

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.)

July 29, 2016

RE: Private Letter Ruling Request for COMPANY

Dear Xxxxx:

This letter is in response to your letter dated March 1, 2016, in which you request information and the additional information you provided subsequent to submitting the request. 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:

Please review this letter as a private letter ruling request as to the application of the Illinois Department of Revenue's ("Department") new local sales tax sourcing regulations to COMPANY. This ruling is requested from and after its issuance until there is a change in COMPANY's material facts that are the basis of this ruling. Such a private letter ruling request is proper under 86 Ill. Admin. Code § 1200.110.

There are no regulations that are clearly dispositive of the issues in this request. And, there are no authorities that COMPANY or its representative is aware of that are contrary to the ruling request made herein by COMPANY

To the best of the knowledge of both COMPANY and COMPANY's representative, the Department has not previously ruled on the same or a similar issue for COMPANY or a predecessor. Neither COMPANY nor its representative has previously submitted the

same or a similar issue to the Department but withdrew it before a letter ruling was issued. Nor are the issues in this request part of any current audit with the Department nor part of any pending litigation matter between the Department and COMPANY or any related company of COMPANY.¹

BACKGROUND

COMPANY is a fuel oil distribution company engaged in the business of selling fuel oil and lubrication products in Illinois. While COMPANY's national headquarters is located outside of Illinois, it has a fuel oil sales and administrative office in CITY 1 Illinois, a lubrication products warehouse and sales office in CITY 2, Illinois, two fuel storage facilities in Illinois (one in CITY 1, Illinois, and the other in CITY 3 Illinois) and leased space for the parking of fleet vehicles in CITY 4, Illinois.

Sales of fuel oil for delivery in Illinois:

For its fuel oil sales for delivery in Illinois, COMPANY has its Illinois fuel oil sales office and its Illinois administrative office related to fuel oil sales located at ADDRESS, CITY 1, Illinois ("CITY 1 Fuel Sales/Admin Office"). At this CITY 1 Fuel Sales/Admin Office, COMPANY receives, accepts and processes purchase orders for fuel oil products; it makes decisions there on fuel pricing, and credit checks and approvals; it solicits sales and performs solicitation and marketing; it accepts purchase orders and signs written contracts, does billing, and performs general customer service functions there, also. COMPANY has three full-time employees stationed at this CITY 1 Fuel Sales/Admin Office (the "office personnel"), including a Regional Sales Support person, a Billing Manager and a Dispatcher. And, its two fuel oil sales representatives (each, a "Territory Sales Manager") are also based at this office. Likewise, all blanket or keep-full contracts or purchase orders are received and accepted at this [sic] COMPANY's CITY 1 Fuel Sales/Admin Office. No other COMPANY office handles fuel oil sales for delivery in Illinois.

For fuel oil sold by COMPANY for delivery in Illinois, it is either purchased by COMPANY at wholesale off the "rack" from third party oil producers or distributors, or is delivered by taking it from two oil storage facilities of COMPANY located in CITY 2, Illinois and CITY 3, Illinois. Note: No fuel oil sales orders are received, accepted, negotiated, solicited or processed at COMPANY's CITY 2 and CITY 3 storage facilities, nor is fuel oil picked up from these facilities by customers of COMPANY, except for gasoline pump sales noted below.

The sales related functions at the CITY 1 Fuel Sales/Admin Office include:

- Answer Customer Telephone Calls
- Reach out to existing customers for marketing/sales purposes
- Extend Credit to Customers (when warranted)

¹ There is pending litigation between the LOCAL GOVERNMENT and COMPANY as to the proper sourcing of COMPANY's sales of fuel oil products in Illinois.

