ST 17-0005-PLR 06/14/2017 LOCAL TAXES

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 220.115, 270.115, and 693.115. (This is a PLR.)

June 14, 2017

Re: Request for Illinois Retailers' Occupation Tax Private Letter Ruling

Dear Xxxxx:

This letter is in response to your letter dated September 8, 2016, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY ("COMPANY"), COMPANY 1 ("COMPANY 1"), COMPANY 2 ("COMPANY 2"), and "COMPANY 3 ("COMPANY 3"), together referred to in the Department's response as "the Companies," for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither the Companies nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. Further, this letter ruling is binding only for sales made on or after January 22, 2014 (the effective date of the Department's emergency rules regarding sourcing of sales found at 38 Ill. Reg. 4047 et seq.). In your letter you have stated and made inquiry as follows:

The purpose of this letter ("Letter") is to request a private letter ruling under 86 Ill. Admin. Code § 1200.110 on behalf of COMPANY ("COMPANY"), COMPANY 1 ("COMPANY 1"), COMPANY 2 ("COMPANY 2") and COMPANY 3 ("COMPANY 3," and together with COMPANY, COMPANY 1 and COMPANY 2 the "Companies") on which the Companies may rely. Specifically, the Companies requests a private letter ruling

that, for purposes of the Home Rule County Retailers' Occupation Tax, Home Rule Municipal Retailers' Occupation Tax (collectively, the "Tax"), it is "engaged in the business of selling" (within the meaning of 86 Ill. Admin. Code §§120.115, 270.115, and 693.115 (collectively, the "Regulations")) in the locations described further below. The Companies also request a ruling that the same result will apply for purposes of allocating the local government portions of the Tax under 35 ILCS 120/3 and 30 ILCS 105/6z-18 and 105/6z-20.

No audit or litigation is pending with the Illinois Department of Revenue (the "Department") involving the Companies regarding the issues presented below. We note, however, that COMPANY is currently under a sales tax audit by the Illinois Department of Revenue for the periods of January 2011 through December 2012. Neither the Companies nor any representatives of the Companies has previously submitted the same or similar issues to those presented below to the Department but withdrew them before a letter ruling was issued.

COMPANY is a Fortune 500 industrial supply company founded in YEAR in CITY, with its corporate headquarters located in unincorporated COUNTY, Illinois.[1] Approximately 3 million businesses and institutions worldwide rely on COMPANY for products such as safety gloves, ladders, motors and janitorial supplies, along with services like inventory management and technical support. COMPANY's customers represent a broad collection of industries including healthcare, manufacturing, government and hospitality. COMPANY's customers typically place over 100,000 orders per day online, with mobile devices, over the phone and at local branches.

Due to the numerous different methods of sale for which a ruling is being requested, for ease of review, the Letter begins by listing the ruling requested, followed by a discussion of the applicable law. The letter concludes with descriptions of the relevant facts, organized by type of sale, and an application of the law to such facts.[2]

RULINGS REQUESTED

1. COMPANY's Branch Sales (as defined below) will be treated as "over the counter sales" within the meaning of the Regulations and thus, will be treated as occurring at the branch where the order was placed.
2. COMPANY's Phone Sales (as defined below) will be treated under the Regulations as occurring in unincorporated COUNTY.
3. COMPANY's Fax Sales (as defined below) will be treated under the Regulations as occurring in unincorporated COUNTY.
4. COMPANY's Email Sales (as defined below) will be treated under the Regulations as occurring in unincorporated COUNTY.

[1] Although COMPANY's corporate headquarters is physically located in unincorporated COUNTY, its mailing address is in CITY 2, Illinois.

[2] We recognize that this approach inverts the normal order in which a ruling would be submitted, but believe that this format will streamline the presentation and simplify the Department's review and analysis.

5. COMPANY's Online Sales (as defined below) will be (i) treated under the Regulations as occurring in CITY 3, Illinois to the extent the Online Sale is fulfilled from the CITY 3 Distribution Facility (defined below) and (ii) subject to use tax presumption set forth in the Regulations for "Sales over the Internet," to the extent the Online Sale is fulfilled from a COMPANY distribution facility located outside of Illinois.

6. COMPANY's eProcurement Sales (as defined below) will be treated under the Regulations as occurring in unincorporated COUNTY.

7. COMPANY's Branch 938 Sales (as defined below) will be treated under the Regulations as occurring in unincorporated COUNTY.

8. COMPANY 2 Sales (as defined below) will be (i) treated under the Regulations as occurring in CITY 3, to the extent the COMPANY 2 Sale is fulfilled from the CITY 3 Distribution Facility (defined below) and (ii) subject to the use tax presumption set forth in the Regulations for "Sales over the Internet," to the extent the COMPANY 2 Sale is fulfilled from a COMPANY distribution facility located outside of Illinois.

9. COMPANY 3 Sales (as defined below) will be (i) treated under the Regulations as occurring in CITY 3, to the extent the COMPANY 3 Sale is fulfilled from the CITY 3 Distribution Facility (defined below) and (ii) subject to the use tax presumption set forth in the Regulations for "Sales over the Internet," to the extent the COMPANY 3 Sale is fulfilled from a COMPANY distribution facility located outside of Illinois.

10. COMPANY Procurement Sales (as defined below) will be treated under the Regulations as occurring in unincorporated COUNTY.

