

This letter discusses nexus. See Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992). (This is a GIL.)

May 17, 2007

Dear Xxxxx:

This letter is in response to your letter dated June 22, 2006, in which you request information. We apologize for the delay in responding to your inquiry. 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:

I am writing to you to get a private letter ruling on the following sales and use tax issues. Please let us know if there is a fee for this service.

These questions are in regard to a Wisconsin retailer dealing in furniture. They are near the Wisconsin-Illinois border so they sell to both Wisconsin and Illinois customers. The Wisconsin retailer is not currently registered with the Illinois Department of Revenue to collect Illinois sales tax.

1. For sales to Wisconsin and Illinois customers that purchase furniture at the store and carry it home themselves, should Wisconsin sales tax be charged for both Wisconsin and Illinois customers?
2. For sales to Illinois customers who purchase furniture and the Wisconsin retail store delivers it to their Illinois residence, how should they be taxed.
3. If and when would it be necessary to register with the Illinois Department of Revenue and collect Illinois sales tax.
4. Is the Illinois resident responsible for paying use tax on the Wisconsin sale per your Use Tax Form ST-44.

5. Any other tax issues that come to mind in regard to the above questions, please let us know in detail.

Thank you in advance for your consideration in this matter.

DEPARTMENT'S RESPONSE:

We cannot provide you with information regarding any Wisconsin tax liabilities your client may incur. Determinations regarding nexus are very fact specific and cannot be addressed in the context of a General Information Letter. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information.

The following guidelines, however, may be useful to you in determining whether your client would be considered "a retailer maintaining a place of business in Illinois" subject to Use Tax collection obligations.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. The Illinois Supreme Court case Brown's Furniture, Inc. v. Wagner, 171 Ill.2d 410, (1996), should be of special interest to you since it concerned the Illinois sales tax liability of an out-of-State furniture seller who made deliveries into this State.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax liability on the purchase of the goods and have a duty to self-assess and remit their Use Tax liability directly to the State. In such instances, those customers must remit their Illinois Use Tax along with a completed Form ST-44, Illinois Use Tax Return unless they are otherwise registered or are required to be registered with the Department and remit their Illinois Use Tax with a Form ST-1, Illinois Sales and Use Tax Return.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk