

This letter discusses marketplace facilitators. See 86 Ill. Adm. Code 131.130.
(This is a GIL.)

August 24, 2021

Dear NAME:

This letter is in response to your letter dated March 30, 2021, in which you requested information. 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.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Re: Request for Written Advice Regarding Application of Illinois Marketplace Facilitator Guidance

To Whom It May Concern:

Taxpayer's representative has been in discussions with the State of Illinois regarding the issues documented below. Based on these discussions, Taxpayer understands the Position stated below to be in agreement with the State's interpretation of existing guidance. This ruling request is intended to formalize that understanding in writing.

Please accept this memorandum as a request for a General Information Letter regarding the application of Illinois Retailers' Occupation Tax ("ROT") and Use Tax to the below described fact pattern.

I. BACKGROUND

Taxpayer is a retailer headquartered outside of Illinois that makes sales of tangible personal property to Illinois customers through its website.

For Illinois sales and use tax purposes, Taxpayer is considered an out-of-state retailer with physical presence in Illinois.

Taxpayer recently launched a program whereby it facilitates the sale of third-party owned goods through its website. Taxpayer's website contains general information regarding its third-party seller program; however, no third-party sellers are individually named or otherwise identified on Taxpayer's website. Taxpayer processes the transactions - including payment - for third-party items, but the third-party seller maintains ownership and possession of the goods at all times until they are sold. After a customer has purchased a third-party item via Taxpayer's website, the third-party seller is responsible for delivery of the goods to the purchaser.

Third-party item product listings are identical in all respects to product listings of Taxpayer's own items, except that third-party listings may include a link to the general landing page on Taxpayer's website that provides an overview regarding its third-party seller program. Therefore, while third-party items are identified as such, no third-party sellers are specifically identified to purchasers on Taxpayer's website.

The purchase confirmation sent to the customer via email is identical in all respects to purchase confirmations for Taxpayer's own items. The physical invoice/receipt delivered to the purchaser along with the items purchased will identify the third-party seller. This is the first and only time the third-party seller is specifically identified to the purchaser.

II. ISSUE

1. Is Taxpayer considered a Marketplace Facilitator under 35 ILCS 120/1 and 86 Ill Admin. Code 131.130?
2. If Taxpayer is not considered a Marketplace Facilitator under 35 ILCS 120/1 and 86 Ill. Admin. Code 131.130, are all of Taxpayer's sales, including sales deemed to be Taxpayer's, sourced pursuant to Illinois' traditional sourcing rules found in 35 ILCS 120/2-12, 86 Ill. Admin. Code 220.115, and 86 Ill. Admin. Code 270.115?

III. POSITION

1. Pursuant to 86 Ill. Admin. Code 131.130(b), Taxpayer is not considered a Marketplace Facilitator for Illinois sales and use tax purposes because the third-party marketplace seller is not identified to the purchaser on the marketplace.

2. Because Taxpayer is not considered Marketplace Facilitator, all of Taxpayer's sales, including sales deemed to be Taxpayer's, are sourced pursuant to Illinois' traditional sourcing guidance.

IV. DISCUSSION

Illinois defines a marketplace facilitator as:

"a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a retail sale by an unrelated third-party marketplace seller by:

1. listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Retailers' Occupation Tax Act; and
2. either directly or indirectly, through agreements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services."¹

A marketplace is "a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items."² Marketplace seller means "a person that makes sales through a marketplace operated by an unrelated third party [sic] marketplace facilitator."³

As of January 1, 2021, marketplace facilitators that make sales through their marketplace of tangible personal property to Illinois purchasers totaling \$100,000 or 200 separate transactions are subject to applicable retailers' occupation taxes based on the location to which the tangible personal property is delivered or at which possession is taken by the purchaser⁴

However, taxpayers that do not indicate to purchasers on the marketplace that the items are being sold on behalf of identified marketplace sellers do not meet the advertising provision of the

¹ 35 ILCS 120/1; 86 Ill. Admin. Code 131.105; 86 Ill. Admin. Code 131.130(a)(1).

² 35 ILCS 120/1; 86 Ill. Admin. Code 131.105.

³ 35 ILCS 120/1; 86 Ill. Admin. Code 131.105.

