

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

September 10, 2018

Dear Xxxxx:

This letter is in response to your email dated June 28, 2018, 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](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 require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC, in conjunction with COMPANY, annually undertakes a major information collection effort with respect to the application of the tax laws of the states. ABC’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.

ABC is in the process of updating the *PUBLICATION* for its 2019 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 2017 response, and it would be helpful to you in completing the 2018 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 2018 questionnaire and return it by August 3, 2018, via email. We are providing additional time this year recognizing the potential impact the Wayfair case and the 2017 federal tax legislation may have upon your responses. The enclosed questionnaire should be answered in accordance with laws in effect as of July 1, 2018. 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 respond. 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 2019 PUBLICATION will be sent to you when it is published next year. Also again this 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 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.

**A. SALES AND USE TAX: COMPLIANCE AND ADMINISTRATION**

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**[16] NEXUS.** If a corporation's sole activity in your state is the activity identified below, does the activity create an obligation to collect and remit sales/use tax (check each activity that would, by itself, create sales/use tax nexus)?

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<ul style="list-style-type: none"> <li>▪ Does your state have special nexus rules regarding attendance or booth at an in-state trade show? <input type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>▪ If YES, explain:</li> </ul>
<ul style="list-style-type: none"> <li>▪ Does your state require the collection of sales/use tax when a retailer makes sales of tangible personal property or services through an independent contractor or other representative if the retailer has an agreement with an in-state resident who directly or indirectly refers potential customers to the retailer for consideration via a link on an Internet Web site or otherwise? <input type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>▪ If YES, is there a threshold level below which such an agreement would not create nexus? <input type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>▪ If YES, what is the amount of that threshold? <input type="checkbox"/> \$5,000 <input type="checkbox"/> \$10,000 <input type="checkbox"/> Other, specify:</li> </ul>

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**SAFE HARBOR NEXUS ZONES**

<ul style="list-style-type: none"> <li>▪ 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</li> <li>▪ If YES, what types of business activities may be conducted without creating nexus for the taxpayer conducting the business?</li> </ul>
<input type="checkbox"/> Call center <input type="checkbox"/> Fulfillment center <input type="checkbox"/> Distribution center <input type="checkbox"/> Trade show <input type="checkbox"/> Other, explain:

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**ECONOMIC NEXUS FOR SALES TAX.** On June 21, 2018, in the case of *South Dakota v. Wayfair, Inc.*, the U.S. Supreme Court ruled that an out-of-state seller can have sales tax nexus in a state even if it does not have a physical presence in that state.

▪ In light of the *Wayfair* decision, has your state enacted an economic nexus statute for sales tax?  Yes  No

▪ If YES, does your state apply sales threshold amounts, transaction limits, or both to establish economic nexus for sales tax? (check all that apply)

- Sales threshold amount. Explain:
- Transaction threshold. Explain:
- Neither, some other measure. Explain:

▪ In light of the *Wayfair* decision, does your state have proposed legislation in process or in planning?  Yes  No

▪ If YES, does your state intend to apply sales threshold amounts, transaction limits, or both to establish economic nexus for sales tax? (check all that apply)

- Sales threshold amount. Explain:
- Transaction threshold. Explain:
- Neither, some other measure. Explain:

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**[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?  Yes  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?  Yes  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?  Yes  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?  Yes  No

▪ If election is made to collect tax on rental proceeds, is tax due in the event the renter is tax-exempt?  Yes  No

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**B. SALES AND USE TAX BASE**

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**[5] EXEMPTIONS**

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**MANUFACTURING EQUIPMENT REPAIR AND REPLACEMENT PARTS**

▪ Does your state provide a manufacturing machinery and equipment exemption?  Yes  No

▪ If YES, does the exemption extend to repair and replacement parts?  Yes  No

▪ If YES, do any of the following additional constraints apply to the exemption? (check all that apply)

- Parts must be purchased at the time the equipment is purchased
- Exempt parts must have a useful life of more than one year
- Parts must replace original equipment as sold by equipment manufacturer
- Other requirements for parts to be exempt

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**[71] MEDICAL EQUIPMENT, SUPPLIES, AND OTHER TRANSACTIONS BY DOCTORS AND CLINICS**

