

This letter discusses nexus. See Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992). (This is a GIL.)

August 10, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 7, 2010, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

### **ABC**

We are requesting clarification regarding the subject of charging sales tax to clients within the state of Illinois; specifically, whether we should charge sales tax given our company profile and the following use of the device.

### **Background**

We are a STATE based company whose main product is a prostate immobilization device (a balloon like product which is inserted in the rectum during radiation treatments to restrict movement of the prostate). The use of the balloon is dependent upon the specifics of the patient’s anatomy and clinical profile; the assessment and decision being the responsibility of the radiation oncologist.

We sell these medical devices to radiation therapy departments in Illinois. We ship these devices from our storage facilities in CITY/STATE via a third party vendor (i.e. FedEx). Furthermore, we do not have a physical office in the state of Illinois, but rather we are a STATE based company acting in the capacity of a distributor; taking possession of the product, processing orders and shipping them to our clients.

Can your legal department please send us an email that addresses our question of whether we have to charge sales tax and maintain a sales tax permit in the state of Illinois? If you should have a need for clarification, please do not hesitate to let me know. We thank you for your assistance.

## **DEPARTMENT'S RESPONSE:**

### **Nexus**

The Department declines to make nexus determinations in the context of Private Letter Rulings or General Information Letters because the amount of information required to make those determinations is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause.

A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Zehnder*, 171 Ill.2d 410, (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax liability on the purchase of the goods and have a duty to self-assess and remit their Use Tax liability directly to the State.

### **Medical Appliances**

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are

not taxed at the normal State rate of 6.25% plus applicable local taxes. These items are taxed at a reduced State rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310.

The definition of a medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." "Medical appliances" may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. See 86 Ill. Adm. Code 130.310(c)(2). Please note that not all items prescribed by or used by physicians or other licensed health care professionals qualify for the low rate. As you can see, in order for a medical appliance to qualify for the reduced rate, the medical appliance itself must be used in a manner that directly substitutes for a malfunctioning part of the body.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess  
Associate Counsel

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