

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

July 31, 2017

Dear Xxxxx:

This letter is in response to your letter dated June 16, 2017, in which you requested 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:

The COMPANY 1, in conjunction with COMPANY 2, annually undertakes a major information collection effort with respect to the application of the tax laws of the states. COMPANY 1's goal in gathering this information is to assemble and publish the *PUBLICATION*. As the market has shown, such a publication is a useful reference source for departments of revenue, attorneys, corporate tax departments, and public accounting firms.

COMPANY 1 is in the process of updating the *PUBLICATION* for its 2018 annual edition. Accordingly, we ask for your state's assistance in preparing this important publication. I have attached two Microsoft Word files—one for income tax and one for sales tax—to serve as this year's questionnaire. The questionnaire follows the same format as in past years. (If you do not have a copy of your 2016 response, and it would be helpful to you in completing the 2017 questionnaire, please let me know and I will email you a copy.)

This year, the numbering scheme and the sequence of the questions remains essentially the same. Also, please note that the new questions are highlighted in **bold, red font**. Therefore, you should be able to easily follow the changes from last year to this year. Because of anticipated time constraints for respondents, again this year we are asking that you only respond to the questions for which your answers require a change and the new questions. All unanswered questions will be considered the same as last year's answer unless otherwise noted.

Please complete the 2017 questionnaire and return it by July 21, 2017. The enclosed questionnaire should be answered in accordance with laws in effect as of July

1, 2017. If there is legislation pending or recently enacted that would alter your answers, please explain any such changes that you are aware of at the time the questionnaire is completed.

If you have any questions about the questionnaire or a specific question, please contact me and I will promptly return your call. Thank you for your continued cooperation and support. Your contributions are extremely valuable in maintaining the quality of this outstanding reference work.

A complimentary copy of the 2018 *PUBLICATION* will be sent to you when it is published next year. Also beginning next year we are offering the option to receive the guide as an ebook. If you select this option, an access code will be emailed to you so that you can download the ebook version for your use. Please let me know if you would like to receive the ebook in lieu of the two volume hardcopy book.

Note: It would be very helpful to me if you could email me back, confirming your receipt of the questionnaire and that you will be the respondent for your state. Please see quick response questions below.

A. COMPLIANCE AND ADMINISTRATION

[16] NEXUS

SAFE HARBOR NEXUS ZONES

- Does your state provide safe-harbor areas within which certain business activities may be conducted without creating nexus for the taxpayer conducting the business? Yes No
 - IF YES, what types of business activities may be conducted without creating nexus for the taxpayer conducting the business?
 - Call center
 - Fulfillment center
 - Distribution center
 - Trade show
 - Other, explain:

BRIGHT-LINE SALES AND USE TAX NEXUS TESTS

- **Has your state adopted a bright-line test to determine whether a taxpayer has nexus for sales and use tax purposes?** Yes No

No

- **If YES, what standards are applied (check all that apply)?**

Sales in excess of some dollar amount. Specify dollar amount:

Retail transactions in excess of some amount. Specify number of transactions:

Other standard. Explain:

- **Does your state currently have proposed legislation in process that would adopt a bright-line test to determine if a taxpayer has nexus for sales and use tax purposes?** Yes No

No

- **If YES, what is the bill number for this legislation?**

[28] SHORT-TERM RENTALS

- Does your state impose sales/use tax upon short-term rentals of tangible personal property? Yes No

▪ If YES, how is "short-term" defined (e.g., number of days)?	
▪ Are short-term rentals subject to taxes in lieu of your state's sales/use tax?	<input type="checkbox"/> Yes <input type="checkbox"/> No
▪ If YES, describe the alternative tax (e.g., Rental Tax at 1%):	
▪ Are short-term rentals subject to miscellaneous taxes in addition to or in lieu of your state's sales/use tax?	<input type="checkbox"/> Yes <input type="checkbox"/> No
▪ If YES, describe the miscellaneous tax (e.g., Tourism Tax at 2%):	
▪ Are special taxes imposed on certain items of tangible personal property subject to short-term rentals?	<input type="checkbox"/> Yes <input type="checkbox"/> No
▪ If YES, describe the special tax (e.g., Car Rental Tax at 1%):	
▪ Is an election to pay sales/use tax on acquisition cost or rental proceeds available?	<input type="checkbox"/> Yes <input type="checkbox"/> No
▪ If election is made to collect tax on rental proceeds, is tax due in the event the renter is tax-exempt?	<input type="checkbox"/> Yes <input type="checkbox"/> No