- Which of the following purchases by doctors and clinics are taxable to the doctor or clinic, assuming the doctor and clinic are operated for-profit? (Check all that apply)
  - Medical Equipment*
    - Equipment used in the diagnosis of a patient, i.e., x-ray, ultrasound, etc.
    - Equipment used in the treatment of a patient, i.e., inhalation equipment, physical therapy equipment, exam tables, etc.
  - Supplies Used in Treatment*
    - Supplies provided to patients in the course of treatment for no additional charge, i.e., bandages, casting materials, etc.
    - Supplies sold to patients for a specific charge in the course of treatment, i.e., crutches, air casts, braces, etc.
    - Prosthetic devices, such as artificial limbs, etc.
    - Prescription eyeglasses sold to patients
  - Drugs Dispensed by Doctor or Clinic*
    - Prescription drug samples distributed by a drug company to a doctor for distribution to patients
    - Drug samples are not taxed to the doctor or clinic who distributes them to the patient; they are taxed to the drug company distributing the sample to the doctor or clinic
    - Prescription drugs dispensed by pharmacy in clinic

**[72] MARIJUANA AND CANNABIS TAXES**

- Does your state allow the lawful sale or dispensing of marijuana/cannabis?  Yes  No
  - If YES, does your state impose a special sales tax or the general sales tax on such sales?
    - Special tax  General tax  Neither
    - If special tax, what is the rate? \_\_\_\_\_
- If sales of marijuana/cannabis are not legal, do taxes apply to the illegal sales as well?  Yes  No
- Are sales of drug paraphernalia, such as pipes, bong, cigarette papers, etc., taxed at a special rate or the general sales tax rate?
  - Special tax  General tax  Neither
  - If special tax, what is the rate? \_\_\_\_\_

**[73] MISCELLANEOUS SERVICES. Which of the following services are taxable? (Check all that apply)**

- Amusements  Cable TV charges  Credit reporting  Debt collection services
- Dry cleaning  Laundry  Membership dues  Pest control
- Pet care  Photographic services  Security services  Towing service
- Transient lodging  Vehicle parking charges
- Gambling or gaming not on Native American reservations

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

**- 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:**

1.

2.

3.

**and so on**

**DEPARTMENT'S RESPONSE:**

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

Trade show appearances

The Department of Revenue has adopted an administrative rule governing trade show appearances. It is found at 86 Ill. Adm. Code 150.802. The rule provides that the presence of an out-of-State retailer or its representative in Illinois to engage in trade show activities brings that retailer within the definition of "retailer maintaining a place of business in this State." As a result, the out-of-State retailer is required to collect Illinois Use Tax on all sales to Illinois purchasers from out-of-State. The rule provides for a safe harbor. The presence in Illinois of an out-of-State retailer for purposes of engaging in trade show activities will not result in the determination that the retailer is a "retailer maintaining a place of business in this State" if the retailer meets each of the following 3 conditions:

- 1) the retailer attends no more than 2 Illinois trade shows during any calendar year;
- 2) the retailer is physically present at those 2 Illinois trade shows for an aggregate total of no more than 8 days during any calendar year; and
- 3) combined gross receipts from sales made subject to Retailers' Occupation Tax at all Illinois trade shows during any single calendar year do not exceed \$10,000.

Agreement with in-State resident to refer customers through an Internet link or otherwise

Section 150.201(c) of the Department's rules (86 Ill. Adm. Code 150.201(c)) provides that a "retailer maintaining a place of business in this State", or any like term, shall mean and include any 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. The rule provides that it applies 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 this State 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 may rebut this presumption by maintaining in its records documentation that shows that persons with whom the retailer has agreements have not engaged in solicitation activities on behalf of the retailer in Illinois that are sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods.

### Economic nexus for sales tax

Illinois enacted Public Act 100-587, which is consistent with the ruling in *South Dakota v. Wayfair, Inc.* No. 17-494 (U.S. June 21, 2018).

Public Act 100-587 requires remote retailers with no physical presence in Illinois to register and collect and remit Use Tax, as provided below.

- (1) Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois must register with the Department and collect and remit Use Tax if:
  - (A) the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
  - (B) the retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.
- (2) A retailer shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets either of the criteria in item (1) for the preceding 12-month period. If the retailer meets either of the criteria in item (1) for a 12-month period, he or she is considered a retailer maintaining a place of business in Illinois and is required to collect and remit the Use Tax and file returns for one year.
  - (A) At the end of that one-year period, the retailer shall determine whether he or she met either of the criteria of item (1) during the preceding 12-month period. If the retailer met either of the criteria in item (1) for the preceding 12-month period, he or she is considered a retailer maintaining a place of business in Illinois and is required to collect and remit Use Tax and file returns for the subsequent year.
  - (B) If at the end of a one-year period a retailer that was required to collect and remit the Use Tax determines that he or she did not meet either of the criteria in item (1) during the preceding 12-month period, the retailer shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets either of the criteria of item (1) for the preceding 12-month period.

