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ALERT

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Illinois Files Emergency Sales Tax Regulations

The Illinois Department of Revenue last week filed emergency regulations on sourcing sales for the purpose of determining local sales tax, in response to the Illinois Supreme Court's decision in *Hartney Fuel Oil Co. v. Hamer*. In that case, a company headquartered in one Illinois jurisdiction opened a small office in a jurisdiction with a lower sales tax, solely to process all of its sales. This allowed the company to avoid collecting the higher local sales tax of the jurisdiction where it was headquartered. The Illinois Supreme Court held that the company was in compliance with the sourcing regulations, but that the regulations were invalid because they impermissibly narrowed the scope of the applicable tax statutes.

The emergency regulations generally provide that local sales taxes collected from customers must be allocated to the county where the retailer's predominant and most important selling activities take place. For many companies, the jurisdiction where these activities take place is clear. The regulations prescribe four primary factors to determine the proper taxing jurisdiction for companies engaged in selling activities in multiple Illinois jurisdictions:

1. the location of officers, executives and employees with discretion to negotiate on behalf of, and to bind, the seller;
2. the location where offers are prepared and made;
3. the location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed; and
4. the location of inventory (if the property that is sold is in the retailer's inventory at the time of sale or delivery).

If, after review of the primary factors, the jurisdiction where the seller is engaged in the business of selling remains unclear, the regulations set forth five secondary factors to analyze:

1. the location where marketing and solicitation occur;
2. the location where purchase orders (or other contractual documents) are received when purchase orders are accepted, processed or fulfilled in a location different from where they are received;
3. the location where property is delivered to the purchaser;
4. the location where title passes; and
5. the location where the retailer's ordering, billing, accounts receivable and other administrative functions are housed.

If a retailer's selling activities occur in multiple jurisdictions and it is a close question as to where the retailer is engaged in the business of selling, the Illinois Department of Revenue will evaluate the above factors in keeping with the principle that the retailer incurs local sales tax where it receives the most governmental protections and benefits.

The emergency rules will be effective until June 20, 2014, unless suspended by a vote of the Joint Committee on Administrative Rules (JCAR). The Illinois Department of

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Revenue also filed nearly identical proposed permanent rules to replace the emergency rules after the JCAR review process.

If you have any questions, please contact [Alan J. Tarr](#) (at 212-407-4900 or atarr@loeb.com) or [Megan A. Stombock](#) (at 212-407-4226 or mstombock@loeb.com).

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