

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

December 28, 2011

Dear Xxxxx:

This letter is in response to your letter dated December 1, 2011, 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 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:

I am writing to you on behalf of COMPANY to obtain an official ruling with regards to sales tax nexus and sales tax collections for COMPANY an Internet based company. COMPANY, an entity who has never had sales tax nexus within the state of Illinois, may be establishing sales tax nexus as a result of a loyalty program launching on or about DATE, 2011, that will enable COMPANY customers to redeem loyalty points in an affiliated company's retail stores.

COMPANY hereby respectfully requests a ruling as to whether it has sales tax nexus with the state of Illinois. Should you determine that COMPANY does have nexus with the state of Illinois, we further respectfully request additional rulings as to how we should properly administer the collection and remittance process of state as well as any local sales taxes.

A. STATEMENT OF FACTS

1. COMPANY INFORMATION

CORPORATION NAME: COMPANY

ADDRESS: ADDRESS, CITY/STATE

TELEPHONE: #

FEIN: #

NATURE OF BUSINESS: Internet retailer of fragrances and other specialty items

INCORPORATION DATE: DATE 1999

STATE OF INCORPORATION: STATE

2. PARENT COMPANY:

CORPORATION NAME: COMPANY HOLDINGS

ADDRESS: ADDRESS, CITY/STATE

TELEPHONE: #

FEIN: #

NATURE OF BUSINESS: Wholesaler, distributor, specialty retailer of perfumes and fragrances

INCORPORATION DATE: DATE 2000

STATE OF INCORPORATION: STATE

RELATION TO COMPANY: Parent company

3. AFFILIATED COMPANY:

CORPORATION NAME: BUSINESS

ADDRESS: ADDRESS, CITY/STATE

TELEPHONE: #

FEIN: #

NATURE OF BUSINESS: Retail stores that sell fragrances and other related specialty items

INCORPORATION DATE: DATE, 1987

STATE OF INCORPORATION: STATE

RELATION TO COMPANY: Affiliate

*These 3 companies are, herein, from time to time collectively referred to as 'COMPANY Holdings and Subsidiaries.'

3. GENERAL CORPORATE OVERVIEW:

COMPANY HOLDINGS is an independent wholesaler, distributor and specialty retailer of perfumes and fragrances that does business through several operating subsidiaries, two of which, COMPANY and BUSINESS, are relevant to this inquiry.

COMPANY is a separate company that is an internet retailer of fragrance and other specialty items.

The brick and mortar retail business is operated by BUSINESS, a subsidiary of COMPANY HOLDINGS, and all retail stores but one, operate under BUSINESS as 'COMPANY.' The BUSINESS retail stores are generally located in regional malls, manufacturers' outlet malls, lifestyle centers, airports and suburban strip shopping centers. As of DATE, 2011, BUSINESS operated # retail stores in the United States.

The following chart shows the number of BUSINESS retail stores located and operated in each state.

Retail Stores as of DATE, 2011

STATES and # of stores.

4. EXECUTIVE OFFICERS AND DIRECTORS OF COMPANY HOLDINGS:

NAME POSITION

NAMES AND TITLES LISTED

5. BUSINESS & DISTRIBUTION LOCATION:

The corporate headquarters and the only warehouse and distribution center of COMPANY HOLDINGS and Subsidiaries are all physically located at ADDRESS, CITY/STATE. All shipments from this location either to COMPANY or BUSINESS retail stores are done by common carrier, from this one location.

B. RULINGS REQUESTED

The following rulings are respectfully requested:

1. On or about DATE, 2011, does COMPANY have nexus with the state of Illinois based upon the following facts:
 - a. COMPANY has no physical presence, employee(s), payroll, solicitor(s), representative(s) (brokers, agents, etc.), nor owns or leases real or tangible personal property in the state of Illinois.
 - b. COMPANY is associated with an affiliated company, BUSINESS, which has retail store locations throughout the United States. A chart has been provided above that details the locations of the BUSINESS retail stores.
 - c. On or about DATE, 2011 and not prior, both COMPANY and BUSINESS will be promoting a loyalty points program whereby the customers of each company will receive points for purchases made from either the COMPANY internet site and/or the BUSINESS retail store locations. As these points accrue, the customer will reach a threshold where they will receive a fixed price redeemable gift certificate to use interchangeably in either BUSINESS retail store locations and/or the COMPANY internet site.
 - d. On or about DATE, 2011 and not prior, COMPANY customers will have the option to make any returns of internet purchases at BUSINESS retail store locations or online.

Should you determine that COMPANY does have nexus with the state of Illinois, please answer the following:

2. What type of filer status would COMPANY be registered as, Sales Tax, Sellers [sic] Use Tax, or an alternate filing status?
 - a. If COMPANY is to be considered as a Sellers [sic] Use Tax Filer or an alternate filer, can COMPANY collect the appropriate taxes from the end customer?

- b. If the tax is collected from the end customer, is there a flat rate charged for out of state shipments in to [sic] the State or is it the local jurisdictions that determine the tax rate that should be applied to the products that are being shipped in to [sic] the State?
 3. Is COMPANY liable to collect all state and local sales taxes on all COMPANY shipments into the state of Illinois?
 - a. If it is determined that COMPANY is liable to collect all sales taxes, is it the 'ship to' address of the customer or the affiliated company BUSINESS retail store locations that drives the local tax rate being charged to the customer?
 - b. If it is determined that it is the 'ship to ' address that drives the tax rate being charged to the customer then are all sales taxes collected within the state remitted on the state Sales and Use Tax Return or are there other local Sales and Use Tax Returns that are to be filed separately from the state return?
 - If there are separate locality [sic] Sales & Use Tax returns does COMPANY have to register for sales tax with all of those localities?
 - If COMPANY is required to be registered and collect the local sales taxes for all of the separate locality [sic] Sales and Use Tax jurisdictions, please provide us with a list of all the locality [sic] Sales and Use tax jurisdictions within your state that COMPANY would be liable to collect and remit sales taxes.
 - c. If in the alternative, it is determined that it is the BUSINESS retail store locations that drive the tax rate being charged to the customer and BUSINESS has multiple retail locations (stores) in the state, what retail location should be used to calculate the correct local rate to charge to the COMPANY customers?
4. In any months that COMPANY does not have any sales into the state of Illinois, is COMPANY required to file a zero state and local Sales and Use Tax Return for that month?

**Please keep in mind that COMPANY's only physical location is located in New York State and the affiliate, BUSINESS, only has physical locations in precise areas within each state.

C. CONCLUSION

Based on the facts provided, COMPANY, an internet based company, respectfully requests a ruling on the topic of sales tax nexus with the state of Illinois. Should you determine that COMPANY does have nexus with the state of Illinois, we further respectfully request additional rulings as to how we should properly administer the collection and remittance process of state as well as any local sales taxes. If you have

any questions, concerns or if additional information is needed, please do not hesitate to contact INDIVIDUAL.

Under penalties of perjury, I declare that I have examined this request, and to the best of my knowledge and belief, this request contains all relevant facts relating to such request, and the facts presented in support of the requested rulings are true, correct and complete.

DEPARTMENT'S RESPONSE:

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.

If you believe that you have sufficient nexus with the State to be required to register as a Use Tax collector or want to voluntarily report to collect Use Tax for sales to Illinois customers, please

contact the Department's Central Registration Division at P.O. Box 19030, Springfield, IL 62794-9050 or through the Department's website listed below.

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

Very truly yours,

Debra M. Boggess
Associate Counsel

DMB:msk