⁴ 35 ILCS 120/2(c); 35 ILCS 120/2-12(7); 86 Ill. Admin. Code 131.130(f); 86 Ill. Admin. Code 131.135(a).

marketplace facilitator definition.⁵ Such taxpayers are considered the sellers of the items and are required to collect tax as they would on their own sales.⁶

While Taxpayer sells third-party merchandise on its website, it is not considered a marketplace facilitator under Illinois tax rules. Taxpayer does hold agreements with unrelated third parties and processes payment for all transactions on its website. However, under Illinois regulations, Taxpayer does not list or advertise items for sale by third-party marketplace sellers. The Illinois Department of Revenue ("DOR") has issued specific administrative guidance regarding what constitutes listing or advertising items for sale by third-party sellers. Specifically, the third-party sellers must be identified on the marketplace as the seller of the items.

In no instance does Taxpayer identify any third-party sellers on its website (i.e., the marketplace). If a third-party seller is identified to the purchaser, such identification occurs after the transaction has been completed and entirely outside of the marketplace (via the physical invoice/receipt delivered to the purchaser).

While Illinois' marketplace facilitator regulations in Title 86 Part 131 of the Illinois Administrative Code provide sourcing guidance to marketplace facilitators, they do not provide guidance to entities that do not meet the definition of a marketplace facilitator. Rather, such taxpayers must look elsewhere to determine whether and how their sales are subject to tax in Illinois. Section 131.155 provides direct sourcing guidance to marketplace facilitators and remote retailers, and directs out of state retailers with physical presence in Illinois to refer to Illinois' traditional sourcing guidance to determine how their sales may be subject to tax in the state.⁷ Because Taxpayer does not meet the definition of a marketplace facilitator, it must look to outside Title 86 Part 131 of the Illinois Administrative Code to determine how and where its sales may be subject to tax in Illinois.

V. CONCLUSION

Taxpayer is not considered a marketplace facilitator for Illinois sales and use tax purposes because Taxpayer does not indicate to purchasers on its marketplace the identity of any third-party sellers. Pursuant to 86 Ill. Admin. Code 131.130(b), Taxpayer does not meet the advertising prong of the marketplace facilitator definition and is not subject to Illinois sales

⁵ 86 Ill. Admin. Code 131.130(b).

⁶ 86 Ill. Admin. Code 131.130(b).

⁷ 86 Ill. Admin. Code 131.155(e).

and use tax collection requirements as a marketplace facilitator. Further, because Taxpayer is not considered a marketplace facilitator in Illinois, it must look outside of Title 86 Part 131 of the Illinois Administrative Code to determine how and where its sales may be subject to tax in Illinois.

We appreciate your consideration of this matter. Please let us know if you have any questions or require any additional information in order to issue a General Information Letter.

DEPARTMENT'S RESPONSE:

A marketplace facilitator is a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a retail sale by an unrelated third-party marketplace seller by:

- A) Listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under ROTA; and
- B) Either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

86 Ill. Adm. Code 131.130(a)(1). If none of the tangible personal property sold over a marketplace is identified to purchasers on the marketplace as tangible personal property sold on behalf of an identified marketplace seller, the requirements of (a)(1)(A) are not met. 86 Ill. Adm. Code 131.130(b). If an online marketplace does not indicate to purchasers using the marketplace that the sales are made on behalf of any identified marketplace sellers, it is simply an online retailer making its own sales. See 131.130, Example 4. All unidentified sales made over such an online marketplace are considered the sales of the online retailer. See 131.130(b). Tax liability from these sales depends on the activities of the online retailer.

Every retailer in this State must determine the taxing jurisdictions where it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in Section 270.115(c) and (d), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit retailers' occupation tax. See, for example, 86 Ill. Adm. Code 270.115(c) and (d). If you are engaged in any special selling activity where your remittance of retailers' occupation tax would be directed by statute rather than these rules, please refer to the applicable statute.

COMPANY/NAME

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Out-of-State retailers with a physical presence in Illinois incur a Use Tax collection obligation for sales made outside Illinois and shipped or delivered to Illinois purchasers. Such retailers also incur State and local retailers' occupation taxes using origin sourcing for any sales made in Illinois. 86 Ill. Adm. Code 131.107(a)(4). For example, an out-of-state retailer incurs a Use Tax collection obligation for sales made to Illinois purchasers when its selling activities occur outside Illinois and the inventory used to fill purchases for Illinois purchasers is located outside Illinois. See 86 Ill. Adm. Code 270.115(c) and (d) for factors used to make this determination. If either its selling activities occur in Illinois or its inventory is located in Illinois for a sale made to an Illinois purchaser, the out-of-state retailer is considered an Illinois retailer for that transaction and is subject to State and local retailers' occupation taxes at the origin rate at the location where the selling activities occur or the location where the inventory is located. See 86 Ill. Adm. Code 270.115(c) and (d) for factors used to make this determination.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Alexis K. Overstreet
Associate Counsel

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