

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 GIL.)

April 22, 2021

Dear NAME:

This letter is in response to your letter received February 4, 2021, 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:

I have some tax questions for the Illinois Department of Revenue Legal Services. My situation is perhaps a little different. I'm a resident of Illinois and I'm starting a business in Illinois that sells therapeutic medical lasers. I'm selling a medical therapeutic laser device that's manufactured in STATE and will be shipped to our customers from STATE. So, the products will not be shipped to me in Illinois and then shipped to our customers.

The ST-1 Instructions start out saying this:

"Who must file Form ST-1? You must file Form ST-1, Sales and Use Tax and E911 Surcharge Return, if you are making retail sales of any of the following **in Illinois**":

It's my understanding that I have to pay 6.25% if sell a laser device in Illinois.

The other questions I have are:

What if I sell a laser device to a doctor in another state? Do I pay a sales tax in Illinois and the other state? I've always thought it was the end user that's making the retail purchase who is responsible to pay the sales tax to the state they're in because they are the one buying the product. Also,

would I be responsible to collect the sales tax for another state and send it to that state?

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101.

These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130. When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented.

If sales are made to Illinois purchasers from locations in Illinois, State and local retailers' occupation tax is incurred at the rate in effect where the sales are made. The Illinois Department of Revenue offers a tax rate finder on its website to determine the applicable sales tax rate (including any applicable local Retailers' Occupation Taxes) for your business's location. The tax rate finder can be found at <https://mytax.illinois.gov/>.

Because the tax is imposed on the retail business of selling and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing *Mahon v. Nudelman*, 377 Ill. 331 (1941) and *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136 (1943)); see also *Young v. Hulman*, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax...imposes liability upon the occupation of selling at retail and not on the sale itself"). See, for example, 86 Ill. Adm. Code 270.115(b)(1). The Illinois Department of Revenue has created administrative rules that govern the sourcing of local retailers' occupation taxes. See, for example, 86 Ill. Adm. Code 270.115. The rules provide that:

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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)). 86 Ill. Adm. Code 270.115(b)(2).

Some retailers are engaged in retail operations with selling activities in multiple jurisdictions within the State, or in jurisdictions located in more than one state. The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Consequently, "it is...not possible to prescribe by definition which of the many activities must take place in [a jurisdiction] to constitute it an occupation conducted in [that jurisdiction] It is necessary to determine each case according to the facts which reveal the method by which the business was conducted." *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943); see also *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 36. See, for example, 86 Ill. Adm. Code 270.115(b)(3).

A seller incurs Retailers' Occupation Tax in the county or municipality if its predominant and most important selling activities take place in the jurisdiction. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322-23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35. See, for example, 86 Ill. Adm. Code 270.115(b)(5). The Department's regulations enumerate several "primary selling activities" and "secondary selling activities" to aid in this inquiry, which are listed at 86 Ill. Adm. Code 270.115(c)(1) and (4). "Primary selling activities" include:

- A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
- B) 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;
- C) The location where payment is tendered and received, or from which invoices are issued with respect to each sale;
- D) 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

- E) 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, for example, 86 Ill. Adm. Code 270.115(c)(1). If the primary selling activities occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, you must consider the listed secondary selling activities to determine the jurisdiction where you are engaged in the business of selling. "Secondary selling activities" include:

- A) Location where marketing and solicitation occur;
- B) Location where the seller engages in activities necessary to procure goods for sale;
- C) 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);
- D) 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;
- E) Location where title passes; and
- F) Location where the retailer displays goods to prospective customers, such as a showroom.

See, for example, 86 Ill. Adm. Code 270.115(c)(4).

Every retailer in this State must determine the taxing jurisdictions where it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in Section 270.115(c), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit retailers' occupation tax. See, for example, 86 Ill. Adm. Code 270.115(c). If you are engaged in any special selling activity where your remittance of retailers' occupation tax would be directed by statute rather than these rules, please refer to the applicable statute.

Except as provided in subsection (d), a retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) is engaged in the business of

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selling in the jurisdiction where its inventory is located under subsection (c)(1)(D), or where its headquarters is located under subsection (c)(1)(E), whichever jurisdiction is the location where more selling activities occur, considering both primary and secondary selling activities. A retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) or (c)(5) is presumed to be engaged in the business of selling at the location of its headquarters absent clear and convincing evidence to the contrary. See, for example, 86 Ill. Adm. Code 270.115(c)(5) and (6).

Your letter does not provide sufficient information regarding the nature of your Illinois sales to enable the Department to provide any opinion as to the location where you are engaged in the business of selling. Please review the Department's regulations at 86 Ill. Adm. Code 270.115 for guidance.

Regarding sales of tangible personal property that is shipped from an out-of-state manufacturer to an out-of-state consumer, Illinois sales tax would not apply. These sales would constitute sales into interstate commerce upon which Illinois sales tax cannot be imposed. See 35 ILCS 120/2-60. However, for sales of tangible personal property made in Illinois to an Illinois purchaser, Illinois sales tax would apply even if the property is shipped from an out-of-state manufacturer.

We are unable to provide guidance on the tax laws of other states. For information on the tax laws of other states, please reach out to the regulatory body for each state at issue.

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,

Alexis K. Overstreet
Associate Counsel

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