

IRMA SOURCING TESTIMONY
Public Hearing, March 21, 2014
Illinois Department of Revenue
Springfield, Illinois

The Illinois Retail Merchants Association (IRMA) appreciates the opportunity to offer its views on the proposed sourcing rules. IRMA represents retailers of sizes and types including many multi-store operators primarily impacted by these proposed rules. The retail sector IRMA represents is not only the largest employer in Illinois but is the largest generator of tax revenues for the state and units of local government. A healthy and predictable regulatory scheme is in the best interests of everyone.

In our testimony of December 12, 2013, jointly offered with the Illinois Chamber of Commerce, Illinois Manufacturers' Association, and the Taxpayers' Federation of Illinois, we noted that a major tenet of good tax policy is predictability and certainty. Retailers, in particular, need bright-line tests in order to easily comply with the tax laws and not be unnecessarily exposed to liabilities after the fact because retailer have to make decisions at the point-of-sale.

What is accepted?

IRMA accepts the fact that the Department's 60-year old "sales acceptance" single factor determination is no longer considered faithful to the authorizing statute as a result of the Illinois Supreme Court's decision in *Hartney*.

What we also accept is the fact that while the Court ruled a single-factor test invalid, they did not, by any interpretation, preclude bright-line tests. In other words, the Court did not condone or recommend rules which are neither predictable, certain, nor workable in the modern retail sector.

Contrary to the publicly stated position of the Department, these rules are not easy to comply with for the vast majority of over-the-counter sales. They may have been in 1950 or even 1990, but given the way the retail sector operates in the 21st century, these rules become very unpredictable and uncertain very quickly. Further, they may be easy for one-store operating in one jurisdiction. Multiple stores operating in multiple jurisdictions quickly face significant interpretational hurdles. What follows are three real-world scenarios from brick-and-mortar retailers operating in Illinois:

Scenarios

Scenario #1: The customer places a dot-com order from within an Illinois brick-and-mortar store. The store could be out of an item or not carry the item at that location. The order is accepted, processed and fulfilled outside Illinois. The order is shipped from a location outside Illinois to the customer's location within Illinois.

Scenario #2: The customer places a dot-com order from within an Illinois brick-and-mortar store. The store could be out of an item or not carry the item at that location. The order is accepted, processed, and fulfilled outside Illinois. The order is shipped from a location outside Illinois to a brick-and-mortar store in Illinois for in-store pick-up by the customer.

Scenario #3: The customer places a dot-com order from a location other than the brick-and-mortar store (e.g. work, home or other location). The order is accepted, processed and fulfilled outside Illinois. The order is shipped from a location outside Illinois to a brick-and-mortar store of the dot-com store in Illinois for in-store pick-up by the customer.

For the scenarios just described, it is impossible under the proposed rules to determine with any certainty at the point-of-sale where these sales should be sourced and therefore taxed. Also under the proposed rules, it is then left to the Department to determine on a case-by-case basis where each sale should have been sourced if the retailer guessed wrong. And let's be clear: these rules require retailers to guess at the point-of-sale meaning they are in an untenable situation and unreasonably exposed to financial penalties. This approach also exposes local units of government who cannot be confident the tax revenues initially credited to them will remain with them.

Closing

While the Court ruled a single-factor test invalid, the Court did not, by any reading, preclude bright-line tests. In other words, the Court did not condone or recommend the proposed rules which are neither predictable, certain, nor workable in the modern retail sector. That means the Department has viable and defensible options if the Department continues to defend their historic mission of trying to provide as simple, clear, and enforceable a tax code as possible. As we all know, it is in the best interests of the state, business, and local units of government that the tax code be simple, clear, and enforceable.

For example, the Department could create a hierarchical multi-factor test. If a retailer meets the first test, the tax is sourced at "x". If not, see the next test. If the retailer meets the second test, the tax is sourced at "y". And so on. This is just one potential solution. I'm certain there are others that should be considered.

Any final rules must not only focus on today's problems but must recognize the evolution already occurring in the marketplace. If final rules do not work in a fair, clear, predictable, and easy-to-administer manner for brick-and-mortar retailers, they ultimately will not work for units of local government. Over-correcting by adopting rules with little or no certainty and not accounting for the emerging realities of the way the modern retail sector operates, will ultimately harm and frustrate everyone including the units of local government who the Court determined were harmed under the old single-factor test.

We strongly urge the Department to significantly re-think and re-draft these proposed rules in close consultation with the businesses who actually have to interpret and implement the rules in the modern world of retail and whose decisions ultimately impact units of local government.

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