



March 17, 2014

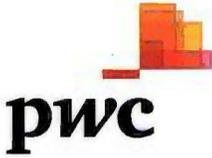
Mr. Paul Berks
Deputy General Counsel
Illinois Department of Revenue
100 West Randolph Street, 7th Floor
Chicago, Illinois 60601

Dear Mr. Berks:

We'd like to thank the department for quickly moving to address the Illinois local rate sourcing issues. PwC is providing comment based on concerns that have been expressed by taxpayers related to the proposed rules released as a result of *Hartney Fuel Oil Co. v. Hamer (2013)*. A prominent concern expressed relates to the application of the sourcing parameters presented to companies engaged in electronic commerce. The factors presented contemplate historic operating models for the selling of tangible personal property and are perhaps not applicable to the true selling activities of an electronic commerce business. We recognize the difficulty of writing guidance for a wide variety of businesses in Illinois, and we realize every scenario cannot be accounted for within the regulations, however we have clients who are concerned that they will have uncertainty in applying the primary and secondary factors outlined in 86 ILCS Section 220.115(d).

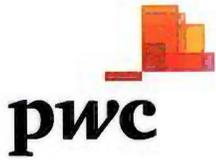
These concerns include:

1. The factors may tend to be inconclusive and perhaps irrelevant in defining the business of selling for an electronic commerce organization. Below is a discussion of the primary and secondary factors and potential issues.
 - a. Location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller.
 - i. In the electronic commerce industry the location of the officers and executives are irrelevant to defining the business of selling. Such personnel do not negotiate and bind the seller, rather such electronic commerce sales are more akin to over-the-counter retail sales where purchases are made via a set price without negotiation and purely dependent upon the ability of the customer to provide consideration.
 - b. Location where offers are prepared and made.
 - i. Such a factor may exist in Illinois if employees in the state prepare product descriptions, prices and other website content.
 - c. Location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed.
 - i. Servers that host the website and process orders and credit card information may be located outside of Illinois. Such processes are often automated in nature and require de minimus intervention by employees.



- d. Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery.
 - i. Inventory may be located outside of Illinois.
2. If the primary factors are inconclusive one would be left to review the secondary factors for the purposes of sourcing. These factors may also be unclear and not offer certainty relative to the sourcing of electronic commerce sales.
 - a. Location where marketing and solicitation occur.
 - i. Marketing is done both electronically via the website and by employees in and out of state.
 - b. Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received.
 - i. Servers that host the website and process orders and credit card information may be located outside of Illinois. Such processes are often automated in nature and require de minimus intervention by employees.
 - c. Location of delivery of the property to the purchaser.
 - i. For sales to Illinois customers, the product is delivered to an Illinois location.
 - d. Location where title passes.
 - i. Title will typically pass at the customer's location, which for the transactions at issue would be Illinois.
 - e. Location of the retailer's ordering, billing, accounts receivable and other administrative functions.
 - i. These tasks would generally be performed where those particular functions are located which could be in and out of state.
3. Concern exists as to how a business can weigh the factors with confidence that they are appropriately identifying the factors that are predominant and most important to defining their business of selling.
 - a. In an electronic commerce scenario there are many factors of great importance to the success of a business. Such factors include; the technology used to sell their product in an effective and timely fashion, advertising and marketing, pricing, procurement of product, fulfillment and shipment of goods, among others.

Because the business operations of an electronic commerce company vary greatly from traditional brick and mortar stores, there is difficulty applying the primary and secondary factors as written. We ask that you consider these issues before the new regulations become permanent so that Illinois businesses can



apply the rules to their business with confidence. For example, it would be very helpful to businesses if the regulations could provide safe harbors or examples for as many fact patterns as possible.

Thank you for your time and consideration on this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "S. Bradley Danton".

S. Bradley Danton