



TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

Chair's welcome letter

By Don Rubin

I wanted to take a moment to welcome both new and returning SALT Council members to the new season. At our initial meeting we covered a lot of ground concerning many issues, including those carrying over from last year as well as new matters that have arisen more recently. We are already hard at work looking at

case law and legislation, reviewing new assessor and board forms and rules emanating from both Cook and the Collar Counties, and discussing e-filing rules that are being promulgated for use in the County Division Tax Department of the Cook

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Editor's note

By Stanley Kaminski

As you know by now Don Rubin is the new Chairman of the State and Local Tax Section Council. We would all like to welcome him and wish him good luck. As to this issue of the newsletter, featured is an article drafted by David J. Kupiec and Natalie M. Martin that discusses the change in the Illinois Use Tax definition of "retailer maintaining a place of business in

the state" by the General Assembly, effective July 1, 2011. This new definition is based loosely on the Amazon laws passed in other states, and expands this definition of retailer in an attempt to require some Internet retailers to collect Illinois Use Tax, if they have a sales commission arrangement with Illinois businesses through links on such businesses' Web site. ■

Illinois sales tax legislation enacted—Amends definition of "retailer maintaining a place of business in the state"

By David J. Kupiec JD, CPA and Natalie M. Martin JD of Kupiec & Martin, LLC

On March 10, 2011, Governor Quinn signed into law House Bill 3659, the Mainstreet Fairness Bill (Public Act 96-1544). The law amends Section 2 of the Illinois Use Tax Act, 35 ILCS 105/2, by requiring all online retailers who contract with an "affiliate" in Illinois to collect sales tax on customer purchases beginning July 1, 2011.

Specifically, Public Act 96-1544 expands the

Use Tax Act Section 2 definition of "retailer maintaining a place of business in the state" to include:

- 1.1 Beginning July 1, 2011, a retailer having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by

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(Notice to librarians: The following issues were published in Volume 54 of this newsletter during the fiscal year ending June 30, 2011: July, No. 1; August, No. 2; September, No. 3; October, No. 4; November, No. 5; December, No. 6; January, No. 7; February, No. 8; March, No. 9; April, No. 10; May, No. 11; June, No. 12).



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Chair's welcome letter

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County Circuit Court. As you can tell from this quick summary of just our first meeting, this will be an extremely busy and, hopefully, a very successful year for SALT.

I also want to continue to promote CLE opportunities and invite speakers to address us on topics of interest. However, my biggest

goal is to work hard to continue to improve the overall quality and integrity of our practices, and to enhance our image amongst legislators, the media, the general public, and even our own colleagues. That goal can only be reached if we all agree to devote ourselves to a continuing effort to work togeth-

er to improve each other as attorneys who practice law in these areas.

I look forward to working with all of you as both my friends and my colleagues as we begin our new year together.

Don ■

Illinois sales tax legislation enacted—Amends definition of “retailer maintaining a place of business in the state”

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the retailer, directly or indirectly refers potential customers to the retailer by a link on the person's Internet Web site.

...

1.2 Beginning July 1, 2011, a retailer having a contract with a person located in this State under which:

- A. the retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name or trademark as the person located in this State; and
- B. the retailer provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the retailer.

The provisions of both sections 1.1 and 1.2 only apply if the cumulative gross receipts from sales of tangible personal property by the retailer to customers in Illinois exceed \$10,000 during the four preceding quarters.

The law also amends Section 2 of the Illinois Service Use Tax Act, 35 ILCS 110/2, to expand the definition of “serviceman maintaining a place of business in this State” using language almost identical to the language cited above but addressing the sale of service by the serviceman.

The expanded definition of retailer creates a taxable presence or “nexus” for Illinois online vendors with Illinois affiliates that meet the gross receipts threshold. This would require these retailers to collect and remit Illinois sales tax based on their relationship with their Illinois based affiliates. The

new law contains no exemption or rebuttal presumption provision for a vendor to claim the contacts are minimal or limited in nature. New York has enacted a similar law but that law includes a safe-harbor provision to exempt certain passive activities.

Nor does the new law define “person located in this state,” raising the issue of whether a company with merely some nexus in Illinois is included or is the law only applicable to persons that have physical locations in Illinois. In addition, the law does not appear to distinguish where the advertising Web site is located that creates the tax nexus. Therefore, if a person located in Illinois maintains its servers and Web site outside of Illinois, it is unclear how this creates physical presence in Illinois to establish nexus.

In response to the law, some companies have publicly stated that they will terminate their relationships with Illinois based affiliates. They also claim the law is “unconstitutional and counterproductive.”

