

Generally, an out-of-State retailer with an ongoing physical presence in Illinois is a "retailer maintaining a place of business in this State" under Section 2 of the Use Tax Act, 35 ILCS 105/2. 86 Ill. Adm. Code 150.201 (This is a GIL).

May 23, 2023

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated January 31, 2023, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

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

- 1) COMPANY is a licensed STATE dealer that sells PRODUCT1, PRODUCT2 and PRODUCT3 to customers nationwide, which could include Illinois customers.
- 2) After the vehicles are delivered to customers, COMPANY hires a 3rd party company to calibrate the meters on the PRODUCT1 at the customer's location.

In reviewing 35 ILCS 105/2 it states:

"Retailer maintaining a place of business in this State", or any like term, means and includes any of the following retailers:

- (1) A retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or **any agent or other representative operating within this State under the authority of the retailer or its subsidiary**, irrespective of whether such place of business or agent or other

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representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State. However, the ownership of property that is located at the premises of a printer with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, or other place of business within this State.

Based on the highlighted text above, does COMPANY have a physical presence because it hires a 3rd party company to complete the calibrations on the equipment?

Thanks in advance for your response,

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

The limited description you provided regarding activities performed in Illinois does not allow for a specific answer to your question. Generally, a determination regarding physical nexus is very fact specific and cannot be addressed in the context of a GIL. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information. We hope the following information which outlines the principles of nexus will be helpful.

An out-of-State retailer making sales to Illinois purchasers from locations outside Illinois is required to register with the Department and collect and remit Use Tax on those sales if it falls within the definition of a "retailer maintaining a place of business in this State" in Section 2 of the Use Tax Act, 35 ILCS 105/2. The Department is authorized to require these retailers to act as tax collectors because they have established sufficient contacts, or physical nexus, with Illinois. The physical presence required to establish physical presence nexus is not limited to an office or other physical building. The types of activities constituting a physical presence, as pronounced in a series of court cases described below, are found in Section 2 of the Use Tax Act's definition of a "retailer maintaining a place of business" in Illinois. See, 35 ILCS 105/2. The physical presence requirement was established in a series of United States

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Supreme Court decisions. See, for example, *Scripto v. Carson*, 362 U.S. 207 (1960); *National Bellas Hess v. Department of Revenue of the State of Illinois*, 386 U.S. 753 (1967); *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992). In 1996, the Illinois Supreme Court ruled a vendor's delivery and installation of its product on a repetitive basis, will trigger Use Tax collection responsibilities. See *Brown's Furniture v. Wagner*, 171 Ill. 2d 410 (1996).

Generally, an out-of-State retailer with an ongoing physical presence in Illinois are "retailers maintaining a place of business in Illinois" under Section 2 of the Use Tax Act, 35 ILCS 105/2. As a result, they incur only a Use Tax collection obligation (6.25%) on sales made to Illinois purchasers from locations outside Illinois. However, if sales are made to Illinois purchasers from locations in Illinois, State and local retailers' occupation tax is incurred at the rate in effect where the selling activities occur. See 86 Ill. Adm. Code 270.115(c) and (d). This selling frequently occurs when sales made to Illinois purchasers are filled from inventory located in Illinois.

Please note that beginning January 1, 2021, an out-of-State retailer without sufficient physical presence in this State meeting either tax remittance threshold as set out in 86 Ill. Adm. Code 131.115(a) and 131.135(a), respectively, are liable for all applicable State and locally-imposed retailer's occupation taxes administered by the Department of Revenue on all sales made to Illinois purchasers. See 86 Ill. Adm. Code 131.115 and 131.135.

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,

Thomas Grudichak
Associate Counsel

TG:bf