

This letter discusses the Department's voluntary disclosure program. See 86 Ill. Adm. Code 210.126 for information about voluntary disclosure. (This is a GIL.)

July 3, 2007

Dear Xxxxx:

This letter is in response to your letter dated March 20, 2007, 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.ILTAX.com 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 appreciate your Department's past efforts in working with our law firm to negotiate prospective use tax collection agreements for remote sellers with no physical facilities or employees in Illinois. We represent two affiliated direct marketing clients, one is an online vendor of women's apparel and the other is a mail order vendor of women's apparel (the 'Clients'). These companies would like to register with the Illinois Department of Revenue and begin collecting use tax on sales to customers in Illinois on a prospective basis, in return for a waiver of any potential liability for sales and use taxes, interest and penalties for periods of time prior to the date of the agreement. As with prior agreements reached with your department, I believe that such prospective collection agreements would be mutually beneficial to the state and to each Client and are entirely appropriate in the circumstances described below.

Each Client has its primary place of business outside the State of Illinois. Neither Client has any physical facilities, employees, inventory, property or independent representatives in Illinois. All of the Clients' customer orders are received at locations outside of Illinois, are fulfilled from distribution centers located outside of Illinois, and delivered to consumers in Illinois by common carrier.

The Clients share a common parent corporation with a third company that operates retail stores ('Stores') in a number of states, including Illinois. Each Client, however, maintains its own customer base which they developed separate from Stores. While the

Clients and Stores are in the same line of business (women's apparel) and have some products in common, the Clients and Stores each have a substantial number of their own products not sold by the other. Indeed, the Clients purchase and maintain their own inventory and have their own system of SKUs independent of Stores, even for like products. Consistent with the companies' maintenance of independent stocks of inventory and product assortments, Stores has a strict 'No Return' policy and does not accept returns or exchanges of products, even like ones, purchased by consumers from either direct marketing Client. Moreover, Stores maintains its own point of sale ('POS') computer system which does not allow retail locations of Stores to access the Internet website of the online Client. In addition, catalogs for the mail order Client are not generally distributed in Stores locations but are occasionally made available to Stores customers if specifically requested. Neither the mail order Client's 1-800 number, nor the Internet Client's website address, is displayed on signage in any retail location of Stores or printed on Stores bags. Gift certificates purchased in Stores locations cannot be redeemed through either direct marketing Client.

In light of the foregoing, neither Client has ever registered to collect sales/use tax in Illinois and each maintains that it is not obligated to collect use tax on its sales to consumers in Illinois because each lacks a sufficient physical presence in Illinois to constitute 'substantial nexus' under applicable United States Supreme Court precedent applying the Commerce Clause of the United States Constitution. Neither Client is currently under audit by the Illinois Department of Revenue, nor has either Client received a notice of audit.

Each Client, however, is considering expanding its marketing activities in Illinois, and would be prepared to enter into an agreement to collect and remit Illinois use taxes on a prospective basis, in return for a waiver of potential back sales/use tax liability. As you may know, our firm has assisted other clients in negotiating similar agreements with the Illinois Department of Revenue in the past. A proposed form of agreement is enclosed and reflects terms that would be acceptable to each of our Clients in this case.

After you have had an opportunity to review the proposed Agreement, please contact me at your earliest convenience to discuss the proposal. I look forward to speaking with you.

DEPARTMENT'S RESPONSE

Your letter has been forwarded to the Legal Services Office for response. The Legal Services Office has no statutory authority to compromise a debt owed to the State or to waive taxpayers' obligations that arose prior to their voluntary registration.

If your clients are confident that they do not have nexus with Illinois and have no obligation to collect and remit tax, they may continue as they are, or they may register with the Department to voluntarily collect and remit tax as a courtesy to their customers.

If your clients are concerned that they owe Illinois sales tax, they may want to contact the Department's Board of Appeals.

The Board of Appeals administers a voluntary disclosure program that can provide for limited liabilities for participants who come forward and disclose their liabilities. Please see the enclosed copy of 86 Ill. Adm. Code 210.126 for information about the voluntary disclosure program.

If you require additional information, please visit our website at www.ILTAX.com 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,

Martha P. Mote
Associate Counsel

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