B. SALES AND USE TAX BASE

[69] AUTOMOTIVE DEALERS

<p>▪ In addition to selling vehicles, automobile dealerships provide <i>demonstrators</i> for customer use, <i>loaners</i> for service customers, and <i>mixed-use</i> vehicles for their employees. For purposes of this question, assume:</p> <ul style="list-style-type: none"> ▪ A <i>demonstrator</i> is a vehicle in dealer inventory for resale but used as demonstrator for prospective customers. ▪ A <i>loaner</i> is a vehicle used by customers while their vehicle is being serviced. ▪ A <i>mixed-use</i> vehicle is a vehicle held in dealer inventory but used occasionally for business or pleasure by the dealer or one of its owners or employees. 		
Please indicate the taxable or nontaxable status of each of the following purchases:	Taxable	Nontaxable
▪ Demonstrator vehicle	<input type="checkbox"/>	<input type="checkbox"/>
▪ Loaner vehicle	<input type="checkbox"/>	<input type="checkbox"/>
▪ Mixed-use vehicle	<input type="checkbox"/>	<input type="checkbox"/>

[70] NON-PROFIT SALES AND PURCHASES

<p>▪ Which of the following non-profit sales and purchases would be subject to sales tax even though the entity is tax-exempt for income tax purposes (check all that apply)?</p> <p><input type="checkbox"/> Sales of food, meals, beverages, and similar items</p> <p><input type="checkbox"/> Sales of tickets that buyers will exchange for food, beverages, or other physical products</p> <p><input type="checkbox"/> Sales of booklets, books, pamphlets, and so forth</p> <p><input type="checkbox"/> Sales of tickets for fundraising events when the ticket price includes amounts for food or beverages</p> <p><input type="checkbox"/> Sales of items at rummage sales, bazaars, carnival booths, community events, and other fundraisers</p> <p><input type="checkbox"/> Sales of merchandise in Internet, live, and silent auctions</p>

<input type="checkbox"/> Sales of tickets for game booths where prizes are guaranteed to each ticket purchaser, even when the prizes have little value
<input type="checkbox"/> The gifting of merchandise for a true donation to the non-profit
<input type="checkbox"/> Sales of tickets for concerts, movies, plays, shows, and similar events <i>when food and meals are not included in the ticket price</i>
<input type="checkbox"/> Sales of tickets for game booths and raffles when prizes are not guaranteed to every ticket purchaser
<input type="checkbox"/> The sale of travel, home rentals, guide services, personal services, tutoring, and other things of value that are not physical products
<input type="checkbox"/> Sales of gift cards, gift certificates, and coupon books
<input type="checkbox"/> Membership drives and other fundraising activities that do not involve the exchange of merchandise
<input type="checkbox"/> Sales of advertising that does not involve exchanges of merchandise or goods

Thank you for your cooperation on this project! Please return this questionnaire BY JULY 21, 2017 to:

Please list the state revenue agency employee(s) to contact for further information on these matters.

Name	Name
Address	Address
Phone	Phone
Fax	Fax
e-mail	e-mail

DEPARTMENT’S RESPONSE:

We are unable to respond to your survey in the format provided. However, we hope you find the following information helpful.

Nexus

Beginning July 1, 2011, the definition of a “retailer maintaining a place of business” was amended to include additional types of retailers. A retailer maintaining a place of business also includes a retailer having a contract with a person located in this State under which:

- A. The retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and

B. The retailer provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the retailer. See 35 ILCS 105/2(1.2).

These provisions only apply if the cumulative gross receipts from sales of tangible personal property by the retailer to customers in this State under all such contracts exceed \$10,000 during the preceding 4 quarterly periods. Please note that in *Performance Mktg. Ass'n, Inc. v. Hamer*, 998 N.E. 2d 54 (2013) the Illinois Supreme Court struck down 35 ILCS 105/2(1.1) and 35 ILCS 110/2(1.1), a “click-thru nexus provision” enacted in 2011. However, new provisions became effective January 1, 2015. The following provisions address the court’s concerns in *Performance Mktg. Ass'n, Inc. v. Hamer*, 998 N.E. 2d 54 (2013).

Beginning January 1, 2015, a retailer maintaining a place of business also includes a retailer having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer by providing to the potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons.

Examples of mechanisms that allow the retailer to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. These provisions apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers who are referred to the retailer by all persons in Illinois under such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. A retailer meeting these requirements shall be presumed to be maintaining a place of business in Illinois but may rebut this presumption by submitting proof that the referrals or other activities pursued within this State by such persons were not sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods. See ILCS 105/2(1.1).

