

Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145. (This is a PLR.)

December 10, 2020

NAME
ADDRESS

Dear Xxxx,

This letter is in response to your letter dated May 1, 2020, 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 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, 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:

Private Letter Ruling Request

This letter is to request that the Illinois Department of Revenue ("Department") issue COMPANY ("Company") a Private Letter Ruling ("PLR") for Service Occupation Tax ("SOT") and Retailers' Occupation Tax ("ROT") pursuant to 2 Ill. Admin. Code § 1200.110.

General Information:

1. Enclosed is a copy of Power of Attorney Form IL-2848, executed by an authorized agent of the Company, authorizing PERSON of COMPANY1 to act on the Company's behalf.
2. This PLR request is not based on alternative plans of proposed transactions or a hypothetical situation, it is instead on the Company's actual business transactions, while acting as a marketing execution firm, which is described in detail below.

3. As we have discussed during our prior conversation, the issue that is the subject of this PLR request is currently before Department's Informal Conference Board ("ICB"). We initially reached out to you at the suggestion of PERSON1, head of the ICB, to determine if the Department and Company might be able to agree to a manner in which Illinois SOT and ROT laws can be applied to Company's business for the period before the ICB and for subsequent periods. It was agreed that we would present this issue to the Department in the form of a PLR request.

4. Neither the Company, nor any related taxpayer, is engaged in litigation with respect to this issue with the Department. The Company is not currently involved in any litigation in which the Department is a party.

5. There is no dispositive case law concerning the transactions that are the subject of this request, although as described below we believe there is a regulation and other Department authority that address the questions at issue.

6. The Company knows of no authority contrary to the authorities referred to and cited in this request.

7. To the best of the knowledge of both the Company and its representatives, the Department has not previously ruled on the same or similar issues for the Company or its predecessor; nor has the Company or any representatives previously submitted the same or similar issues to the Department and withdrawn the request before a PLR was issued.

Statement of Facts:

Company is the leading marketing execution firm serving some of the world's most marketing intensive companies, including those listed in the Fortune 1000. It procures marketing materials for corporate clients across a wide range of industries, including but not limited to retail, financial services, hospitality, consumer services, consumer packaged goods, non-profits, healthcare, food and beverage, broadcasting and cable and transportation in all fifty states and internationally. Company is headquartered in CITY, Illinois and is designated as a C corporation for both Illinois and federal tax purposes.

As a comprehensive outsourced global solution, Company leverages proprietary technology, an extensive international supplier network and deep domain expertise to streamline the creation, production and distribution of marketing and promotional materials, signage and displays, retail experiences, events and promotions and product packaging across every major market worldwide. Through Company's network of more than THOUSANDS global suppliers, it offers a full range of fulfillment and logistics services that allow it to procure marketing materials of virtually any kind. The breadth of its product offerings and services and the depth of its supplier network enable it to fulfill nearly every possible client marketing material need, including but not limited to printed materials such as mailed advertising campaigns, branded items, such as pens, mugs and caps, and retail experiences, such as point of sale displays frequently used in grocery or convenience stores. Company provides marketing material to thousands of clients every month.

Company generates its revenue by sourcing custom products at the request of its clients. These products are shipped to a final destination, as directed by the client. Company is registered in all states that have a sales tax regime and it provides resale certificates to its suppliers prior to the suppliers issuing an invoice to Company.

Company production managers ("PM") are assigned to accounts (clients), usually based on jurisdiction. PMs working from and for US operations are physically located in one of three locations: 1) onsite within the offices of large clients, 2) in one of Company's NUMBER US office locations, or 3) from their homes.

The sale process generally begins when members of a client's marketing team reach out to their PM to place new orders for printed or other marketing materials. After discussing the specifications of a particular order and obtaining a thorough understanding of the client's needs, the PM places a request for a quote out to various suppliers within the Company's supplier network. The PM has discretion to select, from a Company approved supply chain, which supplier should be utilized to complete an order. Deciding factors include, but are not limited to, cost, ability to meet deadlines, past experiences on similar projects and custom color or other specifications. After selecting the supplier, the PM returns the quote to the client for acknowledgement. The client's final price is determined in one of three ways: cost plus pre-negotiated margin, cost minus pre-determined baseline price for recurring items, or order-specific negotiated price. Once the PM receives client acceptance of the order, the PM issues a Purchase Order ("PO") to the supplier to commence work. The PO, issued by the PM, binds Company to abide by the PO terms with the selected supplier. PM is responsible for ensuring the supplier meets all aspects of the PO, including that it produces goods to client's specifications and that the terms of delivery are met. Once the supplier has shipped the goods, the PM invoices the client. As long as the price and quantity on the invoice match the amounts approved by client, the PM does not need additional approval to send the invoice.

