

If a remote retailer is no longer required to remit State and local retailers' occupation taxes, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin remitting State and local retailers' occupation taxes. For each quarter ending on the last day of March, June, September, and December, the remote retailer must examine its sales for the immediately preceding 12-month period to determine whether it met either of the tax remittance thresholds in 86 Ill. Adm. Code 131.115(a)(1). If it met either of those thresholds during that 12-month lookback period, it must remit State and local retailers' occupation taxes for the following 12-month period. At the end of that 12-month period, it must examine its sales to determine if it must continue to remit tax. See 86 Ill. Adm. Code 131.115(e). (This is a GIL.)

March 27, 2024

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated December 21, 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 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:

To whom it may concern,

Please advise your official stance for Economic Nexus for an out-of-state Remote Seller concerning the Trailing Nexus Rule. We have a shop in CITY STATE and sell online. Our Tax ID ends in XXXX. We've had IL Account ID: XXXX-XXXX since X/XX/XX.

We have COMPANY1 handling our tax returns and were advised nexus is not forever, but depends on each state. I understand your evaluation period is the calendar year and your threshold is \$100,000 or 200 sales. For 2023, we have not met either. Would we be required to collect taxes from Illinois residents in 2024?

Please let us know. I can be reached at EMAIL or by calling PHONE.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

A remote retailer is a retailer that does not maintain 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 that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a remote retailer. See 86 Ill. Adm. Code 131.105.

As of January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of the following thresholds is met:

- A) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B) The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

See 86 Ill. Adm. Code 131.115(a).

For information on how to calculate sales to determine whether a retailer meets either of these thresholds see 86 Ill. Adm. Code Sections 131.115 and 131.120. A remote retailer meeting either of these thresholds is liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers and is required to file all applicable returns for one year. See 86 Ill. Adm. Code 131.115(b). At the end of that one-year period, during which the remote retailer was remitting taxes, the remote retailer shall determine whether it met either threshold for the preceding 12-month period. If the remote retailer has again met a threshold for that 12-month period, the remote retailer remains required to remit all applicable State and local retailers' occupation taxes and file returns for the subsequent year. 86 Ill. Adm. Code 131.115(c).

COMPANY/NAME

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If, at the end of that one-year period, a remote retailer determines that its sales to Illinois purchasers did not meet either threshold, the remote retailer must notify the Department and discontinue remitting State and local retailers' occupation taxes. See 86 Ill. Adm. Code 131.115(d). As a courtesy to its Illinois customers, the remote retailer may notify the Department to change its registration status to voluntarily collect and remit Use Tax, since its Illinois customers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. See 86 Ill. Adm. Code 150.805 for additional information. Please note that all notifications made under 86 Ill. Adm. Code 131.115(d) shall be made electronically as required by the Department.

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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,

Tom Grudichak
Associate Counsel

TG:rkn