

The destination of products to a third-party warehouse or distribution location is reviewed under the provisions of IITA Section 304(a)(3)(B)(i). (This is a GIL.)

September 17, 2024

NAME
TITLE
PARTNERSHIP
ADDRESS

Re: Request for Private Letter Ruling – Sourcing Sales of Tangible Personal Property
COMPANY1
FEIN: ##-#####
Tax Year Ended: MM/DD/YEAR

Dear NAME:

This is in response to your letter dated April 19, 2024, in which you requested a Private Letter Ruling on behalf of COMPANY1, and certain of its subsidiaries seeking confirmation as to whether the sale of certain tangible personal property will be within Illinois for purposes of 35 ILCS Section 5/304(a). 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 2 Ill. Adm. Code Section 1200.120(b) and (c), which may be found on the Department’s website at tax.illinois.gov.

The facts and analysis as you have presented them are as follows:

COMPANY2 (“COMPANY2”), acting as lead filer of the combined unitary group that includes COMPANY1 (“COMPANY1”) and certain of its subsidiaries (collectively, the “Taxpayer”),¹ hereby requests a Private Letter Ruling seeking confirmation as to whether the sale of certain tangible personal property will be within Illinois for purposes of 35 ILCS section 5/304(a). The tax period at issue begins with the YEAR tax period.

Neither the issues raised in this ruling request, nor any substantially related issues, are being or have been previously considered by Illinois or federal authorities under audit or examination of, or in litigation concerning, the Taxpayer or any related party. To the best of the knowledge of both of the Taxpayer and

¹ As of the date of this filing, the members of the combined group are: COMPANY2 (EIN: ##-#####), COMPANY1 (EIN: ##-#####), COMPANY3 (EIN: ##-#####), COMPANY4 (EIN: ##-#####), COMPANY1 COMPANY5 (EIN: ##-#####), COMPANY1 COMPANY6 (EIN: ##-#####), COMPANY7 (EIN: ##-#####), COMPANY1 COMPANY8 (EIN: ##-#####), COMPANY1 COMPANY9 (EIN: ##-#####), COMPANY10 (EIN: ##-#####), COMPANY11 (EIN: ##-#####), COMPANY12 (EIN: ##-#####), COMPANY13 (EIN: ##-#####), and COMPANY1 COMPANY14 (EIN: ##-#####). COMPANY2 is located at the following address: ADDRESS C/O Tax Department CITY, STATE ZIP

the Taxpayer's representatives, the Illinois Department of Revenue has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, and the neither the Taxpayer nor any representatives of the Taxpayer have previously submitted the same or a similar issue to the Illinois Department of Revenue but withdrawn it before a letter ruling was issued.

PARAGRAPH REDACTED

A. Facts

COMPANY1 is the publicly traded parent company of COMPANY2, US COMPANY15 ("COMPANY15"), COMPANY16 ("COMPANY16") and various other subsidiaries that manufacture, purchase and/or import PRODUCTS. Collectively, these COMPANY1 subsidiaries are referred to in this submission as the "COMPANY17" or "COMPANY17s," and the various PRODUCTS they manufacture, purchase and import are collectively referred to as the "COMPANY17 Products." COMPANY1, the COMPANY17s, COMPANY7 (defined below), and various additional subsidiaries file an Illinois unitary combined report.

The distribution of the COMPANY17 Products in the United States is managed by COMPANY7 ("COMPANY7"). The COMPANY17s and COMPANY7 do not sell COMPANY17 Products to LOCATIONS. The COMPANY17s sell COMPANY17 Products to various third-party distributors. These distributors then sell COMPANY17 Products to either other distributors or to retail stores. In addition to arranging for distribution, COMPANY7 employs representatives throughout the United States who visit retailers and distributors to (i) ensure compliance with COMPANY1's sales and distribution requirements, and (ii) provide information about the COMPANY17 Products and PROGRAMS, and COMPANY7 will continue to employ these representatives under the Alternative COMPANY17 Product Distribution Platform (as discussed below).

