

Every retailer required or authorized to collect Use Tax must file a return each month, except when they have been authorized to file on an annual or quarterly basis. See 86 Ill. Adm. Code 150.901. (This is a GIL.)

April 2, 2009

Dear Xxxxx:

This letter is in response to your letter dated October 22, 2008, 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:

I am writing to request a letter ruling for a specific sales tax nexus question. When nexus has been established in the state of Illinois, for sale and/or use tax purposes, is a seller required to register and file sales and/or use tax returns if no sales were made? In other words, would the seller be required to register and file zero returns with the state? Or would registration solely be required?

Does Illinois have a dollar amount threshold that needs to be met before a seller is required to register and collect and remit sales tax to the state, if nexus has been established?

**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 at retail to purchasers for use or consumption. See 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

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. The Use Tax rate is 6.25%.

It is unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration from the Department. 35 ILCS 120.2a. See also 86 Ill. Adm. Code 130.701. A registration must be obtained prior to making retail sales. There is no dollar threshold. If a person is not making retail sales, no registration is necessary. A person registered to engage in the business of selling tangible personal property at retail must file periodic returns. 35 ILCS 120/3. Generally, a retailer must file monthly returns. 86 Ill. Adm. Code 130.501. However, depending on the amount of sales, returns on a less frequent basis may be permitted. See 86 Ill. Adm. Code 130.502 & 130.510.

There is no dollar threshold that must be met before a retailer is required to register and remit Use Tax to the State if the retailer has nexus with the State. Every retailer required or authorized to collect Use Tax must file a return each month, except when they have been authorized to file on an annual or quarterly basis. See 86 Ill. Adm. Code 150.901.

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,

Richard S. Wolters  
Associate Counsel

RSW:msk