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Mayor

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Mr. Jim Nichelson  
Illinois Department of Revenue

RE: Comments for Illinois Department of Revenue  
New Sales Tax Sourcing Regulations Meeting December 12, 2013

The City of Kankakee is located 60 miles south of Chicago. We are a Home Rule community of approximately 27,000 residents. We are a blend of urban and rural lifestyles. At one time we had a very large manufacturing presence, but in the late 1970's many of these industries relocated their factories to the south. The result was devastating to our area with the loss of nearly 4000 jobs. We have worked very hard to rebuild our industrial base. We are fortunate to have regained and retained many industries that now call Kankakee home. Kankakee has not been spared in the latest economic downturn. Our unemployment rate is one of the highest in the State of Illinois and we have, like many other communities, lost many homes to foreclosure. We continue to try to find ways to stabilize our neighborhoods as well as our tax base.

Our General Fund budget is approximately \$24 million a year. Like most municipalities, 85% of that budget pays for police, fire, code and public works employees. In addition, our police and fire pensions are fully funded each year costing nearly \$4 million. In 2010 in order to balance the budget I asked and received 12% wage concessions from all six (6) employee unions. The following year, knowing concessions would not be considered again, I had to lay off employees, consolidate departments, and institute a hiring freeze. This last year we were able to balance the budget which included a \$150,000 surplus to my \$24 million budget. The city's cash reserves total only \$1.5 million.

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It is my understanding that the issue of this hearing today is whether the Department of Revenue should issue preemptory rules in light of the Supreme Court Ruling in Hartney Fuel Oil case. Prior to Hartney, businesses in the State of Illinois had a fundamental understanding of the existing rules and regulations that governed the sourcing of the Retailers Occupation Tax. They knew we are a state whose taxes are imposed based upon the location where the sale was approved. Although this position is consistent with such states as California and Texas, it is also a system that we have used here for most of the years we have imposed the Retailers Occupation Tax.

It is the opinion of the City that a legislative solution needs to be drafted to address the decision in the Hartney Case. The language in the current statute of the "business of selling" needs to be replaced by a "bright line" test to determine tax situs. The "bright-line" test would remove uncertainty as to the site of a sale which both the Taxpayer Federation of Illinois and the Retail Merchants Association argued in their briefs in the Hartney case. The Supreme Court stated, "should the legislature decide that tax certainty warrants a single-factor determination of retail occupation tax situs, it can draft such a test." The process involved in this legislative change should be transparent, include significant input from the business community and should not favor one geographic region of the state over the others.

The rules and regulations that existed in the Department of Revenue created the opportunity for local governments like the City of Kankakee to attract new businesses to the State of Illinois and to the city. Over the past twelve years, the City of Kankakee has sought and successfully attracted businesses who agreed to establish their order acceptance offices in Kankakee. Those offices include many procurement companies which did not pay tax to the state before those agreements with Kankakee. Those companies now locate their nationwide purchase and sales of construction materials, equipment and other general purchases in Illinois and pay sales tax on those purchases to the State of Illinois and Kankakee. Internet companies have located the sales acceptance offices in Kankakee which were located outside of Illinois before our sales tax incentive agreements. It is also important to note that the Hartney decision specifically found these agreements not to be "shams" since the retailers simply followed the Rules and Regulations promulgated by the Illinois Department of Revenue.

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Two years ago, Illinois enacted the "Amazon Tax" in an effort to collect tax on sales that occurred within the state. It was stated the effect of the new tax would help to spur economic activity and would generate \$150 million in revenue. It did neither. According to the Illinois Department of Revenue the tax generated just \$3.8 million between July 2011 and January 2012. Imagine if rather than an Amazon Tax, which caused Amazon and its affiliates to leave the state, we had worked out an agreement with Amazon and its affiliates to give them an incentive to stay in Illinois and pay millions of dollars in sales tax to the state. The effect of our agreements has been to generate an average of more than \$60 million per year in new revenue for the state and nearly \$4 million a year in revenue for the City of Kankakee and Kankakee County. These agreements would be in jeopardy if new rules are drafted that would negate our sales tax sharing agreements. Any new legislation should take into consideration the economic impact to Kankakee and to the many communities in the State that rely on this revenue. Rather than change the rules, the State should enhance the possibility of our agreements. In order to prosper, the state's business community must have a predictable and stable tax environment in which to operate. Any change now would only give businesses another reason to take their jobs, their money and their sales tax payments elsewhere.

This issue needs to be resolved in a manner that is fair to all those involved, not only the City of Kankakee but for ~~all~~ businesses located in the State of Illinois. As the General Assembly contemplates revisions to the state's tax code, I would strongly urge the legislature and the Department of Revenue to review all the factors involved and the impact they might have on municipalities and businesses in Illinois.



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