

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. 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. 86 Ill. Adm. Code 270.115. (This is a PLR.)

May 3, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated January 26, 2022, 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:

On behalf of our client, COMPANY, ("COMPANY"), a subsidiary of COMPANY ("PARENT"), we request the Illinois Department of Revenue to issue a Private Letter Ruling with respect to the factual situation discussed below. Our request is pursuant to 2 Ill. Adm. Code 1200.110. We request a ruling for purposes of determining the correct "sourcing" for local retailers' occupation tax ("ROT") on sales of products by the COMPANY and whether such sales are subject to the retailers' occupation tax of the CITY ("CITY"), where the COMPANY is headquartered, regardless of the location in the state where the products

are delivered or used. We also include the original of a letter submitted by the Mayor of the CITY (and a redacted copy of the letter to remove confidential information) in support of this request.

GENERAL INFORMATION

1. Enclosed please find original form IL 2848, Powers of Attorney, authorizing ATTORNEY1 and ATTORNEY2 ("ATTORNEYS") to represent each of COMPANY and PARENT before the Illinois Department of Revenue (the "Department").
2. This Private Letter Ruling ("PLR") is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the ROT consequences of the proposed business practices and activities of the COMPANY.
3. The COMPANY is not currently engaged in litigation with the Department in regard to this or any other tax matter.
4. The COMPANY is not currently under audit by the Department in regard to this or any other tax matter.
5. The Department has not previously ruled regarding this matter for the COMPANY. In addition, the COMPANY has not submitted the same or similar issue to the Department.
6. The COMPANY requests that certain information be redacted from the PLR prior to dissemination to others. The COMPANY requests that its name, address, and location of its office, the name of its parent company, the name of its representatives, all references to Exhibits, and the Exhibits themselves be redacted.
7. The COMPANY knows of no authority contrary to the authorities referred to and cited below.

STATEMENT OF MATERIAL FACTS

COMPANY is an Illinois limited liability company, with its principal place of business in the CITY. It is a wholly-owned subsidiary of PARENT. COMPANY was formed to operate the fulfillment center and office located in the CITY and to accept and fulfill [sic] all orders for shipment to Illinois destinations. The COMPANY will be managed by a Board of Directors or Managers.

COMPANY is leasing on a long term basis a 1.2 million square foot facility being constructed in the CITY to the specifications of the COMPANY. The facility will contain a fulfillment center/distribution center as well as an office for work by employees of the COMPANY, including one of the COMPANY's Directors. The Director will maintain his office at the COMPANY'S headquarters in the CITY. The COMPANY plans to open the facility in the CITY when construction is completed, which is anticipated to occur in MONTH YEAR. The COMPANY will have 200 employees during the first year of operation. It is anticipated that the number of jobs will increase as sales by the COMPANY increase, and fulfillment from the facility in the City increases accordingly.

The long term lease was entered into, and significant construction costs have been incurred by the COMPANY and PARENT, in order to permit the COMPANY to reduce the time for fulfilling its Illinois customers' orders by providing storage of a large volume of inventory at the facility in the CITY. It is estimated that the fulfillment center will operate on a 24 hour, 7 day a week, basis and fulfill virtually every SKU (and product option) for tangible personal property available for sale by the COMPANY; the number of SKUs and product options of tangible personal property available for sale by the COMPANY will be greater than ten million. It is anticipated that the distribution center will fulfill almost \$\$\$ million of average annual sales to Illinois customers during the first ten years. The estimated construction costs and expenses for the facility, racks, furniture and fixtures is over \$\$\$ million.

Like PARENT, which is also an online retailer, COMPANY will be selling home furnishings to consumers and businesses. The COMPANY will be maintaining a substantial inventory of products at the distribution center in the CITY to serve its Illinois customers. The principal location for fulfilling the COMPANY's orders to Illinois destinations will be the COMPANY's facilities in the CITY.

It is anticipated that approximately 95% of the COMPANY's orders will be taken online. The remaining orders will be received on the phone by customer service representatives. Over one-third to one-half of the COMPANY's orders will likely be multiple product orders, where a purchaser will order more than one product or SKU to be shipped to the same destination. While the primary location for fulfilling the COMPANY's orders will be from the COMPANY's fulfillment center in the CITY, a number of the orders likely will be fulfilled by the COMPANY's vendors. These so called drop ship orders can be fulfilled from anywhere in the United States and are shipped directly to the purchaser.