After purchasing the COMPANY17 Products, the third-party distributors resell them to retailers across the country, including in Illinois. The COMPANY17s have arrangements with approximately ### distributors throughout the United States. The top ## distributors by volume are responsible for distributing approximately ## percent of COMPANY17 Products. It is expected that the distributors initially implementing the Alternative COMPANY17 Product Distribution Platform will include some members of the top ## distributors by volume.

Current COMPANY17 Product Distribution Platform

COMPANY17 Products are ultimately sold by retailers in STATES, and so must be distributed TO STATES. To accomplish this, COMPANY7 uses CARRIERS to manage transportation and warehousing of the COMPANY17 Products. Specifically, COMPANY7 SHIPS from the place of manufacture, purchase or import to ## public warehouses located in ## states, including Illinois.

COMPANY7 does not own the public warehouses. Instead, COMPANY7 contracts with third-party logistics providers to use public warehouse space. These facilities typically also store GOODS made by other manufacturers. In some cases, COMPANY7 uses CARRIERS to ship directly to third-party distributors.

Third-party distributors order COMPANY17 Products from the COMPANY17s. For a few third-party distributors, COMPANY7 provides support in placing orders based on DATA. After an order is placed, COMPANY7 SHIPS the relevant COMPANY17 Products. These products are shipped from WAREHOUSE and delivered to designated third-party distributor locations (known as "DISTRIBUTOR LOCATIONS") at which the distributors regularly receive COMPANY17 Products. The third-party distributors currently use approximately #### DISTRIBUTOR LOCATIONS in STATES to accept delivery of COMPANY17 Products, including approximately ## DISTRIBUTOR LOCATIONS in Illinois.

On a typical day, COMPANY7 receives orders for COMPANY17 Products from approximately #### DISTRIBUTOR LOCATIONS. These orders are shipped by CARRIERS, and the majority are sent to DISTRIBUTOR LOCATIONS. COMPANY7 occasionally arranges for expedited delivery of COMPANY17 Products by CARRIERS when required by business exigencies. Some products are shipped directly from COMPANY1-owned warehouses in STATE1 and STATE2 to DISTRIBUTOR LOCATIONS. Irrespective of how the product is shipped, title to the COMPANY17 Products passes from the COMPANY 17s to the third-party distributor on shipment (FOB shipping point).

On shipment (FOB shipping point) to the third-party distributor, control of and responsibility for the future sale and distribution of the COMPANY17 Products are transferred to the relevant third-party distributor. After the COMPANY17 Products are received by a third-party distributor, the products are shipped and/or sold by the third-party distributor to: (a) one or more other warehouses owned by the third-party distributor or the distributor's affiliates; and/or (b) the third-party distributor's customers.

Although COMPANY7 and the COMPANY17s have no involvement in or control over the distribution and sales of COMPANY17 Products once they are shipped and sold to a third-party distributor, they may obtain some information about such activities. For instance, information regarding shipments from DISTRIBUTOR LOCATIONS is provided to COMPANY7 approximately TIME after-the-fact by a third-party data service company. This information is useful to the COMPANY17s in estimating DATA. The COMPANY17s provide BENEFITS to distributors and retailers that are primarily based on ACTIVITIES.

COMPANY17 Products are shipped and sold to DISTRIBUTOR LOCATIONS both inside and outside of Illinois. COMPANY1 understands that COMPANY17 Products shipped to a DISTRIBUTOR LOCATION in Illinois are further

distributed and shipped by the distributor to locations both inside and outside of Illinois. Similarly, COMPANY1 understands that some of the COMPANY17 Products shipped to a DISTRIBUTOR LOCATION located outside of Illinois are further distributed and shipped by the distributor to locations inside of Illinois.

