

ST-15-0004-PLR 01/21/2015 LOCAL TAXES:

The occupation of selling is comprised of the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price. Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. 86 Ill. Adm. Code 270.115. (This is a PLR.)

January 21, 2015

Dear Xxxx:

This letter is in response to your letter dated July 10, 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 to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the

issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Please review this letter as a private letter ruling request as to the application of the Illinois Department of Revenue's ("Department") new local sales tax sourcing regulations to COMPANY. This ruling is requested for all taxable periods from and after its issuance until COMPANY's material facts that are the basis of this ruling change. Such a private letter ruling request is proper under 86 Ill. Admin. Code § 1200.110.

No authority exists that is contrary to the positions expressed in this request for a private letter ruling. Nor are the issues in this request part of a current audit or litigation matter concerning COMPANY or any related company. There are no regulations that are clearly dispositive of the issues in this request.

To the best of the knowledge of both COMPANY and COMPANY's representative, the Department has not previously ruled on the same or a similar issue for COMPANY or a predecessor, other than the Department agreeing in the last audit of COMPANY that COMPANY's consolidation of its headquarters and administrative offices with its sales office in LOCATION 1 in September of 2009, was sufficient to source its sales to LOCATION 1. Neither COMPANY nor its representative has previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. And, there are no authorities that COMPANY or its representative is aware of that are contrary to the ruling request made herein by COMPANY.

Background

COMPANY is a fuel oil distribution company engaged in the business of selling fuel oil in Illinois. COMPANY has its primary sales office, its headquarters and administrative office all located at LOCATION 1, Illinois ("Sales/HQ Office"). At this Sales/HQ Office, it receives, accepts and processes purchase orders for fuel, it does fuel pricing, does credit checks and approvals, solicits sales, does solicitation and marketing, signs written contracts, performs accounts receivable processing, does billing and payment application, as well as collections and customer service. COMPANY officers, administrative personnel, and its salesmen are also stationed at this office. Likewise, all blanket or keep full contracts or purchase orders are received and accepted at COMPANY's Sales/HQ Office. As to fuel payments, these are sent to a Bank lockbox, then at the end of every business day, an executive assistant at the Sales/HQ Office receives all the information on every payment online from COMPANY's Bank portal and then makes the application of the funds to the individual

accounts into COMPANY's accounting system. The Sales/HQ Office has eleven (11) employees and officers.

For fuel oil purchased by COMPANY for resale to its customers, generally all fuel for delivery in Illinois is purchased at wholesale off the "rack" from third party oil producers or distributors, except as mentioned below for certain non-taxable biofuel and certain fuel stored in LOCATION 2.

COMPANY has a truck terminal located in LOCATION 3, Illinois where two (2) non-sales employees are located. This terminal performs two principal functions. It is a holding location for small and large fuel trucks that are dispatched to service COMPANY's customers, and it has a small biofuel dispenser where tax-free biofuel can be purchased by COMPANY customers.¹ Notably, the dispatcher for the trucks parked at this LOCATION 3 terminal is located at the Sales/HQ Office, and similarly, any tank monitoring for the dispatching of these trucks occurs at the Sales/HQ Office, and not at the LOCATION 3 terminal.

Finally, in LOCATION 2, Illinois, COMPANY has a truck terminal for both small and large trucks. There are also fuel storage tanks on this site for small fuel customers serviced by COMPANY's small trucks and occasionally by its large trucks. Some walk-in sales (less than ½ of 1 % of COMPANY sales) also occur at this location. A dispatcher and an administrative employee for the small trucks are stationed at this location. As to sales of fuel to larger fuel customers to be delivered by the large trucks of COMPANY based at this LOCATION 2 location, all such purchase orders are received, accepted and processed at COMPANY Sales/HQ Office, including billing and payment application. Similarly, as to sales of fuel to customers by the small trucks of COMPANY based at this LOCATION 2 location, all purchase orders for sales of such fuel are likewise accepted by the COMPANY's Sales/HQ Office. For orders for deliveries of fuel from storage at the LOCATION 2 terminal site, these orders may be initially received in LOCATION 2, and may be ultimately dispatched at the LOCATION 2 terminal. However, fuel pricing, order acceptance, accounts receivable, bill processing, payment application and other administrative selling functions for these sales occur at the Sales/HQ Office.