### Short-term rentals

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. See 35 ILCS 155/1 et seq. and 86 Ill. Adm. Code 180.101. This tax is imposed at the rate of 5% of the gross receipts from such business. Illinois provides an exemption from Retailers' Occupation Tax and Use

Tax at the time of purchase of a motor vehicle that is used for automobile renting, as defined in the Automobile Renting Occupation and Use Tax Act.

Effective January 1, 2018, the Rental Purchase Agreement Occupation and Use Tax took effect in Illinois. See 35 ILCS 180/1 et seq. The Rental Purchase Agreement Occupation Tax is imposed upon persons engaged in this State in the business of renting merchandise under a rental-purchase agreement in Illinois at the rate of 6.25% of the gross receipts received from the business. A complementary Rental Purchase Agreement Use Tax is imposed upon the privilege of using, in this State, merchandise which is rented from a merchant at the rate of 6.25% of the rental price paid to the merchant under any rental purchase agreement. A "rental purchase agreement" is an agreement for the use of merchandise by a consumer for personal, family, or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the merchandise. Illinois provides an exemption from Retailers' Occupation Tax and Use Tax at the time of purchase of merchandise that is subject to the Rental Purchase Agreement Occupation and Use Tax.

#### Manufacturing equipment repair and replacement parts

Illinois' manufacturing machinery and equipment exemption applies to machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. "Equipment" includes any parts that require periodic replacement in the course of normal operation. (86 Ill. Adm. Code 130.330(c)(3))

#### Medical equipment, supplies, and other transactions by doctors and clinics

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the basic State rate of 6.25% plus applicable local taxes. These items are taxed at a reduced State rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.311, Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use.

A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body. "Medical appliances" are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for 1% rate as well. Moreover, generally, home glucose monitors, test strips and related supplies used to treat human diabetes also qualify for the 1% State rate of tax. See 86 Ill. Adm. Code 130.311(e). Unless medical equipment or supplies qualify as a medical appliance or otherwise qualify for an exemption, they will be taxed at the State rate of 6.25% plus applicable local taxes.

In a gift situation the donor who purchases the tangible personal property and gives it away makes a taxable use of the property when making the gift. See the Department's regulation at 86 Ill. Adm. Code 150.305(c), which can be found on the Department's website. When such a gift is made, the donee incurs no Use Tax liability as a result of the gift. In general, the donor of prescription drugs would be liable for the use tax, at the rate of 1% plus applicable local taxes, for the prescription drugs.

Marijuana and cannabis taxes

Beginning January 1, 2014, a tax is imposed under the Compassionate Use of Medical Cannabis Pilot Program Act upon the privilege of cultivating medical cannabis at a rate of 7% of the sales price per ounce. The tax is paid by a cultivation center and is not the responsibility of a dispensing organization, qualifying patient, or designated caregiver. The tax imposed under this Law shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof. See 86 Ill. Adm. Code 429.110. Medical cannabis, including medical cannabis infused products, sold by registered dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act, is subject to Retailers' Occupation Tax at the 1% rate, plus applicable local taxes. See 86 Ill. Adm. Code 130.311(a). The tax imposed under the Compassionate Use of Medical Cannabis Pilot Program Act is not imposed on sales of cannabis paraphernalia, which are, however, subject to the Retailers' Occupation Tax at the general merchandise rate of 6.25%, plus applicable local taxes.

Miscellaneous services

The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is transferred incident to the services provided, then no Service Occupation Tax Act or Service Use Tax would apply. With respect to the services listed in the question, Illinois imposes a Hotel Operators' Occupation Tax Act upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 6% of 94% of the gross rental receipts from the renting, leasing or letting, excluding, however, from the gross rental receipts, the proceeds of the renting, leasing or letting to permanent residents of a hotel. See 86 Ill. Adm. Code 480.101. With respect to gambling or gaming, the following taxes and Acts may apply: the Bingo License and Tax Act (230 ILCS 25/1 et seq.; 86 Ill. Adm. Code 401.101 et seq.); the Charitable Games Act (230 ILCS 30/1 et seq.; 86 Ill. Adm. Code 435.101 et seq.); the Illinois Pull Tabs and Jar Games Act (230 ILCS 20/1 et seq.; 86 Ill. Adm. Code 432.101 et seq.); the Video Gaming Act (230 ILCS 40/1 et seq.), administered by the Illinois Gaming Board; the Riverboat Gambling Act (230 ILCS 10), administered by the Illinois Gaming Board; and the Illinois Horse Racing Act of 1975 (230 ILCS 5/1 et seq.), administered by the Illinois Racing Board.

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,

Samuel J. Moore  
Associate Counsel

SJM:bkl