



VILLAGE OF SCHAUMBURG

MUNICIPAL CENTER / 101 SCHAUMBURG COURT / SCHAUMBURG, IL 60193-1899
847.895.4500 / FAX 847.895.7806 / WWW.CI.SCHAUMBURG.IL.US

March 7, 2014

Joint Committee on Administrative Rules
c/o Mr. Paul Berks/Deputy General Counsel
Illinois Department of Revenue
JRTC – 7th Floor, Room 7-216
100 West Randolph
Chicago, IL 60601

RE: Written Testimony for IDOR Public Hearing on March 21, 2014 at 10:00am

Dear Members of the Joint Committee on Administrative Rules:

I understand that the Illinois Department of Revenue will hold a public hearing on its proposed permanent amendments to rules regarding local sales tax sourcing on Friday, March 21, 2014 at 10am. As you begin to review the Department of Revenue's recently proposed rules, pertaining to Title 86 (Revenue), Chapter 1 (Department of Revenue), Part 270 (Home Rule Municipal Retailer's Occupation Tax) of the Illinois Administrative Code, clarifying how the retailers' occupation tax should be collected in the state of Illinois, please support our communities by eliminating sales tax avoidance schemes.

This past November, the Illinois Supreme Court made clear that state law does not permit Illinois retailers to avoid paying sales tax in the community or jurisdiction where they operate simply by establishing a lone sales office in another low-taxing community or jurisdiction within the state. To emphasize the need for reform, Schaumburg has been a participating member in the Sales Tax Fairness Coalition, which is a diverse association of municipalities, counties, community organizations and special districts. Together, we wish to ensure that retailers across the state pay sales tax in the location where the bulk of their selling activity takes place and we strongly support regulations that are consistent with this basic fairness principle. The Department of Revenue's new rules reflect long-standing Illinois law and are intended to stop the sham sales tax operations that have been widely publicized in the last few years.

Allowing companies who operate in higher tax jurisdictions to establish sales offices in low tax municipalities such as Channahon, Kankakee, and Sycamore is unfair to the local governments

that must provide these companies with basic services such as infrastructure improvements, public transportation, and police and fire protection despite the fact that these companies are paying sales tax in another jurisdiction. In particular, an example of this practice that we suspect impacts our village is an agreement that the Rabine Group, located at 900 National Parkway in Schaumburg, has with the Village

of Savanna, Illinois. The village believes that the sales tax rebate agreement between Palatine Oil Company (part of the Rabine Group) and the Village of Savanna is improper and should be terminated.

It should also be noted that we concur with the comments that have been provided by the Regional Transit Authority and presented to Deputy General Counsel Berks through its letter dated March 3, 2014 as they apply to municipalities. In particular, it is crucial to note that in *Hartney Fuel Oil Co. v. Hamer* the Court found the prior regulations invalid because they could be interpreted in a manner that was contrary to well-established Illinois law relating to retailer's occupation taxes. IDOR's proposed amendments reflect the long-standing law that was recently reaffirmed by the Illinois Supreme Court in *Hartney*. In some respects, however, the proposed amendments are not consistent with existing Illinois law. Please find five specific changes to the proposed amendments that are needed:

1. The section titled "Long Term or Blanket Contracts" was properly omitted by IDOR and should not become part of the regulations;
2. The distinction between "Primary" and "Secondary" factors should be removed, because the courts have repeatedly said that no single factor is always more important;
3. The section titled "Order Acceptance Not Doing Business in the Jurisdiction" should be eliminated or rephrased. The rule must be written to make clear that the place of order acceptance should never be considered as the single dispositive factor in determining tax jurisdiction;
4. The section titled "Guidance on the Application of the Composite of Selling Activities Test to Common Selling Operations" should be rephrased to emphasize that it identifies guidelines for the application of the general rule that regards the business of selling as a

composite of many activities, not independent "bright-line rules" to be blindly followed;
and

5. The list of business activities to consider when determining tax jurisdiction should be expanded, and it should be made clear that the list is non-exhaustive.

These changes to the proposed amendments should be made to ensure consistency with Illinois law.

On behalf of taxpayers and municipalities throughout Illinois, we look forward to your support to end these tax avoidance schemes and reform the system. Should you have any questions, feel free to contact me at 1.847.923.4401 or alarson@ci.schaumburg.il.us or our Village Manager, Brian Townsend, at 1.847.923.4700 or btownsend@ci.schaumburg.il.us.

Sincerely,

VILLAGE OF SCHAUMBURG



Al Larson
Village President

cc: Board of Trustees and Village Clerk
Village Manager, Assistant Village Manager, and Department Directors
IML, NWMC, and DMMC Legislative Representatives
Claire J. Serdiuk-Anderson /Manager of External Affairs - Regional Transportation Authority