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 PLR.)

June 14, 2018

Dear Xxxxx:

This letter is in response to your letter dated March 2, 2018, 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 and COMPANY 1 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 COMPANY and COMPANY 1 nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

> On behalf of our client, COMPANY 1, a division of COMPANY ("Company"), we request the Illinois Department of Revenue to issue a Private Letter Ruling with respect to the factual situation discussed below. Our request is pursuant to 2 Ill. Adm. Code 1200.110. We request a ruling that for purposes of determining the correct "sourcing" for local retailer's [sic] occupation tax ("ROT") on sales of petroleum fuel, COMPANY 5's sales are subject to municipal retailer's [sic] occupation tax in CITY, Illinois regardless of where fuel is delivered or used. The relevant facts are outlined below.

GENERAL INFORMATION

1. Enclosed please find an original form IL 2848, Power of Attorney, authorizing ABC to represent COMPANY 1 before the Illinois Department of Revenue (the "Department").

2. This Private Letter Ruling ("PLR") is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the ROT consequences of the actual business practices of the Company.

3. The Company is not currently engaged in litigation with the Department in regard to this or any other tax matter.

4. The Company is not currently under audit by the Department in regard to this or any other tax matter.

5. The Department has not previously ruled regarding this matter for the Company. In addition, the Company has not submitted the same or similar issue to the Department.

6. The Company requests that certain information be redacted from the PLR prior to dissemination to others. The Company requests that its name, address, the location of its sales office, the name of its representatives, all references to Exhibits, and the Exhibits themselves be redacted.

7. The Company knows of no authority contrary to the authorities referred to and cited below.

STATEMENT OF MATERIAL FACTS

1. **General Overview**: COMPANY, is a Corporation qualified to do business in Illinois. It has been in business since YEAR. COMPANY is a privately-held company recognized as an innovative leader in the distribution and marketing of energy, automotive and lubricant products in many parts of the United States. COMPANY has organized its business with operating divisions and business units, each focused on different aspects of the business of distribution and marketing of energy, automotive and lubricant products. The divisions include:

    a. **COMPANY 1** – is a value-added distributor, marketer, trading and terminal operator of fuels and renewable energy products.

    b. **COMPANY 2** – is a leading distributor and marketer of top-tier brands for tires, parts and lubricants in the vehicle aftermarket. COMPANY 2 has four Illinois locations with ## full time employees.

    c. **COMPANY 3** – is a leading lubrication solutions provider offering a wide range of lubricants for commercial fleets, automotive dealerships, service shops, and lube and tire centers.

    d. **COMPANY 4** – is a leading Compressed Natural Gas (CNG) provider offering fleet operators an environmentally friendly, cost-effective alternative to traditional fuel options. COMPANY 4 owns three CNG stations in Illinois, plus

it has one additional branded station with its name on it whereby it receives a royalty on sales.

In 2016, COMPANY decided to enter into a new line of business, marketing fuel at retail to large commercial customers, primarily the major railroads and large trucking companies. As part of its business strategy, COMPANY established a new business unit within its COMPANY 1 to focus on this very unique market opportunity. The COMPANY 5 ("COMPANY 5") was formed and a person with significant experience negotiating and performing fuel supply agreements with the Railroads was hired and given authority to establish and grow the business. The COMPANY 5 is headquartered in CITY, Illinois. Almost all of COMPANY 5's business is won or lost on the competitiveness of its bids in response to Requests for Proposals issued by the various railroads and/or trucking companies. Although the COMPANY 5 doesn't have many customers (# or fewer), the sales volume is significant, currently in excess of # million gallons of fuel per year. **Attached as Exhibits A-E are current contracts with DEF, GHI, JKL, MNO and PQR respectively.**

2. **Employees and Locations**: *CITY Illinois COMPANY 5 headquarters location.* COMPANY 5 leases office space and owns the furniture and fixtures that are located in the office space. COMPANY 5 has # full-time employees at this location:

    a. **Director, Commercial Sales**: The Director, Commercial Sales is based out of CITY, IL. The Director, Commercial Sales, negotiates the contracts for all COMPANY 5 fuel sales. As described below, the Director, Commercial Sales travels significantly, primarily to meet with customers, prospective customers, fuel suppliers and transportation companies. **See Exhibit F for Job Description**.

    b. **Manager, Bid Operations, Commercial Sales:** The Manager, Bid Operations, works out of the CITY, IL office, with negligible travel requirements. The Manager, Bid Operations, is responsible for all COMPANY 5 bid operations. This Manager manages every aspect of the operations relative to the Company bid business, from submitting offers subjected to unilateral acceptance by buyer, to managing and fulfilling contract related purchase orders and final invoice verification and distribution. **See Exhibit G for Job Description**.

