

This letter responds to an annual survey. (This is a GIL.)

August 18, 2016

Dear Xxxxx:

This letter is in response to your letter dated June 10, 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.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The COMPANY 1, in conjunction with COMPANY 2, annually undertakes a major information collection effort with respect to the application of the tax laws of the states. COMPANY 1's goal in gathering this information is to assemble and publish the *PUBLICATION*. As the market has shown, such a publication is a useful reference source for departments of revenue, attorneys, corporate tax departments, and public accounting firms.

COMPANY 1 is in the process of updating the *PUBLICATION* for its 2017 annual edition. Accordingly, we ask for your state's assistance in preparing this important publication. I have attached two Microsoft Word files—one for income tax and one for sales tax—to serve as this year's questionnaire. The questionnaire follows the same format as in past years. (If you do not have a copy of your 2015 response, and it would be helpful to you in completing the 2016 questionnaire, please let me know and I will email you a copy.)

This year, the numbering scheme and the sequence of the questions remains essentially the same. Also, please note that the new questions are highlighted in **bold, red font**. Therefore, you should be able to easily follow the changes from last year to this year. Because of anticipated time constraints for respondents, again this year we are asking that you only respond to the questions for which your answers require a change and the new questions. All unanswered questions will be considered the same as last year's answer unless otherwise noted.

Please complete the 2016 questionnaire and return it by July 22, 2016, via email to: XXX@COMPANY1.COM. The enclosed questionnaire should be answered in accordance with laws in effect as of July 1, 2016. If there is legislation pending or recently enacted that would alter your answers, please explain any such changes that you are aware of at the time the questionnaire is completed.

Beginning in the fall 20XX, COMPANY 1 began a tuition assistance program for state department of revenue employees in appreciation for their assistance in publishing the *PUBLICATION*. A limited amount of tuition assistance is available for courses in COMPANY 1's Online Graduate Certificate in State and Local Taxation. This Certificate program is the first of its kind in the nation to be offered totally online. To receive the Certificate, students must complete the four-course curriculum. For further information about the program or available tuition assistance contact YYYY at COMPANY 1 YYYY@COMPANY1.COM or ####.

If you have any questions about the questionnaire or a specific question, please contact me at XXX@COMPANY1.COM (email) and I will promptly return your call. Thank you for your continued cooperation and support. Your contributions are extremely valuable in maintaining the quality of this outstanding reference work. A complimentary copy of the *PUBLICATION* will be sent to you when it is published next year.

Note: It would be very helpful to me if you could email me back, confirming your receipt of the questionnaire and that you will be the respondent for your state.

A. COMPLIANCE AND ADMINISTRATION

WEB HOSTING NEXUS

<p>▪ Is nexus created for a taxpayer if the taxpayer:</p> <p>▪ Leases space from a service provider on a server located in your state? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>▪ Stores information on a server located in your state that is accessed remotely from within your state by unrelated parties? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>▪ Stores information on a server located in your state that is accessed remotely from outside your state by unrelated parties? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>▪ Does the use of a Web hosting provider with a server in your state create nexus for the taxpayer who contracts with the service provider? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

[31] ADMINISTRATIVE APPEALS OUTSIDE THE DEPARTMENT OF REVENUE

<p>▪ Does your state have a tax appeals court or similar tax appeals body outside the department of revenue and before entering the court system? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<ul style="list-style-type: none"> ▪ If YES, what is the name of this body?
<ul style="list-style-type: none"> ▪ If YES, may appeals be made directly to this tax appeals body without first appealing to an appeals office within the department of revenue?
<ul style="list-style-type: none"> ▪ If YES, where are appeals filed if a taxpayer does not agree with the determination of the tax appeals body?
<input type="checkbox"/> Circuit Court <input type="checkbox"/> Court of Appeals <input type="checkbox"/> Other, explain:
<ul style="list-style-type: none"> ▪ What body within the department of revenue hears the appeal of tax cases?

MANUFACTURING APPLICATIONS. If your state provides a manufacturing machinery and equipment exemption, which of the following items would qualify for the exemption (check all that apply)?

<input type="checkbox"/> Receiving inspection equipment that is used to test incoming materials prior to placing them into inventory storage <input type="checkbox"/> Material handling equipment that is used only to move product through manufacturing process <input type="checkbox"/> Material handling equipment that is used only on the shipping and receiving dock to load and unload trucks <input type="checkbox"/> Machinery and equipment used to manufacture other manufacturing equipment for use in the manufacturing process (sometimes referred to as a use-on-use exemption) <input type="checkbox"/> Shrink-wrap machine used to shrink-wrap end pallets in the shipping department prior to loading them on a truck for shipment <input type="checkbox"/> Shrink-wrap machine used to shrink-wrap every pallet of product prior to placing it in finished goods storage <input type="checkbox"/> Quality control equipment used to test sample product for performance characteristics, i.e., test every Nth item to determine if it meets expected standards <input type="checkbox"/> Quality control equipment used to test every item produced as part of a required manufacturing step to make sure it functions properly and as expected <input type="checkbox"/> Cleaning-in-place equipment used to flush interior of manufacturing equipment or bottling equipment to maintain cleanliness and/or product integrity <input type="checkbox"/> Computers used to create product operating software
--

[68] COMMON MISTAKES CORPORATIONS MAKE IN FILING RETURNS AND REMITTING TAXES

<ul style="list-style-type: none"> ▪ What are the most common mistakes that corporations make in filing sales and use tax returns and remitting sales and use taxes? For ease of presentation in a chart, please organize your response as a bullet point list, as follows: 1.