Orders are custom to each client. Often, Company will utilize multiple suppliers to source a single order. The need for multiple suppliers may be due to limitations on color, capacity, and/or product availability, as well as economics. For large orders, for example direct mail campaigns, it may be most cost efficient for one supplier to print the letter, a second supplier to provide the envelopes, a third to print the return postcard and a fourth, separate vendor to receive all the pieces, compile them, and mail out the final product. Alternatively, it may be most cost effective for raw materials to be sourced from one supplier and provided to another supplier that will print or embroider the final product on the first supplier's raw materials. For example, baseball caps provided by supplier A that supplier B will embroider with the client's logo or tagline.

While Company PMs issue POs to various suppliers, neither the PM, the Company nor the client have detailed knowledge of how or where the products are produced. Similar to how Company subcontracts with its suppliers, its suppliers are generally not prohibited from outsourcing the printing or production of materials to other vendors. Thus, by way of example, the PM may contract with company A that only has operations at one location in Illinois, but company A arranges for another

service provider in STATE1 to complete the entire order. In many instances neither Company nor the PM would be aware that the end product was produced by the other service provider outside of Illinois. Additionally, some suppliers have multiple locations. Thus, production by suppliers, even for a single order, can include activity in multiple states (or multiple locations within Illinois) in order to meet client mandated delivery deadlines or other specifications. Furthermore, production delays caused by employment issues, machinery malfunction, raw material delays and other items may cause a supplier to shift production from a facility in close proximity to the ultimate client to a location in another state or in the rare occasion another country.

Finally, as indicated above, Company relies on a network over THOUSANDS suppliers. Due to the custom nature of the business, suppliers often change on an order by order basis. Each Company client relationship typically utilizes multiple suppliers, on average about 30 suppliers for any client in a given year, and it is extremely rare that the same supplier will be used for every order for any given client.

Historically, Company has applied a SOT rate to printed items or a ROT rate to personalized tangible personal property based on the location of the PM assigned to a particular client and where he or she performed his or her daily business functions. By way of example, if a particular client's PM is located at Company's CITY office, Company paid the CITY tax rate, even if the client was in CITY1 and the supplier was in CITY2. By way of another example, if the Company's client and PM were in CITY1 and one supplier for project A for the client was in CITY and another supplier in STATE2 for project B for the same client, Company paid CITY1 's rate on both project transactions. Under these examples, ICB asserted that the Company is required to pay SOT based on the rate of the location of Company's suppliers. Additionally, while not addressed by ICB, the auditor asserted that ROT on any personalized tangible personal property should be based on Company 's headquarter location.

Issue:

Company disagrees with the ICB's determination that the location of Company 's suppliers dictates that local rate of tax that must be paid on a SOT transaction. However, in an effort to work with the Department, Company contacted outside tax consultants to determine if they could help develop a way to automate a tax compliance system given the variables discussed above. After a number of conversations with the outside consultants, the Company has determined that it cannot implement a process to capture the data necessary to allow it to make tax determinations using multiple supplier locations for a single client transaction or how to even uncover the fact that a supplier outsourced his or her obligation to an unrelated third party. Overall the consultants concluded that there are simply too many variables and unknowns to create an effective system to track tax in the manner suggested by ICB during the initial phase of the ICB process. Additionally, Company disagrees with the auditor's assertion that personalized tangible personal property should be subject to ROT based on rate applicable at Company's headquarters. Such a determination does not take the totality of the selling activities, which occur at the PM's location, into consideration.