11. The results under Ruling Requests 1-11, above, apply for purposes of allocating the local government portions of the Tax under 35 ILCS 120/3 and 30 ILCS 105/6-18 and 105/6z-20.

APPLICABLE LAW

Under the Regulations, the jurisdiction where a retailer is "engaged in the business of selling" is the jurisdiction that can impose Tax. A retailer incurs Tax in a particular jurisdiction if its predominant and most important selling activities take place in the jurisdiction. 86 Ill. Admin. Code §§ 220.115(b)(5), 270.115(b)(5) and 693.115(b)(5). A retailer is instructed to determine the taxing jurisdiction in which it is engaged in the business of selling with respect to each of its sales by first analyzing its "primary selling activities."

A Taxpayer's primary selling activities (also referred to as the "primary factors") include:

- The location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale ("Primary factor 1");

- The location where the seller takes action that binds it to the sale, which may be the acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale ("Primary Factor 2");

- The location where payment is tendered and received, or from which invoices are issued with respect to each sale "(Primary factor 3");

- The location of inventory, if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery ("Primary Factor 4"); and

- 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 ("Primary Factor 5").

86 Ill. Admin. Code §§ 220.115(c)(1), 270.115(c)(1) and 693.115(c)(1). A retailer engaging in three or more primary selling activities in one jurisdiction in the State is considered to be engaged in the business of selling in that jurisdiction. 86 Ill. Admin. Code §§ 220.115(c)(2), 270.115(c)(2) and 693.115(c)(2).

If a retailer's primary selling activities occur in multiple jurisdictions, but no jurisdiction has more than two primary selling activities, the following additional selling activities ("secondary selling activities" or "secondary factors") are considered to determine the jurisdiction in which the retailer is engaged in the business of selling:

- The location where marketing and solicitation occur;

- The location where the seller engages in activities necessary to procure goods for sale;

- The location of the retailer's officers, executives and employees with authority to set prices or determine other terms of sale, if determinations are made in a location different than that identified in the first primary selling factor;

- The 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;

- The location where title passes; and

- The location where the retailer displays goods to prospective customers, such as a showroom;

86 Ill. Admin. Code §§ 220.115(c)(4), 270.115(c)(4) and 693.115(c)(4). A retailer that is not engaged in the business of selling in any particular jurisdiction under the primary factors will be treated as engaged in the business of selling in the jurisdiction where the inventory is located for such sale (under the fourth primary factor) or where the retailer's headquarters is located (under the fifth primary factor), whichever jurisdiction is the location where more selling activities occur, considering both the primary and secondary factors. 86 Ill. Admin. Code §§ 220.115(c)(5), 270.115(c)(5) and 693.115(c)(5). Finally, a retailer that is not engaged in the business of selling in a jurisdiction based upon application of the primary and secondary factors described above is presumed, absent clear and convincing evidence to the contrary, to be engaged in the business of selling at the location of its headquarters. 86 Ill. Admin. Code §§ 220.115(c)(6), 270.115(c)(6) and 693.115(c)(6).

For so-called "over the counter" sales (i.e., sales where the purchaser is present at a place of business owned or leased by the retailer and there enters into agreement with the retailer's sales personnel to purchase tangible personal property from the retailer and makes payment for the property at the same location), the sale is deemed to take place at the retailer's place of business where the over the counter sale occurred, regardless of whether the purchaser takes immediate possession of the property or whether the retailer delivers or arranges for the property to be delivered to the purchaser. 86 Ill. Admin. Code §§ 220.115(c)(3)(A), 270.115(c)(3)(A) and 693.115(c)(3)(A).

For sales of tangible personal property made through a consumer-based retailer website available without limitation on the world wide web, the Department will presume that the retailer's selling activities take place outside of the state. Therefore, such sale will be subject to use tax unless there is "clear and convincing" evidence that the retailer's predominant and most important selling activities take place in the state. 86 Ill. Admin. Code §§ 220.115(d)(3), 270.115(d)(3) and 693.115(d)(3). There is "clear and convincing evidence" sufficient to overcome the use tax presumption if the tangible personal property that is sold is in an inventory in the possession of the retailer located within a jurisdiction in Illinois at the time of the sale. In that case, the retailer will be treated as engaged in the business of selling with respect to such sale where the property is located at the time of the sale. 86 Ill. Admin. Code §§ 220.115(d)(3)(A), 270.115(d)(3)(A) and 693.115(d)(3)(A).

In General Information Letter ST 15-0001-GIL (01/07/15) (the "GIL"), the Department addressed the meaning of the first three "primary selling activities" under these local sourcing rules.[3] In the GIL, the Department stated that the "primary selling activities" are so designed because they are "nearly universal." Moreover, the "primary selling activities" serve as "proxies for a composite of activities critical to the business of selling" and the locations of each of the "primary selling activities" are "generally

[3] The GIL addressed the rules contained under 86 Ill. Admin. Code § 320.115, which relate to the Regional Transportation Authority portion of the Tax. The rules contained in the Regulation are identical to those contained in 86 Ill. Admin. Code § 320.115, but relate to the Home Rule Municipality, Non-Home Rule Municipality, and Home Rule County portions of the Tax, respectively.

physical structures where employees come and go on a daily basis, taking advantage of … core services provided by local governments." Thus, the "primary selling activities" test satisfies important practical criteria: it is predictable for retailers and administrable for the Department. General Information Letter ST 15-0001-GIL (01/07/15).

