

Nexus issues are not generally suitable for resolution by letter ruling. A corporation's activities in Illinois beyond solicitation that are more than de minimus will establish nexus with Illinois. (This is a GIL.)

March 16, 2026

NAME  
ADDRESS  
EMAIL

Re: Illinois Income Tax – Nexus

Dear NAME:

This letter is in response to your email dated March 3, 2026, in which you requested information regarding income tax nexus under Illinois law for the hiring of a contract packager in Illinois by a STATE company. 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. Admin. 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. Admin. Code 1200.120(b) and (c). You may access our website at <https://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.

**INQUIRY:**

I was referred to this legal department by an employee in the Illinois Department of Revenue (see email trail below). I was looking for an opinion on what the following requirements would be in Illinois for a STATE company that hired a contract packager from Illinois.

The facts are as follows: My client is a STATE S-corporation which has only one location, which is a sales office in STATE and all employees are physically

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located and working in STATE. They hired a contract packager in Illinois who would bottle, box, and ship their products throughout the USA. There are minimal shipments to customers in Illinois, all of which would be wholesale (no retail customers). All shipments use common carriers. Some raw materials are purchased and owned by the STATE company before it is used by the contract packager and finished goods may also sit on the floor and are owned by STATE company before being shipped by the contract packager from the facility in Illinois. The inventory is only in Illinois for the convenience of the contract packager whose plant is in Illinois. Would this situation create income tax nexus in Illinois requiring the company to file a S-corporation income tax return?

I also answered the seven questions in the email trail below sent by the Department of Revenue.

1. Will the business maintain sites in Illinois? No
2. Does the business own real estate or real property in Illinois? No
3. Does the business own any stock of merchandise located in a warehouse in Illinois? Yes
4. Do the employees make purchases or perform services (installation, assembly, repairs, etc.) in Illinois? No
5. Is the business merchandise filled by a distributor (non-employee) in Illinois? Yes – an Illinois contract packager mixes and bottles product for shipment
6. Do the employees of the business enter Illinois with the authority to accept orders for merchandise? No
7. Does the business sell merchandise from a mobile store in Illinois (i.e. truck or van)? No

The filing deadline is approaching and if a composite return is required, we will file. I appreciate any assistance you can provide.

Please let me know if you need any additional information or have any questions.

#### **DEPARTMENT'S RESPONSE:**

The determination as to whether a taxpayer has nexus with Illinois is extremely fact specific. Therefore, the Department does not issue rulings regarding whether a particular taxpayer has nexus with the State. Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and information. For information regarding nexus, see 86 Ill. Adm. Code 100.9720 (accessible from the

Department's website). However, the following general information regarding nexus with Illinois for income tax purposes may be provided.

Section 201(a) of the IITA Illinois Income Tax Act ("IITA", 35 ILCS 5/101 et seq.) imposes a tax measured by net income on corporations on the privilege of earning or receiving income in or as a resident of Illinois. In addition, Section 201(c) of the IITA imposes a second tax (the personal property tax replacement income tax) measured by net income on corporations on the privilege of earning or receiving income in or as a resident of Illinois.

The United States Constitution limits the power of states to subject foreign corporations and other nonresidents to income tax. The Due Process Clause requires that there exists some minimum connection between a state and the person, property, or transaction the state seeks to tax. (*Quill Corp. v. N. Dakota*, 504 U.S. 298 (1992)) Similarly, the Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state. (*Id.*) In addition, in the case of foreign corporations, Illinois may not assert jurisdiction to tax where a corporation falls under the protection provided by Public Law 86-272 (15 U.S.C. § 381). Public Law 86-272 precludes any state from subjecting a nondomiciliary corporation to a net income tax where such corporation's only activities within the state for the taxable year consist of solicitation activities for sales of tangible personal property. Where any part of a foreign corporation's income is allocable to Illinois in accordance with the provisions of Article 3 of the Illinois Income Tax Act (35 ILCS 5/Article 3), Illinois can demonstrate the connection or nexus necessary to subject a foreign corporation to tax. Therefore, unless protected by the United States Constitution or federal statute, a foreign corporation is liable for Illinois income tax where any portion of its income is allocated to Illinois.