3. **Responsibilities of COMPANY 1 Commercial Marketing Business Unit Employees:**

    a. *Director, Commercial Sales*: The Director of Commercial Marketing Business for the COMPANY 5, is authorized to execute all COMPANY 5 commercial marketing agreements and any and all documents required thereunder and/or thereto, on behalf of COMPANY 5 and the Company, and to bind COMPANY 5 and the Company to the terms and conditions of such agreements, subject to the limitations of all corporate approval limitations and policies, and such authority is retroactive to DATE. **[See Exhibit H for Board of Directors Meeting Minutes – Delegation of Authority documentation.]** Further, as

authorized by COMPANY's Board of Directors, the Director, Commercial Sales negotiates, executes, delivers and causes to be performed, as applicable, all agreements and documents (and any obligations thereunder (sic)) related to the operations of COMPANY 1's Commercial Marketing Business Unit. These include (i) the procurement of fuel from refineries and other suppliers; (ii) the sale of fuel to COMPANY 1's Commercial customers.

Notwithstanding the delegation of authority provisions the organization has put in place, the Director in CITY, IL, performs all solicitation and negotiation of fuel sale contracts and signs all contracts that bind the COMPANY 5 to the sales.

b. *Manger, Bid Operations, Commercial Sales*: This CITY, IL-based employee reports directly to the Director, Commercial Sales. This Manager is responsible for coordinating the submission and acceptance of all petroleum bid contracts; reviewing all On-boarding activities related to setting up accepted bids including loading numbers, invoicing and payment setup; accepting and fulfilling product orders; matching bid BOL's and Manifests to contract product orders; verifying, approving and submitting all bid related invoices to bid customer; assist with all loading and supply issues relative to bid contracts including outages and specification issues; monitoring customer accounts receivable and payment activity relative to bid contracts including invoicing and payment errors; managing the CITY, IL office including lease negotiation, utilities, equipment and daily operations; documenting communication efficiently and accurately; analyzing and resolving any/all discrepancies expeditiously; utilizing computer to input, retrieve, organize or display accounting information;.

4. Solicitation, Annual Contracts and Contracting Procedures

a. *Contracting Process*: COMPANY 5's fuel sales to its customers are contractually governed by a fuel supply agreement. The Director, Commercial Sales negotiates for COMPANY 5 all terms (including pricing) of the fuel supply agreement. He negotiates these agreements principally in CITY, Illinois. He executes all final contracts in CITY, Illinois.

b. *Pricing of Fuel Sales*. COMPANY 5 sells its fuel at an arm's-length per gallon price. The fuel supply agreement sets forth the pricing and other provisions governing the sales.

5. **Order Acceptance Procedures**: At the start of a contract period, most customers are provided with a communication in the form of an email or mailed correspondence, sent from the CITY office, outlining the location of terminal(s) fuel may be pick up, and a loading number to be used at the "rack". Customer will pick up fuel at the designated location, providing its loading number. Sometimes, the contract requires the COMPANY 5 to arrange for a third-party transportation company to deliver the fuel to the customer. In the event a fuel purchase does not require a purchase order, it is sent to the CITY office for acceptance and processing.

6. **Invoicing and Payment Procedures**:

   a. *Invoicing:* Invoices for fuel deliveries for most customers are generated through one of a variety of electronic data interchanges. The Manager, Commercial Sales reviews the relevant customer order information prior to invoice preparation, including fuel supply price, fuel sale price, transportation charges, etc. Once determined to be correct, the respective invoice is created in COMPANY's CITY 1, STATE offices where it is sent electronically to the Manager Commercial Sales. The Manager checks invoices for accuracy and either emails or mails the invoices from the CITY office to the customer. Most contracts require invoicing within 72 hours of product delivery and payment within ten days of a valid invoice. **[See Exhibit I for Sample Invoices]**

7. **Inventory and Title Transfer:** Transfer of title and risk of loss typically occurs at the terminal or "rack" location, where the customer picks up the fuel. This is commonly referred to as "COMPANY 5 Rack Business". In some cases, Company owns the fuel in transit, typically in situations when Company contracts with third-party transportation companies to deliver fuel to a customer location. This is commonly referred to as "COMPANY 5 Delivered Business".