Statement of Relevant Authorities:

86 Ill. Admin. Code §140.145 is the only regulation promulgated by the Department entitled multi-service situations. Under subpart (c) its states:

Multi-service transactions between registered servicemen. Primary servicemen who are registered with the Department, regardless of whether they are de minimis servicemen paying Service Occupation Tax on their cost price or servicemen paying tax on their selling price, should provide Certificates of Resale to secondary servicemen who are also registered.

86 Ill. Admin. Code § 280.115 of the Home Rule Municipal Service Occupation Tax states in part:

If a purchase order is accepted outside this State but the tangible personal property which is sold incident to the sale of service is in the inventory of a serviceman located within a home rule municipality at the time of its sale (or is subsequently produced in the home rule municipality) then delivered in Illinois to the service customer, the place where the property is located at the time of the sale (or subsequent production in the municipality) will determine where the seller is engaged in business for Home Rule Municipal Service Occupation Tax purposes with respect to such sale.

86 Ill. Admin. Code § 270.115 of the Home Rule Municipal Retailers' Occupation Tax states in part:

- c) Application of Composite of Selling Activities Test to Retailers Conducting Selling Activities in Multiple Taxing Jurisdictions. Every retailer maintaining a place of business in this State shall determine the taxing jurisdictions in which it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in this subsection (c), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit retailers' occupation tax. These retailers shall remit retailers' occupation tax as directed by statute, notwithstanding anything in this Part to the contrary.
 - 1) Primary Selling Activities. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions shall consider the following selling activities to determine where they are engaged in the business of selling with respect to each sale. 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:
 - 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.

2) 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 engaged in the business of selling in that location. A retailer engaging in three or more primary selling activities for a particular sale outside the State shall collect and remit tax to the State to the extent required by the Illinois Use Tax Act [35 ILCS 105] for that sale, except as provided in subsection (d).

4) Secondary Selling Activities. If the primary selling activities listed in subsection (c)(1) occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, the following additional selling activities shall be considered to determine the jurisdiction in which the retailer engaged in the business of selling.

- A) Location where marketing and solicitation occur;
- B) Location where the seller engages in activities necessary to procure goods for sale;
- C) Location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A);
- D) Location where purchase orders or other contractual

documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;

- E) Location where title passes; and
- F) Location where the retailer displays goods to prospective customers, such as a showroom.

The Illinois Supreme Court in *Hartney Fuel Oil Corp v. Hamer*, nullified a ROT regulation that looked at only one activity to determine which local ROT rate applied to a transaction. The Court stated: "[s]econd, by allowing for only one, potentially minor step in the business of selling to conclusively govern tax situs, this regulation impermissibly constricts the scope of intended taxation." 376 Ill. Dec, 294, 312 (2013).

Where a general statutory provision and a more specific one relate to the same subject the Illinois Supreme Court has applied a presumption that the more specific provision will govern. *Moore v. Green*, 219 Ill. 2d 470, 480 (2006). Similarly, the Court will presume that the legislature intended the more recent statutory provision to control. *State v. Mikusch*, 138 Ill. 2d 242, 254 (1990).

Although general information letters are not binding, they are instructive. It would be unfair to taxpayers for the Department to take one position in general information letters and take a contrary position in later proceedings. *The Department of Revenue of the State of Illinois v. Taxpayer, Inc.* ST 99-9 (01/01/2000).

With respect to transactions involving the second product, you appear to be describing a multi- service situation. When a serviceman (e.g., a dentist) contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman (dentist), he engages the services of a secondary serviceman (laboratory or denturist) in order to obtain all or part of the product and services desired by the service customer (patient). Whether the primary and secondary servicemen are registered or not or de minimis or not will determine what type of tax will be incurred as well as who will incur the tax. The provisions of 86 Ill. Admin. Code 140.145 explain the different ways in which servicemen may handle their tax liability in multi-service scenarios. ST 17-0034-GIL, 10/03/2017.

The provisions of 86 Ill. Admin. Code 140.145 explain the different ways in which servicemen may handle their tax liability in multi-service scenarios. ST 16-0051-GIL, 09/30/2016.