Online ordering from the COMPANY will be done through the PARENT's website. A person who shops on the website will place products to purchase in his/her shopping cart, which includes the product and the price of the product. When ready for checkout, the customer will be taken to the checkout page, which contains in effect an order form from the COMPANY, listing each product to be purchased, the price of the product, the tax to be charged (which is populated by a server located in the cloud based on the customer's delivery address), the total amount to be paid by the purchaser, the identity of the seller as the COMPANY in the case of Illinois orders and the payment method. The customer then submits an order by clicking on the button to purchase, which purchase order is based on the total amount specified in the checkout page. That submission gives the COMPANY the authority to charge the customer's credit card for the total amount approved by the purchaser, which includes the sales tax. The COMPANY will then approve the order through a server located in the cloud. After approval, the COMPANY will send by email from its office in the CITY an invoice to the customer confirming the sale. The entire transaction, from submission of an order to approval of the order, is almost instantaneous, taking less than 25 milliseconds. We are submitting with this request the planned confirmatory invoice from the COMPANY.

RULING REQUESTED

The applicable Illinois regulation, found in 86 Ill. Adm. Code Section 270.115 (the "Rule"), sets forth the ground rules for sourcing of the retailers' occupation tax. The COMPANY requests a ruling that, once the fulfillment center in the City is opened, all of its sales in Illinois are sourced to the CITY for purposes of the retailers' occupation tax, because the COMPANY will be engaged in selling activities in the CITY with respect to its sales in Illinois. The authorities supporting this requested ruling and the authorities in opposition are described below. But first some background is in order.

THE DILEMMA FOR THE COMPANY UNDER THE ILLINOIS TAX STRUCTURE

A remote retailer—i.e. a retailer that does not have a physical presence in Illinois—is required to collect the retailers' occupation tax on sales to Illinois, which tax consists of both the state tax at the rate of 6.25% on the retail sales price and the local retailers' occupation tax of the destination of the shipment; i.e. the location to which the goods are shipped. See [https://www2.illinois.gov/rev/research/taxinformation/sales/Pages/Frequently-Asked-Questions-\(FAQs\)-for-Marketplace-Facilitators,-Marketplace-Sellers,-and-Remote-Retailers.aspx](https://www2.illinois.gov/rev/research/taxinformation/sales/Pages/Frequently-Asked-Questions-(FAQs)-for-Marketplace-Facilitators,-Marketplace-Sellers,-and-Remote-Retailers.aspx). See 86 Ill. Adm. Code 131.155. The local rates vary from .5% to about 5% in Chicago. However, per the statute and applicable regulations, a retailer with a physical presence in

Illinois is required to collect only the use tax, which is the state rate of 6.25% of the price, and does not include any local tax, unless the retailer is subject to the home rule municipal retailers' occupation tax of a location. Under the applicable law, a retailer is subject to a municipality's retailers' occupation tax if it is engaged in the retail business of selling in the municipality. And if the sale is fulfilled from inventory in Illinois, the retailer is deemed to be engaged in the retail business of selling and thus subject to the retailers' occupation tax of the municipality where the inventory is located. See

[https://www2.illinois.gov/rev/research/taxinformation/sales/Pages/Frequently-Asked-Questions-\(FAQs\)-for-Marketplace-Facilitators,-Marketplace-Sellers,-and-Remote-Retailers.aspx](https://www2.illinois.gov/rev/research/taxinformation/sales/Pages/Frequently-Asked-Questions-(FAQs)-for-Marketplace-Facilitators,-Marketplace-Sellers,-and-Remote-Retailers.aspx)

In approximately MONTH YEAR the COMPANY will be opening a large distribution facility in the CITY, where it will be maintaining a substantial inventory of products to serve its Illinois customers. Thus, it will have a physical presence in Illinois and must determine whether to collect (and therefore charge its customers) only the state use tax at the rate of 6.25% or to collect and remit the retailers' occupation tax at the state rate of 6.25% and the CITY and RTA combined tax rate, because of its inventory located in the CITY and the other selling activities it undertakes in the CITY.