To meet the first primary selling activity in a particular location, the GIL confirms that the retailer must have sales personnel in that location with "actual power to determine whether or not a retailer will do business with a given customer." Thus, the first of the primary selling activities refers to the location of individuals to whom the retailer has delegated significant authority to decide when, where and to whom the retailer will sell the goods, and who hold the power to "bind the seller to the sale." If there is no single location where sales personnel exercise discretion and authority to both solicit customers and complete sales, the retailer will not meet the first primary selling activity in any location when determining where to source its sales.

The GIL confirms that the second primary selling activity occurs where the retailer's personnel perform the "final action necessary to commit the retailer to a contractually binding relationship."

With respect to the third primary selling activity, the GIL states that, if payment is not "tendered or received" at the seller's place of business, the third primary selling activity occurs at the location where the retailer "engages in the conduct necessary to prepare and submit an invoice."

The GIL also addresses certain sales of tangible personal property over the Internet, stating that such sales are generally presumed to be subject to use tax when the consumer places an order "through a consumer-based retailer website available without limitation on the world wide web." On the other hand, sales made through web-based applications accessible only to established members or customers would not be subject to the use tax presumption, and would instead appear to be sourced based on the retailers primary selling activities, as described in the Regulations.

Under 35 ILCS 120/3, the Department is required to pay into the Local Government Tax Fund 16% of the 6.25% general state rate on the selling price of tangible personal property, and into the County and Mass Transit District Fund 4% of the net revenue realized for the preceding month from such 6.25% general state rate. Under 30 ILCS 105/6z-18, a portion of the money paid into the Local Government Tax Fund from the 6.25% general state rate is distributed to the municipalities based upon the sales which occurred in that municipality, with the remainder distributed to each county based upon the sales which occurred in the unincorporated area of such county. Under 30 ILCS 105/6z-20, distribution of the money paid into the County and Mass Transit District Fund form the 6.25% general state rate is to be made to the Regional Transportation Authority tax fund based upon the retail sales occurring in a county have [sic] more than 3,000,000 inhabitants, with the remainder of such money being distributed to each county having 3,000,000 or fewer inhabitants based upon the retail sales occurring in each such county.

STATEMENT OF FACTS AND APPLICATION OF LAW

As described above, due to the number of different methods by which COMPANY makes sales to its customers, we have included a separate section below for each type of sale that describes the relevant facts and applies the relevant law. Nonetheless, there are certain important facts that are generally consistent across all of the different types of COMPANY sales. Those common facts are as follows:

- COMPANY's corporate headquarters is located in unincorporated COUNTY, Illinois.[4] COMPANY's principal executives, as well as its marketing team (including COMPANY VPs of Marketing and E-Commerce), procurement team (including COMPANY's VP of Global Product Management and VP of Pricing and Indirect Procurement), finance team (including its Chief Financial Officer), and numerous other team members are located at its headquarters. Except as otherwise described herein, the team members at COMPANY's corporate headquarters generally have the ability to set pricing and determine other terms of sale.

- Although COMPANY has several distribution facilities throughout the United States, COMPANY's sole distribution facility in Illinois is located in CITY 3, Illinois (the "CITY 3 Distribution Facility"). Thus far during 2016, approximately 70% of COMPANY's sales to Illinois customers have been shipped from the CITY 3 Distribution Facility. All shipments are made FOB origin.

- Approximately 85% of COMPANY customers make purchases on account. The balance make payment with a credit card, debit card, cash or check at the time an order is placed. A new customer's credit limit is generally determined by algorithms with COMPANY's SAP system. Assuming an order is placed on account within the customer's pre-approved credit limit, the order can generally be accepted and released through the normal process that is in place for the particular type of sale. If a customer places an order on account in excess of its credit limit, the request is routed to one of COMPANY's credit specialists located in CITY 4, STATE for manual approval. COMPANY estimates that approximately 8% of the 100,000 orders that are typically processed through COMPANY's various sale channels each day are routed to the credit specialist team in CITY 4, STATE for approval and order release.

- COMPANY's main data center (which houses, among other things, COMPANY's main SAP software) is located in CITY 5, Illinois. COMPANY also has a backup data center located at its corporate headquarters in unincorporated COUNTY.

- An electronic billing file with relevant sale and pricing information is sent each week by COMPANY from its main data center in CITY 5, Illinois to a third party billing company in CITY 6, Illinois. The customer invoices are

[4] Although COMPANY's corporate headquarters is physically located in unincorporated COUNTY, its mailing address is in CITY 2, Illinois.

> physically printed and mailed by the third party company, which does not have the authority to modify them. Illinois customers generally mail payment on these invoices to a lock box in CITY 7, Illinois for processing by the cash processing team located in CITY 5, Illinois.

The following is a brief description of each type of sale that is the subject of this Letter, as well as a discussion applying the law to the facts of each particular type of sale. To aid the Department's review, attached to this Letter as Exhibit A is a matrix (the "Matrix") that sets fourth, by type of sale, the location in which each of the primary and secondary factors occur.