You appear to be describing a multi-service situation. You may want to visit the Department's website at tax.illinois.gov and review letters that we have issued regarding multi-service scenarios. In the meantime, we hope the following information is helpful. When a serviceman contracts out all or a portion of the service that he will provide, he is

acting as a primary serviceman in a multi-service situation. As a primary serviceman, he engages the services of a secondary serviceman in order to obtain all or part of the product and services desired by the service customer. Whether the primary and secondary servicemen are registered or de minimis will determine what type of tax will be incurred as well as who will incur the tax. See 86 Ill. Admin. Code 140.145 for the ways in which servicemen incur tax in multi-service scenarios. Depending on whether each of the servicemen are registered servicemen in Illinois, 86 Ill. Admin. Code 140.145(c) may apply, and certificates of resale may be given for purchases of services involving the transfer of tangible personal property which will be transferred incident to a subsequent sale of service. ST 15-0084-GIL, October 19, 2015.

Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption. ST 11-0047-GIL, 06/22/2011

Analysis:

SOT

Company's payment of SOT for printed materials based on the location of it [sic] PMs' activities is proper. The only regulatory authority that contemplates a multi-serviceman or secondary serviceman situation is 86 Ill. Admin. Code § 140.145. Part (c) of that section addresses Company's circumstances and mandates that Company provide its suppliers, the secondary servicemen, with an exemption certificate. Based 86 Ill. Admin. Code § 140.145(c) the transaction with the secondary serviceman is a nontaxable transaction and therefore we would not look to that transaction as the situs of sale. ICB determined that by providing the resale certificate, Company is bound to pay SOT at the rate of the secondary serviceman's location. ICB points to 86 Ill. Admin. Code § 280.115 as support for its determination. However, that section does not address a multi-serviceman or secondary serviceman situation. At best it is at odds with 86 Ill. Admin. Code § 140.145 and § 140.145 being more specific controls. See, *Moore v. Green*, 219 Ill. 2d 470, 480 (2006). Additionally, 86 Ill. Admin. Code § 140.145, having been amended more recently, March 23, 2001 would control over 86 Ill. Admin. Code § 280.115 amended April 11, 1991. See, *State v. Mikusch*, 138 Ill. 2d 242, 254 (1990). At worst 86 Ill. Admin. Code § 280.115 is invalid because it exceeds existing statutory authority. A review of Illinois statutory law did not yield statutory language supporting the conclusion reached in 86 Ill. Admin. Code § 280.115.

ICB's position cannot be applied in a normal business setting where thousands of monthly transactions take place with thousands of clients and thousands of suppliers. Company does not have insight into where every supplier transacts

business. Additionally, ICB's position cannot be applied in situations where multiple suppliers are under contract to provide different elements of the overall client deliverable. For example, ICB's position cannot be applied to a situation where to fulfil a single contract for a client for a single sales price, one supplier provides customer letters, another supplier provides response post cards, yet another supplier the envelope the letter and post card are mailed in and a fourth supplier compiles the three pieces and mails them out to the potential customers. This situation, which Company regularly encounters, is not addressed by 86 Ill. Admin. Code § 280.115. Such a scenario, however, is contemplated by 86 Ill. Admin. Code § 140.145(c), which directs the primary serviceman to provide the secondary servicemen with a resale certificate. Additionally, as articulated in ST 11-0047-GIL "[s]uch servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations." Emphasis added.

Under the ROT when a reseller provides a manufacturer with a resale certificate, the reseller does not pay ROT based on the manufacturer's or the supplier's location. The resale certificate allows the reseller to pay tax based on his or her selling activities. Similarly, 86 Ill. Admin. Code § 140.145(c), allows the primary serviceman to pay the proper rate of SOT based on his activities. Concluding any other way would render the statement in 86 Ill. Admin. Code § 140.145(c), as well as 20 years of letter ruling directing primary servicemen to provide their secondary servicemen with resale certificates meaningless. Finally, on this point, the undersigned is aware of no other area of state tax law where the activity of an unrelated third party determines the tax rate the ultimate vendor must pay on a transaction with his or her client or customer.

Company's receipts for purposes of local SOT should be sourced to the location where the preponderance of Company's selling activities take place. Those activities for Company would include among other things the location where the PM: 1) works with the client to understand its marketing needs; 2) prepares the request for proposal from suppliers, 3) reviews the responses from interested suppliers, 4) chooses and contracts with the supplier, 5) addresses client and supplier issues, 6) approves payment of the supplier, and 7) bills the client.