- Determine pricing for sales
- Provide written quotes on pricing, as required
- Accept Customer Orders
- Determine applicable taxes
- Enter orders into Operating System
- Dispatch drivers for delivery of fuel product to customer
- Bill the customer for deliveries
- Answer technical/product questions from customers
- Answer customer questions regarding fuel taxes
- Interact with fuel suppliers
- Monitor supplier cost and availability
- Advise drivers where to pick up product (from suppliers or storage facility) based on daily cost, availability and supplier volume agreements.
- Analyze customer circumstances and approve arrangements for loan of fuel dispensing equipment for customer; monitor and arrange for ongoing maintenance of same, as needed
- Solicit new customers via:
 - Make “cold calls” to prospective customers
 - Respond to bids received
 - Follow up on leads generated by our website
- Procure fuel oil product daily from various fuel suppliers

Additional Marketing functions include:

- Interact with call-in customers
- Develop and work a customer target list for new business
- Answer customer inquiries
- Work cooperatively with Outside Sales Personnel
- Send brochures to Customers
- Respond to bid requests
- Analyze customer buying trends and outreach (when needed)
- Send e-mail/fax blasts to groups of customers (on occasion)

Sales orders are handled at CITY 1 Fuel Sales/Admin Office, as follows:

1. Customer Call to Office: Office personnel review, determine pricing and/or pricing variations, review credit status, and approve customer orders received via telephone / e-mail, or fax and subsequently initiate an order in the office computer system, and process the order through delivery.
2. Customer Call to Outside Sales Personnel: Outside sales representatives forward any and all orders into the CITY 1 Fuel Sales Office. A Territory Sales Manager and/or office personnel review, determine pricing and/or pricing variations, review credit status, and approve such orders. Office personnel subsequently enter the order into the office computer system and

process the order through delivery. Fuel delivery drivers may also forward sales orders into the Office - such orders are handled in the same manner.

3. eTank Orders: "eTank" refers to telemetry technology for customer fuel tanks that electronically monitors a customer's fuel tank and sends an inventory signal/ order to the CITY 1 Fuel Sales Office via Internet. Office personnel enter into "keep full" agreements for eTank monitoring of customer accounts, and then monitor "eTank" customer inventory levels on a daily basis, review credit status, and initiate orders as needed to balance customer demands with average order size. In some cases, customer usage spikes, creating an "eTank alert"; office personnel then identifies this situation as an "emergency order" and arranges for expedited delivery, etc.
4. Scheduled Orders. Some customers have contracted for a "standing order" with the CITY 1 Fuel Sales Office. Examples include agreements for daily, weekly, 3X per week, once a month, etc. deliveries. CITY 1 office personnel monitor these contract requirements, review credit status, and initiate delivery as agreed with the customer.
5. Billing. Billing for fuel oil deliveries are processed and sent out by office personnel at the CITY 1 Fuel Sales Office.

Gasoline Pump sales:

At COMPANY's CITY 2 and CITY 3, Illinois locations there is a card-lock facility where fuel pumps are stationed and customers with card-lock accounts can purchase gasoline at the pump. For Illinois Retailers' Occupation Tax purposes, these gas pump sales are treated by COMPANY as sold from the CITY 2 facility and the CITY 3 facility, respectively, and not from CITY 1.

Sales of lubricants:

COMPANY has a sales office at ADDRESS, CITY 2, Illinois where it stores and sells lubricants. As to sales of lubricants by COMPANY for delivery into Illinois, all orders are received at this facility, prices set or negotiated at this facility, orders accepted and processed at this facility, and all the lubricants are either picked up or delivered from this facility. For Illinois Retailers' Occupation Tax purposes, these lubricant sales are treated by COMPANY as sold from this CITY 2 facility, and not from CITY 3. No fuel oil sales are made or processed through this facility.

Leased truck space:

COMPANY lease [sic] space for some of its truck [sic] in CITY 4, Illinois. No fuel oil is stored on this facility, nor are any sales of fuel oil or lubricant made from this facility.

