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April 30, 2014

## By Electronic Mail

Mr. Paul Berks  
Deputy General Counsel  
Illinois Department of Revenue  
100 W. Randolph  
Suite 7-500  
Chicago, Illinois 60601

### **RE: Request for Review of Proposed Change to “Hartney Regulations” in advance of May 5, 2014 Deadline for Submissions**

Dear Mr. Berks:

On behalf of my undisclosed client, I am submitting the following proposed change to the Emergency Rules and Proposed Rules, identified below, in advance of the May 5, 2014 deadline for such proposed changes. As previously discussed, we would appreciate it if you would kindly review this proposal and provide some guidance with regard to whether it is likely to be accepted by the Illinois Department of Revenue (“Department”) to become part of the final regulations. If it is not likely to be accepted by the Department, guidance with regard to any defects in the proposed language would be appreciated such that this taxpayer has an opportunity to correct the defect(s) and submit a version on May 5<sup>th</sup> most likely to be accepted by the Department.

It is the intent of my client to receive clarity in the law for their business to ensure they are collecting the right amount of tax to avoid penalty/interest assessments for non-compliance. With your guidance, this taxpayer will have an opportunity to make changes to this proposal and submit a version on May 5, 2014 that has the best possible chance of becoming part of the final regulations and allow for accurate compliance.

### **EMERGENCY AND PROPOSED RULES**

The following Emergency and Proposed Rules (“Rules”) are the Rules to which I am submitting the proposed modification below. These Rules are the Department’s response to *Hartney Fuel Oil Company v. Hamer*, 2013 IL 115130 (Ill. Nov. 21, 2013) and as posted at the Department’s website at <http://www.revenue.state.il.us/News/HartneyDecision.htm>.

#### *List of emergency rules:*

Section 220-115 - Jurisdictional Questions  
Section 270-115 - Jurisdictional Questions  
Section 320-115 - Jurisdictional Questions

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Section 370-115 - Jurisdictional Questions  
Section 395-115 - Jurisdictional Questions  
Section 630-120 - Jurisdictional Questions  
Section 670-115 - Jurisdictional Questions  
Section 690-115 - Jurisdictional Questions  
Section 693-115 - Jurisdictional Questions  
Section 695-115 - Jurisdictional Questions

*List of proposed rules:*

(Please see the Proposed Rules area for information on the current status of the following.)

Section 220-115 - Jurisdictional Questions  
Section 270-115 - Jurisdictional Questions  
Section 320-115 - Jurisdictional Questions  
Section 370-115 - Jurisdictional Questions  
Section 395-115 - Jurisdictional Questions  
Section 630-120 - Jurisdictional Questions  
Section 670-115 - Jurisdictional Questions  
Section 690-115 - Jurisdictional Questions  
Section 693-115 - Jurisdictional Questions  
Section 695-115 - Jurisdictional Questions

**PROPOSED CHANGE**

The following change is being proposed for all of the above-identified Rules but for ease of discussion is being made to § 220.115. The proposed change is the addition of the underlined language.

(c)(3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale.

(A) Internet-Based Retailers. An internet-based retailer's predominant selling activity includes buying goods for resale to customers via the internet, price setting, marketing, corporate administrative activities, website hosting to allow for the matching of buyer with seller for where tangible personal property will be bought and sold, respectively, and electronic offer and acceptance. Because these predominant selling activities are of equal value and importance to an internet-based retail business model, when these predominant selling activities occur both in-state and out-of-state, the internet-based retailer will source its sales of tangible personal property to the location of the inventory at the time of the sale.

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With kind regards,

*Denise Obrochta*

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