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Mr. Brian Hamer
Director
Illinois Department of Revenue
100 West Randolph
Suite 7-500
Chicago, IL 60601

Re: Proposed Revised Local Sales Tax Sourcing Regulations

Dear Director Hamer:

On behalf of the City of Chicago, I am writing to provide our comments concerning the proposed revised local sales tax sourcing regulations that the Illinois Department of Revenue ("Department") filed with the Joint Committee of Administrative Rules on January 22, 2014.

Subject to our comments below, we strongly support the proposed regulations. They are generally consistent with the Illinois Supreme Court's recent decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, and we anticipate that they will help accomplish the purpose of discouraging manipulation and abuse of the sales and use tax system. We applaud the Department for its efforts in that regard, including the efforts that led to the *Hartney* decision.

We have reviewed the comments of the Regional Transportation Authority filed on or about April 29, 2014, and we generally agree with those comments.

In addition, we have one further suggestion, which is to add a definition of the term "selling activities," which is used at numerous points in the proposed regulations. *See, e.g.*, Sections (b)(3), (c)(1), (c)(7)(A), (c)(7)(B), (d)(1), (d)(2), (d)(4)(A), (d)(4)(B). If left undefined, the term could be construed narrowly, as referring only to the kinds of activities traditionally performed by a company's sales department (such as making sales calls, negotiating sales and taking orders), or it could be construed more broadly, as referring to all of the activities that relate to the company's business of selling tangible personal property.

In a given case, this issue could be important. To give just one example, assuming a retailer with extensive manufacturing operations in one Illinois municipality (producing the tangible personal property that it sells at retail), a large headquarters in another Illinois municipality, and a genuine but relatively small sales department in another Illinois municipality, use of the more narrow construction noted above could result in sourcing its sales to where the sales department is located, even though the bulk of its overall activities are elsewhere.

The *Hartney* decision notes that the General Assembly sought to place the burden of the retailers' occupation tax "upon that class of business which not

only enjoyed the greater part of governmental protection but which benefitted by being conducted under that protection." The decision refers to "the composite of activities that comprise the retailer's business," and it mentions not only the kinds of activities traditionally performed by a company's sales department but also other activities such as manufacturing and accounting. See *Hartney* at ¶ 31.

Consistent with *Hartney*, the proposed regulations at various points refer to (a) the location where the retailer "principally enjoys the benefits of government services," (b) the location of "the composite of activities that comprise the retailer's business," (c) the location of the retailer's "business activities," and (d) the location where the retailer "enjoyed the greater part of governmental protection [and] benefitted by being conducted under that protection." See Sections (b)(1), (b)(2), (b)(3) and (d)(4)(A).

Based on the above, it is our understanding that the intent of both *Hartney* and the proposed regulations is to base taxation on where the bulk of the retailer's overall activities in Illinois take place, provided that those activities relate to its business of selling tangible personal property. To avoid any possible confusion or dispute about this point, we therefore suggest that the Department add a definition of the term "selling activities," as used in the proposed regulations, so it is clear that the term includes all activities of the retailer relating to its business of selling tangible personal property.¹

Thank you for your consideration of these comments.

Very truly yours,



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¹ We assume that activities unrelated to the business of selling tangible personal property would not be considered - for example, if the company had a division engaged solely in the provision of unrelated services.