The Rule sets forth certain principles, including "presumptions," for determination of whether a retailer is subject to a municipality's local home rule tax. The dilemma posed by the Rule for the COMPANY is that application of these presumptions to the COMPANY will mean that it is a "roll of the dice" whether the COMPANY will be charging its customers at the correct tax rate. If it charges only the state use tax, it will be liable for the home rule tax if the CITY and RTA tax was properly due; i.e. if the sale is fulfilled from products in the CITY. If it bills its customers both the state and the CITY/RTA tax, but only the state tax is due because the products never "touched" the CITY, then it will have overcharged its customers.

PRESUMPTIONS UNDER THE RULE

Subsection (d) of the Rule lists two presumptions that may have an inconsistent result as applied to the way the COMPANY will be doing business once the facility in the CITY is opened. Subsection (d)(2) provides that if a retailer's selling activities take place in jurisdictions outside the State but the tangible property sold to the customer is in inventory at a location in Illinois at the time of sale, the retailer is deemed to have been engaged in selling activities at the location of the inventory at the time of sale if the location is in Illinois and therefore subject to the retailers' occupation tax of the municipality where the inventory is located.

Recent publications of the Department of Revenue underscore that the determination of whether the retailers' occupation tax applies added an additional modification to Subsection (d)(2) pointing to the location of the inventory at the time of delivery, which, of course, will occur after the sale is made.

Subsection (d)(3) of the Rule sets forth the presumption that all internet sales are sourced outside of Illinois and therefore subject only to the use tax, "unless there is clear and convincing evidence the predominant and most important selling activities take place in this State." Under Subsection (d)(3)(A) of the Rule, "clear and convincing evidence includes (but is not limited to) the fact that the inventory is in the possession of the retailer in the jurisdiction at the time of sale," requiring the retailer to collect and remit that jurisdiction's home rule tax.

The applications of these presumptions to the COMPANY produces the so-called Hobbesian choice for the COMPANY. As described above, within .25 milliseconds of a customer placing an order, the COMPANY informs the customer of the tax on the products listed on the order form and accepts the order. At that time, it does not know the location of the inventory of the product or products used to fulfill the order. Currently, neither the PARENT nor the COMPANY maintains inventory at Illinois locations, so the decision is simple and correct; charge the Illinois use tax at the rate of 6.25%.

But that will change once the CITY facility is opened. The COMPANY will maintain a substantial inventory at its facility in the CITY, so that at the time of sale—the order is placed and the COMPANY accepts the order—there is a likelihood that the products for the order may be fulfilled from the facility in the CITY. But there is no certainty that is the case. That can only be determined after-the-fact. So, if the COMPANY applies the presumption of Subsection (d)(3) and charges the CITY tax, but the product is fulfilled from a location outside of the CITY, then it has overcharged the customer. Yet if it charges the customer only the state tax rate of 6.25%, the Illinois Department of Revenue could assert that the COMPANY is liable for the local home rule rate if it turns out the COMPANY did fulfill the order from inventory in the CITY.

Nor can the COMPANY charge the customer's credit card to the extent it undercharged the tax on the order. That would be inconsistent with the agreement with the customer in the first place, not to mention a potential source of customer dissatisfaction.

An additional source of errors and complications occurs for multi-product orders, which will comprise up to 50% of the orders. In that case, one product may be fulfilled from inventory in the CITY while the second or third products may be shipped from a location anywhere in the United States. Application of

the presumptions under Subsection (d)(2) and (d)(3) would require different tax rates on the same order, a substantial source of confusion for the customers, the COMPANY and the Department. Similar complications arise for products that are not in stock but are “backordered,” meaning that a sale takes place but the location for fulfillment may not be determined until long after the sale.

