

This letter discusses nexus. See Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992). (This is a GIL.)

March 31, 2008

Dear Xxxxx:

This letter is in response to your letter dated February 26, 2008, in which you request 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.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is a follow up to a recent telephone conversation with your office concerning the reporting requirements for one of our clients who is a North Carolina S. Corporation. As per our phone conversation, the above taxpayer is seeking a general information letter ruling pursuant to 2 Ill. Administrative Code Section 1200.120 concerning whether our client has the requisite activities in Illinois for your state to confer nexus upon our client for S corporate income and sales tax, respectively.

As for our client's activities and operations in Illinois, all of our client's real property, personal property, and employees are situated in North Carolina. Moreover, during the past seven years, the Company has not engaged in any installation, training functions, repairs, credit checks, or any other services in Illinois. Rather, the Company's physical presence in Illinois has been limited to attending trade shows on a regular basis and engaging an exclusive third party, who is not domiciled in Illinois, to serve as an authorized dealer of our client's software in Illinois. But for the occasional attendance at a trade show and the use of an exclusive third party to serve as an authorized dealer of our client's software in Illinois, our client has no other contact with Illinois.

A review of the possible nexus authority for corporate income, Illinois Regulation 35 ILCS 5/304 and for sales tax, Illinois Code Statute Section 35 ILCS 105/2, respectively, indicates that it is possible that attending trade shows as well as engaging an authorized dealer by which initial sales of the client's software is consummated may be

sufficient for Illinois to confer nexus on our client. To this end, our client requests guidance as whether this suffices for corporate income and sales tax nexus, respectively.

In the event that the Department determines that attending trade shows and utilizing an authorized dealer by which initial sales of the client's software are effectuated is sufficient for the Department to confer nexus on our client, our client will submit a BOA-2 Application for Voluntary Disclosure for the sole purpose of adhering to the rules and regulations pertaining to the Sales and Use Tax and Illinois Composite Income and Replacement Tax collection responsibilities and obligations for the State of Illinois.

We sincerely appreciate your prompt attention to this matter. If you have any questions or require any additional information in order for you to make your nexus determination and the contingent VDA request with respect to our client, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE:

Determinations regarding the subject of nexus are normally very fact specific. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information. The following guidelines, however, may be useful to you in determining whether your client would be considered "a retailer maintaining a place of business in Illinois" subject to Use Tax collection obligations.

Whether a retailer is subject to Illinois Retailers' Occupation Tax (sales tax) liability or is required to collect Illinois Use Tax from its Illinois customers depends upon whether that retailer has sufficient "nexus" with the State of Illinois so that the retailer will be subject to Illinois law. The following information outlines the principles of nexus.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. 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.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). 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.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical

building. Under Illinois law, it also includes the presence of any agent or representative of the seller. This could include independent contractors. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Zehnder*, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and the customer must remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
Associate Counsel

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