Branch Sales

Facts. In a branch sale ("Branch Sale"), a customer walks into a store to place an order for an item. The COMPANY personnel located at the branch have the discretion and authority to solicit and bind COMPANY to the sale and can accept payment from the customer at the branch location. When a customer places an order and makes payment at the branch, the order is accepted at the branch and the customer receives a receipt from the point of sale terminal at the branch location.

Customers with COMPANY accounts also have the ability to place their Branch Sale orders on account. If the order is within the customer's pre-approved credit limit (as determined by COMPANY's internal SAP system), the order is automatically approved. If the customer wishes to place an order on account that is in excess of its pre-approved credit limit, however, the request is routed to one of COMPANY's credit specialists located in CITY 4, STATE for manual approval. For orders that are placed on account, an invoice for payment is issued to the customer from COMPANY's main data center in CITY 5, Illinois. As described above, customer payments on these invoices are processed by the COMPANY cash processing team in CITY 5, Illinois.

In a Branch Sale, the customer will almost always receive the purchased item at the time of sale at the branch location. If the item is not in stock at the branch, it is generally shipped to the customer from the CITY 3 Distribution Facility.

Discussion. Under the Regulations, an "over the counter sale" is deemed to take place at the retailer's place of business where the sale occurred, regardless of whether the purchaser takes immediate possession of the property or whether the retailer delivers or arranges for the property to be delivered to the purchaser. 86 Ill. Admin. Code §§ 120.115(c)(3)(A), 270.115(c)(3)(A) and 693.115(c)(3)(A). An "over the counter sale" includes a sale where the purchaser "is present at a place of business owned or leased by a retailer and there enters into an agreement with the retailer's sale personnel to purchase tangible personal property, and makes payment for that property at the same place of business." Id. In a Branch Sale, the customer will often make payment at the time of the sale, in which case it is clear that a Branch Sale would be an "over the counter sale." Even where a customer places a Branch Sale order on account, however, such sale should still be treated as an "over the counter sale," because the customer agrees at the time of sale to make payment, albeit at a later date. Moreover, at the time the order is placed, the customer's available credit limit is decreased and a receivable is created on COMPANY's books for the amount due. Thus, all of

COMPANY's Branch Sales (whether the customer makes payment at the time of sale or agrees at the time of sale to make payment at a later date) should be considered "over the counter sales," and should therefore be deemed to take place at the branch where the order was placed.

Phone Sales

Facts. Customers are able to order products by phone by calling 1-800-COMPANY ("Phone Sales"). A customer's call is routed to any available COMPANY customer service agent. COMPANY estimates that only approximately 10% of COMPANY's customer service agents are located in Illinois.

The customer service agent has the discretion and authority to solicit and bind COMPANY to the sale and can accept payment from the customer over the phone. Payments taken over the phone by customer service agents are entered by the customer service agent into COMPANY's SAP system. In the event that a customer places an order on account, the process is substantially similar to that which is described above for orders placed on account under "Branch Sales." Invoices or receipts are issued from COMPANY's main data center in CITY 5, Illinois.

Phones Sale orders to Illinois customers are primarily shipped (FOB origin) from the CITY 3 Distribution Facility.

Discussion. Because the customer service agents are not likely to be in Illinois, it is unlikely the Primary Factor 1 will be treated as occurring in Illinois. It is also unlikely that Primary Factor 2 will occur in any location in Illinois, whether payment is made by phone through a customer service agent (likely not located in Illinois) or whether the order needs to be approved and released by a member of COMPANY's credit team located in CITY 4, STATE. Primary Factor 3 should be treated as occurring in CITY 5, Illinois (where invoices are issued from and payments are received). In most cases, Primary Factor 4 will be treated as occurring in CITY 3. Primary Factor 5 is met at COMPANY's headquarters in unincorporated COUNTY.

Although COMPANY may on occasion have Phone Sales that meet one or both of Primary Factors 1 and 2, none of those sales will ever meet three of the five Primary Factors in any single Illinois location. Thus, the determination of where COMPANY is "engaged in the business of selling" with respect to its Phone Sales will depend upon the application of both the primary and the secondary factors. In such case, the Regulations provide that COMPANY will be "engaged in the business of selling" in the jurisdiction where its inventory is located (under Primary Factor 4) or where its headquarters is located (under Primary Factor 5), whichever jurisdiction is the location where more selling activities occur, considering both the primary and the secondary selling factors. As shown in the attached Matrix, one of the primary factors (Primary Factor 5) and three secondary factors occur at COMPANY's corporate headquarters in unincorporated COUNTY, whereas only one of the primary factors (Primary Factor 4) and one secondary factor (passage of title), at the most, occur at the location of the

inventory in CITY 3.[5] Thus, COMPANY's Phone Sales should be treated under the Regulations as occurring in unincorporated COUNTY, Illinois.

Fax Sales

Facts. Customers have the ability to fax purchase orders directly to a dedicated COMPANY fax number ("Fax Sales"). In general, fax orders are processed by COMPANY's SAP computer system located in CITY 5, Illinois. Any errors are reviewed manually by teams in CITY 8, STATE 1 and CITY 4, STATE. In the event of an error, (i.e., if the fax order does not process correctly), a COMPANY employee in CITY 8, STATE 1 will manually enter the sales order data into COMPANY's SAP system. Invoices for Fax Sales are issued from COMPANY's data center in CITY 5, Illinois. As is the case with other COMPANY sales, Fax Sales are primarily shipped (FOB Origin) to Illinois customers from CITY 3 Distribution Facility.

