

This letter responds to an annual survey. (This is a GIL.)

August 12, 2014

Dear Xxxxx:

This letter is in response to your email dated June 16, 2014, 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 requires that we respond with a GIL. In your letter you have stated and made inquiry as follows:

**SAFE HARBOR NEXUS ZONES**

<p>▪ Does your state provide safe-harbor areas within which certain business activities may be conducted without creating nexus for the taxpayer conducting the business? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>▪ If YES, what types of business activities may be conducted without creating nexus for the taxpayer conducting the business?</p> <p><input type="checkbox"/> Call center    <input type="checkbox"/> Fulfillment center    <input type="checkbox"/> Distribution center    <input type="checkbox"/> Trade show</p> <p><input type="checkbox"/> Other, explain: _____</p>
<p>▪ If fulfillment center or distribution center operations can be conducted without creating nexus, does the exemption extend to the taxpayer who is storing goods or inventory in:</p> <p>▪ Fulfillment center? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>▪ Distribution center? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

**SPECIAL CHARGES.** When goods are returned to the vendor after some time period has elapsed, many vendors will levy a restocking charge to reverse the transaction and return the item purchased to inventory. The charge can either be a fixed sum or a percentage of selling price of the item returned with a minimum charge of some amount. Other special charges may be imposed for handling of the item (preparing it for shipment), processing a small order below some minimum, or splitting a shipment to more than one destination.

<p>▪ Which of the following charges are subject to sales tax in your state (check all that apply)?</p> <p><input type="checkbox"/> Restocking charges    <input type="checkbox"/> Handling charges    <input type="checkbox"/> Small order charges    <input type="checkbox"/> Split shipment charges</p>
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**MEASURE OF TAX**

<p>▪ Is the measure of tax the same at the state and local jurisdictional level? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>▪ If NO, how do they differ?</p>
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- Exemptions differ, explain: \_\_\_\_\_
- Tax measure differs, explain: \_\_\_\_\_

**RATE OF TAX**

<ul style="list-style-type: none"> <li>▪ Do all local jurisdictions impose a sales tax? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></li> <li>▪ If NO, what local jurisdictions do not impose a sales tax (check all that apply)?           <ul style="list-style-type: none"> <li><input type="checkbox"/> No local sales tax in any jurisdiction</li> <li><input type="checkbox"/> City    <input type="checkbox"/> County    <input type="checkbox"/> School District</li> <li><input type="checkbox"/> Special District (name: _____ )</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>▪ Do all local jurisdictions impose a use tax? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></li> <li>▪ If NO, what local jurisdictions do not impose a use tax (check all that apply)?           <ul style="list-style-type: none"> <li><input type="checkbox"/> No local use tax in any jurisdiction</li> <li><input type="checkbox"/> City    <input type="checkbox"/> County    <input type="checkbox"/> School District</li> <li><input type="checkbox"/> Special District (name: _____ )</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>▪ Do all local jurisdictions impose the same rate of tax (e.g., all cities are authorized to impose a 0.5% sales tax)? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></li> <li>▪ If NO, what are the authorized rates or ranges of rates by taxing jurisdiction?           <ul style="list-style-type: none"> <li>City _____ County _____ School District _____</li> <li>Special District (name: _____ )</li> </ul> </li> </ul>

**JURISDICTIONAL BOUNDARIES**

<ul style="list-style-type: none"> <li>▪ Do some local taxing jurisdictions have non-geographical boundaries (e.g., eastern part of one county and the adjoining western part of another county)? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></li> </ul>
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**ADMINISTRATION**

<ul style="list-style-type: none"> <li>▪ Does the state administer all local taxes, i.e., collect receipts and perform audits for local jurisdictions?           <ul style="list-style-type: none"> <li><input type="checkbox"/> Yes</li> <li><input type="checkbox"/> No, local jurisdictions audit and collect their own taxes</li> </ul> </li> </ul>
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[67] **VIRTUAL CURRENCY.** The use of virtual currency is a growing phenomenon across the Internet. Virtual currency has developed into a new medium of exchange that is difficult to trace and whose ownership may not be readily apparent. However, its use continues to expand because of the relative security and anonymity offered by such means of payment. The IRS has determined that virtual currency is not a new form of legal tender and that its sale generates capital gains and losses, rather than holding that it is a fungible good.