RECONCILIATION OF THE DILEMMA POSED BY THE INCONSISTENT PRESUMPTIONS

The foundation for the presumptions in the Rule provides a sound basis for reconciling this anomalous situation. Subsection (d)(1) of the Rule provides as follows:

“For certain classes of retailers with unique, complicated or widely dispersed selling activities, determining appropriate tax situs in **every situation presents substantial administrative difficulties for both retailers and tax enforcement personnel.** Subsections (d)(2) through (d)(5) provide administrative “short cuts” that **balance the administrative difficulties presented by certain selling operations against the need for accurate tax assessment.**” (emphasis added)

The reason for the “short cut” of the presumptions in Subsections (d)(2) and (d)(3) is to provide for an accurate tax assessment in light of administrative difficulties. Use of these presumptions will produce an inaccurate result for many orders, regardless of whether the COMPANY charges the combined state and the CITY tax rates based on the presumption in Subsection (d)(2), or the use tax at the state rate based on the presumption in Subsection (d)(3). And it is not only administratively difficult, but impossible for the COMPANY to determine the proper tax rate to charge its customers at the time of sale.

The way to balance these two countervailing considerations is an interpretation of the language of Subsection (d)(3), providing an exception to sourcing outside the state when “there is clear and convincing evidence that the predominant and most important selling activities take place in this State,” in light of the statute adopting the Home Rule Municipal Retailers’ Occupation Tax. As stated in the Rule, ‘retailers will incur local retailers’ occupation tax in a jurisdiction in Illinois if they ‘enjoyed the greater part of governmental [services and] protection’ in that jurisdiction. See Subsection (b)(4) of the Rule, quoting from *Harney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 34. This interpretation of “the Act links the retailer’s tax liability to where it principally enjoys the benefits of government services.” 86 Ill. Adm. Code Section 270.115(b)(4), citing *Svithiod Club v. McKibbin*, 38 Ill. 194, 199 (19420

ILLINOIS, AND THE CITY IN PARTICULAR, PROVIDE
THE LION'S SHARE OF GOVERNMENTAL SERVICES TO THE
COMPANY

The Company, organized in Illinois to conduct sales to Illinois residents principally from inventory located in the CITY, enjoys, by far, its greater part of (or indeed only) government services from the CITY. Police and fire protection provided by the CITY along with maintenance of the road and other necessary elements of the infrastructure are some of the many benefits that the COMPANY will enjoy in the CITY. The letter from the CITY in support of this request describes those services provided by the CITY.

AT LEAST THREE OF THE FIVE
"PRIMARY SELLING ACTIVITIES" WILL TAKE PLACE IN THE CITY.

Subsection (c) of the Rule sets forth the composite of selling activities test for retailers conducting activities in multiple jurisdictions based on five "primary" factors described in Subsections (1)(A)-(E). We will skip Factors (A)-(C) for the time being and focus on Factors (D) and (E), and then return to (A)-(C).

Review of the COMPANY's activities under Factors (D) and (E) indicate that the primary location for selling activities is the CITY. Factor (D) looks to where the inventory is located at the time of its sale **or** delivery. That certainly will be the CITY in many cases. The COMPANY distribution center in the CITY will be the only location maintained by the COMPANY for housing inventory for delivery of products to its Illinois customers. While the COMPANY will use products stored at locations that its affiliates and third parties maintain, its distribution facility in the CITY will be the principal place for fulfilling customer orders. Any other facility will account for only a small percent of the Illinois orders once the CITY distribution center is opened.

Factor (E) looks to the headquarters of the retailer. The COMPANY is headquartered in the CITY. When the facility opens in YEAR, the COMPANY will employ over 200 persons. The facility will be the location where daily decisions regarding fulfillment of orders from inventory located in the CITY are made. In addition, a member of the Board of Directors of the COMPANY is assigned to the headquarters office of the COMPANY in the CITY.

With regard to Factors (A)-(B), we note that, based on the information from the PARENT, over 95% of orders for the COMPANY'S products will be received and accepted by servers located in the cloud and for which payment by credit card is tendered and received by servers also located in the cloud. Thus, the COMPANY's activities in the categories of Factor (A) (location of sales personnel exercising discretion and authority to solicit customers and to bind

the seller to the sale) and Factor (B) (location where the seller takes action that binds it to the sale, including acceptance of the order) all happen in cyberspace, except for those orders handled by customer service. In a real sense with regard to the vast majority of the COMPANY's orders the activities of solicitation of the orders and acceptance of the order happen everywhere and nowhere. All of such activities take place on servers located in the cloud, so it is impossible to say in which state let alone municipality the activity takes place.