Past COMPANY Audit

COMPANY was audited by the Illinois Department of Revenue ("Department") in 2009. During the audit, in order to comply with the Department's position as to the sourcing of sales, COMPANY moved its administrative offices and headquarters to LOCATION 1 where its sales office was located. It thus consolidated its selling and administrative

¹ Some miscellaneous storage of old documents and some oil cans inventory are also at this LOCATION 3 location.

functions in LOCATION 1. At that time, it closed its LOCATION 4 office, but kept its truck terminals in LOCATION 3 and LOCATION 2. Because of this consolidation of selling, headquarters, and administrative activities in LOCATION 1, the Department concluded that from the date of this consolidation, COMPANY was properly sourcing its sales to LOCATION 1 for local sales tax purposes and reflected that position on its audit determination for COMPANY.

New Regulation

As a result of the Department's issuance of its final regulations ("regulations") that now have implemented primary and secondary factors to consider in the proper sourcing of sales, COMPANY believes it needs confirmation that the Department's previous audit determination that COMPANY is now correctly sourcing its taxable fuel sales to its Sales/HQ Office, is still correct. See, e.g., 86 Ill. Admin. Code § 270.115.

Under the regulations, it still appears that the COMPANY sales should be sourced to its Sales/HQ Office, except for walk-in sales at the LOCATION 2 location. As a result COMPANY wants the Department to confirm that COMPANY's (1) truck delivery of fuel in Illinois purchased off the rack from third party distributors is being correctly sourced to its Sales/HQ Office location; and (2) that COMPANY's truck delivery of fuel where such fuel is stored at COMPANY's LOCATION 2 terminal is also being correctly sourced under the new regulations at COMPANY's Sales/HQ Office location.

Ruling Requested

1. COMPANY requests that a ruling be issued that confirms that its sales of taxable fuel by its trucks purchased off the rack from third party distributors are properly sourced to COMPANY's Sales/HQ Office location.
2. COMPANY requests that a ruling be issued that confirms that its sales of taxable fuel for delivery by its trucks from fuel inventory stored at its LOCATION 2 terminal location are properly sourced to COMPANY's Sales/HQ Office location.

Applicable Law

Local retailers occupation taxes are sourced under the regulations based on a composite of selling activities by the seller. See e.g., 86 Ill. Adm. Code § 270.115. Under the regulations, there are five primary factors. See e.g., Section 270.115(c)(1). Under the primary factors test, a retailer needs to have at least three of these five primary factors at its sales location to consider its sales as occurring at that location. If less than

three of these factors are at a selling location in Illinois (and no more than two of the primary factors occur outside of Illinois), then the six additional secondary factors (see e.g. Section 270.115(c)(4)) shall be considered to determine the location of the sale in Illinois. In those instances where the secondary factors are used along with the primary factors, either the inventory location or the headquarters location will be deemed the location of the sale based on the location that has the greater number of combined factors with respect to the sales at issue.

The primary factors are (1) location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale; (2) location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale; (3) the location where payment is tendered and received, or from which invoices are issued with respect to each sale; (4) location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery; and (5) the location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters. See, e.g., 86 Ill. Admin. Code § 270.115(c)(2).

The secondary factors are (1) location where marketing and solicitation occur; (2) Location where the seller engages in activities necessary to procure goods for sale; (3) location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A); (4) location where purchase orders or other contractual documents are received when purchase orders are accepted, processed or fulfilled in a location or locations different from where they are received; (5) location where title passes; and (6) Location where the retailer displays goods to prospective customers, such as a showroom. See e.g., 86 Ill. Admin. Code § 270.115 (c)(4).

