

General Information Letter: The request contains insufficient information for offering guidance on the application of Public Law 86-272.

June 20, 2008

Dear:

This is in response to your letter dated February 26, 2008, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

This letter is a follow up to a recent telephone conversation with your office concerning the reporting requirements for one of our clients who is a North Carolina S corporation. As per our phone conversation, the above taxpayer is seeking a general information letter ruling pursuant to 2 Ill. Administrative Code Section 1200.120 concerning whether our client has the requisite activities in Illinois for your state to confer nexus upon our client for S corporate income and sales tax, respectively.

As for our client's activities and operations in Illinois, all of our client's real property, personal property and employees are situated in North Carolina. Moreover, during the past seven years, the Company has not engaged in any installation, training functions, repairs, credit checks, or any other services in Illinois. Rather, the Company's physical presence in Illinois has been limited to attending trade shows on a regular basis and engaging an exclusive third party, who is not domiciled in Illinois, to serve as an authorized dealer of our client's software in Illinois, our client has no other contact with Illinois.

A review of the possible nexus authority for corporate income, Illinois Regulation 35 ILCS 5/304 and for sales tax, Illinois Code Statute Section 35 ILCS 105/2, respectively, indicates that it is possible that attending trade shows as well as engaging an authorized dealer by which initial sales of the client's software is consummated may be sufficient for Illinois to confer nexus on our client. To this end, our client request guidance as whether this suffices for Illinois to confer nexus on our client. To this end, our client request guidance as whether this suffices for corporate income and sales tax nexus, respectively.

In the even that the Department determines that attending trade shows and utilizing an authorized dealer by which initial sales of the client's software are effectuated is sufficient for the Department to confer nexus on our client, our client will submit a BOA-2 Application for Voluntary Disclosure for the sole purpose of adhering to the rules and regulations pertaining to the Sales and Use Tax and Illinois Composite Income and Replacement Tax collection responsibilities and obligations for the State of Illinois.

## **Response**

Your inquiry concerning sales taxes has been assigned to a different attorney and will be answered

separately. This letter deals only with income taxes.

The determination of whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a particular taxpayer has nexus with the State. However, general information regarding nexus with Illinois for income tax purposes may be provided.

The United States Constitution restricts a state's power to subject to income tax foreign corporations. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax (*Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904 (1992)). Similarly, the Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state (*Id.*). Where any part of a foreign corporation's income is allocable to Illinois in accordance with the provisions of Article 3 of the Illinois Income Tax Act (35 ILCS 5/Article 3), Illinois can demonstrate the connection or nexus necessary to subject a foreign corporation to tax. Therefore, unless protected by the United States Constitution or federal statute, a foreign corporation is liable for Illinois income tax where any portion of its income is allocated to Illinois.

Public Law 86-272 (15 U.S.C. Section 381) states in part:

No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either or both of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

Your letter contains no information regarding the computer software sold by your client, so it is impossible to provide any guidance on whether or not the software could be considered tangible personal property within the scope of Public Law 86-272. Also, your letter contains no information regarding the scope and nature of the activities your client conducts at trade shows in Illinois or that your client's representative conducts in this State. Accordingly, it is not possible to give you more detailed guidance.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have

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any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton

Deputy General Counsel – Income Tax