For Illinois state income tax purposes, sales of COMPANY17 Products that are shipped to a third-party distributor warehouse located in Illinois are sourced to Illinois irrespective of whether the third-party distributor further distributes and ships the product to a location outside of Illinois. Similarly, for Illinois state income tax purposes, sales of COMPANY17 Products that are shipped to a third-party distributor warehouse located outside of Illinois are not sourced to Illinois irrespective of whether the third-party distributor further distributes and ships the product to a location inside of Illinois.

Alternative COMPANY17 Product Distribution Platform

In recent years, certain COMPANY17s have increasingly focused on PRODUCTS (“OTHER PRODUCTS”). As part of this change, those COMPANY17s have INTRODUCED multiple OTHER PRODUCTS (with more on the way), some of which are expected to come with CHALLENGES AND COMPLEXITIES attributable to the large number of DISTRIBUTOR LOCATIONS. Additionally, the COMPANY17s and other PRODUCTS companies have recently been experiencing difficulty in AREAS.

To help address these challenges and to supplement its existing distribution platform, COMPANY7 has initiated a plan to consolidate and streamline portions of its distribution system by enhancing its network to include the use of large warehouses with increased capability (“COMPANY7 STOREROOM1s”) expected to be in the same states as large and modern facilities that distributors have established or are expected to establish (the “STOREROOM2”). The warehouse space in the first COMPANY7 STOREROOM1 is currently operational in STATE3. The warehouse space in the STATE3 COMPANY7 STOREROOM1 was first utilized by COMPANY1 in MM/YEAR for strategic business reasons to support current and future product distribution. COMPANY7 was the ## tenant in the building, which was AGE at the time COMPANY7 first occupied it.

STATES were selected due to market factors, including large volumes of COMPANY17 Products delivered in STATE and surrounding areas, the location of existing nearby DISTRIBUTOR LOCATIONS, economic development tax incentives, and real estate and other financial considerations. These COMPANY7 STOREROOM1s will be capable of storing large quantities of COMPANY17 Products and will be equipped with FACILITIES that may be required for the OTHER PRODUCTS. COMPANY7 will require SYSTEMS in the COMPANY7 STOREROOM1s. The STATE3 COMPANY7 STOREROOM1 is already equipped with these SYSTEMS. COMPANY7 will contract with third-party logistics providers to arrange for space in the COMPANY7 STOREROOM1

and will also manage and operate the COMPANY7 STOREROOM1 through contracts with third-party logistics providers.

The new COMPANY7 STOREROOM1s are expected to be in the same states as STOREROOM2s that distributors have established or will establish in STATES. These STOREROOM2s will be capable of storing large quantities of COMPANY17 Products.

NOW, under the alternative structure, COMPANY7 will initially ship some, and plans to eventually ship approximately ## % of the COMPANY17 Products from the new COMPANY7 STOREROOM1s to STOREROOM2s in STATES. The remainder of the COMPANY17 Products will go to WAREHOUSES. Once fully implemented, the establishment of the COMPANY7 STOREROOM1 and the STOREROOM2, in conjunction with the revisions to COMPANY7's distribution network, is expected to decrease the number of SHIPMENTS required by COMPANY7 as compared to the existing system. This will, in turn, increase COMPANY7's efficiency by reducing the number of SHIPMENTS, shortening the distance of many shipments, and simplifying the network for the largest distributors and produce net cost savings.

As a result of the new system, COMPANY1 understands that participating distributors will eventually benefit from increased profit margins, lower net product costs, decreased uncertainty, and increased efficiency of asset utilization.

The operational logistics and related features of the alternative distribution model will be as follows:

1. COMPANY7 will generally use contracted CARRIERS to ship COMPANY17 Products from ORIGIN to a COMPANY7 STOREROOM1 (or, in some cases, first to STATE1 or STATE2 and then to a COMPANY7 STOREROOM1). Some products will be shipped directly from the place of manufacture or import to a STOREROOM2.
2. The COMPANY17 Products that are shipped to the COMPANY7 STOREROOM1 will be stored at the COMPANY7 STOREROOM1 until the products are ordered by a third-party distributor.
3. After an order is received from a distributor, CARRIERS will ship the ordered product from COMPANY7 STOREROOM1 to a STOREROOM2.
4. Title to the COMPANY17 Products will pass from the COMPANY17s to the distributor at or before arrival to the STOREROOM2.