The Governor stated in his March 10, 2011 press release that “this law will put Illinois-based businesses on a level playing field...” The underlying belief is that Illinois residents that are not charged an Illinois sales tax on items that they purchase online and use in Illinois do not pay the required use tax. The Illinois Department of Revenue estimates that between \$153 million and \$170 million in sales tax revenue per year from internet, mail order and out-of-state purchases goes uncollected as businesses are unaware or avoid their obligation to collect and pay sales tax on such items.

In an effort to increase Illinois use tax

compliance, legislation was enacted last year (Public Act 96-1388) to require individuals with annual use tax liabilities under \$600 to report such liabilities on line 22 of their 2010 Form IL-1040 and pay such liabilities as part of their annual Illinois income tax filing. Public Act 96-1388 also established an Illinois Use Tax Amnesty program from January 1, 2011 through October 15, 2011, for individuals with unpaid use tax on purchases made between June 30, 2004 through December 31, 2010.

A sign that this issue may not yet be resolved is that the Illinois General Assembly currently has a bill pending before it that would further amend the definition of maintaining a place of business in Illinois. Specifically, Senate Bill 1783, which has not been passed by either the Illinois Senate or House as of the drafting of this article, proposes that a “an advertising link or affiliate link on a Web site is not sufficient to qualify the retailer as a retailer maintaining a place of business in this State.” ■



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August

Tuesday, 8/9/11- Teleseminar—Business Torts, Part 1. Presented by the Illinois State Bar Association. 12-1

Wednesday, 8/10/11- Teleseminar—Business Torts, Part 2. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 8/23/11- Teleseminar—Drafting Employee Handbooks. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 8/30/11- Teleseminar—Buying, Selling & Exchanging LLC and Partnership Interests. Presented by the Illinois State Bar Association. 12-1.

September

Tuesday, 9/6/11- Teleseminar—Social Media Issues and Employer Liability in the Workplace. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 9/13/11- Teleseminar—Joint Venture Agreements in Business, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/14/11- Teleseminar—Joint Venture Agreements in Business, Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 9/16/11- Webcast—ThalP 101: An Intellectual Property Primer for In-House Attorneys. Presented by the ISBA Corporate Law Section. 12-2.

Friday, 9/16/11- Galena, Eagle Ridge Resort and Spa—Hot Topics in Consumer Collection. Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section; co-sponsored by the ISBA Young Lawyers Division. 8:45-4:30.

Tuesday, 9/20/11- Teleseminar—Franchise Law: What You Need to Know Before Your Client Buys. Presented by the Illinois State Bar Association. 12-1.

Thursday, 9/22/11- Teleseminar—Generation Transfer Tax Planning. Presented by

the Illinois State Bar Association. 12-1.

Friday, 9/23/11- Fairview Heights, Four Points Sheraton—Current DUI, Traffic and Secretary of State Related Issues- Fall 2011. Presented by the ISBA Traffic Laws/Courts Section. 9-4.

Tuesday, 9/27/11- Teleseminar—Metadata: The Hidden Digital World of Client Files in Litigation. Presented by the Illinois State Bar Association. 12-1.

October

Tuesday, 10/4/11- Teleseminar—Fixing Broken Trusts. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/6/11- Teleseminar—Environmental Liability in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

Monday, 10/10/11- Chicago, UBS Towers—Advanced Workers' Compensation. Presented by the ISBA Workers' Compensation Law Section. 9-5.

Monday, 10/10/11- Fairview Heights, Four Points Sheraton—Advanced Workers' Compensation. Presented by the ISBA Workers' Compensation Law Section. 9-5.

Tuesday, 10/11/11- Teleseminar—Drafting LLC Operating Agreements, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/12/11- Teleseminar—Drafting LLC Operating Agreements, Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 10/14/11- Springfield, INB Conference Center—Divorce Basics for Pro Bono Attorneys- 2011. Presented by the ISBA Delivery of Legal Services Council. 1:00-4:45.

Friday, 10/14/11- Chicago, ISBA Chicago Regional Office—Family Law Nuts and Bolts Chicago 2011. Presented by the ISBA Family Law Section. 8-5. ■

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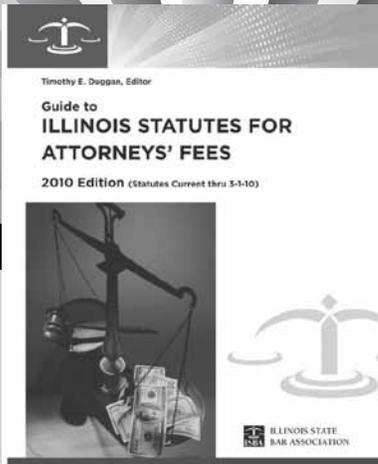
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