Additionally, moving forward with the ICB's position will force Company and similarly situated taxpayers to exclusively use non-Illinois suppliers. Illinois printers and other suppliers have already been negatively impacted by the recent expiration of the expanded temporary storage exemption. Mandating that Company pay a tax rate determined by their suppliers' locations will force Company and taxpayers that work with secondary servicemen to work exclusively with out of state suppliers, further negatively impacting Illinois printers and other suppliers. The only way for Company and taxpayers that work with secondary servicemen to automate their tax systems, which is a necessity for businesses that have thousands of monthly transactions, is for them to have certainty on what rate of tax they must charge. If Company cannot pay a rate based on its PMs' activities, it will be forced to find an easily substituted alternative. The base 6.25% rate charged on out-of-state transactions will not only be quickest and easiest way to automate Company's tax system, it may be the only way to automate the tax process outside of using the PMs' locations.

Furthermore, ICB's position is easily subject to manipulation. As described above, just moving everything to out-of-state suppliers causes a much lower tax rate than the process proposed by Company. Illinois Courts generally abhorred such easily manipulated rules. For example, in *Hartney Fuel Oil Corp v. Hamer*, 376 Ill. Dec, 294, 312 (2013), the Court invalidated the Department's rule that the location of order acceptance dictated, which rate of local ROT a seller was required to remit on a transaction.

While the *Hartney* Court did not expressly address SOT, its decision on factors to consider in applying the proper local ROT rate, does provide useful insights into the local tax consequences of occupation taxes in general. ICB's assertion that one singular fact should control which local rate of SOT applies is directly at odds with the arguments the Department raised in the course of the *Hartney* litigation. There the Department vociferously argued that a totality of the circumstances test should be applied to the occupation of selling. The *Hartney* Court ultimately agreed with the Department, citing Illinois Supreme Court precedent for the premise that the business of selling is a composite of many activities. See, e.g., *Ex-Cello-0 Corp. v. McKibbin*, 50 N.E.2d 505, 507 (1943); *Hartney* at 376 Ill. Dec. 303-304.

Given the Illinois Supreme Court's analysis in *Hartney*, a court could find that 86 Ill. Admin. Code § 280.115 is contrary to that decision and void the Department's assertion that a single activity of an unrelated third party, such as location of that third party's inventory or where it product is produced, dictates where a service provider is engaged in the business of selling. Thus, while § 280.115 may possibly create a presumption of where a seller's selling activity take place, the business of selling is a fact-intensive inquiry which cannot be circumvented by regulatory shortcuts using "only one, potentially minor step in the business of selling to conclusively govern tax situs." *Hartney*, at 376 Ill. Dec. 312.

ROT

Company's payment of ROT for personalized tangible personal property based on the location of it [sic] PMs' activities is proper. As discussed in the facts section above, Company's primary selling activities take place at PM's location. The PM 1) solicits clients and works with the client's marketing team to address their need for marketing materials; 2) after obtaining a thorough understanding of the client's needs, the PM works with various suppliers to obtain price quotes for an order and ensure that the marketing materials offered by the supplier will meet the client's specifications; 3) the PM has full discretion to decide what supplier should be utilized to complete an order; 4) after the PM selects a supplier, the PM returns the quote to the client for formal acknowledgement; 5) after obtaining the client's acknowledgement the PM binds Company to the purchase from the supplier through a PO and sale to the client; 6) the PM is responsible for ensuring the supplier meets all aspects of the PO, including that it produces goods to client's specifications and that the terms of delivery are met; and 7) once the supplier has shipped the goods, the PM invoices the client.

The PM's activities meet at least three of the primary selling activities articulated in 86 Ill. Admin. Code § 270.115(c)(1). The activities set forth under §

270.115(c)(1)(A), (B) and (C) all take place at the PM's location. Therefore under § 270.115(c)(2) Company is required to remit ROT based on the PM's location. Additionally, while unnecessary because at least three primary selling activities take place at the PM's location the secondary selling activities set forth in § 270.115(c)(4)(A), (B), (C) and (D) also take place at the PM's location. As a result, Company is required to remit ROT based on the PM's location.