YES    NO

<ul style="list-style-type: none"> <li>▪ Does your state consider virtual currency when purchased or acquired, the purchase of a taxable commodity for sales tax purposes, i.e., is the acquisition of virtual currency a taxable transaction? <span style="float: right;"><input type="checkbox"/>    <input type="checkbox"/></span></li> </ul>
<ul style="list-style-type: none"> <li>▪ Does your state consider virtual currency to be taxable consideration for the purchase of goods and services? <span style="float: right;"><input type="checkbox"/>    <input type="checkbox"/></span> <ul style="list-style-type: none"> <li>▪ If YES, how is it valued for sales tax purposes?               <ul style="list-style-type: none"> <li><input type="checkbox"/> Cash equivalent market value of item or service purchased</li> <li><input type="checkbox"/> Market value of virtual currency on date of purchase</li> <li><input type="checkbox"/> Other, explain: _____</li> </ul> </li> </ul> </li> </ul>

**[68] COMMON MISTAKES CORPORATIONS MAKE IN FILING RETURNS AND REMITTING TAXES**

<ul style="list-style-type: none"> <li>▪ What are the most common mistakes that corporations make in filing sales and use tax returns and remitting sales and use taxes? For ease of presentation in a chart, please organize your response as a bullet point list, as follows:           <ol style="list-style-type: none"> <li>1. _____</li> </ol> </li> </ul>
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2.

3.

and so on

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## DEPARTMENT'S RESPONSE:

### Safe Harbor Nexus Zones

The State of Illinois does not have any safe harbor zones or areas in which a business may operate or conduct business activities without creating nexus.

### Special Charges

When a retailer makes a charge for restocking or re-shelving returned merchandise, the receipts retained by the retailer to cover the restocking or re-shelving fee are not considered taxable gross receipts for purposes of the Retailers' Occupation Tax liability. When a customer returns merchandise to the retailer, the retailer should refund all of the sales tax to the customer even though he or she will not be refunding the entire purchase price because of a restocking or re-shelving policy. 86 Ill. Adm. Code 130.401(b).

Handling charges represent a retailer's cost of doing business and consequently are always includable in gross charges subject to tax. See, 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax. As indicated above, charges termed "delivery" or "transportation" charges follow the same principle.

Please note that unless separately contracted for as provided above, these charges are considered to be part of the selling price of the tangible personal property being sold. Such charges are considered a cost of doing business, which are always includable in the gross receipts subject to tax.

The best evidence that shipping and handling or delivery charges have been contracted for separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property at the sellers' locations for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and

handling are actually reflective of the costs of such shipping, transportation or delivery. See subsection (d) of Section 130.415. If the retailer charges a customer shipping and handling or delivery charges that exceed the retailer's cost of providing the transportation or delivery, the excess amount is subject to tax.

### Measure of Tax

The State Retailers' Occupation Tax imposes a general merchandise rate on the sale of tangible personal property of 6.25% of gross receipts. Food, drugs and medical appliance are taxed at the rate of 1%. Units of local government authorized by statute to impose an occupation tax generally are allowed to set the rate of tax. Most units of local government cannot tax titled and registered items, food, drugs and medical appliances as part of their occupation taxes. Occupation taxes imposed by units of local government that are administered by the Illinois Department of Revenue generally are subject to the same exemptions contained in the State Retailers' Occupation Tax Act.

### Rate of Tax

Generally, home rule and non-home rule municipalities, counties, school districts and special districts may impose occupation taxes. See Illinois Municipal Code (65 ILCS 5) and Counties Code (55 ILCS 5). Special Districts (for example, airport, forest preserves, fire protection, park, sanitary, transit and water) can be found in Chapter 70 of the Illinois Compiled Statutes beginning with 70 ILCS 5 and ending at 70 ILCS 3720. Not all units of local government impose a local occupation tax. Not all units of local government impose the same rate of tax. Not all units of local government impose a use tax. A tax rate finder is located on the Department's website.

### Jurisdictional Boundaries

Generally, local occupation taxes that are imposed by units of local government are confined to the geographic boundaries of the local government adopting the tax. However, some local occupation taxes imposed by special districts may cover multiple jurisdictions, for example, transit taxes.

### Administration

The Department does not administer all local taxes. One must review the statute authorizing a local tax to determine if the tax is administered by the Department.

### Virtual Currency

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property. "Gross receipts" means the total selling price or the amount of such sales. The Department rules state that "'gross receipts' means all the consideration actually received by the seller, except traded-in tangible personal property." 86 Ill. Adm. Code 130.401. "'Selling price' or the 'amount of sale' means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property. . ." 35 ILCS 120/1.

The Department has not issued any guidance on the sale or use of virtual currency. The Retailers' Occupation Tax only exempts "[l]egal tender, currency, medallions, or gold or silver coinage issued by the State of Illinois, the government of the United States of America, or the government of any foreign country, and bullion." 35 ILCS 2-5(18). Virtual currency does not fall within the exemption.

### Common Filing Mistakes

The Department has prepared a document that identifies common sales tax filing mistakes. It is located on the Department's website at:

<http://tax.illinois.gov/Businesses/AvoidCommonSalesTaxFilingMistakes.htm>

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,

Richard S. Wolters  
Associate Counsel

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