Manufacturers, importers and wholesalers may enter into agency agreements with the Department, whereby they register, file returns and remit sales tax on behalf of retailers selling their products. See, 86 Ill. Adm. Code Section 130.550 (This is a GIL).

August 24, 2000

Dear Xxxxx:

This is in response to your letter dated April 20, 2000. We regret the delay in responding to your request. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. *See* 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at http://www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

> In 1999, we were granted a sales/use tax permit to do business in your city and state.
>
> During the course of our first year in business, we have been informed on several occasions, by many of our independent distributors that the other business' that they are involved with on the multi-level marketing scale DO NOT require them to pay sales/use taxes on their purchases; I am writing to inquire as to how this could be?
>
> We are a multi-level marketing company who uses independent distributors to distribute our product, so why are we required to obtain permits and collect sales/use tax?
>
> Since many of our distributors are questioning the reason behind this, I would appreciate a written response to the above question so when the need arises, I can forward to my distributors a copy of the answer from your department.
>
> Thank you for your assistance in this matter.

When a seller of tangible personal property registers with and obtains a Certificate of Registration from the Illinois Department of Revenue, it gains the right to sell at retail its products in the state of Illinois and in turn, assumes the duty to file returns and remit the tax collected on those sales. In the event a seller registered with the Department sells its products to an independent distributor for the purpose of resale, a Certificate of Resale must be obtained from the distributor in order to be relieved of the duty to collect and remit the sales tax on the products purchased for resale. The requirements for obtaining Certificates of Resale are provided in the enclosed copy of 86 Ill. Adm. Code Section 130.1405.

Manufacturers, importers or wholesalers may, however, enter into an "agency agreement" with the Department, whereby they register, file returns and remit sales tax on behalf of their independent

distributors. Please find enclosed a copy of 86 Ill. Adm. Code Section 130.550, the regulation explaining how to enter into such an agreement. Under this type of agreement, the manufacturers, importers or wholesalers sell their products to the distributors and collect tax from the distributors based on the selling price of the products to the ultimate consumer. The tax therefore, is not calculated on the selling price to the distributor, but rather the applicable tax is calculated and collected based on the selling price of the product at retail. Under such an agreement, the independent distributor is not required to register with the Department, file a return and remit the tax because those duties have been assumed by the manufacturer, importer or wholesaler.

An independent distributor that agrees to allow the manufacturer, importer or wholesaler to register and remit taxes on its behalf should keep a copy of the agency agreement as proof that it is relieved from the duty to register and remit taxes on products sold at retail. A distributor may opt out of the agency agreement where the distributor wishes to register and remit its own taxes.

Enclosed with this letter you will find a RR-80, Agency Agreement, which may be used to obtain approval for this type of agreement with the Department. Department approval is subject to any written objections of the retailers that would be affected under such an arrangement. The agreement may be submitted to the attention of Mr. Norman Clark, Illinois Department of Revenue, 101 West Jefferson, Springfield, Illinois 62794.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
Enc.