Discussion. Because Fax Sales are the result of a direct order request from the customer, Primary Factor 1 would not appear to occur in any single Illinois location. Primary Factor 2 should occur, if anywhere, in CITY 5 Illinois (where the Fax Sales are processed by COMPANY's SAP system). As is the case with other COMPANY sales, primary Factor 3 occurs in CITY 5, Illinois, Primary Factor 4 should generally occur in CITY 3, and Primary Factor 5 occurs at COMPANY's headquarters in unincorporated COUNTY. Because COMPANY does not meet three primary factors for its Fax Sales in any one Illinois location, the determination of where COMPANY is "engaged in the business of selling" with respect to its Fax Sales will depend on application of both the primary and secondary factors. As shown in the attached Matrix, one of the primary factors (Primary Factor 5) and three of the secondary factors occur at COMPANY's corporate headquarters in unincorporated COUNTY, whereas only one of the primary factors (Primary Factor 4) and one secondary factor (passage of title), at the most, occur at the location of the inventory in CITY 3.[6] Thus, COMPANY's Fax Sales should be treated under the Regulations as occurring in unincorporated COUNTY, Illinois.

Email Sales

Facts. Customers have the ability to order items by emailing purchase orders to a dedicated COMPANY email address ("Email Sales"). The process for Email Sales is substantially similar to that which is described above for Fax Sales.

Discussion. Because Email Sales are the result of direct order request from the customer, Primary Factor 1 would not appear to occur in any single Illinois location. Primary Factor 2 should occur, if anywhere, in CITY 5, Illinois (where the Email Sales are processed by COMPANY's SAP system). As is the case with other COMPANY sales, primary Factor 3 occurs in CITY 5, Illinois, Primary Factor 4 should generally occur in CITY 3, and Primary Factor 5 occurs at COMPANY's headquarters in unincorporated COUNTY. Because COMPANY does not meet three primary factors for

[5] As discussed above, approximately 70% of Illinois sales are shipped from the CITY 3 Distribution Facility. In other cases, no primary or secondary factors will occur in CITY 3.

[6] As discussed above, approximately 70% of Illinois sales are shipped from the CITY 3 Distribution Facility. In other cases, no primary or secondary factors will occur in CITY 3.

its Email Sales in any one Illinois location, the determination of where COMPANY is "engaged in the business of selling" with respect to its Email Sales will depend upon the application of both the primary and the secondary factors. As shown in the attached Matrix, one of the primary factors (Primary Factor 5) and three of the secondary factors occur at COMPANY's headquarters in unincorporated COUNTY, whereas only one of the primary factors (Primary Factor 4) and one secondary factor (passage of title), at the most, occur at the location of the inventory in CITY 3.[7] Thus, COMPANY's Email Sales should be treated under the Regulations as occurring in unincorporated COUNTY, Illinois.

Online Sales

Facts. Customers have the ability to place orders on COMPANY's general internet website, www.COMPANY.com ("Online Sales"). The website is available for both new and returning COMPANY customers. For Online Sales, customers select a product from COMPANY's website and place their order via a standard online shopping cart/checkout process. Payment is generally made on the website at the time the order is placed, but customers with COMPANY accounts have the ability to place their order on account. To the extent an order is placed on account, the process for invoicing and payment following the order is substantially similar to that which is described above under "Branch Sales." Approximately 70% of Online Sales to Illinois customers are shipped from the CITY 3 Distribution Facility, with the remainder coming from COMPANY distribution facilities located outside of Illinois.

Discussion. Under the Regulations, sales made through a consumer-based retailer website available without limitation on the world wide web are presumed to take place outside of the state and thus are subject to use tax unless there is "clear and convincing" evidence that the retailer's predominant and most important selling activities take place in the state. 86 Ill. Admin. Code §§ 220.115(d)(3), 270.115(d)(3) and 693.115(d)(3). An example of "clear and convincing evidence" sufficient to overcome the use tax presumption includes the fact that the tangible personal property sold on the retailer's website is in the inventory in possession of the retailer located within a jurisdiction in Illinois at the time of the sale, in which case the retailer is engaged in the business of selling in the jurisdiction where the property is located at the time of sale with respect to the sale. Id.

In most cases, there should be "clear and convincing evidence" to overcome the use tax presumption that applies to sales over the internet because, as described above, approximately 70% of Online Sales to Illinois customers come from inventory in COMPANY's possession at the CITY 3 Distribution Facility. Thus, in such cases, Online Sales should be treated as occurring in CITY 3. In cases where Online Sales are fulfilled from COMPANY distribution facilities located outside of the Illinois, however, the use tax presumption set forth in the Regulations for "Sales over the Internet" would apply.

eProcurement Sales

[7] As discussed above, approximately 70% of Illinois sales are shipped from the CITY 3 Distribution Facility. In other cases, no primary or secondary factors will occur in CITY 3.

Facts. The COMPANY eProcurement solution is a seamless private electronic connection between the customer and COMPANY. The eProcurement solution is set up to emulate an online retail-like experience to help the customer find products, place orders and make payment. COMPANY offers the following eProcurement solutions and services to its customers:

- Punchout Catalog – The COMPANY online catalog is connected directly to the customer's eProcurement system (BRAND 1, BRAND 2, BRAND 3) or other enterprise resource planning (ERP) system (e.g., BRAND 4, BRAND 5, BRAND 6). Customers have the ability to browse the COMPANY online catalog, place orders and make payments.

