

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

August 31, 2022

Dear XXX.  
ADDRESS

This letter is in response to your e-mail received June 13, 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 also access our website at [www.tax.illinois.gov](http://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:

Each year, the COMPANY1, in conjunction with COMPANY2, collects and disseminates information regarding the tax laws of each state. The results of the annual survey are published in the PRODUCT, which has been one of the premier state tax reference books for nearly 40 years.

Your assistance in the preparation of the 2023 edition is essential. Please complete the attached corporate income tax and sales tax questionnaires by August 8, 2022, and email them to [ADDRESS](#). If your responses to last year's questionnaire would be helpful, please let us know and we will send you a copy.

All new questions are highlighted in red font. Due to time constraints, please respond only to the new questions and to the prior year questions that require a change. All unanswered questions will be considered to have the same response as last year, unless otherwise noted.

Please acknowledge receipt of this email. Also, please send us your responses to the following questions:

1. Who is the state respondent for the corporate income tax questionnaire?
2. Who is the state respondent for the sales tax questionnaire?

3. Do you prefer a complimentary hardcopy of the PRODUCT or should we send you an access code for an eBook?

Please contact us at [ADDRESS](#) if you have any questions, and thank you for your continued support of this important tax reference book.

## DEPARTMENT'S RESPONSE

We are unable to respond to your survey in the format provided. However, we hope you find the following information regarding the updated questions helpful.

### [16] NEXUS MARKETPLACE FACILITATORS

▪ Are the sales and transactions thresholds applied separately to the marketplace facilitator and seller or are the thresholds applied to the combined sales and transactions of the two entities? For example, both a marketplace facilitator and seller separately have sales revenue of \$60,000 in State A, for a combined total of \$120,000.

☐ Applied separately    ☐ Applied to combined sales volume

## DEPARTMENT'S RESPONSE

In applying the threshold tests, the cumulative gross receipts and transactions from sales of tangible personal property to purchasers in Illinois made through the marketplace by both the marketplace facilitator and marketplace seller are used to determine whether a marketplace facilitator has met a threshold. See 86 Ill. Adm. Code 131.135.

▪ If a seller makes all its sales through a marketplace facilitator, must the seller still:

▪ Register for sales tax in your state?    ☐ Yes    ☐ No

▪ File returns for sales tax in your state?    ☐ Yes    ☐ No

## DEPARTMENT'S RESPONSE

Although a marketplace seller makes all its sales through a marketplace facilitator that meets a threshold test, registration still may be required. The rules established for marketplace facilitators and marketplace sellers apply only to the remittance of State and local Retailers' Occupation Tax ("sales tax") administered by the Department. Marketplace sellers that incur liability for other taxes or fees administered by the Department on sales through a marketplace facilitator remain liable for the remittance of those taxes to the Department. See 86 Ill. Adm. Code 131.107(c)(4). See also 86 Ill. Adm. Code 131.150 for obligations of marketplace sellers to maintain books

and records as well as circumstances when marketplace sellers have liability for sales tax on its sales through a marketplace facilitator.

- May a marketplace facilitator or seller whose sales volume is below your state's threshold voluntarily register, collect, and file? ☐ Yes ☐ No

## DEPARTMENT'S RESPONSE

A marketplace facilitator may not voluntarily register and collect sales tax for marketplace sellers if the sales through its marketplace to Illinois purchasers does not meet either of the thresholds in 86 Ill. Adm. Code 131.135(a), because the marketplace facilitator would not be considered the retailer for such sales.

If a marketplace seller sells through a marketplace that does not meet the threshold test in 86 Ill. Adm. Code 131.135(a), and the marketplace seller does not otherwise have nexus with Illinois, the marketplace seller may voluntarily register to collect the Use Tax on its sales to purchasers in Illinois. See 35 ILCS 105/6.

- Must a marketplace facilitator collect and remit taxes other than sales tax? ☐ Yes ☐ No
- If YES, what taxes?

## DEPARTMENT'S RESPONSE

In the case of marketplace sellers incurring additional taxes for tangible personal property sold over a marketplace other than State and local Retailers' Occupation Tax, the Department encourages such sellers to work with their marketplace facilitators to make arrangements allowing the marketplace facilitator to collect these taxes and remit them to the marketplace seller, along with the gross receipts from the sale, so that the marketplace seller can then remit the taxes to the Department. See 86 Ill. Adm. Code 131.107(c)(4).

- When purchasing meals delivered from a restaurant, who is entitled to the:
  - Vendor's fee? ☐ Delivery service ☐ Restaurant
  - Collection discount? ☐ Delivery service ☐ Restaurant

## DEPARTMENT'S RESPONSE

The retailers' discount as provided in 35 ILCS 120/3 is available to a food delivery service of restaurant meals if it qualifies as a marketplace facilitator with respect to such meals and has met a tax remittance threshold. See 86 Ill. Adm. Code 131.145(j).

- When purchasing meals delivered from a restaurant, is the applicable tax rate based on the

|                                                                                                                                      |
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| origin (the restaurant) or the destination (delivery point)? <input type="checkbox"/> Origin <input type="checkbox"/> Delivery point |
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## DEPARTMENT'S RESPONSE

For purposes of determining the applicable sales tax rate, food delivery services that are marketplace facilitators and have met a tax remittance threshold, are considered to be engaged in the business of selling at the Illinois location to which the food is shipped or delivered. 86 Ill. Adm. Code 131.155(b). However, food delivery services that are considered marketplace facilitators are required to remit the Metropolitan Pier and Exposition Authority Retailers' Occupation Tax on sales made on behalf of a restaurant or other food establishment that is subject to the Metropolitan Pier and Exposition Authority Retailers' Occupation Tax (origin rate). See 86 Ill. Adm. Code 131.107(c)(1)(C).