86 Ill. Adm. Code Section 100.9720(c)(2)(A) provides:

If a nonresident taxpayer's activities exceed "mere solicitation" as set forth in subsection (a) of PL 86-272 (subsection (c)(1)(A) of this Section), it obtains no immunity under that federal statute. The taxpayer is subject to Illinois income tax and personal property tax replacement income tax for the entire taxable year and its business income is apportioned under IITA Section 304. Whether a nonresident taxpayer's conduct exceeds "mere solicitation" depends upon the facts in each particular case.

Specific activities that go beyond "mere solicitation" and are unprotected by Public Law 86-272 are listed within 86 Ill. Adm. Code Section 100.9720(c)(4). Additionally, 86 Ill. Adm. Code Section 100.9720(c)(5) lists specific activities that are considered to be protected activities in Illinois. As provided in 86 Ill. Adm. Code Section 100.9720(c)(3)(B), the inclusion of an activity on the listing of "protected activities" is neither a declaration nor an

admission by this State that the activity must be afforded protection under Public Law 86-272.

Illinois construes the protection of Public Law 86-272 very narrowly. Almost any activity exceeding the parameters of that statute will cause the protection to be forfeited. An out-of-state corporation can lose the immunity provided by Public Law 86-272 where its activities within the state exceed the mere solicitation standard of the law.

A corporation's activities in Illinois beyond solicitation that are more than de minimus will establish nexus with Illinois. De minimus activities, as outlined in 86 Ill. Adm. Code Section 100.9720(c)(2)(D), are those activities that when taken together, establish only a trivial additional connection with this State. Activities that are regularly conducted within Illinois on a regular or systematic basis or pursuant to a company policy are normally not considered to be trivial. An unprotected activity that would not be de minimus if it were the only business activity of the taxpayer conducted in this State will not be de minimus merely because the taxpayer also conducts a substantial amount of protected activities within this State, nor will an unprotected activity that would be de minimus if conducted in conjunction with a substantial amount of protected activities fail to be de minimus merely because no protected activities are conducted in this State.

According to the facts presented in your email, the STATE corporation retains ownership of a stock of merchandise located in an Illinois warehouse before being shipped from the facility by the contract packager. Assuming these facts to be true and without additional support or clarification, this activity may be considered more than de minimus to create physical presence in Illinois for income tax purposes.

Pursuant to IITA Section 502(a), an Illinois income tax return is required to be filed by a nonresident in two situations: when a taxpayer is liable for Illinois income tax (Section 502(a)(1)) or, in the case of a corporation qualified to do business in Illinois, when the taxpayer is required to file a federal income tax return, regardless of whether such person is liable for Illinois income tax (Section 502(a)(2)). A nonresident is liable for Illinois income tax under IITA Section 201 if it computes "net income" as defined under IITA Section 202. IITA Section 202 defines Illinois net income as that portion of the taxpayer's "base income" as defined in IITA Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. Under IITA Section 203, base income is generally determined by starting with the taxpayer's federal taxable income (adjusted gross income in the case of an individual) and adjusting that amount by certain statutorily prescribed addition and subtraction modifications. Base income must then be classified as between nonbusiness income and business income, and allocated or apportioned to Illinois, respectively, according to the rules set forth in Article 3 of the IITA.

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Illinois eliminated the traditional composite return for pass-through entities, effective for tax years ending on or after December 31, 2014. Pass-through entities are now required to withhold Illinois income tax on behalf of nonresident partners or shareholders and report that withholding on its own Illinois income tax return. Additional information on pass-through withholding may be found in 86 Ill. Adm. Code Section 100.7035, and in the instructions to the 2025 Form IL-1120-ST, Small Business Corporation Replacement Tax Return, located on the Department's website.

As stated above, this is a General Information Letter. A General Information Letter does not constitute a statement of Department policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you require additional information, please visit the Department's website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Assistance Division at 800-732-8866.

Sincerely,

Jennifer Uhles

Jennifer Uhles

Associate Counsel (Income Tax)

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