

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.225 Drop Shipments

**TITLE 86: REVENUE
PART 130
RETAILERS' OCCUPATION TAX**

Section 130.225 Drop Shipments

- a) A drop-shipment situation is one in which out-of-State purchasers (purchasers) that are not registered with the State of Illinois and that do not have sufficient nexus with Illinois to require them to collect Illinois Use Tax make purchases for resale from companies (companies) that are registered with Illinois and have those companies drop-ship the property to purchasers' customers (customers) located in Illinois. As sellers required to collect Illinois tax, companies must either charge tax or document exemptions when they make deliveries in Illinois. In order to document the fact that their sales to purchasers are sales for resale, companies are obligated by Illinois to obtain valid Certificates of Resale from purchasers. (See 86 Ill. Adm. Code 130.1405 for information on what is required for a Certificate of Resale to be valid.)

- b) If purchasers have no nexus with Illinois, it is unlikely that purchasers would be registered with Illinois. If that is the case, and if purchasers have no contact with Illinois that would require them to be registered as out-of-State Use Tax collectors for Illinois, then purchasers could obtain resale numbers, which would provide them the wherewithal to supply required numbers to companies in conjunction with Certificates of Resale. Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as purchasers do not act as Illinois retailers and, so long as they do not fall under the definition of a "retailer maintaining a place of business in this State", their sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and they cannot be required to act as Use Tax collectors. So long as this is true, purchasers qualify for resale numbers that do not require the filing of tax returns with the Illinois Department of Revenue. (See 86 Ill. Adm. Code 130.1415 for information on resale numbers.) A "retailer maintaining a place of business in this State" or any like term shall mean and include any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State. (See 86 Ill. Adm. Code 150.201(i) and Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992).)

- c) The fact that purchasers may not be required to act as Use Tax collectors for Illinois does not relieve their customers of Use Tax liability. Therefore, if purchasers do not collect Illinois Use Tax from their customers, the customers would have to pay their tax

liability directly to the Illinois Department of Revenue.

- d) While active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers' Occupation Tax Act provides that *failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale.* [35 ILCS 120/2c]. In light of this statutory language, certifications from purchasers on Certificates of Resale in lieu of resale numbers that described the drop-shipment situation and the fact that purchasers have no contact with Illinois that would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale that does not contain a valid resale number and require that more information be provided by companies as evidence that the particular sale was, in fact, a sale for resale.

(Source: Added at 24 Ill. Reg. 15104, effective October 2, 2000)