- Hosted Content – COMPANY's product catalog is provided as a file to load into a customer's ERP system (or the system of a third party that is providing the customer's eProcurement solution).

- Business-to-Business (B2B) Integration Services – allows for integrated purchase orders, order acknowledgements and invoices using electronic data interchange (EDI) or extensible markup language (XML) technologies.

Discussion. Sales of tangible personal property over the Internet are generally presumed to be subject to use tax when the consumer places an order "through a consumer-based retailer website available with limitation on the world wide web." 86 Ill. Admin. Code §§ 220.115(d)(3), 270.115(d)(3) and 693.115(d)(3). On the other hand, sales made through web-based applications accessible only to established members or customers generally would not be subject to the use tax presumption. General Information Letter ST 15-0001-GIL (01/07/15). Because eProcurement Sales are the result of direct order request from established COMPANY customers, the use tax presumption should not apply. Rather, the eProcurement Sales should be sourced based on an analysis of the primary and secondary factors.

Primary Factor 1 does not appear to occur in any single Illinois location. Primary Factor 2 should occur, if anywhere, in CITY 5, Illinois (where the eProcurement Sales are processed by COMPANY's SAP system). As is the case with other COMPANY sales, Primary Factor 3 occurs in CITY 5, Illinois, Primary Factor 4 should generally occur in CITY 3, and Primary Factor 5 occurs at COMPANY's headquarters in unincorporated COUNTY. Because COMPANY does not meet three primary factors for its eProcurement Sales in any one Illinois location, the determination of where COMPANY is "engaged in the business of selling" with respect to its eProcurement Sales will depend upon the application of both the primary and the secondary factors. As shown in the attached Matrix, one of the primary factors (Primary Factor 5) and three of the secondary factors occur at COMPANY's headquarters in unincorporated COUNTY, whereas only one of the primary factors (Primary Factor 4) and one secondary factor (passage of title), at the most, occur at the location of the inventory in CITY 3.[8] Thus,

[8] As discussed above, approximately 70% of Illinois sales are shipped from the CITY 3 Distribution Facility. In other cases, no primary or secondary factors will occur in CITY 3.

COMPANY's eProcurement Sales should be treated under the Regulations as occurring in unincorporated CITY 1, Illinois.

Branch 938 Sales

Facts. In some instances, a customer will contact a COMPANY account manager (or a COMPANY account manager will suggest to a customer) to purchase a product which COMPANY does not typically stock. In that case, the account manager submits a request for the product to the COMPANY sourcing team (the "Sourcing Team") located in CITY 9, Illinois. The Sourcing Team works with potential suppliers to identify the product cost and delivery options that meet the customer's needs. The Sourcing Team negotiates the cost or relies on pricing that COMPANY may already have with the supplier. The Sourcing Team will then prepare a quote for the account manager to present to the customer. If the customer accepts the quote, it is turned into a purchase order with "Branch 938" identified as the selling location (a "Branch 938 Sale"). Once the customer accepts the quote from the Sourcing Team, the COMPANY account manager (generally located at one of the branches located in Illinois) enters the order into COMPANY's SAP systems to process the order. The ordered product is usually drop shipped directly to the customer location from the third party supplier, but in some cases the product is shipped to a local COMPANY branch for consolidation and subsequent shipment to the customer. As is the case with all COMPANY shipments, if the product is shipped from a COMPANY branch, it is shipped FOB origin.

Discussion. Although the COMPANY account managers solicit Branch 938 Sales, it is the Sourcing Team (located in CITY 9, Illinois) that prepares the price quote. Thus, it does not appear the Primary Factor 1 is met at any one COMPANY location or department. Primary Factor 2 should be treated as occurring, if anywhere, where the COMPANY account manager receives the purchase order from the customer and enters it into COMPANY's SAP system. As is the case with other COMPANY sales, Primary Factor 3 should generally be met in CITY 5, Illinois. Primary Factor 4, however, may not be met in any Illinois location to the extent (as is most often the case) that an item is drop shipped by the third party supplier directly to the customer.[9] Primary Factor 5, of course, is met in unincorporated COUNTY, Illinois.

Because COMPANY does not meet three primary factors for its Branch 938 Sales in any one Illinois location, the determination of where COMPANY is "engaged in the business of selling" with respect to its Branch 938 Sales will depend upon the application of both the primary and the secondary factors. As described above and as shown in the attached Matrix, one of the primary factors (Primary Factor 5) and one of the secondary factors occur at COMPANY's corporate headquarters in unincorporated COUNTY, whereas neither Primary Factor 4 nor any of the secondary factors occur at COMPANY's CITY 3 Distribution Facility. Thus, COMPANY's Branch 938 Sales should be treated under the Regulations as occurring in unincorporated COUNTY, Illinois.

COMPANY 2 Sales

[9] As discussed above, in a small percentage of Branch 938 Sales, an item may be shipped to a local COMPANY branch and delivered to the customer thereafter.

