

This letter responds to an annual survey. (This is a GIL.)

July 29, 2021

Dear NAME:

This letter is in response to your letter dated May 20, 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.

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:

Our firm is surveying states on whether destination sales of drop shipments are to be included in your state's sales tax economic presence nexus threshold. We would appreciate your response to this survey. Please consider the following two fact scenarios:

Fact Scenario No 1:

Company A located in State 1 sells tangible personal property to Company B located in State 2. Company B requests that the tangible personal property be shipped directly to Company B's customer in Illinois (here "drop shipment").

Does your state require Company A to include the drop shipment sales to Company B that were shipped to Illinois in determining Company A's requirement to collect and remit sales tax in Illinois?

Your response: Yes ☐ No ☐

Fact Scenario No 2:

Company A located in State 1 sells tangible personal property to Company B located in Illinois. Company B requests that the tangible personal property be shipped directly to Company B's customer in State 2.

Does your state require Company A to include the drop shipment sales to Company B that were shipped to State 2 in determining Company A's requirement to collect and remit sales tax in Illinois?

Your response: Yes ☐ No ☐

Please feel free to provide additional information or explanation below.

DEPARTMENT'S RESPONSE:

A Remote Retailer is a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a remote retailer. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. As of January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of the following thresholds is met:

- A) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B) The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

See 35 ILCS 120/2(b); 86 Ill. Adm. Code 131.115. A remote retailer meeting either of these thresholds is liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers. See 86 Ill. Adm. Code 131.110(a); Section 131.115(a). Sections 131.115 and 131.120 further discuss how to calculate sales to determine whether a retailer meets either of these thresholds.

In determining whether a remote retailer meets either threshold establishing tax remittance obligations, "gross receipts" means all the consideration actually received for a sale. See 86 Ill. Adm. Code 131.120(a)(1). An "Illinois purchaser" is a person in Illinois who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration. See Section 131.120(a)(2). A remote retailer enters into a sale when it takes action that binds it to a sale and can occur even before the tangible personal property sold has been shipped to the purchaser. See Section 131.120(a)(3). Other than sales for resale, sales made through a marketplace facilitator, and occasional sales, all sales of tangible personal property, even if they are exempt from tax, must be included for purposes of calculating the thresholds. See 86

Ill. Adm. Code 131.120(b), amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021, for a maximum of 150 days.

The Department's regulations regarding Drop Shipments can be found at 86 Ill. Adm. Code 130.225. A drop-shipment situation is normally one in which an out-of-State purchaser makes a purchase for resale from a company which is registered with Illinois and has that company drop-ship the property to the purchaser's customer located in Illinois. The company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In Scenario 1, while the sale from Company A to Company B is a sale for resale, Company B's sale to the Illinois purchaser is a sale at retail. Therefore, this sale from Company B to the Illinois purchaser must be counted in Company B's gross receipts and as a transaction in determining whether Company B meets either threshold for establishing tax remittance obligations. The transaction would not count towards Company A's gross receipts or transactions in determining whether Company A meets either threshold for establishing tax remittance obligations as it is a sale for resale. In Scenario 2, Company A, located in State 1, makes a sale for resale to Company B, located in Illinois. Company B requests Company A to drop-ship the tangible personal property to the purchaser located in State 2. Because Company A's sale to the Illinois based Company B is for resale, it does not count in Company A's gross receipts or as a transaction in determining whether Company A meets either threshold.

If the sale is properly documented as a sale for resale, it would not count toward the thresholds establishing tax remittance obligations. However, if there is not proper documentation that it is a sale for resale, it would be considered a taxable retail sale by Company A when it is delivered to a purchaser in Illinois and would count toward the thresholds. Please review 86 Ill. Adm. Code 130.1405 for information to properly document a sale for resale.

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.

Very truly yours,

Alexis K. Overstreet
Associate Counsel

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