

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

March 16, 2009

Dear Xxxxx:

This letter is in response to your letter dated March 4, 2009, 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](http://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:

Our client is requesting a General Information Letter from the Illinois Department of Revenue regarding sales tax nexus for an out-of-state business. The issue does not relate to any ongoing dispute, litigation, or audit.

Our client (the ‘Company’) is headquartered outside Illinois. It sells tangible personal property to retail customers over the Internet. It does not manufacture any of the tangible personal property it sells. Instead, the Company purchases its inventory from unrelated suppliers, displays the product for sale on online ‘webstores,’ and resells the products directly to consumers located across the United States. Some of these customers are located in Illinois. All shipments are made via common carrier.

The Company has no offices, facilities, or employees in Illinois. All inventory is stored in warehouses outside the State. Approximately 3-4 times per year, however, a consultant employed by the Company comes into Illinois for the sole purpose of meeting with prospective or existing *suppliers*. Neither the consultant nor anyone else ever visits Illinois customers or solicits sales in Illinois.

We would like to know whether a few visits per year to meet with suppliers would create nexus in Illinois, so as to require the Company to collect sales tax on sales to Illinois customers.

Thank you for your consideration.

## **DEPARTMENT'S RESPONSE:**

The Department declines to make nexus determinations in the context of Private Letter Rulings or General Information Letters because the amount of information required to make those determinations is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining your client's tax 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 a 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. Please see Brown's Furniture, Inc. v. Wagner, 171 Ill.2d 410, (1996).

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. Many retailers that do not have nexus with the State have chosen to voluntarily register as Use Tax collectors as a courtesy to their Illinois customers so that those customers are not required to file returns concerning the transactions with those retailers.

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

Very truly yours,

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