2.

3.

and so on

[69] ELECTRONIC ENTERTAINMENT EQUIPMENT. Are the gross proceeds from the use of the following equipment in bars, restaurants, and places of amusement subject to sales tax or taxed under an admissions or amusement tax in your state?

	YES	NO
▪ Video poker or other gambling machines	<input type="checkbox"/>	<input type="checkbox"/>
▪ Video amusement games	<input type="checkbox"/>	<input type="checkbox"/>
▪ Digital jukeboxes that play music	<input type="checkbox"/>	<input type="checkbox"/>
▪ If YES, is the licensing fee on the digital music paid by the jukebox “lessee” to the jukebox owner subject to sales tax?	<input type="checkbox"/>	<input type="checkbox"/>
▪ If NO, are the fees non-taxable because they constitute a sale for resale of the digital music by the “lessee” of the jukebox?	<input type="checkbox"/>	<input type="checkbox"/>

DEPARTMENT’S RESPONSE:

We are unable to respond to your survey in the format provided. However, we hope you find the following information helpful.

Administrative Appeals outside the Department of Revenue

The Independent Tax Tribunal exists to provide an independent and impartial venue for disputes between taxpayers and the Illinois Department of Revenue. The Tribunal shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under the Illinois Income Tax Act, the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, the Cigarette Tax Act, the Cigarette Use Tax Act, the Tobacco Products Tax Act of 1995, the Hotel Operators' Occupation Tax Act, the Motor Fuel Tax Law, the Automobile Renting Occupation and Use Tax Act, the Coin-Operated Amusement Device and Redemption Machine Tax Act, the Gas Revenue Tax Act, the Water Company Invested Capital Tax Act, the Telecommunications Excise Tax Act, the Telecommunications Infrastructure Maintenance Fee Act, the Public Utilities Revenue Act, the Electricity Excise Tax Law, the Aircraft Use Tax Law, the

Watercraft Use Tax Law, the Gas Use Tax Law, or the Uniform Penalty and Interest Act. Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, Notices of Claim Denial, and Notices of Penalty Liability where the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000, exclusive of penalties and interest. In notices solely asserting either an interest or penalty assessment, or both, the Tax Tribunal shall have jurisdiction over cases where the combined total of all penalties or interest assessed exceeds \$15,000. A final decision issued by the Independent Tax Tribunal may be appealed to the Illinois Appellate Court.

Manufacturing Applications

Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The manufacturing process is the production of articles of tangible personal property or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant. See Section 130.330(b)(2).

Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process, including machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. See Section 130.330(c)(2).

Though the exempt status of machinery and equipment depends on how the item is used, generally, the use of machinery or equipment to inspect, test or measure the tangible personal property to be sold where the function is an integral part of the production flow, will qualify for the exemption. See 86 Ill. Adm. Code 130.330(d)(3)(D). In addition, the use of machinery and equipment to convey, handle, or transport the tangible personal property to be sold within production stations on the production line or directly between the production stations or buildings within the same plant is generally considered an exempt use. The use of machinery or equipment to place the tangible personal property to be sold into the container, package, or wrapping in which this property is normally sold when the machinery or equipment is used as a part of an integrated manufacturing process is also generally considered an exempt use of manufacturing machinery and equipment. See 86 Ill. Adm. Code 130.330(d)(3)(E-F).

Manufacturing machinery and equipment also includes any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembling process: including computers used primarily in operating exempt machinery and equipment in a computer-assisted design, computer-assisted manufacturing (CAD/CAM) system; or any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment, parts of machinery, such as tools, dies, jigs, fixtures, patterns and molds, and any parts which require periodic replacement in the course of normal operation. Beginning August 23, 2001, equipment includes computers used primarily in a manufacturer's computer-assisted design, computer-assisted manufacturing (CAD/CAM) system.

Common Filing Mistakes

The Department has prepared a document that identifies common sales tax filing mistakes. It is located on the Department's website at:

<http://tax.illinois.gov/Businesses/AvoidCommonSalesTaxFilingMistakes.htm>

Electronic Entertainment Equipment

The Department of Revenue does not administer the taxes associated with electronic entertainment equipment. For information regarding such taxes, please see the Video Gaming Act, 230 ILCS 40.

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

Very truly yours,

Cara Bishop
Associate Counsel

CB:bkl