Facts. COMPANY 2 is a COMPANY affiliate which is an online retailer of industrial maintenance, repair and operational supplies. COMPANY 2 does not have any sales people – it is a pure internet sales business. COMPANY 2's main offices are located in CITY 10, Illinois where its marketing, finance, human resources, e-commerce teams are located. COMPANY 2's back office operations, including its customer operations and customer service teams, are located in CITY 4, STATE.

For COMPANY 2 Sales, customers select a product from COMPANY 2's website (www.COMPANY 2.com) and place their order via a standard online shopping cart/checkout process. Payment is most often made on the website at the time the order is placed with a credit card. Customers generally do not make purchases on account, but COMPANY 2 will sometimes grant payments on terms. To the extent an invoice is issued, it is issued electronically from COMPANY 2's data center, which is not located in CITY 5, Illinois, but rather is hosted by a third party outside of Illinois. Approximately 70% of COMPANY 2 Sales are shipped from COMPANY's CITY 3 Distribution Facility, with the remainder coming from COMPANY distribution facilities located outside of Illinois. Title to inventory located in COMPANY's distribution facilities is transferred to COMPANY 2 prior to shipment by COMPANY 2 to the customer.

Discussion. Under the Regulations, sales made through a consumer-based retailer website available without limitation on the world wide web are presumed to take place outside of the state and thus are subject to use tax unless there is "clear and convincing" evidence that the retailer's predominant and most important selling activities take place in the state. 86 Ill. Admin. Code §§ 120.115(d)(3), 270.115(d)(3) and 693.115(d)(3). An example of "clear and convincing evidence" sufficient to overcome the use tax presumption includes the fact that the tangible personal property sold on the retailer's website is in the inventory in possession of the retailer located within a jurisdiction in Illinois at the time of the sale, in which case the retailer is engaged in the business of selling in the jurisdiction where the property is located at the time of sale with respect to the sale. Id.

In most cases, there should be "clear and convincing evidence" to overcome the use tax presumption that applies to sales over the internet because, as described above, approximately 70% of COMPANY 2 Sales to Illinois customers come from inventory in COMPANY's possession at the CITY 3 Distribution Facility. Thus, in such cases, COMPANY 2 Sales should be treated as occurring in CITY 3. In cases where COMPANY 2 Sales are fulfilled from COMPANY distribution facilities located outside of the Illinois, however, the use tax presumption set forth in the Regulations for "Sales over the Internet" would apply.

COMPANY 3 Sales

Facts. COMPANY 3 is a COMPANY affiliate that is an online retailer of industrial maintenance, repair and operations supplies which will begin operations in 2017. COMPANY 3 will not have any sales people - it will be solely an internet sales business. COMPANY 3's main offices are located in CITY, Illinois where its marketing, finance, human resources, and e-commerce teams are located. COMPANY 3's back office operations, including its customer operations and customer service teams, are located in CITY 4, STATE.

For COMPANY 3 sales ("COMPANY 3 Sales"), customers will select a product from COMPANY 3's website and place their orders via a standard online shopping cart/checkout process. Payment will be most often made on the website at the time the order is placed with a credit card. Customers generally will not make purchases on account, but COMPANY 3 will sometimes grant payment on terms. To the extent an invoice is issued, it will be issued electronically from COMPANY 3's data center, which is not located in CITY 5, Illinois, but rather is hosted by a third party outside of Illinois. It is expected that approximately 70% of COMPANY 3 Sales will be shipped from COMPANY's CITY 3 Distribution Facility, with the remainder coming from COMPANY distribution facilities located outside of Illinois. Title to inventory located in COMPANY's distribution facilities will be transferred to COMPANY 3 prior to shipment by COMPANY 3 to the customer.

Discussion. Under the Regulations, sales made through a consumer-based retailer website available without limitation on the world wide web are presumed to take place outside of the state and thus are subject to use tax unless there is "clear and convincing" evidence that the retailer's predominant and most important selling activities take place in the state. 86 Ill. Admin. Code §§ 220.115(d)(3), 270.115(d)(3) and 693.115(d)(3). An example of "clear and convincing evidence" sufficient to overcome the use tax presumption includes the fact that the tangible personal property sold on the retailer's website is in the inventory in possession of the retailer located within a jurisdiction in Illinois at the time of the sale, in which case the retailer is engaged in the business of selling in the jurisdiction where the property is located at the time of sale with respect to the sale. Id.

In most cases, there should be "clear and convincing evidence" to overcome the use tax presumption that applies to sales over the internet because, as described above, approximately 70% of COMPANY 3 Sales to Illinois customers come from inventory in COMPANY 3's possession at the CITY 3 Distribution facility. In such cases, COMPANY 3 Sales should be treated as occurring in CITY 3. In cases where COMPANY 3 Sales are fulfilled from COMPANY distribution facilities located outside of the [sic] Illinois, the use tax presumption set forth in the Regulations for "Sales over the Internet" should apply.

COMPANY 1 Sales

Facts. COMPANY 1 is a COMPANY affiliate that serves as an indirect procurement company, procuring goods on behalf of COMPANY affiliates for use in their various businesses. When a COMPANY affiliate identifies an item that it needs in connection with its business operations, the COMPANY affiliate issues a purchase order to COMPANY 1 requesting the item. Following receipt of such purchase order, COMPANY 1 identifies potential suppliers, negotiates a contract and ultimately acquires and resells the item to the COMPANY affiliate ("COMPANY 1 Sales"). The team members making contract purchase and resale decisions on behalf of COMPANY 1 are located at the COMPANY corporate headquarters in unincorporated COUNTY.

