

Illinois: Department of Revenue proposes rules for taxing out-of-state firms' trade show activities



David M. Kall | Friday, September 1, 2017

In the Aug. 18, 2017, volume of the [Illinois Register](#), the Department of Revenue included a notice of a proposed rule concerning taxation of trade-show related activities. The crux of the rule provides that “the presence of an out-of-[s]tate retailer or its representative in Illinois for the purpose of engaging in trade show activities establishes nexus for the retailer and requires collection of Use Tax on all sales into Illinois.”

The notice specifies that “...[a]ny activity, traditionally conducted at conventions, trade shows or similar meetings, whose purpose is, in whole or part, to create, maintain or enhance a business market in Illinois” qualifies as a trade show activity. Such activity also includes those purposed in attracting people “in an industry generally, as well as members of the public, to the trade show for the purpose of displaying industry products or to stimulate interest in and demand for industry products or services, or to educate persons engaged in the industry in the development of new products and services.”

The above-described presence brings a retailer within the definition of a “retailer maintaining a place of business” in the Prairie State. “As a result, the out-of-State retailer is required to register with the Department and collect and remit Use Tax on all sales to Illinois purchasers.”

The proposed rule offers a safe-harbor, under which an out-of-state retailer that is in Illinois for trade show activities will not be deemed to be a “retailer maintaining a place of business” in the state if it satisfies these three conditions:

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1. The retailer attends no more than two trade shows in Illinois during any calendar year.
2. Combined gross receipts from sales made at all Illinois trade shows during any single calendar year do not exceed \$10,000.
3. The retailer is physically present at those [two] Illinois trade shows for an aggregate total of no more than eight days during any calendar year.

For purposes of calculating the eight days set forth in the third condition, the Department of Revenue will apply four criteria:

- Days during which a retailer is present in Illinois, but is not engaged in activity related to the trade show, will not count toward the eight-day limit. For example, a retailer arrives in Illinois on the day before a trade show begins and stays in a hotel the night before the trade show. The day before the trade show begins will not count as one of the eight days. Similarly, if a retailer stays in Illinois as a tourist for three days after the trade show, those three days will not count toward the eight-day maximum.
- It does not matter whether the retailer has one representative at the Illinois trade show, or more than one. In both situations, each day of the trade show only counts as one of the eight days.
- Any portion of a day that a retailer is physically present at an Illinois trade show counts as a whole day. For example, if the only representative at the trade show leaves that show after one hour, that hour counts as a whole day.
- Days spent setting up and tearing down displays prior to and after a trade show do not count toward the eight days.

Even if an entity satisfies these safe-harbor conditions, the notice warns that sales made by retailers at an Illinois trade show are subject to Retailers' Occupation Tax, including applicable local taxes.

Those who qualify as “representatives” subject to the rule are described as follows:

[A] representative need not be an agent. It does not matter that a representative may engage in business on his or her own account in other transactions, nor that he or she may act as a representative for other persons in other transactions. Similarly, it does not matter that a representative is not an employee but is an independent contractor acting as a representative. The term "representative" is broader than the term "employee" and includes anyone acting under the seller's authority.

The notice provides three examples to illustrate how the rule would apply:

EXAMPLE 1: An athletic clothing and shoe retailer located outside Illinois maintains a display booth at a sports and fitness exposition that runs for 2 days immediately prior to the Chicago Marathon. Attendance at the expo is the only activity of the retailer in Illinois during the calendar year. At the expo, the retailer displays new merchandise to race participants, provides information to local athletic stores regarding its product line, and distributes promotional materials such as t-shirts, hats and other gear. The retailer also makes sales at the expo totaling \$20,000. Presence at the expo creates nexus for the retailer. While the retailer only attends one trade show for less than 8 days, its sales total more than \$10,000. As a result, the retailer has not met all 3 requirements necessary for safe harbor. Its presence at the expo requires it to collect Use Tax on sales made into Illinois from its out-of-State location...all sales (\$20,000) made at the trade show by the retailer are subject to Retailers' Occupation Tax.

EXAMPLE 2: An out-of-State flooring manufacturer attends 2 trade shows in Illinois each year for the purpose of exhibiting its products to builders, contractors and the general

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public. Seven employees of the manufacturer attend each show and are physically present for a combined total of 10 days. The employees are present for 2 of the 10 days for purposes of setting up and tearing down displays. No sales are made at the trade shows. The manufacturer's attendance at the trade shows meets all 3 requirements for safe harbor. Consequently, the manufacturer is not required to collect Use Tax on sales into Illinois from its out-of-State location.

EXAMPLE 3: An out-of-State retailer holds its annual management meeting in Chicago. The purpose of the meeting is to provide orientation for new managers, instruct managers about new company policies and procedures, and conduct team building exercises. The purpose of the annual meeting is not to create, maintain or enhance a business market in Illinois. Consequently, the meeting does not constitute a trade show, and the retailer's presence in Illinois for these purposes does not create tax collection obligations.

Those who wish to submit comments on the proposal may submit them in writing, by no later than Oct. 2, 2017, to:

Jerilynn Troxell Gorden
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794
217-782-2844



David M. Kall

[Team member bio](#)