5. In addition to transferring title to the distributor at or before arrival to the STOREROOM2, possession, custody, and control of the COMPANY17 Products will also fully transfer to the distributor at or before arrival to the STOREROOM2. After this delivery, COMPANY7 will not be involved in any aspect of the future shipment and/or distribution of the products and will not know the subsequent destination of the COMPANY17 Products beyond the inventory and/or shipment information available to COMPANY7, as outlined above. At or before delivery to the STOREROOM2, responsibility for the future sale of the COMPANY17 Products is transferred to the distributor.
6. Upon receipt by the distributor, COMPANY1 understands that the COMPANY17 Products will be unloaded, sorted, and then stored to maintain adequate inventory levels. Distributors are expected to maintain sufficient inventory to ensure uninterrupted flow of COMPANY17 Product to retailers. COMPANY7 will require distributors to ship product on a "first-in-first-out" basis and understands that the duration of the storage will be determined by, among other things, a product's shelf life, the distributor's inventory strategy, variations in market demand, and logistical constraints.
7. COMPANY1 understands that the distributor will then distribute the COMPANY17 Products from the STOREROOM2. COMPANY1 understands that this distribution activity will generally entail (1) creating new pallets of various COMPANY17 Products or pallets of COMPANY17 Products and products from other manufacturers; (2) packaging and labeling the pallets for shipment; (3) re-packaging damaged cases and re-casing; and (4) shipping the product.
8. COMPANY1 understands that the distributor will ship the COMPANY17 Products from a STOREROOM2 using either its own trucks or a third-party carrier arranged by the distributor to DISTRIBUTOR LOCATIONS. The distributor will be responsible for all aspects of shipping, including security.

In addition to the COMPANY7 STOREROOM1s, COMPANY7 will continue to utilize WAREHOUSES as per the current system, WITH MODIFICATIONS. Shipments that are not fulfilled by a COMPANY7 STOREROOM1 and shipments to non-participating distributors will be shipped directly to DISTRIBUTOR LOCATIONS both inside and outside of Illinois. Some COMPANY17 Products shipped to DISTRIBUTOR LOCATIONS in Illinois will be further distributed and shipped by the distributor to locations both inside and outside of Illinois. Similarly, some COMPANY17 Products shipped to STOREROOM2 and DISTRIBUTOR LOCATIONS located outside of Illinois will be further distributed and shipped by the distributor to locations both inside and outside of Illinois.

B. Applicable Law

Corporations doing business in Illinois or deriving income from sources within Illinois are subject to a corporate income tax based on net income.² Income is apportioned using a single sales factor formula.³ The sales factor is a fraction, the numerator of which is the total sales in Illinois during the taxable year, and the denominator of which is the total sales everywhere during the taxable year.⁴

Sales of tangible personal property are assigned to Illinois if the property is “delivered or shipped to a purchaser, other than the United States government, within [Illinois] regardless of the f.o.b. point or other conditions of the sale.”⁵ Property is “deemed to be delivered or shipped to a purchaser within [Illinois]” if “the recipient is located in [Illinois]” or “the shipment terminates in [Illinois].”⁶ This is true irrespective of whether the property “is subsequently transferred by the purchaser to another state.”⁷

Conversely, it follows that receipts are not sourced to Illinois if the seller delivers product to the purchaser in another state, even though the purchaser may subsequently ship the product to Illinois.