Requested Ruling:

Based on the above, Company requests that the Department rule that Company has properly applied the SOT rate to printed materials and the ROT rate to personalized tangible personal property based on the location of the PM assigned to a particular client and where he or she performs his or her daily business functions. If the Department proposes to rule other than as requested herein, we respectfully request a conference with the Department as to the issues contained in this PLR request and reserve the right to withdraw the request at any time prior to a ruling by the Department.

Prior to publication we respectfully request that the Department delete the name and any identifying information about the Company. For the Department's convenience, we would be happy to provide the Department with a redacted version of this PLR request.

Thank you for your consideration and attention to this request. I look forward to your response. In the interim, should you have any questions or concerns or should you require additional information, please do not hesitate to let me know.

By email dated DATE, you confirmed that the Company makes SOT and ROT sales from its headquarters in CITY, Illinois HQ, has PMs in Illinois, and the Company is not a de minimis serviceman.

DEPARTMENT'S RESPONSE:

Retailer's Occupation Tax

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

An "Illinois Retailer" is one who makes sales of tangible personal property in Illinois. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers. The Department's regulations were amended in response to the Illinois Supreme Court's decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130.

The regulations specify the selling activities that trigger Retailers' Occupation Tax liability in Illinois. See, e.g., 86 Ill. Adm. Code 270.115.

Another type of retailer is a retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is found at 35 ILCS 105/2 and described further, in part, in 86 Ill. Adm. Code 150.201. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

Jurisdictional Issues – Retailers' Occupation Taxes

As noted above, the Department revised the administrative rules that govern the sourcing of local retailers' occupation taxes. 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)). 86 Ill. Adm. Code 270.115(b)(2).

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 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.

A retailer engaging in three or more primary selling activities in one location in the State or a particular sale must remit the retailers' occupation tax imposed by the taxing bodies with authority to impose retailers' occupation tax on those engaged in the business of selling in that location. A retailer engaging in three or more primary selling activities for a particular sale outside the State must collect and remit tax to the State to the extent required by the Illinois Use Tax Act for that sale, except under certain circumstances identified in Section 270.115(d)). 86 Ill. Adm. Code 270.115(c)(2).

If a retailer's selling activities take place in taxing jurisdictions outside the State, except that 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 its sale (or is subsequently produced by the retailer in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced by the retailer will determine where the retailer is engaged in business with respect to the sale. 86 Ill. Code 270.115(d)(2).

Service Occupation Tax

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen are required to provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the

servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Where tangible personal property is located in this State at the time of its transfer (or is subsequently produced in Illinois) as an incident to a sale of service, and is then delivered in Illinois, the serviceman incurs Service Occupation Tax liability on the selling price of the property. 86 Ill. Adm. Code 140.501(a).

Multi-Service Transaction – Secondary Servicemen

Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145. A primary serviceman engages the services of a secondary serviceman in order to obtain part or all of the products and services desired by the service customer. The point at which Service Occupation Tax or Use Tax will be incurred depends upon whether the primary and secondary servicemen are registered or de minimis. In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. 86 Ill. Adm. Code 140.301(a).

When both primary servicemen and secondary servicemen are registered, primary servicemen provide secondary servicemen with a Certificate of Resale. A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property or 50% of the bill to the service customers. If the primary serviceman is registered and de minimis (that is, under the 35% threshold, or 75% for pharmacists and printers), he may choose to remit Service Occupation Tax to the Department based upon his cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Upon selling their product, servicemen are required to collect the corresponding Service Use Tax from their customers.

If an unregistered de minimis serviceman subcontracts service work to another unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis.

Transactions involving multiple servicemen work best if both the primary and secondary servicemen are registered. This will enable both parties to utilize Certificates of Resale. If the primary serviceman is registered and the secondary serviceman is not registered, it is possible that tax will be incurred at more than one point during the course of sale of a particular item. This will occur if the unregistered secondary serviceman has paid Use Tax with respect to an item of tangible personal property, then transfers that property to a primary serviceman who will, in turn, incur a Service Occupation Tax liability when transferring the item to the service customer.