8. **Fuel Procurement:** As COMPANY 5 receives RFP's from potential customers, as part of its bidding process, the Director, Commercial Sales will seek pricing for designated supplies to meet RFP requirements. Specifically, Director, Commercial Sales will contact an Energy Trader within COMPANY to seek proposals, as well as contact third party suppliers directly if Director, Commercial Sales believes he can get a better price. After securing binding proposals for the fuel supply, COMPANY 5 will price its bid accordingly, and if the new business is won, a contract will be entered into, or an existing contract amended, with a third-party fuel supplier to cover the bid requirements. **See Attached Exhibits J-M for existing supply contracts with STU, VWX, YZ and AAA.**

Ruling Requested

On behalf of the Company, we respectfully request the Department to rule that COMPANY 1's Commercial Marketing Business Unit sales are appropriately sourced to CITY, Illinois for purposes of local ROT.

Relevant Authorities

Description of Relevant Taxes

The tax commonly known as the Illinois "sales tax" is composed of the ROT, the service occupation tax ("SOT"), the use tax ("UT"), and the service use tax ("SUT").

The Illinois ROT Act imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 Illinois Complied Statutes 120/2 (hereinafter

"ILCS"); 86 Ill. Adm. Code §130.10 (hereinafter "ILAC"). In accordance with Section 2-10 of the Act, this tax is measured by the seller's gross receipts. 35 ILCS 120/2-10; 86 ILAC 130.101. The legal incidence of the ROT falls on the seller, who effects reimbursement by collecting UT from its customer. 86 ILCA 130.101(d).

Generally speaking, all sales of tangible personal property, including fuel, are presumed subject to the ROT unless it can be established that the transfer of property is incident to a service or an exemption applies. The seller has the burden of proving that a transaction is not taxable or otherwise not subject to the ROT. 86 ILAC 130.801(f).

The ROT authorizes municipalities to impose corresponding local ROT. 65 ILCS 5/8-11-1. The CITY [sic] of CITY, and the County of COUNTY, have not imposed a home rule municipal ROT.

The Illinois Supreme Court previously addressed the method by which an Illinois sale is sourced to a local jurisdiction in *Hartney Fuel Oil Co. v Hamer*, 2013 IL 115130 (Nov. 21, 2013). *The Hartney Oil* decision invalidated long-standing local tax sourcing regulations, emphasizing a business-specific, fact-intensive sourcing methodology. The Court noted:

[T]he location of the business of selling inside or outside the state controls, and not the location of transfer of title, *Standard Oil Co. v. Department of Finance*, 383 Ill. 136, 142 (1943). The business of selling itself is:

> "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consumption of the sale by the passing of title and payment of the purchase price. It is obvious that such activities are as varied as the methods which men select to carry on retail business and it is therefore not possible to prescribe by definition which of the many activities may take place in Illinois to constitute it an occupation conducted in this State. Except for a general classification that might be made of the many retail occupations, it is necessary to determine each case according to the facts which reveal the method by which the business is conducted." *Ex-Cell-O Corp*., 383 Ill. at 321-22.

The Court also noted other important points:

- The business of selling is distinct from the business of mere solicitation, as the Retailers' Occupation Tax Act did not authorize a tax on mere solicitation. *Allis-Chalmers Manufacturing Co. v. Wright*, 383 Ill. 363, 366 (1943).

- In parsing the many activities making up the business of selling, some combinations of activities within the state are insufficient for the ROT to apply and "each case, of necessity, rests completely and entirely on the foundation of its own facts." *Automatic Voting Machine Corp*., 409 Ill. 438, 447 (1951),

- In determining whether the business of selling has taken place in the state, courts may look through the form of a putatively interstate transaction to its

substance, in determining whether enough of the business of selling took place within the state to subject it to the ROT. *Marshall & Huschart Machinery Co. v. Department of Revenue*, 18 Ill. 2d 496, 501 (1960),

- In evaluating Legislative intent as regards application of the ROT, Illinois courts have concluded that the General Assembly intended to link application of the Retailer's [sic] Occupation Tax to consumption of government services. *Svithiod Singing Club*, 11 Ill. 2d 402, 406-407 (1957); *Gilligan v Korzen*, 56 Ill. 2d 387, 391-92 (1974).

In response to the *Hartney Oil* decision, the Illinois Department of Revenue promulgated new regulations to aid retailers in performing a fact-specific analysis for purposes of determining in which jurisdiction a sale should be subject to local ROT. 86 ILAC 270.115 is the regulation that governs the Home Rule Municipal Retailer's [sic] Occupation Tax.

The regulation provides guidance for retailers who conduct selling activities in multiple jurisdictions, providing that "[a] retailer is engaged in the business of selling in only one location for each sale, but may be engaged in the business of selling in different locations for different sales". 86 ILAC 270.115(c). The regulation then sets forth five primary selling activities and provides that "[a] retailer engaging in three or more primary selling activities in one location in the State after a particular sale shall remit the retailers' occupation tax imposed by the taxing bodies with authority to impose retailers' occupation tax on those engages [sic] in the business of selling in that location." *Id*. The primary selling activities are set forth in section (c)(1):

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) 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.