Additional Information:

Both the CITY 1 Fuel Oil Sales/Admin Office and the CITY 2 lubricant sales office are under general supervision of the Regional Vice President (“RVP”) in the Company. The RVP serves as the National Fuels Sales Manager for COMPANY, and also, supervises all lubricant sales for COMPANY in the Midwest. The RVP does not enter into sales contracts of fuel oil (or lubricant products), and is not involved in and does not manage the day to day operations of the various offices, but merely supervises the overall operations of the offices. He divides his time among i) the CITY 1 location; ii) the CITY 2 location; iii) the location of the newly acquired CITY 5, WI lubricant business; and iv) locations on the road for company-wide sales meetings; meetings with suppliers; and meetings with existing and potential customers for both product lines.

RULINGS REQUESTED

1. COMPANY requests that a ruling be issued that confirms that its sales of fuel oil for delivery in Illinois by its trucks whether purchased off the rack from third party distributors, or taken from its own storage facilities in CITY 2 or CITY 3, are properly sourced to COMPANY’s CITY 1 fuel Sales/Admin Office location in CITY 1, Illinois.
2. COMPANY requests that a ruling be issued that confirms that its sales of lubricant products from its CITY 2 lubricant sales and storage facility from inventory stored at its CITY 2, Illinois facility are properly sourced to COMPANY’s CITY 2 facility.
3. COMPANY requests that a ruling be issued that confirms that its gasoline sales at pumps at its CITY 2 and CITY 3, Illinois facilities are properly sourced [sic] to these facilities.

APPLICABLE LAW

Local retailers occupation taxes are sourced under the regulations based on a composite of selling activities by the seller. See e.g., 86 Ill. Admin. Code § 270.115. Under the regulations, there are five primary factors. See e.g., Section 270.115(c)(1). Under this primary factors test, a retailer needs to have at least three of these five primary factors at its sales location to consider its sales as occurring at that location. If less than three factors are at a selling location in Illinois (and no more than two of the primary factors occur outside of Illinois), then the six additional secondary factors (see e.g. Section 270.115(c)(4)) shall be considered to determine the location of the sale in Illinois. In those instances where the secondary factors are used along with the primary factors, either the inventory location or the headquarters location will be deemed the location of the sale based on the location that has the greater number of combined factors with respect to the sales at issue.

The primary factors are: (1) location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale; (2) location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer,

or other actions that bind the seller to that sale; (3) the location where payment is tendered and received, or from which invoices are issued with respect to each sale; (4) location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery; and (5) the location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters. See, e.g., 86 Ill. Admin. Code § 270.115(c)(2).

The secondary factors are: (1) location where marketing and solicitation occur; (2) location where the seller engages in activities necessary to procure goods for sale; (3) location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A); (4) location where purchase orders or other contractual documents are received when purchase orders are accepted, processed or fulfilled in a location or locations different from where they are received; (5) location where title passes; and (6) location where the retailer displays goods to prospective customers, such as a showroom. See, e.g., 86 Ill. Admin. Code § 270.115(c)(4).

For over the counter sales, "if a purchaser is present at a place of business owned or leased by a retailer and there enters into an agreement with the retailer's sales personnel to purchase tangible retailers' personal property, and makes payment for that property at the same place of business, then the retailers' occupation tax for that sale is incurred at the retailers' occupation tax for that sale is incurred at [sic] the retailer's place of business where the sale occurred regardless of whether the purchaser takes immediate possession of the tangible personal property, or the retailer delivers or arranges for the property to be delivered to the purchaser." 86 Ill. Admin. Code § 270.115(c)(3).

Moreover, if a purchaser, having no prior commitments to the retailer, agrees to make a purchase of tangible personal property and makes payment over the phone, in writing or over the internet, and then takes possession of the property at a retailer's place of business, the sale shall be deemed to occur at that place of business, if the retailer regularly stocks similar items there. 35 ILCS 120/2-12(2).