Jurisdictional Issues – Service Occupation Taxes

If the Illinois Service Occupation Tax on a transaction is being remitted to the Department by the serviceman, the serviceman shall also pay any local service occupation tax to the Department on the same transaction if such serviceman engages in the business of making sales of service within a jurisdiction that has adopted a local service occupation tax. If a purchase order is accepted outside this State but the tangible personal property which is sold incident to the sale of service is in the inventory of a serviceman located within a home rule municipality at the time of its sale (or is subsequently produced in the home rule municipality) then delivered in Illinois to the service customer, the place where the property is located at the time of the sale (or subsequent production in the municipality) will determine where the seller is engaged in business for local service occupation tax purposes with respect to such sale. See, for example, 86 Ill. Adm. Code 280.115.

Service Use Tax

The Service Use Tax is a privilege tax imposed on the privilege of using, in this State, tangible personal property that is received anywhere as an incident to a purchase of service from a serviceman. However, if the serviceman would not be taxable under the Service Occupation Tax Act despite all elements of the sale of service occurring in Illinois, then the tax imposed by the Service Use Tax Act does not apply to the use of such property in this State. Any evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State. The rate of the Service Use Tax is 6.25% of the serviceman's selling price of the tangible personal property transferred by the serviceman as an incident to a sale of service. 86 Ill. Adm. Code 160.101. The Service Use Tax shall be based on the selling price of the tangible personal property transferred incident to the sale of service if stated separately on the invoice from the serviceman. If not stated separately, then the tax will be imposed on 50% of the entire billing from the serviceman. However, the Service Use Tax which is collected by a de minimis serviceman who incurs Service Occupation Tax on his cost price of tangible personal property transferred incident to service, as provided at 86 Ill. Adm. Code 140.109, shall be based upon his cost price of tangible personal property transferred incident to his or her sales of service. 86 Ill. Adm. Code 160.115.

Ruling

The Company has its headquarters in CITY, Illinois. It is registered with the Department. It makes sales at retail of tangible personal property in Illinois and incurs Retailers' Occupation Tax liability on such sales. It also makes sales at retail of tangible personal property from out-of-state locations and ships the property to Illinois customers. It is required to collect and remit Use Tax on such sales, except when the property is in inventory in Illinois at time of sale or is subsequently produced in Illinois, in which case, it incurs liability for Retailers' Occupation Tax, including any applicable local taxes. In addition, it makes sales of service in Illinois and incurs Service Occupation Tax liability on those sales. Finally, the Company makes sales of service from out-of-state locations and ships the products to customers in Illinois. It is required to collect and remit Service Use Tax on such sales, except when the property is in inventory in Illinois at time of sale or is subsequently produced either by the Company or a supplier in Illinois, in which case, it incurs liability for Service Occupation Tax, including any applicable local taxes.

Section 270.115 addresses jurisdictional issues for determining Retailers' Occupation Tax liability and liability for any applicable local retailers' occupation taxes. The Company requests a

ruling that, for sales at retail of tangible personal property in which it incurs Retailers' Occupation Tax liability, the sale takes place at the location of the PM.

The Company states its PMs have the following authority and provide the following functions: 1) solicit clients and works with the client to determine its needs; 2) work with various suppliers to obtain price quotes and ensure that the marketing materials will meet the client's specifications; 3) the PMs have full discretion to select the supplier; 4) after the supplier is selected, the PMs return the quote to the client for formal acknowledgement; 5) after obtaining the client's acknowledgement, the PMs bind the Company to the purchase from the supplier through a PO and sale to the client; 6) the PMs are responsible for ensuring the supplier meets the terms the PO; and 7) once the supplier has shipped the goods, the PMs invoice the client. Three of the primary selling activities take place at the location of the PM. 86 Ill. Adm Code 270.115(c)(1)(A), (B), and (C). For sales at retail of the tangible personal property made by PMs located in Illinois, the Company must remit Retailers' Occupation Tax and applicable local occupation tax based on the location of the PM making the sale.

