



ILLINOIS CHAMBER OF COMMERCE

March 21, 2014

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

Re: Proposed Amendments to 86 Ill. Admin. Code Sections 220.115, 270.115, 320.115, 370.115, 395.115, 630.120, 670.115, 690.115, 693.115 and 695.115.

Dear Mr. Berks:

The following comments are submitted on behalf of the Illinois Chamber of Commerce in response to the proposed local Retailers' Occupation Tax regulations identified above.

We applaud the Department's efforts to provide guidance to Illinois retailers. We also recognize the difficulty of developing guidelines for the sourcing of local retailer's occupation taxes that apply to such a diverse population of Illinois businesses and industries-- each with unique and ever-evolving retail practices. Members of the General Assembly that enacted the Retailers' Occupation Tax Act in 1933 could not possibly have foreseen our current day retail practices and the dramatic impact that e-commerce has had on our tax laws.

As a representative of businesses charged with collecting state and local sales taxes on behalf of the State, we urge you to work with the business community to develop more clear guidance for determining which and how many of the more than 1400 local sales taxes throughout Illinois should be applied to a particular sale. We recognize that it is not an easy task. While we believe that the Department's proposed regulations are a step in the right direction in that they identify the primary factors that IDOR will look to in determining the appropriate local rate, they do not yet provide the clear guidance that retailers need in order to collect the appropriate local tax without risk of assessment or litigation.

We are committed to working with the Department of Revenue and all affected parties to develop the best guidelines possible and we will be submitting more detailed written recommendations during the first notice period of today's revised regulations.

For purposes of today's public hearing we would like to focus primarily on the need to develop a legislative solution to the many concerns that you have heard about or will hear about this morning.

We strongly urge the Department of Revenue to convene a working group of all affected parties to develop objective statutory guidelines for determining where a sale takes place. As IDOR Director Brian Hamer acknowledged in his January 14th letter to the Joint Committee on Administrative Rules (JCAR), the current tax statutes, along with the Supreme Court's recent *Hartney* decision prevent the Department from providing a bright line or one factor test *by regulation*—"only legislation could accomplish such a test." We agree with Director Hamer that legislation is needed to define what constitutes the occupation of selling. Without statutory guidance, all retailers are operating under a cloud of uncertainty—not just the very few whose unique sourcing practices have been challenged by the Department and local governments.

The Department states in subsection (c)(1) of the proposed regulations that for most retailers, the jurisdiction in which they are engaged in the occupation of selling is not open to reasonable dispute because "it is obvious where the most significant selling activities take place." The Department then proceeds to enumerate "special rules" in subsections (c)(2) through (c)(7) which restate the sourcing rules that have been in place for certain taxpayers and/or industries for over 60 years. These special rules generally provide bright line or single factor tests that have not been disputed by retailers, the Department of Revenue or by local governments. However, taxpayers acting in compliance with these bright line or single factor guidelines are now in danger of being challenged by local governments and/or transit districts who claim the regulation is lacking in statutory authority after *Hartney*. Without a statutory amendment to codify the more non-controversial guidelines in subsections (c)(2) through (c)(7), even these taxpayers remain at risk. The Department has indicated that approximately 90% of taxpayers fall into this category. If that is the case, let's at least provide some certainty for those 90% while we work toward addressing the remaining 10%.

Every state with a sales tax has some form of objective sourcing test—*except Illinois after Hartney*. With over 1400 local taxing jurisdictions imposing local sales taxes, the need for an objective test could not be more critical. The Department of Revenue needs to take the lead in developing a legislative solution to what has become a very serious tax administration issue.

In 1987, in a report submitted to then Governor James Thompson, a Revenue Review Committee charged with reforming the state and local sales tax system, recommended that sales and use tax collection, administration, enforcement, and local government distribution responsibilities should rest solely with the Illinois Department of Revenue—the chief tax administration agency for the State of Illinois. Prior to that time, local governments

administered their own sales taxes, most with differing bases and rates. As a result of the recommendations of that group the state imposed our current combined state/local sales tax rate of 6.25% effective September 1, 1990. The working group made this recommendation primarily to avoid the very situation we find ourselves in today. The proliferation of local sales taxes (and there were fewer than 100 local taxes at that time), each having a differing base and rate was resulting in Illinois being classified as having one of the most complex sales tax systems in the country. For a time, the 6.25% combined tax rate worked well. However, since 1990 we have lost sight of the purpose for shifting to the combined state/local rate and we have authorized a multitude of new local sales taxes to fund local government services. All of the complexity with local tax rates that the Committee recognized in 1987, including the intra-Illinois competition for revenues, has returned but is made even more complex with the advent of new and ever-evolving business practices. We have come full circle in little over 20 years but now we have over 1400 local governments imposing some form of local sales tax.

The very fact that local taxing districts are now suing other local taxing districts, and taxing districts are suing retailers to determine where sales should be sourced is proof in itself that objective standards need to be put in place as soon as possible.

We urge the Department of Revenue to convene a working group as soon as possible to begin what we recognize will be the hard work of drafting legislation that will provide objective standards for retailers to use in determining the appropriate local tax rate.

Respectfully submitted,



Connie Beard

Tax Director

Illinois Chamber of Commerce