The Illinois regulations in 86 Ill. Admin. Code § 100.3370(c)(1)(C) provide an example in which:

The taxpayer makes a sale to a purchaser who maintains a central warehouse in [Illinois] at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the corporation’s products shipped to the purchaser’s warehouse in [Illinois] is property “delivered or shipped to a purchaser within [Illinois].”⁸

We have not identified any authorities contrary to the views expressed herein.

C. Application to the Sale of the COMPANY17 Products

The COMPANY17s must apportion their income to Illinois. The question presented is whether sales by the COMPANY17s (1) to the STOREROOM2s located outside of Illinois are considered sales outside of Illinois for purposes of

² 35 ILCS 5/304(a).

³ 35 ILCS 5/304(h).

⁴ 35 ILCS 5/304(a)(3).

⁵ 35 ILCS 5/304(a)(3)(B)(i). “F.o.b.” stands for “free on board,” the point at which a buyer or seller assumes ownership and liability for goods being transported.

⁶ 86 Ill. Admin. Code § 100.3370(c)(1)(B) and (C).

⁷ 86 Ill. Admin. Code § 100.3370(c)(1)(C).

⁸ *Id.*

calculating the sales factor, and (2) sales to DISTRIBUTOR LOCATIONS located inside of Illinois are considered sales in Illinois for purposes of calculating the sales factor.

Under the alternative platform:

- The COMPANY17s will sell their products to both the STOREROOM2s and other DISTRIBUTOR LOCATIONS of unrelated third parties.
- In the case of sale to the STOREROOM2s, COMPANY17 Products will be purchased by distributors and shipped by common carrier to the STOREROOM2s.
- In both cases, title and risk of loss pass to the distributor at or before arrival to the STOREROOM2s or DISTRIBUTOR LOCATIONS, as the case may be.
- The COMPANY17s do not maintain control over the further distribution of the products.
- In the case of sale to the STOREROOM2s, the distributors receive the COMPANY17 Products at their STOREROOM2s and will store, sort, and aggregate the COMPANY17 Products in order to prepare them for distribution and resale.

Accordingly, the sale of the COMPANY17 Products should be sourced to the location of the STOREROOM2 or DISTRIBUTOR LOCATIONS at which delivery by COMPANY7 occurs. Once title has been transferred and the assumption of risk has occurred, the COMPANY17s no longer maintain control of the products. They cannot dictate to which location the products must be shipped. The sale of the products should be sourced to the location at which transfer of title and assumption of risk occur.

D. Ruling Requested

We request that you rule as follows:

Issues:

1. For purposes of 35 ILCS 5/304(a), does the delivery of goods by COMPANY7 to third-party distributor warehouses within Illinois terminate in Illinois, and are such deliveries sales within Illinois, regardless of whether the third-party distributor subsequently moves the goods to locations outside the state?

2. For purposes of 35 ILCS 5/304(a), does the delivery of goods by COMPANY7 to third-party distributor warehouses outside of Illinois terminate outside of Illinois, and are such deliveries sales outside of Illinois, regardless of whether the third-party distributor subsequently moves the goods to locations inside Illinois?

Conclusions:

1. For purposes of 35 ILCS 5/304(a), delivery of goods by COMPANY7 to distributor warehouses within Illinois terminate in and are sales in Illinois, regardless of whether the distributor subsequently moves the goods to locations outside the state.
2. For purposes of 35 ILCS 5/304(a), delivery of goods by COMPANY7 to distributor warehouses located outside of Illinois terminate outside of Illinois and are not sales in Illinois, regardless of whether the distributor subsequently moves the goods to locations inside the state.