COMPANY 1 has a bank account from which it makes payment to suppliers. COMPANY 1 then issues an invoice (from the COMPANY data center in CITY 5,

Illinois) to the COMPANY affiliate to which it resold the item. The requested item is generally shipped directly from the supplier to the requested COMPANY location.[10]

Discussion. Because COMPANY 1 does not engage in any marketing or solicitation of the COMPANY affiliates for which it procures goods, Primary Factor 1 does not appear to be met in any location. Primary Factor 2 is met in unincorporated COUNTY, where the COMPANY 1 team members that make contract purchase and resale decisions are located. Primary Factor 3 occurs in CITY 5, Illinois, as that is where COMPANY 1 issues invoices to its customers (the COMPANY affiliates). As COMPANY 1 Sales are shipped to COMPANY directly from its suppliers, Primary Factor 4 does not occur at any COMPANY location. As is the case with all COMPANY sales, Primary Factor 5 is met at COMPANY's corporate headquarters in unincorporated COUNTY, Illinois.

Because COMPANY 1 does not meet three primary factors for its COMPANY 1 Sales in any one Illinois location, the determination of where COMPANY 1 is "engaged in the business of selling" will depend upon the application of both the primary and secondary factors. As described above and as shown in the attached Matrix, one of the primary factors (Primary Factor 5) and three of the secondary factors occur at COMPANY's corporate headquarters in unincorporated COUNTY, whereas neither Primary Factor 4 nor any of the secondary factors occur at COMPANY's CITY 3 Distribution Facility. Thus, COMPANY 1 Sales should be treated under the Regulations as occurring in unincorporated COUNTY, Illinois.

* * * * *

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions, or would like any additional information. *We respectfully request a conference in the event you tentatively conclude that an adverse ruling would be warranted.* A power of attorney authorizing the undersigned to represent COMPANY in this matter is attached as Exhibit B. This ruling request pertains only to periods beginning after the date hereof.

DEPARTMENT'S RESPONSE:

In response to the Illinois Supreme Court decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, 376 Ill. Dec. 294 (2013), the Illinois Department of Revenue revised the administrative rules that govern the sourcing of local retailers' occupation taxes. See, for example, 86 Ill. Adm. Code 270.115. The rules provide that:

> 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". *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

[10] COMPANY 1 transfers title to the requested item to the COMPANY affiliate instantaneously once the item arrives at the requested COMPANY location.

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).

Based on a review of the activities described in your letter and an analysis of the Department's regulations found at 86 Ill. Adm. Code 220.115, 270.115, and 693.115, the Department finds that:

Branch sales, as described in your letter, are over the counter sales in accordance with 86 Ill. Adm. Code 220.115(c)(3)(A), 270.115(c)(3)(A), and 693.115(c)(3)(A). For **branch sales**, as described in your letter, the Companies are engaged in the business of selling at the branch where the order is placed and therefore these sales should be sourced to the branch where the order is placed.

For **phone sales, fax sales, email sales, eprocurement sales, branch 938 sales, and COMPANY 1 sales,** as described in your letter, you represent that the Companies do not engage in three or more primary selling activities in one location. Therefore, under the regulations, we also look at the Companies' secondary selling activities to determine whether the Companies are engaged in the business of selling where the inventory is located or where the headquarters are located with respect to these sales. See 86 Ill. Adm. Code 220.115(c)(5), 270.115(c)(5), and 693.115(c)(5). Based on a review of the primary and secondary selling activities described in your letter, and an analysis of the Department's regulations, the Department finds that, for **phone sales, fax sales, email sales, eprocurement sales, branch 938 sales, and COMPANY 1 sales,** as described in your letter, the Companies are engaged in the business of selling at the corporate headquarters in unincorporated COUNTY, Illinois and therefore these sales should be sourced to unincorporated COUNTY, Illinois.

For **COMPANY's online sales, COMPANY 2 sales, and COMPANY 1 sales,** as described in your letter, the provisions of 86 Ill. Adm. Code 220.115(c)(3), 270.115(c)(3), and 693.115(c)(3) regarding "sales over the Internet" apply. With respect to these sales, if the tangible personal property that is sold is in the Companies' inventory in CITY 3, Illinois at the time of its sale, then the sale should be sourced to CITY 3, Illinois. With respect to these sales, if the tangible personal property that is sold is not in the Companies' inventory in Illinois at the time of the sale, it is presumed that the Companies' predominant selling activities take place outside Illinois and, with respect to these sales from the Companies' out-of-state locations to Illinois customers, the Companies should collect Use Tax at the rate of 6.25%. See 86 Ill. Adm. Code 150.801.

Sections 6z-18 and 6z-20 of the State Finance Act (30 ILCS 105/6z-18 and 6z-20) require distribution of the 1.25% portion of the State 6.25% Retailers' Occupation and Service Occupation Taxes to units of local government based on where the sale occurred. For purposes of making these distributions under Sections 6z-18 and 6z-20 of the State Finance Act to units of local government, each sale shall be sourced to the same location as the sale is sourced under this Private Letter Ruling with respect to locally imposed Retailers' Occupation and Service Occupation Taxes as discussed above.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

RSW:SJM:bkl