

ST 15-0018-PLR 12/22/15 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. See 86 Ill. Adm. Code 270.115 and 35 ILCS 120/2-12(2). (This is a PLR.)

December 22, 2015

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 30, 2015 and your subsequent e-mails dated December 16, 2015, December 17, 2015, and December 18, 2015, 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 ABC 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 ABC, 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 view this letter as a private letter ruling request as to the application of the Illinois Department of Revenue's ("Department") local sales tax sourcing regulations to ABC. ("ABC"). 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 with the Department concerning ABC 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 ABC and its representative, the Department has not previously ruled on the same or a similar issue for ABC or a predecessor. Neither ABC 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 ABC or its representative are aware of that are contrary to the ruling request made herein by ABC.

Background

ABC is engaged in the business of making retail sales of plumbing supplies. ABC has signed a lease, effective DATE 1, 20XX, to move its headquarters, sales and administrative offices to CITY 1, Illinois (its "HQ/Sales Office") from CITY 2, Illinois. After it relocates, ABC will have no office, warehouse or place of business in any other state nor in any other city in Illinois, except for a warehouse in CITY 2, Illinois. At this HQ/Sales Office, it will receive, accept and process purchase orders for plumbing supplies, and will do pricing, credit checks and credit approvals, solicits [sic] sales, perform solicitation and marketing, and sign written contracts, performs [sic] accounts receivable processing, do billing, payment application, as well as collections and customer service. ABC's officers, administrative personnel, and its salesmen will also be stationed at this office. The HQ/Sales Office's employees and officers, will comprise [sic] approximately of [sic] 23 to 30 persons, and will include the company's president, vice president/general manager of operations, data processing operators, customer service employees, sales employees and administrative employees. At its CITY 2 warehouse it will continue to maintain its warehouse facilities for shipment and pick up purposes.

ABC HQ/Sales Office personnel will have authority to solicit additional sales and bind ABC. Therefore, for other than over-the-counter sales at the CITY 2 warehouse, order acceptance for all purchase orders will be made by ABC from its HQ/Sales Office in CITY 1, Illinois. Therefore, except for the over-the-counter sales at the CITY 2 warehouse, the HQ/Sales Office personnel will receive and process all orders, credit purchases and credit card payments. However, in some instances, over-the-counter sales can occur directly from the warehouse in CITY 2, or a sales order received and processed at the HQ/Sales Office may be picked up by the purchaser at the CITY 2 warehouse. This is a small percentage of ABC's sales.

Ruling Requested

1. ABC requests that a ruling be issued that confirms that all of its sales of products, where the sales orders are received and processed at its HQ/Sales Office and shipped to a customer in Illinois, are to be sourced to ABC's HQ/Sales Office located in CITY 1, Illinois.
2. As to: (a) over-the-counter sales from the CITY 2 warehouse; or (b) sales from the HQ/Sales Office that are non-pre-existing contract sales paid by phone, electronically or in writing and picked up at the CITY 2 warehouse, ABC requests a ruling that confirms such sales are to be sourced to CITY 2.

Applicable Law

The statutory intent of the Home Rule Municipal Retailers' Occupation Tax is that retailers will incur local retailers' occupation tax in a jurisdiction in Illinois if they "enjoyed the greater part of governmental services and protection in that jurisdiction." See *e.g.*, 86 Ill. Admin. Code § 270.115(b)(4). Local retailers' occupation taxes are sourced under the regulations based on a composite of selling activities by the seller. See *e.g.*, 86 Ill. Admin. Code § 270.115(b)(2). Under the regulations, there are five primary factors. See *e.g.*, Section 270.115(c)(1). Under this 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 § 220.115(c)(2).

Moreover, if a purchaser, having no prior commitments to the retailer, agrees to make a purchase of tangible personal property and makes payment over the phone, in writing or over the internet, and then takes possession of property at a retailer's place of business, the sale shall be deemed to occur at that place of business, if the retailer regularly stocks similar items there. 35 ILCS 120/2-12(2).

Analysis

Applying the sourcing regulations to ABC situation, it appears that all of ABC sales should be sourced to its HQ/Sales Office in CITY 1, except for the over-the-counter or pick-up sales in CITY 2 noted above. At the HQ/Sales Office, four of the five primary selling activities will occur for all sales, including: (1) where ABC officers and employees are located that can exercise discretion to negotiate and bind ABC on such sales, since ABC headquarters and sales office is located at this facility and since ABC's officers

and sales employees are located at this facility and prices are set at this facility; (2) the location where offers are prepared and made; or where purchase orders are accepted, since orders are received and accepted, and processed and billed at this facility; (3) location where invoices are sent out or where payments are received, since invoices will be sent out of their office, and credit and credit card payments will be processed at this facility; and (4) the location where the headquarters and principal place of business is located, since this is the headquarters and administrative office of ABC, as well as the location where the daily operational decisions are made. As a result, under the regulations it appears that ABC should source its sales to its HQ/Sales Office.

As to ABC's over-the-counter sales from its warehouse in CITY 2, these sales are received at this location and the purchaser either pays at this location by cash, credit card or by pre-approved credit. Possession of the supplies purchased are also transferred at this location. However, invoicing may be done from the HQ/Sales Office. Please confirm that the CITY 2 office is the correct location to source such sales.

For ABC's sales at its HQ/Sales Office in CITY 1 that are picked up at the CITY 2 warehouse, these sales orders are received by phone or fax at the HQ/Sales Office in CITY 1 and processed and paid by pre-approved credit or credit card at the HQ/Sales Office location. Please confirm that under 35 ILCS 120/2-12(2) that these sales are to be sourced to the CITY 2 warehouse because the purchaser took possession of the supplies purchased at this warehouse. Note: These are not long-term or keep full contracts with a prior commitment by the purchasers to buy these products.

Based on the above, we request a private letter ruling be issued that confirms ABC's HQ/Sales Office in CITY 1 is the location that it should source all of its sales orders for delivery in Illinois, except for the sales that occur over-the-counter or for pick-up in CITY 2 as noted herein.

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 an analysis of the Department's regulations found at 86 Ill. Adm. Code 270.115, the Department finds that

with respect to ABC's sales discussed above which occur at the headquarters in CITY 1, Illinois, ABC is engaged in three or more primary selling activities in CITY 1, Illinois and therefore those sales should be sourced to CITY 1, Illinois. See 86 Ill. Adm. Code 270.115(c)(2).

It is our understanding that while most sales occur in CITY 1, some over the counter sales are conducted from the CITY 2, Illinois warehouse. Over the counter sales made from the CITY 2, Illinois warehouse should be sourced to CITY 2, Illinois. See 86 Ill. Adm. Code 220.115(c)(3)(A).

It is also our understanding that some orders may be received and processed over the phone, electronically or in writing from the CITY 1, Illinois location but the item is picked up at the warehouse in CITY 2, Illinois. As you noted in your letter, certain selling activities are governed by statute under 35 ILCS 120/2-12(2). Because the purchaser is not previously committed to ABC, orders are received and processed via phone, electronically, or in writing from the CITY 1, Illinois headquarters, and the purchaser takes possession of the tangible personal property at the CITY 2, Illinois warehouse, such sales should be sourced to the CITY 2, Illinois warehouse when ABC regularly stocks the item or similar items in the quantity, or similar quantities as that purchased by the purchaser.

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:CB