

General Information Letter: The Department does not ordinarily give binding rulings on the existence of nexus with a particular taxpayer.

June 12, 2000

Dear:

This is in response to your letter dated April 19, 2000 in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). 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. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

We are writing to request a determination as to whether xxxxxxxxxxxxxxxxxxxxxxxxxxx activity creates sufficient contact with your state to require xxxxxxxxxxx to collect sales or use tax. In addition, if xxxxxxxxxxx has sufficient contact, we wish to know if income derived from the company's activities conducted over Internet are taxable in your state.

xxxxxxxxxxxxxxxxxxxxxxxx is located in xxxxxxx. The xxxxxxx location will take orders for the product. Technical services in the creation and support of the product will occur at an out of state location. xxxxxxxxxxx, does not have a property or employees in your state.

The primary product sold by the company consists of the establishment of Web Centers. For an annual fee, a member will be assigned a Website address, the Web Center will be hosted, and the member will have access to certain features provided to customize the Web Center. Features on the Web Center, include templates that simplify the process of establishing the site, links to third party affiliate programs, Web-based personal information management tools (i.e., calendar, address book, schedule, etc.), Web-based e-mail, etc.

After the member signs up, the member may choose to participate in the company's compensation program. The compensation program pays to the member a retail bonus on future Web Center sales associated to the member by use of an ID#. In addition, Override Bonuses may be paid to the member based on downline sales volume related to sign ups that the member has sponsored.

DISCUSSION

This letter concerns the issue of nexus, or taxable contacts, solely from an Illinois income tax perspective. The sales tax division will answer your letter under separate cover for any sales or use tax issues. I have reviewed your letter; however, a letter ruling is not the proper format to make a determination of nexus. This can only be done in the context of an audit wherein the auditor would have full access to all of the pertinent information. Accordingly, I can only give you a general discussion of the law.

Illinois law determines "doing business" as the prevailing principles of jurisprudence under the commerce and due process clauses of the US Constitution. The leading case in the area is *Quill v. North Dakota*, 112 S.Ct. 1904 (1992), which found that a state could not tax a business whose only activity within a state is by mail order. Some physical presence is necessary and a taxpayer must purposefully avail itself of an economic market before a state could exert jurisdiction over a taxpayer for taxing purposes. However, subject to the limits of *Quill* and PL 86-272 a state is allowed to tax someone if it so chooses. The providing of services does not qualify for protection under PL 86-272. But, occasional visits to the state would probably satisfy the commerce and due process clauses. In the New York case of *Orvis v. Tax Appeals Tribunal*, 86 N.Y.2d 165, 654 N.E.2d 954 (1995), the court found that four visits to nineteen customers in one year was enough to allow the state to tax a Vermont wholesaler.

In addition, I can say that the program mentioned in the last paragraph of your letter wherein a member can receive bonuses based upon sponsoring additional members may establish nexus depending upon the mechanics of the program.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles E. Matoesian
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