

This letter discusses nexus, construction contractors, sales for resale, and sales to governmental bodies. See 86 Ill. Adm. Code Part 130. (This is a GIL.)

May 31, 2006

Dear Xxxxx::

This letter is in response to your letter received November 30, 2005, 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.ILTAX.com](http://www.ILTAX.com) 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:

We are endeavoring to have a clear and decisive understanding of our requirements to collect tax and remit tax to the State of Illinois.

During several phone conversations (3) we have come to the following conclusions, but need to obtain validation of our interpretation of what the State employees have told us. If possible, can you give us the true/false answer to our interpretations? If this is not correct protocol, please issue whatever rendering you can on the situations outlined. Thank you in advance.

During phone conversations with State specialists 11/15, 11/16 and 11/17

Phone 1 800 732 8866 1-0-0 State of Illinois

Beth(with ABC) stated the following facts:

- \*Business selling products is a STATE Corporation
- \*Manufacturing of completed products (elevator components) occurs in STATE
- \*Raw materials are purchased in STATE and no sales tax is paid to STATE
- \*ABC maintains an office in CITY which is a staging/sales office
- \*Installation is sometimes done on product
- \*Installation is not always done on project

Questions:

\*What tax is due for each of our situations:

**OUR UNDERSTANDING OF ILLINOIS REQUIREMENTS:**

When we ship product or ship and install product as a wholesaler to a retailer who has provided proper documentation of their certificate of registration, there is no tax to be collected or paid by ABC. TRUE/FALSE

**MORE SPECIFICALLY:**

**When we sell product but are not installing**

- A) We are selling to end user:  
**Because we have nexus (an office in CITY) even if we are shipping FOB from STATE (not installing). we still must pay and/or charge use tax because we have a presence if and only if we are selling to the end user**  
TRUE FALSE

UNLESS

\*The project is an exempt government, or other exempt type project. We can accept this exemption, and should have a copy of the E form in our file  
We can accept a third party delivery of exemption status on a project (Otis gives us an exemption certificate for the Church) TRUE FALSE

OR UNLESS

- B) We are selling wholesale:  
A) We need a current resale certificate on file from our customer. No Tax is collected by us. TRUE FALSE

**INSTALLING**

To determine if we have tax liability, we must ask:  
Are we selling wholesale or retail?

- A) Wholesale: Our client is NOT the end user and will have to resell the personal tangible property to someone else (either another contractor or to owner) Tax liability is with the client we sold to. TRUE  
FALSE
- B) We are selling to the end user. Unless exempt (must receive Certificate)  
We must remit 6.25 percent use tax on the personal tangible Property (which includes everything except installation) TRUE  
FALSE

\*\* FOR A ABOVE: Obtain a resale certificate from the prime Contractor OR get an actual copy of their certificate of registration.

**INSTALLATION IS BEING SUBCONTRACTED BY ABC**

ABC receives the purchase order for both materials and installation,  
But subcontracts the labor for installation.

Wholesale: Our client is not the end user and is selling both the ABC personal tangible property and the installation To end user. Tax liability is with the client we sold to TRUE FALSE

Retail: Our client is the end user. We must collect use tax on materials (installation is exempt) TRUE/FALSE

Thanks in advance.

The information can be emailed or faxed

## DEPARTMENT'S RESPONSE

You have asked a number of questions that can be answered by reviewing the Department's regulations. We hope the following is helpful.

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 company would be considered a retailer subject to sales 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), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. 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. 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%.

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b), enclosed. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which the retailer has nexus, but both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

In regard to construction contractors, we refer you to the Department's regulations at 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (Go to the Department's website and look under Laws/Regs/Rulings.) Please note that if subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property. This situation is described in the Department's letter ST 00-0009-PLR.

The resale exemption is described in the Department's regulations at 86 Ill. Adm. Code 130.210 and 86 Ill. Adm. Code 130.1405. This includes information regarding resale certificates.

Sales to governmental bodies are described in the Department's regulation at 86 Ill. Adm. Code 130.2080. Sales to purchasers performing contracts with governmental bodies are described in 86 Ill. Adm. Code 130.2076.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) 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,

Martha P. Mote  
Associate Counsel

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