

This letter discusses the component of interstate commerce involving shipment/delivery on sales by remote retailers to purchasers in Illinois. (86 Ill. Admin. Code 130.605; 86 Ill. Adm. Code 131) (This is a GIL)

Dear NAME:

This letter is in response to your letter received March 15, 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](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:

Can I please give you a fact pattern and can you tell me how local tax applies considering the new Level the Playing Field legislation?

We are an STATE headquartered company with a manufacturing plant in STATE. We sell large items to an Illinois company. The Illinois company arranges for a common carrier to pick up the items at our manufacturing plant in STATE. Title passes in STATE. We do not charge for freight on our invoice since the customer arranges and pays for freight. We have no physical nexus with the State of IL. We would have economic nexus if we shipped the items to Illinois, charged for freight and title passed in IL. But we never arrange for shipping.

The customer wants us to voluntarily collect and remit Illinois tax on the sales to this company. We are registered in Illinois and have voluntarily collected and remitted the 6.25% out of state general merchandise tax for the past year of 2020. Level the playing field has complicated the issue since local tax based on destination could be due in the scenario I have outlined above.

Questions:

1. Since the Illinois customer arranges for freight and title passes in STATE, should we voluntarily charge the destination tax rate where the common carrier delivers the item in Illinois?

2. As a voluntary tax collector for the customer, should we simply charge and collect 6.25% general merchandise tax for out of state vendors?
3. Would the Illinois customer owe the additional local tax based on the final destination since they pick up the item in STATE and have it shipped to an Illinois destination?
4. Would the Illinois customer simply owe the 6.25% use tax on purchase once they receive the item at the Illinois destination?

There was no issue or questions when the rate was 6.25% no matter the shipping and title passage fact pattern but with Level the Playing field and the intent behind the fairness of instate vs. out of state vendors, we want to make sure the STATE seller and Illinois purchaser do not have an exposure problem with collecting the incorrect rate of tax.

Please email or mail the response to:

ADDRESS

E-MAIL

**DEPARTMENT'S RESPONSE:**

This GIL addresses your request for information concerning the responsibility of a remote retailer for local taxes due to the enactment of the Leveling the Playing Field for Illinois Retail Act, when a purchaser arranges for shipment.

Public Acts 101-31 and 101-604 amended the Retailers' Occupation Tax Act and Use Tax Act, as well as enacted the Leveling the Playing Field for Illinois Retail Act. These changes are intended to "level the playing field" between Illinois-based retailers and remote retailers. As a result, beginning January 1, 2021, a remote retailer as defined in [35 ILCS 120/1], is liable for all applicable State retailers' and locally imposed retailers' occupation taxes, if either of the following thresholds was met during the preceding four quarterly periods ending on the last day of March, June, September, and December:

- 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. 35 ILCS 120/1; 120/2(b).

A remote retailer that meets either of the two 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).

In your statement of facts, the purchaser contracts with a common carrier to pick up the tangible personal property at the remote retailer's place of business in STATE, at which time title to the property passes to the customer. Your letter states that the remote retailer would have economic nexus in Illinois, but for this shipping arrangement.

The fact that a purchaser arranges for the common carrier or that title passes at the remote retailer's place of business is not material to a determination of whether delivery or possession took place in STATE. See 86 Ill. Admin. Code 130.605(a)(3) and (d). However, a remote retailer that meets either of the two thresholds; that makes a retail sale to an Illinois purchaser and is listed as the consignor or shipper on the bill of lading for that sale, would be responsible for Illinois State and local retailers' occupation taxes administered by the Department. *Id.* See also Section 130.605(f) which identifies the type of documents a seller must retain to support the interstate commerce exemption.

A remote retailer who does not meet a threshold would not be liable for Illinois State and local retailers' occupation taxes on such a sale but could voluntarily collect and remit Illinois Use Tax as a courtesy to its customer. See 86 Ill. Adm. Code 131.115(d), and Section 150.805. Further, if the Illinois purchaser is listed as the consignor or shipper on the bill of lading for that sale, possession would have taken place in STATE, and the purchaser would be liable for Illinois Use Tax with credit for any sales tax properly due and paid on the transaction to the State of STATE. See 86 Ill. Adm. Code 130.605(d) and Section 150.310(a)(3).

From the information provided, we cannot make a determination as to whether delivery or possession takes place in STATE. If you require additional information, including registering as a remote retailer, the Department has created a dedicated resource web page on the Leveling the Playing Field for Illinois Retail Act. Visit the Department's website at [www.tax.illinois.gov](http://www.tax.illinois.gov) and access the link [Resource Page for the "Leveling the Playing Field for Illinois Retail Act" - Sales Taxes](#).

Very truly yours,

Thomas Grudichak

Associate Counsel

TG:rkn