Category (C) of the Rule refers to the location where payment is received or where invoices are issued. Payment will be received by the COMPANY's acceptance of credit cards, so that payment is received at servers located in cyberspace. But the COMPANY will be transmitting the invoice confirming the products ordered and the total price from its headquarters in the CITY. Thus, Factor (C) points to the CITY as the sourcing location.¹

Subsection (c)(2) of the Rule provides that if a retailer engages in three or more primary selling activities outside Illinois, the retailer is required to collect the use tax and not the retailers' occupation tax. For most if not all of its orders, the retailer, the COMPANY, will not be engaged in more than two activities described in Subsections (c)(1)(A)-(E) outside the State of Illinois. The CITY is the only location in Illinois where three or more activities described in Subsections (A)-(E) occur.

CONCLUSION

In light of the underlying basis for the Rule, and the circumstances by which the COMPANY will be selling products to its Illinois customers, it is respectfully submitted that all sales of products by the COMPANY to its Illinois customers should be sourced to the CITY, so that the COMPANY will be obligated to collect and remit the retailers' occupation tax of the state and the home rule rate of the CITY and the RTA.

In a follow-up email, you stated the following:

[T]his email confirms that the first two factors under 86 Ill. Adm. Code 270.115(c)(1)(a) and (b) are performed by PARENT on the web. In a sense, the activities are performed anywhere and everywhere by PARENT, because they are done on servers maintained in the cloud.

As to the first activity, Subsection (a), there are no sales personnel but the solicitation is done by PARENT through the website, which is hosted in the cloud. As to the second, the location where offers are made to the customers, is also done on the cloud-based server by PARENT.

Once the customer submits his/her credit card, the order is sent to COMPANY, which in turn invoices the customer per the invoice I attached to the Letter Ruling Request. The invoice provides the details regarding the order. That is per factor 3, Subsection (c), under Rule 270.115(c)(1).

DEPARTMENT'S RESPONSE:

In response to the Illinois Supreme Court decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, 376 Ill. Dec. 294 (2013), the Illinois Department of Revenue revised the administrative rules that govern the sourcing of local retailers' occupation taxes. See, for example, 86 Ill. Adm. Code 270.115. This rule provides that:

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).

Based on a review of the activities described in your letter, the supplemental information provided to the Department, and an analysis of the Department's regulations found at 86 Ill. Adm. Code 270.115, the Department finds that, for periods after COMPANY opens its new headquarters in CITY, with respect to sales of items in COMPANY's inventory in CITY, COMPANY is engaged in three or more primary selling activities in CITY, Illinois. Therefore, these sales should be sourced to CITY, Illinois. See 86 Ill. Adm. Code 270.115(c)(2).

Further, based on a review of the activities described in your letter, the supplemental information provided to the Department, and an analysis of the Department's administrative rules found at 86 Ill. Adm. Code 270.115, the Department finds that, for periods after COMPANY opens its new headquarters in CITY, with respect to sales in which items are drop shipped directly by an out-of-state vendor to COMPANY's customers, COMPANY is "engaged in the business of selling" (within the meaning of 86 Ill. Admin. Code 270.115(b)(1)) in CITY. Therefore, these sales should be sourced to CITY, Illinois. See 86 Ill. Adm. Code 270.115. This conclusion is reached based on a number of factors and the overall complexity of COMPANY's selling activities. The fact pattern presented here is not specifically addressed in Department rules. Therefore, we must look at the guidelines established in the rule for sourcing sales. The rule points out that:

[A] seller incurs Home Rule Municipal Retailers' Occupation Tax if its predominant and most important selling activities take place in the municipality. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322-23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35. 86 Ill. Adm. Code 270.115(b)(5).

In addition, the rule states that:

It is the intent of the Home Rule Municipal Retailers' Occupation Tax that retailers will incur local retailers' occupation tax in a jurisdiction in Illinois if they "enjoyed the greater part of governmental [services and] protection" in that jurisdiction. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 34 (quoting *Svithiod Singing Club v. McKibbin*, 381 Ill. 194, 197 (1942)). By allowing the municipality to impose tax on retailers who conduct business in the municipality, the Home Rule Municipal Retailers' Occupation Tax Act links the retailer's tax liability to where it principally enjoys the benefits of government services. *Svithiod Club v. McKibbin*, 38 Ill. 194, 199 (1942). 86 Ill. Adm. Code 270.115(b)(4).