ANALYSIS

Applying the sourcing regulation to COMPANY's situation, all of COMPANY's taxable fuel oil sales for delivery in Illinois should be sourced to its CITY 1 Fuel Sales/Admin Office in CITY 1, Illinois. At COMPANY's CITY 1 Fuel Sales/Admin Office, at least three of the five primary selling activities occur for all of its fuel oil sales, including: (1) the location where COMPANY's employees are stationed who can exercise discretion to negotiate and bind COMPANY on such sales; (2) the location where offers are prepared and made; and where purchase orders are accepted; and (3) the location where invoices are sent out to customers. This is sufficient under the regulations to source

such sales of fuel oil products for delivery in Illinois to COMPANY's CITY 1 Fuel Sales/Admin Office in CITY 1, Illinois.

In addition, because COMPANY's sales of fuel oil for delivery in Illinois are principally managed and directed from its CITY 1 Fuel Sales/Admin Office in CITY 1, it can also be said that under the Department's sourcing regulations this CITY 1 Fuel Sales/Admin Office is, in substance, the Illinois headquarters of the company for these sales, making it even more clear that this CITY 1 Fuel Sales/Admin Office is the proper office to source fuel sales for delivery in Illinois.

Finally, even looking at the secondary factors, since COMPANY: (1) performs marketing and solicitation at its [sic] CITY 1 Fuel Sales/Admin Office; (2) procures fuel oil supply for the company's sales of fuel oil products, as approved by the CITY 1 Fuel Sales/Admin Office; and (3) has employees with authority to set prices at this CITY 1 Fuel Sales/Admin Office, even if COMPANY did not meet at least 3 of the primary factors, under the secondary test its CITY 1 Fuel Sales/Admin Office should still be the appropriate location to source its fuel sales for delivery in Illinois.

As to COMPANY's lubricant sales, since these sales orders are received, entered into and processed from COMPANY's CITY 2, Illinois office from inventory at this CITY 2, Illinois facility, these sales should be sourced at this CITY 2 location under either 86 Ill. Admin. Code § 270.115(c)(2), 86 Ill. Admin. Code § 270.115(c)(3) or 35 ILCS 120/2-12(2).

Finally, as to gasoline sales from the pump at the card-lock facilities in CITY 2 and CITY 3, Illinois, these sales should be sourced to these locations under either 86 Ill. Admin. Code § 270.115(c)(3) or 35 ILCS 120/2-12(2).

If you have any questions, need any additional documents or facts, or contemplate issuing a private letter ruling different from that requested above, please call. We reserve the right to withdraw this private letter ruling request if a negative ruling on any portion is contemplated. Thank you again for your time and consideration of this matter.

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 86 Ill. Adm. Code 270.115. The rules provide 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)).

Based on a review of the activities described in your letter and an analysis of the Department's regulations found at 86 Ill. Adm. Code 270.115, the Department finds that, with respect to sales of fuel oil for delivery in Illinois, whether purchased by COMPANY off the rack from third party distributors and delivered by its trucks or taken from its own storage facilities in CITY 2 or CITY 3 and delivered by its trucks, COMPANY is engaged in three or more primary selling activities in CITY 1, Illinois and, therefore, these sales should be sourced to CITY 1, Illinois. See 86 Ill. Adm. Code 270.115(c)(2).

Further, based on a review of the activities described in your letter and an analysis of the Department's administrative rules found at 86 Ill. Adm. Code 270.115, the Department finds that, with respect to sales of lubricant products by COMPANY from its CITY 2 location from inventory stored at its CITY 2, Illinois facility, COMPANY is engaged in three or more primary selling activities in CITY 2, Illinois and, therefore, these sales should be sourced to CITY 2, Illinois.

Finally, with respect to gasoline sales at pumps at its CITY 2 and CITY 3, Illinois card-lock facilities, based on a review of the activities described in your letter, the follow-up information provided, and an analysis of the Department's administrative rules found at 86 Ill. Adm. Code 270.115, the Department finds that COMPANY is engaged in the business of making over-the-counter sales at these locations and, therefore, these gasoline sales should be sourced to CITY 2 and CITY 3, respectively. See 86 Ill. Adm. Code 270.115(c)(3)(A).

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. 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,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

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