

This letter discusses out-of-state and remote retailers. 86 Ill. Adm. Code 150.803; 35 ILCS 120/2. (This is a GIL)

July 27, 2020

Dear Xxxx:

This letter is in response to your letter dated April 22, 2020, 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:

It was suggested I contact you directly by EMPLOYEE in “REV.TA-Sales” after I requested information from them regarding COMPANY’s Sales Tax Nexus status. See email thread below:

REV.TA-Sales

to me

Hello.

I consulted technical staff and this is what I was told.

“If COMPANY was purchased by COMPANY 1, Nexus would be established since COMPANY 1 is located in Illinois.

However, if COMPANY is operating under a different FEIN from COMPANY 1, Nexus would not necessarily be established in Illinois. It appears that this is the case.

I think you should probably have them get a letter ruling from legal just to be sure.”

If you would like to write to legal the address is provided below:

Legal Services Office, 5-500
101 West Jefferson
Springfield, IL 62702

Thank you,

EMPLOYEE

This email contains the thoughts and opinions of EMPLOYEE and does not represent official department policy.

COMPANY used to have nexus in Illinois because we had a salesperson living in Illinois. That relationship ended in Mid-20XX. Our last ST-1 was filed for 7/31/20XX. COMPANY's FEIN is ###. I believe our Illinois Tax ID Number is ### and it appears the account was closed on 6/30/20XX.

On 12-31-20XX, COMPANY was purchased by the COMPANY 1, in CITY Illinois. COMPANY 1 has a separate FEIN (###). Does this give COMPANY (located in CITY 1, STATE) Sales Tax Nexus by Affiliation, or do we fall into the "standard" rules for establishing Nexus??

Our sales into Illinois for Q2 20XX thru Q1 20XX were ~ \$XX,XXX with less than 200 transactions.

Please advise as to our current status in regard to the Affiliate Nexus and/or the USD amount shipped into Illinois in the prior 12 months.

DEPARTMENT'S RESPONSE:

An out-of-state retailer making sales to Illinois purchasers from locations outside Illinois is required to register with the Department and collect and remit Use Tax on those sales if it falls within the definition of a "retailer maintaining a place of business in this State" in Section 2 of the Use Tax Act [35 ILCS 105]. The Department is authorized to require these retailers to act as tax collectors because they have established sufficient contacts, or nexus, with Illinois. There are two groups of out-of-state retailers that must collect Use Tax on sales to Illinois purchasers: 1) out-of-state retailers with a physical presence in Illinois, and 2) out-of-state retailers without a physical presence in Illinois. 86 Ill. Adm. Code 150.803.

In *South Dakota v. Wayfair, Inc.*, No. 17-494 (U.S. June 21, 2018), the U.S. Supreme Court upheld a South Dakota statute that imposed tax collection obligations on out-of-state retailers that met specific selling thresholds but had no physical presence in the state. Illinois P.A. 100-587 enacted nexus standards, effective October 1, 2018, that are virtually identical to those upheld in

Wayfair. P.A. 100-587 requires remote retailers with no physical presence in Illinois to register and to collect and remit Use Tax.

Beginning October 1, 2018 through December 31, 2020, 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.

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 for the preceding 12-month period. If the retailer meets either of the criteria 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. 86 Ill. Adm Code 150.803.

Beginning on January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for purposes of this Act, 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.

"Remote retailer" means a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily or whether such retailer or subsidiary is licensed to do business in this State. 35 ILCS 120/1.

Remote retailers making retail sales of tangible personal property that meet or exceed the threshold above shall be liable for all applicable State retailers' and locally imposed retailers' occupation taxes administered by the Department on all retail sales to Illinois purchasers. 35 ILCS 120/2. A remote retailer that meets or exceeds either of the thresholds is engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. 35 ILCS 120/2-12(6).

Your letter does not provide sufficient information regarding the nature of the acquisition of COMPANY by COMPANY 1 to enable the Department to provide any opinion. The Department would note that, if the companies are separate legal entities, each company would independently determine its Use Tax or retailers' occupation tax obligation.

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,

Richard S. Wolters
Associate Counsel

RSW/ld