the order being accepted. Thus, even though the Regulation by its terms requires only that the item be in COMPANY’s inventory at the time of its sale or delivery, since order acceptance and shipment almost always occur on the same day, COMPANY has virtually all of the items sold under consignment or co-location arrangements in its inventory “at the time of its sale.” *Id.*

Thus, for the foregoing reasons, primary factor D should be treated as occurring in CITY with respect to sales shipped out of COMPANY’s CITY warehouse under COMPANY’s consignment or co-location arrangements with its vendors.

Thank you for your consideration of this Letter. Please do not hesitate to contact me if you have any questions, or would like any additional information. We would appreciate the opportunity to review a draft of the ruling prior to its publication for the purpose of redacting any information or references therein that might inadvertently identify COMPANY. In addition, we respectfully request a conference in the event you tentatively conclude that an adverse ruling would be warranted.

**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)

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<sup>4</sup> COMPANY generally delivers property by common carrier f.o.b. destination. The state sales tax regulations recognize however, that delivery is generally effected by the delivery of goods to the common carrier for shipment outside the state irrespective of where title actually transfers. 86 Ill. Admin. Code § 130.605(d). Further, to focus on the end point of the delivery rather than the location of the delivery to the common carrier, would effectively render the words “or delivery” irrelevant and superfluous.

Based on a review of the activities described in your letter, 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 periods before COMPANY opens its new headquarters in CITY 3, COMPANY is engaged in three or more primary selling activities in CITY, Illinois with respect to all of its sales and therefore these sales should be sourced to CITY, Illinois. See 86 Ill. Adm. Code 270.115(c)(2).

Further, based on a review of the activities described in your letter, the supplemental information provided to the Department, and an analysis of the Department's administrative rules found at 86 Ill. Adm. Code 270.115, the Department finds that, for periods after COMPANY opens its new headquarters in CITY 3, with respect to sales of items in COMPANY's inventory in CITY and sales of items stored in COMPANY's warehouse in CITY under a co-location or consignment arrangement, COMPANY is engaged in three or more primary selling activities in CITY, Illinois and therefore these sales should be sourced to CITY, Illinois. See 86 Ill. Adm. Code 270.115(c)(2).

Finally, based on a review of the activities described in your letter, the supplemental information provided to the Department, and an analysis of the Department's administrative rules found at 86 Ill. Adm. Code 270.115, the Department finds that, for periods after COMPANY opens its new headquarters in CITY 3, with respect to sales in which items are drop shipped directly by the vendor to COMPANY's customers or items are delivered to COMPANY's customers from COMPANY's CITY 4 distribution facility, COMPANY is "engaged in the business of selling" (within the meaning of 86 Ill. Admin. Code 270.115(b)(1)) in CITY and therefore these sales should be sourced to CITY, Illinois. See 86 Ill. Adm. Code 270.115. This conclusion is reached based on a number of factors. The facts presented here are not specifically addressed in Department rules. Therefore, we must look at the guidelines established in the rule for sourcing sales. The rule points out that:

[A] seller incurs Home Rule Municipal Retailers' Occupation Tax if its predominant and most important selling activities take place in the municipality. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322-23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35. 86 Ill. Adm. Code 270.115(b)(5)

In addition, these rules state that:

It is the intent of the Home Rule Municipal Retailers' Occupation Tax that retailers will incur local retailers' occupation tax in a jurisdiction in Illinois if they "enjoyed the greater part of governmental [services and] protection" in that jurisdiction. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 34 (quoting *Svithiod Singing Club v. McKibbin*, 381 Ill. 194, 197 (1942)). By allowing the municipality to impose tax on retailers who conduct business in the municipality, the Home Rule Municipal Retailers' Occupation Tax Act links the retailer's tax liability to where it principally enjoys the

benefits of government services. *Svithiod Club v. McKibbin*, 38 Ill. 194, 199 (1942). 86 Ill. Adm. Code 270.115(b)(4)

Your letter points out that approximately 50% of the Illinois orders that include items that are drop shipped or shipped from the CITY 4 distribution center also include items shipped from COMPANY's inventory in CITY (or co-location or consignment items on site at the CITY distribution center), and that, from order to order, the same item may be shipped from either CITY or a drop ship location, depending on availability. In addition, CITY is where COMPANY's primary inventories for the Illinois market are maintained. These facts, combined with the fact that for each sale, the purchase order is accepted in CITY (subsection (c)(1)(B)) and payment is received and invoices are prepared at the CITY location (subsection (c)(1)(C)) persuade us that, rather than in CITY 3 (COMPANY's new headquarters), COMPANY principally enjoys the benefits of government services in CITY with respect to these sales and therefore these sales should be sourced to CITY, Illinois.

You also asked whether the determination above applies to the local portion of the State-imposed taxes. If a person is determined to be engaged in the business of selling in a given location under the rules cited above, then the local portion of the State Retailers' Occupation Tax and Service Occupation Tax (i.e. the 1.25% portion of the 6.25% tax) is allocated under Sections 6z-18 and 6z-20 of the State Finance Act (30 ILCS 105/6z-18 and 6z-20) to the same location as determined under the rules cited above. With respect to COMPANY's sales discussed here, that location is CITY.

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](http://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:SJM:bkl