Nexus Safe-Harbor Zone

The Department’s previous response remains accurate. Note, however, the Department has proposed rulemaking that adds a new section to the Use Tax regulations to assist out-of-state retailers selling at trade shows in determining whether their presence or the presence of their representatives in Illinois for the purpose of engaging in trade show activities triggers nexus for the retailer and requires collection of Use Tax on all sales into Illinois. The proposed rule creates a “safe harbor” for retailers at trade shows if three conditions are met: 1) the retailer attends no more than 2 trade shows per calendar year; 2) the retailer is physically present at those 2 trade shows for an aggregate total of no more than 8 days in any calendar year; and 3) combined gross receipts from sales made at the 2 trade shows during any single calendar year do not exceed \$10,000. If this rulemaking is adopted, the Department’s response on this issue will change.

Short Term Rentals

The lease or rental of an automobile for a term of one year or less is subject to the Automobile Renting Occupation and Use Tax. See 35 ILCS 155/1 et seq. and 86 Ill. Adm. Code 180.101).

When determining the Use Tax owed by the lessor of a motor vehicle, which the lessee may have a contractual obligation to reimburse, effective January 1, 2015, Public Act 98-628 changed the definition of “selling price” on which tax is measured for many situations in which a motor vehicle is sold to a lessor to be leased. For qualifying motor vehicles sold for the purpose of being leased for a defined period that exceeds one year, the taxable selling price is now the amount paid under the lease contract rather than the amount that the leasing company pays to the motor vehicle dealer to purchase the car. The “selling price” on which tax is measured for these qualifying leases is typically the amount found in a box on the lease contract captioned “Total of Payments.” In most cases, the tax amount is less than the amount charged in these transactions prior to January 1, 2015. Motor vehicles that qualify under P.A. 98-628 are all first division motor vehicles and certain second division motor vehicles. For more information, see Informational Bulletin FY 2015-03 “Leased Motor Vehicle Changes and New Reporting Requirements.”

Note, Illinois’ treatment of leases or rentals of tangible personal property not required to be titled and registered may change. Legislation has been proposed entitled “Rental Purchase Agreement Occupation and Use Tax Act” (SB1434) that passed both houses of the legislature and, on June 29, 2017, was sent to the Governor to sign. If signed into law, the Department’s response on this issue will change.

Interim Use

Section 2 of the Use Tax Act states in part that “‘Use’ does not mean the demonstration use or interim use of tangible personal property by a retailer before he sells that tangible personal property.” See 35 ILCS 105/2. The Department’s regulation at 86 Ill. Adm. Code 150.306 describes the Interim Use and Demonstration Exemption. Specifically, subpart (a)(1) provides guidance regarding when tangible personal property qualifies for the interim use exemption. In particular, please note that the property must be available for sale during the interim use period. Whether the property will qualify for the interim use exemption depends, among other things, on how the property is carried on the retailer’s books and whether the property is deducted or depreciated under certain provisions of the Internal Revenue Code. The interim use exemption is only available if the retailer has purchased the item for resale and the item is in the retailer’s sales inventory.

Vehicles that are purchased for resale by an automobile dealership but are used in the interim as loaner cars may, if the requirements of the rule are met, qualify for the interim use exemption under 86 Ill. Adm. Code 150.306.

Exempt Organizations

Sales to exempt organizations (e.g., organizations that qualify as exclusively religious, charitable, or educational, or a not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older) or governmental entities are subject to tax unless the exempt organization or governmental entity has obtained an active exemption identification number (E number) from the Department. See 86 Ill. Adm. Code 130.120(h)-(i). See also 86 Ill. Adm. Code 130.2007 and 130.2080. Persons or businesses selling tangible personal property to these organizations or governmental entities must be provided with an E number for the sales to be tax exempt. It is important to note that only sales to the organization or governmental entity holding the E number are exempt, not sales to individual members of the organization. It is highly improper for an

individual to use the E number of an organization or governmental entity for his or her own benefit. See 86 Ill. Adm. Code 130.2005(k).

While organizations that are organized and operated exclusively for charitable, religious or educational purposes and have received an E number are, as a general matter, subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. The limited exceptions available to not-for-profit organizations described in 86 Ill. Adm. Code 130.2005 include: (1) Sales to Members (see 86 Ill. Adm. Code 130.2005(a)(2)); (2) Noncompetitive Sales (see 86 Ill. Adm. Code 130.2005(a)(3)); and (3) Occasional Dinners and Similar Activities (see 86 Ill. Adm. Code 130.2005(a)(4)).

Retailers' Occupation and Use Taxes do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. Transactions that do not involve the transfer of any tangible personal property to a customer and only involve the transfer of an intangible or services, would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

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:bkl