With regard to a particular sale, if no single Illinois jurisdiction is the place of three or more selling activities, the regulation provides that the sale will be sourced to either the

locality where its inventory is located or where its headquarters is located and the Regulation provides a list of six additional or "secondary" selling activities that must be considered along with the primary selling activities to determine in which of the two locations the retailer engaged in the business of selling with respect to the given sale. *Id*. The secondary selling activities are set forth in section (c)(4):

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 that 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 good to prospective customers, such as a showroom.

Discussion and Analysis

To implement the Illinois Supreme Court's decision in *Hartney Oil* and the "business of selling" principles set forth in the cases that preceded *Hartney Oil*, the Department enacted new regulations. The provisions of 86 ILAC 270.115, which governs local sourcing for home rule municipal retailers' occupation taxes are analyzed below. As noted above, the regulation sets forth five primary selling activities. If three or more of these primary activities apply to a sale and occur in the same location, the sale will be sourced to the location where the activities occur. 86 ILAC 270.115(c)(2)

Primary Selling Activities

First Primary Selling Activity Test

The first primary selling activity is the "[l]ocation of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale." 86 ILAC 270.115(c)(1)(A). Company 1's Director, Commercial Sales solicits and negotiates all sales to potential customers. The Director, Commercial Sales' sales, solicitations and negotiations all occur at the CITY, Illinois COMPANY 5 headquarters. Signature of the contract, the act that binds COMPANY 5 to the sale, is performed in CITY, Illinois. Under the first primary selling activity, the COMPANY 5 is engaged in the business of selling in CITY, Illinois.

Second Primary Selling Activity Test

The second primary selling activity is the "[l]ocation 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." 86 ILAC 270.115(c)(1)(B). As noted above, COMPANY 5's Director, Commercial Sales negotiates and executes all of its fuel sale agreements in CITY, Illinois. In addition, any customer purchase orders under those agreements are sent to the CITY, Illinois headquarters, are accepted in CITY, and delivery of fuel based on those orders is directed from CITY. Under the second primary selling activity, the COMPANY5 is engaged in the business of selling in CITY, Illinois.

Third Primary Selling Activity Test

The third primary selling activity is the "[l]ocation where payment is tendered and received, or from which invoices are issued with respect to each sale." 86 ILAC 270.115(c)(1)(C). Pricing and billing terms are established as contracts are consummated and new customer accounts are set up. COMPANY employees in CITY 1, STATE assist with that effort. COMPANY 5 can commence selling product to customers once the set-up is completed. The applicable test for this business is the location from which invoices are issued.[1]

For COMPANY 5 Rack Business, the supply terminal generates a bill of lading and/or a delivery ticket at the time the COMPANY 5 customer's delivery truck is loaded. Information concerning the delivery is electronically delivered by the supply terminal to the CITY office and COMPANY office in CITY 1, STATE. After review of the transaction specifics by the Manager, Commercial Sales, a COMPANY 5 invoice is created and sent to the CITY office where it is issued to the COMPANY 5 customer. Invoices are also checked by the Manager, Commercial Sales for accuracy.

For COMPANY 5 Delivered Business, the customer's need for fuel is electronically communicated to COMPANY 5's third party carrier. When that carrier's truck is loaded the supply terminal generates a bill of lading and/or delivery ticket. Information concerning the delivery is electronically delivered by the supply terminal to the CITY office and COMPANY's office in CITY 1, STATE. After review of the transaction specifics by the Manager, Commercial Sales, a COMPANY 5 invoice is created and sent to the CITY Office where it is issued to the COMPANY 5 customer. Invoices are also checked by the Manager, Commercial Sales for accuracy. The COMPANY 5 is engaged in the business of selling in CITY, Illinois for purposes of the third primary selling activity.

Fourth Primary Selling Activity Test

The fourth primary selling activity is the "[l]ocation of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery." 86 ILAC 270.115(c)(1)(D). The COMPANY 5 does not own inventory. Fulfillment of customer fuel purchase agreements is made from COMPANY or third-party inventory.

[1] Cash payments are wired by customers to a COMPANY bank account, not made by check or bank draft. Due to all payments being effected via wire, there is no locus for payments for purposes of this test.

Thus, the fourth primary test would not apply since the Company does not own inventory at the time of its sale or delivery.