For sales at retail of tangible personal property made by PMs located outside of Illinois, the Company must collect and remit Use Tax to the State. 86 Ill. Adm. Code 270.115(c)(2). However, for out-of-state sales, if the tangible personal property that is sold is in an inventory in the possession of the Company within a jurisdiction in Illinois at the time of its sale (or is subsequently produced by the Company in the jurisdiction), then delivered in Illinois to the purchaser, the Company incurs Retailers' Occupation Tax liability and any applicable local retailers' occupation taxes for the jurisdiction where the property is located at the time of the sale or where it is subsequently produced by the Company. 86 Ill. Code 270.115(d)(2). Your letter states that "neither the PM, the Company nor the client have detailed knowledge of how or where the products are produced." Moreover, "suppliers are generally not prohibited from outsourcing the printing or production of materials to other vendors." For out-of-state sales, for purposes of determining whether tangible personal property is subsequently produced in Illinois for purposes of Retailers' Occupation Tax liability, the Department will look to the location of any supplier retained directly by the Company. If a supplier retained by the Company is located in Illinois, it will be presumed the tangible personal property is subsequently produced by the supplier in Illinois. This presumption may be overcome by the Company by providing documentation that the supplier, or a subcontractor contracted by the supplier, produced the tangible personal property outside of Illinois and subsequently shipped the property to an Illinois location.

For sales of service made by PMs located in Illinois, the Company must remit Service Occupation Tax and any applicable local service occupation taxes based on the location at which the PM engages in the business of making sales of service. The Company incurs Service Occupation Tax either on the separately stated selling price of the tangible personal property transferred incident to the service, or if the Company does not wish to separately state the selling price of the tangible personal property transferred, the Company incurs tax on 50% of the entire bill to its customers as the tax base.

The Company states that it uses other servicemen to fulfill orders from its clients. Section 140.145 addresses multi-service situations. Subsection (a) addresses multi-service transactions between de minimis servicemen. Subsection (c) addresses multi-service transactions between registered servicemen. Subsection (d) addresses multi-service transactions between registered and unregistered servicemen when each serviceman is located in Illinois. Subsections (c) and (d) permit the primary serviceman to provide secondary servicemen with certificates of resale.

The Company appears unable to determine the locations of the secondary servicemen fulfilling orders, or whether they are de minimis servicemen or are registered with the Department. Without this information, the Company cannot avail itself of the provisions of Section 140.145 that would allow the primary serviceman to provide certificates of resale to its suppliers. When the Company makes a sale of service to its clients in a multi-service transaction, it will incur Service Occupation Tax on either its selling price or its cost price. The Company must determine its cost price either by using the separately stated selling price of tangible personal property set forth on the invoice from the supplier or, if no selling price is separately stated, 50% of the total invoice including labor and service charges, in the absence of proof (e.g., the supplier's purchase invoices showing his cost price) of the consideration paid by the supplier for the purchase of such property. 86 Ill. Adm. Code 140.485(f).

For sales of service made by PMs located outside of Illinois, the Company must collect and remit Service Use Tax to the State on the tangible personal property transferred incident to the sale of service. 86 Ill. Adm. Code 160.101. However, for out-of-state sales, if the tangible personal property that is transferred is in the inventory in the possession of the Company or its serviceman within a jurisdiction in Illinois at the time of its sale (or is subsequently produced by the Company or serviceman in the jurisdiction), then delivered in Illinois to the purchaser, the Company incurs Service Occupation Tax liability. The Company also incurs liability for any applicable local service occupation taxes for the jurisdiction where the property is located at the time of the sale or where it is subsequently produced by the serviceman. 86 Ill. Code 270.115(d)(2). As noted above, your letter states that "neither the PM, the Company nor the client have detailed knowledge of how or where the products are produced." Moreover, "suppliers are generally not prohibited from outsourcing the printing or production of materials to other vendors." For out-of-state sales, for purposes of determining whether tangible personal property is in an inventory in Illinois at the time of sale or is subsequently produced in Illinois for purposes of Service Occupation tax liability, the Department will look to the location of any supplier retained directly by the Company. If a supplier retained by the Company is located in Illinois, it will be presumed the tangible personal property was in inventory in Illinois at the time of sale or was subsequently produced by the supplier in Illinois. This presumption may be overcome by the Company by providing documentation that the inventory was located outside the State at the time of the sale or the supplier, or a subcontractor contracted by the supplier, produced the tangible personal property outside of Illinois and subsequently shipped the property to an Illinois location.

The rulings herein are prospective in nature and apply to sales of tangible personal property and sales of service made on and after the date of this letter.

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:rkn