

A "retailer maintaining a place of business in Illinois" as described in 86 Ill. Adm. Code 150.201(i) is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL.)

November 17, 2003

Dear Xxxxx:

This letter is in response to your letter dated September 25, 2003, 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 1200.1120. You may access our website at [www.ILTAX.com](http://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:

Thank you for taking the time to speak with me again yesterday. Per our conversation, I writing you today to confirm the information I provided last Fall with respect to AAA's sales tax position in Illinois was received and processed internally.

Company specific information:

NAME/ADDRESS

Parent Company  
NAME/ADDRESS

Affiliates through common principals, management and/or ownership:  
Bookstore -- CITY  
Bookstore - CITY

In summary, we discussed the following information with respect to AAA:

1. AAA operates an online bookstore program for private high schools and higher education organizations nationwide. This program includes direct relationships with schools located within the State of Illinois. Textbooks and educational materials and purchased directly by parents and students via the AAA website and shipped directly to the same end consumers. As part of this relationship, the school enters into an exclusive agreement with AAA to serve as its textbook

provider. Schools typically do not participate as an intermediary between any specific transaction, so there is no resale exemption or non-profit exemption from sales tax.

2. Although they are both private companies, we believe AAA national revenues to approximate \$40 million annually and parent company BBB national revenues to exceed \$400 million annually.
3. AAA is actively marketing within the State of Illinois that they do not collect or remit sales tax for any online textbook sales.
4. AAA has a sales force that regularly enters the State of Illinois to meet with prospective and current school accounts to pitch their program or manage ongoing customer relationships.
5. AAA has been conducting on-site textbook buybacks within the State of Illinois at current and prospective school account locations.

As a taxpaying corporation within the State of Illinois we are extremely frustrated to find ourselves at a clear competitive disadvantage to our largest competitor today simply due to the fact they have refused to collect and remit sales tax for sales generated as a product of their activity within Illinois.

Finally, as I requested yesterday, we would appreciate a letter from the Illinois Department of Revenue addressed to ABC stating that companies which do any of the following within the State of Illinois have created a nexus condition which requires them to collect and remit sales and use taxes:

- Have salespeople that regularly enter Illinois to conduct in-person sales presentations to prospective clients;
- Have employees that enter Illinois to manage customer relationships within the State;
- Have employees that conduct on-site sales or buying events within Illinois

We would also appreciate noting in the letter the potential consequences of not collecting and remitting sales and use tax which extend beyond the company itself. Namely, the transfer of burden from the company for collecting and remitting sales taxes over to the end customer that is then required to pay a use tax to the State.

Please let me know if you have any questions regarding this issue. I look forward to your response.

The following information outlines the principles of nexus. 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), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector.

See 86 Ill. Adm. Code 150.801, enclosed. 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 Cause 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. 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 refer to Brown's Furniture, Inc. v. Wagner, (1996), 171 Ill.2d 410.

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 on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

As you can see from the above discussion, companies that do any of the following activities in Illinois, have nexus with Illinois and must collect and remit sales and use taxes: 1) have salespeople that regularly enter Illinois to conduct in-person sales presentations to prospective clients; 2) have employees that enter Illinois to manage customer relationships within Illinois, and; 3) have employees that conduct on-site sales or buying events within Illinois.

If a company with Illinois sales and use tax responsibilities fails to collect the tax from its customers, the customers must self-assess and remit the Use Tax to the Department. Failure to do so may subject the customer to penalties and interest on the unpaid tax. Illinois will aggressively pursue companies that have nexus that fail to collect tax and customers who purchase from such companies that fail to remit their Use Tax liability to the Department.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://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,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.