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**By Electronic Mail and By Hand Delivery**

Mr. Paul Berks  
Deputy General Counsel  
Illinois Department of Revenue  
100 W. Randolph  
Suite 7-500  
Chicago, Illinois 60601

**RE: Request for Proposed Change to “Hartney Regulations”**

Dear Mr. Berks:

On behalf of my undisclosed client, I am timely submitting to the Illinois Department of Revenue (“Department”) the following proposed change to the Emergency Rules and Proposed Rules (collectively, the “Hartney Regulations”), identified below. Please note that it is the intent of my client to receive clarity in the law solely for their business model to ensure that they are collecting the right amount of tax to avoid penalty/interest assessments for non-compliance. It is not my client’s intent to suggest in any way that the proposed change set forth below is or should be applicable to any other business model as they are in no position to so opine.

We appreciate your consideration of this proposed change and hope that the Department includes the proposed change in the final regulation such that my client will be equipped to comply with the law and properly collect sales tax.

**EMERGENCY AND PROPOSED RULES**

The following Emergency and Proposed Rules (“Rules”) are the Rules to which I am submitting the proposed modification below. These Rules are the Department’s response to *Hartney Fuel Oil Company v. Hamer*, 2013 IL 115130 (Ill. Nov. 21, 2013) and as posted at the Department’s website at <http://www.revenue.state.il.us/News/HartneyDecision.htm>.

*List of emergency rules:*

- Section 220-115 - Jurisdictional Questions
- Section 270-115 - Jurisdictional Questions
- Section 320-115 - Jurisdictional Questions
- Section 370-115 - Jurisdictional Questions
- Section 395-115 - Jurisdictional Questions
- Section 630-120 - Jurisdictional Questions
- Section 670-115 - Jurisdictional Questions

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Section 690-115 - Jurisdictional Questions  
Section 693-115 - Jurisdictional Questions  
Section 695-115 - Jurisdictional Questions

*List of proposed rules:*

(Please see the Proposed Rules area for information on the current status of the following.)

Section 220-115 - Jurisdictional Questions  
Section 270-115 - Jurisdictional Questions  
Section 320-115 - Jurisdictional Questions  
Section 370-115 - Jurisdictional Questions  
Section 395-115 - Jurisdictional Questions  
Section 630-120 - Jurisdictional Questions  
Section 670-115 - Jurisdictional Questions  
Section 690-115 - Jurisdictional Questions  
Section 693-115 - Jurisdictional Questions  
Section 695-115 - Jurisdictional Questions

**PROPOSED CHANGE**

The following change is being proposed for all of the above-identified Rules but for ease of discussion is being made to § 220.115. The proposed change is the addition of the underlined language.

(c)(3) In-state Inventory/Out-of-state Selling Activity. If a retailer's selling activity takes place outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced will determine where the seller is engaged in business with respect to that sale.

(A) Internet-Based Retailers. This provision applies to an internet-based retailer that does not have any physical retail locations. Such an internet-based retailer's predominant selling activity integrates the following: buying goods (inventory) for resale to customers via the internet, price setting, marketing, corporate administrative activities, website hosting to allow for the matching of buyer with seller for where tangible personal property will be bought and sold, respectively, and electronic offer and acceptance. Because the integrated predominant selling activity is inseparable in the internet-based retail business model described in this subsection and occurs both in-state and out-of-state, such an internet-based retailer will source its sales of tangible personal property to the location of the inventory at the time of the sale.

With kind regards,



Denise M. Obrochta