Fifth Primary Selling Activity Test

The fifth primary selling activity is the "[l]ocation 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 office of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters." 86 ILAC 270.115(c)(1)(E). The COMPANY 5 has its headquarters in CITY, Illinois, and this is where its principal executive is located. The Director, Commercial Sales, who directs, manages, and performs the business of selling tangible personal property is located in CITY and performs his duties and functions from that location. While COMPANY's Headquarters and some back-office functions are performed in CITY 1, STATE, the direction and management of the COMPANY 5 occurs, in CITY, Illinois. Under the fifth primary selling activity test, the COMPANY 5's headquarters [sic] in CITY, Illinois, and COMPANY 5 is engaged in the business of selling in CITY, Illinois.

CITY is also the place where overall daily operational decision making regarding the COMPANY 5 selling activities occur for the COMPANY 5's nationwide activities and where the vast majority if not all "daily operational decision making" activities associated with Illinois sales occur. In CITY, the Director, Commercial Sales solicits and negotiates the COMPANY 5's sales and signs the contracts that bind it to its sales. In CITY, the COMPANY 5 personnel receive and accept all fuel purchase orders under those contracts and perform activities necessary for the procurement of fuel. In CITY, the Director, Commercial Sales identifies supply commitments by contacting the COMPANY trader responsible for the given market to secure supply pricing, and if necessary, Director, Commercial Sales, contacts third-party suppliers directly to secure bids on fuel supply.

CONCLUSION

"A retailer engaging in three or more primary selling activities in one location in the State after a particular sale shall remit the retailers' occupation tax imposed by the taxing bodies with the authority to impose retailers' occupation tax on those engaged in the business of selling in that location." 86 ILAC 270.115(c)(2). A retailer can only be engaged in the business of selling in one jurisdiction for each sale. 86 ILAC 270.115(b)(8). The COMPANY 5 engages in four of the five primary selling activities in one location – CITY, Illinois. Therefore, the Company is obligated to remit home rule municipal ROT to CITY, Illinois as that is the location where the COMPANY 5 is engaged in the business of selling under the regulation for all its Illinois sales.

We respectively request that the Department issue a ruling stating that, under the provisions of 86 ILAC 270.115, the COMPANY 5 is engaged in the business of selling in CITY, Illinois with regard to the business activities set forth above and that its associated sales of fuel in Illinois must be sourced to CITY, Illinois.

If the Department cannot conclude that the COMPANY 5 is engaged in the business of selling in this CITY, Illinois for the reasons outlined above, we respectfully request that the Department contact the undersigned to determine what additional information is required or to allow the taxpayer to rescind this ruling request.

Thank you in advance for your prompt consideration of the matter.

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 86 Ill. Adm. Code 270.115.

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 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)

The primary selling activities are set forth in 86 Ill. Adm. Code 270.115(c)(1):

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. 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 tangle 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.

Based on a review of the activities described in your letter, the Department concludes that the first two primary selling activities take place in CITY, Illinois.

You note that payment is not tendered and received in CITY, Illinois. We must determine whether the invoice is issued from CITY, Illinois. The method for issuing invoices is similar for rack

sales and delivered sales. In either case, the supply terminal electronically informs the CITY 1, STATE headquarters and the CITY office of a delivery to a customer. The Manager, Commercial Sales, reviews the relevant customer order information. Once the information is determined to be correct, an invoice is created at COMPANY's CITY 1, STATE office. The invoice is sent electronically to the Manager, Commercial Sales. The Manager checks invoices for accuracy and either emails or mails the invoices from the CITY office to the customer.

It is apparent from the description of the invoice process, activities necessary to issue an invoice to the customer take place in more than one location. However, the review of customer order information by the Manager, Commercial Sales, prior to creation of the invoice, the check for accuracy of the actual invoice by the Manager, Commercial Sales, and issuance of the invoice to the customer take place at the CITY location. The Department believes these activities are sufficient to conclude that invoices are issued from CITY, Illinois.

Inventory is not maintained in CITY and the fourth primary test does not apply.

The fifth test is the location of the retailer's headquarters. COMPANY 1 claims its headquarters are in CITY. The Department disagrees. COMPANY 1 is a division of COMPANY, not a separate legal entity. COMPANY admits its headquarters are in CITY 1, STATE. The CITY location for the purposes of the rule is a sales office. "[A] retailer may source to a sales office separate from its headquarters and inventory *only if* it conducts all of the first three primary selling activities in that location." ST 15-0001-GIL (Jan. 7, 2015).

The Department concludes that the first three selling activities identified in subsection (c)(1)(A)-(E) take place in CITY, Illinois, and sales made by COMPANY 1 are subject to municipal retailers' occupation tax in CITY, Illinois.

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.

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:bkl