We greatly appreciate your consideration of this ruling request and would be happy to provide any additional information that may help with a determination. Please contact COMPANY1, at PHONE if you have any questions, or send mail to:

COMPANY1
ADDRESS

RULING

Section 304 of the Illinois Income Tax Act (“IITA”; 35 ILCS 5/304) contains apportionment rules that determine the amount of business income of a nonresident that is taxable in Illinois where the income is derived from Illinois and one or more other states. Under IITA Section 304(a) and (h), the general apportionment rule requires a taxpayer to multiply its business income for the taxable year by its sales factor. IITA Section 304(a)(3)(A) defines the “sales factor” as the fraction consisting of the taxpayer’s total sales in Illinois during the taxable year over its total sales everywhere during the taxable year. The apportionment required under IITA Section 304(a) is to be performed following the close of the taxpayer’s taxable year. The taxpayer determines its total business income for the taxable year, and then apportions to Illinois that part of such income that bears the same ratio as the taxpayer’s Illinois sales for the taxable year bears to total taxable year sales.

IITA Section 304(a)(3)(B) provides various rules for determining whether sales are sourced to Illinois for sales factor purposes. IITA Section 304(a)(3)(B)(i) provides that sales of tangible personal property are sourced to Illinois if:

The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other conditions of the sale.

With regard to this section, 86 Ill. Adm. Code Section 100.3370(c)(1)(C) states:

Property is delivered or shipped to a purchaser within this State if the shipment terminates in this State, even though the property is subsequently transferred by the purchaser to another state.

Example: A corporation makes a sale to a purchaser who maintains a central warehouse in this State at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the corporation's products shipped to the purchaser's warehouse in this State is property "delivered or shipped to a purchaser within this State".

The Department, relying on decisions of courts in other UDITPA-based states, determined that the "destination rule" shall apply for purposes of applying IITA Section 304(a)(3)(B)(i) [See IT 03-0034-GIL (Nov. 3, 2003)]. Under this rule, even though a taxpayer's customer may receive physical possession of the property outside Illinois, a sale may nonetheless constitute an Illinois sale where the destination of the property sold is Illinois.

In the instant case, the destination of COMPANY17 Products sold under the Alternative Product Distribution Platform to a third-party distributor's Illinois DISTRIBUTOR LOCATIONS or Illinois STOREROOM2 remains the purchaser's Illinois place of business. It is the destination of the sale that is dispositive of the Illinois sales factor. Your petition represents that the control of and responsibility for the future sales and distribution of COMPANY17 Products is transferred to the third-party distributor. Your petition indicates the COMPANY17s will cease to be involved in the sales process once the products are ordered by a third-party distributor and shipped to a STOREROOM2. Your petition represents COMPANY7 will not be involved in any aspect of the future shipment and/or distribution of the products. The third-party distributor will create new pallets of COMPANY17 Products (which may be combined with products from other manufacturers), package and label the pallets for shipment, re-package damaged cases, and ship the products using its own trucks or a third-party carrier arranged by the third-party distributor. Your petition represents the third-party distributor is responsible for the shipment and/or sale of the products to its own customers and/or to warehouses owned by that third-party distributor or its affiliates. COMPANY7 will not know the subsequent destination of the COMPANY17 Products beyond the inventory and/or shipment information provided at a future date by a third-party data service company for the purpose of COMPANY17s estimating DATA.

Assuming these facts are true, the sale of COMPANY17 Products which are delivered to DISTRIBUTOR LOCATIONS or STOREROOM2s located within Illinois would be a sale that terminates in Illinois and be within this State under the provisions of IITA

Section 304(a)(3)(B)(i), regardless of whether the third-party distributor subsequently moves the goods to locations outside the State. Therefore, those COMPANY17 Product sales must be included in the numerator of the Illinois sales factor. Again, assuming the above facts are true, the sale of COMPANY17 Products which are delivered to third-party distributor's DISTRIBUTOR LOCATIONS or STOREROOM2s located outside of Illinois, would be a sale that terminates outside of Illinois and would not be a sale within this State under the provisions of IITA Section 304(a)(3)(B)(i), regardless of whether the third-party distributor subsequently moves the goods to locations inside the State.

As stated above, this is a General Information Letter. A General Information Letter does not constitute a statement of Department policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Jennifer Uhles
Associate Counsel (Income Tax)