Analysis

Applying the sourcing regulations to COMPANY's situation, all of COMPANY's taxable fuel sales should be sourced to its Sales/HQ Office, except for the walk-in sales noted below. At COMPANY's Sales/HQ Office, at least three of the five primary selling activities occur for all of the large truck and small truck sales, including (1) where COMPANY's officers and employees are located that can exercise discretion to negotiate and bind COMPANY on such sales; (2) the location where offers are prepared

and made; and where purchase orders are accepted; (3) location where invoices are sent out and where payments are applied; and (4) location where COMPANY's headquarters and principal place of business is location [sic]. This is sufficient under the regulations to source such sales to COMPANY's Sales/HQ Office. In addition, however, even looking at the secondary factors, since COMPANY does (1) marketing and solicitation at it [sic] Sales/HQ Office; (2) procures fuel for sale at this office; and (3) has officers, executives or employees with authority to set prices at this Sales/HQ Office, even if COMPANY did not meet the primary test, under the secondary test its Sales/HQ Office would still be the appropriate location to source its large and small truck sales.

As to COMPANY's small truck sales of fuel held in storage tanks at the LOCATION 2 terminal, based on the primary factors test COMPANY's Sales/HQ Office is likewise the proper office to source such sales. As to these sales, COMPANY again meets three of the five primary factors, which are: (1) location where purchase orders are accepted; (2) the location of the billing for the fuel; and (3) the location of its headquarters. While the fuel is located in LOCATION 2 and an LOCATION 2 employee may, within Sales/HQ Office pricing parameters, discuss price, such employee cannot bind COMPANY, and any sale is subject to Sales/HQ Office ultimate approval. As a result, the activities in LOCATION 2 are not sufficient under the primary factors to source the sale to LOCATION 2. As to the secondary factors, once again solicitation and marketing occur at the Sales/HQ Office and not LOCATION 2. And, even though orders may be initially received in LOCATION 2, the officers, executives or employees with authority to set prices is [sic] at COMPANY's Sales/HQ office. Consequently, even looking at the secondary test of combining the primary and secondary selling factors, since the greater number of these factors occur at COMPANY's Sales/HQ Office rather than the inventory location, under the regulations COMPANY's Sales/HQ Office would be deemed the location for the sourcing of such sales.

Finally, as to the walk-in sales at LOCATION 2 where the buyer places its orders and can receive possession of fuel from the LOCATION 2 terminal (non-deliveries), these appear to be taxable in LOCATION 2 as over-the-counter sales under 86 Ill. Admin. Code Section 270.115(c)(2).

If you have any questions, need any additional documents or facts, or contemplate issuing a private letter ruling different from that requested above, please call. We reserve the right to withdraw this private letter ruling request if a negative ruling on any portion is contemplated. Thank you again for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

In response to the Illinois Supreme Court decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, 376 Ill. Dec. 294 (2013), the Illinois Department of Revenue revised the administrative rules that govern the sourcing of local retailers' occupation taxes. See 86 Ill. Adm. Code 270.115. The rules provide that:

The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)).

Based on a review of the activities described in your letter and the supplemental information provided to the Department and an analysis of the Department's regulations found at 86 Ill. Adm. Code 270.115, the Department finds that, with respect to sales of taxable fuel purchased by COMPANY off the rack from third party distributors and delivered by its trucks and with respect to sales of taxable fuel stored in inventory at its LOCATION 2 terminal and delivered by its trucks, COMPANY is engaged in three or more primary selling activities in LOCATION 1 and therefore these sales should be sourced to LOCATION 1. See 86 Ill. Adm. Code 270.115(c)(2). Further, based on a review of the activities described in your letter and the supplemental information provided to the Department and an analysis of the Department's administrative rules found at 86 Ill. Adm. Code 270.115, the Department finds that, with respect to walk-in sales in LOCATION 2 where the buyer places its order and can receive possession of fuel from the LOCATION 2 terminal (non-deliveries), these sales are over-the-counter sales subject to the Retailers' Occupation Tax rate in LOCATION 2. See 86 Ill. Adm. Code 270.115(c)(3)(A).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

RSW:SJM:ikm