**[32] False Claims Act and Qui Tam Lawsuits.** A qui tam lawsuit is a type of lawsuit in which a whistleblower sues on behalf of the government.

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| <ul style="list-style-type: none"> <li>Can private parties bring qui tam lawsuits against:           <ul style="list-style-type: none"> <li>Retailers responsible for collecting and remitting sales tax? <input type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>Taxpayers for failure to remit consumer's use tax? <input type="checkbox"/> Yes <input type="checkbox"/> No</li> </ul> </li> <li>Are successful whistleblowers entitled to a portion of any sales or use tax recovery per the False Claims Act? <input type="checkbox"/> Yes <input type="checkbox"/> No</li> </ul> |
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## DEPARTMENT'S RESPONSE

The Illinois False Claims Act ("Act") 740 ILCS 175/1 *et seq.*, authorizes the Attorney General as well as private parties to bring a civil action against persons that are in violation of section 3 of the Act. Where a private party initiates the action, the case must be brought in the name of the State and the State must be served with a copy of the complaint and other documents. The State then has the right to intervene and take over the action. If it elects not to proceed, the party who initiated the action has the right to continue on its own, subject to certain ongoing rights of the State. *Id.* at 4(b)(4)(B), 4(c)(3).

A claim is generally brought against a retailer responsible for collecting and remitting sales and use taxes who knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State. *Id.* at 3(a)(1)(G).

A private party bringing a successful claim under the Act is entitled to receive not less than 25% nor more than 30% of the proceeds of the action to compensate it for recovering the money on behalf of the State. *Id.* at 4(d)(2). If the State proceeds with an action brought by a private party, the compensation awarded is at least 15% but not more than 25% of the proceeds of the action or settlement received. *Id.* at 4(d)(1).

**[47] DIGITAL PRODUCTS.** Does your state impose sales/use tax on these items when sold in digital form

(check all that apply)?

|                                                |                                                 |                                                                   |
|------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Books                 | <input type="checkbox"/> Movies                 | <input type="checkbox"/> Recorded music                           |
| <input type="checkbox"/> Magazines             | <input type="checkbox"/> Newspapers             | <input type="checkbox"/> Subscriptions to magazines or newspapers |
| <input type="checkbox"/> Streaming video       | <input type="checkbox"/> Remote access software | <input type="checkbox"/> Digital automated service (DAS)          |
| <input type="checkbox"/> <b>Cryptocurrency</b> |                                                 |                                                                   |
| <input type="checkbox"/> Other, specify:       |                                                 |                                                                   |

## DEPARTMENT'S RESPONSE

Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to Retailers' Occupation and Use Tax. See 86 Ill. Adm. Code 130.2105(a)(3).

**[73] MISCELLANEOUS SERVICES.** Which of the following services are taxable? (Check all that apply)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p><input type="checkbox"/> Amusements <input type="checkbox"/> Cable TV charges <input type="checkbox"/> Credit reporting <input type="checkbox"/> Debt collection services</p> <p><input type="checkbox"/> Dry cleaning <input type="checkbox"/> Laundry <input type="checkbox"/> Membership dues <input type="checkbox"/> Pest control</p> <p><input type="checkbox"/> Pet care <input type="checkbox"/> Photographic services <input type="checkbox"/> Security services <input type="checkbox"/> Towing service</p> <p><input type="checkbox"/> Transient lodging <input type="checkbox"/> Vehicle parking charges <input type="checkbox"/> Gambling or gaming not on Native American reservations</p> <p><input type="checkbox"/> <b>Peer-to-peer sharing: Carsharing (Airbnb for cars)</b></p> <p><input type="checkbox"/> <b>Peer-to-peer sharing: Short-term rentals (less than 30 days) of real estate, such as Airbnb</b></p> |
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## DEPARTMENT'S RESPONSE

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax Act ("ART"). See 35 ILCS 155/1 *et seq.* Furthermore, ART has incorporated the Sections of the Retailers' Occupation Tax Act related to marketplace facilitators. See 35 ILCS 155/3 and 4. A car rental company operating a peer-to-peer motor vehicle sharing platform is acting as a marketplace facilitator subject to the same provisions and requirements as a marketplace facilitator under the Retailers' Occupation Tax Act. See Illinois Private Ruling Letter ST-22-0002 (2/1/2022).

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. HOOT defines "hotel" to include any building or buildings in which the public may, for consideration, obtain living quarters, sleeping or housekeeping accommodations. See 35 ILCS 145/2(1) *et seq.* In the context of the providing of short-term accommodations that are rented through the use of a third-party platform, the third-party platform is not liable for HOOT. Rather, the tax obligation is on the owner/host of the accommodations which are being rented. See Illinois General Ruling Letter ST 17-0007 (3/2/2017).

## DEPARTMENT UPDATES

### [5] STATUTE OF LIMITATIONS, ETC.

- What is the statutory time limit for assessing sales/use tax in your state?

Beginning June 25, 2021, for any period included in a claim for credit or refund for which the statute of limitations for issuing a notice of tax liability under would expire less than 6 months after the date a taxpayer files the claim for credit or refund, the statute of limitations is automatically extended for 6 months from the date it would have otherwise expired. 35 ILCS 120/6.

Also, please note that the Department's response to the 2022 survey questions titled "**REMOTE WORKERS**", and "**MARKETPLACE FACILITATORS**" contained references to emergency rules in effect at such time which amended certain regulations under 86 Ill. Adm. Code 131.101 *et seq.* Amendments to the cited regulations have been adopted and the emergency rules are no longer in effect and such reference to them should be removed.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov)

Very truly yours,

Thomas Grudichak  
Associate Counsel