When selling activities are so varied, "it is...not possible to prescribe by definition which of many activities must take place in [a jurisdiction] to constitute it an occupation conducted in [that jurisdiction]....". *Ex-Cell-O-Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943); see also *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 36. See 86 Ill. Adm. Code 270.115(b)(3). The Department "may look through the form of a putatively [multijurisdictional] transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. *Marshall & Huschart Mach. Co. v. Dep't of Revenue*, 18 Ill. 2d 496, 501 (1960); *Fed. Bryant Mach. Co. v. Dep't of Revenue*, 41 Ill. 2d 64, 67 (1968); *Int'l-Stanley Corp. v. Dep't of Revenue*, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 31. See 86 Ill. Adm. Code 270.115(b)(6).

The Department's sourcing rule provides five primary selling activities to consider in determining the location of a sale. See 86 Ill. Adm. Code 270.115(c)(1). Your letter and follow-up email points out that COMPANY does not engage in solicitation of sales (subsection (c)(1)(A)) or the acceptance of purchase orders, submission of offers, or other actions that bind the seller to a sale (subsection (c)(1)(B)) as those activities are done by COMPANY, a separate parent company of COMPANY. As such, those two primary selling activities are inapplicable to determining where these sales are sourced. Two primary selling activities that are conducted by COMPANY in CITY, Illinois include the preparation of invoices (subsection (c)(1)(C)) and the location of COMPANY's

headquarters (subsection (c)(1)(E)). The Department's rule provides that a retailer engaging in three or more primary selling activities in one location in the State or outside of the State for a particular sale shall remit either the retailers' occupation tax imposed at that in-State location or Use Tax for the out-of-State location, respectively. See 86 Ill. Adm. Code 270.115(c)(2). Only two primary selling activities are conducted by COMPANY in CITY, Illinois in regard to these sales.

The location of inventory at the time of its sale or delivery for sales fulfilled by third-party vendors could be anywhere in the United States. Third-party vendor facilities will likely account for a number of Illinois orders once the CITY distribution center is opened, and, from order to order, the same item may be shipped from either CITY or a drop ship location, depending on availability. The various possible locations of third-party inventory present the same type of "unique, complicated or widely dispersed selling activities" that make "determining appropriate tax situs in every situation" difficult "for both retailers and tax enforcement personnel." See 86 Ill. Adm. Code 270.115(d)(1). The Department has provided administrative "short cuts" to "balance the administrative difficulties presented by certain selling operations against the need for accurate tax assessment." See *id.* While an administrative short cut specifically addressing this fact pattern has not yet been provided in the Department's regulations, the administrative difficulties presented by these selling activities and the need for accurate tax assessment must also be balanced.

COMPANY's distribution center in CITY will be the only location maintained by COMPANY for housing inventory for delivery of products to its Illinois customers. While COMPANY will use products stored at locations that its affiliates and third parties maintain, its distribution facility in CITY will be the principal place for fulfilling customer orders. In addition, CITY is where COMPANT's primary inventory for the Illinois market is maintained (subsection (c)(1)(D)). These facts, combined with the applicable primary selling activities, persuade us that, rather than out of state (where sales could be fulfilled from inventory drop shipped directly to COMPANY's customers on limited occasions), COMPANY principally enjoys the benefits of government services in CITY with respect to these sales. Therefore, these sales should be sourced to CITY, Illinois.

If a person is determined to be engaged in the business of selling in a given location under the rules cited above, then the local portion of the State Retailers' Occupation Tax and Service Occupation Tax (i.e. the 1.25% portion of the 6.25% tax) is allocated under Sections 6z-18 and 6z-20 of the State Finance Act (30 ILCS 105/6z-18 and 6z-20) to the same location as determined under the rules cited above. With respect to COMPANY's sales discussed here, that location is CITY.

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.

COMPANY/NAME

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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,

Samuel J. Moore
Private Letter Ruling Committee Chairman

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