

ST 25-0005-GIL 02/03/2025 MARKETPLACE FACILITATOR

An internet auction listing service meeting the requirements of a marketplace facilitator, including one of the tax remittance thresholds, is considered a marketplace facilitator. See 86 Ill. Adm. Code 130.1915(c); 86 Ill. Adm. Code 131.105; 86 Ill. Adm. Code 131.135. The participation of a marketplace facilitator in the collection and payment process under 86 Ill. Adm. Code 131.130(a)(1)(B) is not limited to instances where the purchaser directly pays the marketplace facilitator, and the marketplace facilitator directly remits the payment to the marketplace seller. See 86 Ill. Adm. Code 131.130(a)(1)(B). (This is a GIL.)

February 3, 2025

COMPANY
NAME
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated May 18, 2024, 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 <https://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:

The undersigned, as the authorized representative of his unnamed client (“Taxpayer”), is requesting the Illinois Department of Revenue (“Department”) issue a General Information Letter pursuant to 2 Ill. Adm. Code 1200.120 regarding the questions raised herein.

QUESTIONS RAISED

A. Whether the definition of “marketplace facilitator” under Illinois Compiled Statutes 35 ILCS 120/1 requires a person to both collect and transmit payment from the purchaser to the marketplace seller in order to satisfy the definition of “marketplace facilitator.”

B. Whether the term “indirectly” under paragraph (2) of the definition of “marketplace facilitator” 35 ILCS 120/1 requires the existence of an agreement or arrangement with a third party in order for a person to be treated as indirectly collecting payment from a purchaser and transmitting the payment to a marketplace seller. Stated differently, if the facilitator has not entered into any agreement or arrangement with a third party to collect and transmit payment from the purchaser to the seller, then such facilitator cannot be treated as indirectly collecting and transmitting payment from a purchaser to a marketplace seller.

C. Whether the definition of “third party” as used in the definition of “marketplace facilitator” under 35 ILCS 120/1 excludes the purchaser and marketplace seller from falling within the definition of “third party.”

D. Whether a person who lists or advertises a seller's tangible personal property is treated as either directly or indirectly collecting and transmitting payment to the marketplace seller under the definition of marketplace facilitator under Section 35 ILCS 120/1 where (1) such person's “marketplace” (as defined under 35 ILCS 120/1) is used to communicate the purchaser's credit card digits and identity to the seller, (2) the seller uses its own credit card processing merchant account to process purchaser's payment, and (3) the facilitator has not entered into any agreement or arrangement with a third party to transmit the purchaser's identity and credit card digits to the marketplace seller.

PROPOSED ANSWER TO QUESTION RAISED

A. In order to satisfy the definition of “marketplace facilitator” under 35 ILCS 120/1, the statutory definition requires as a necessary condition a person to both collect and transmit either directly or indirectly payment from the purchaser to the seller with respect to the sale of tangible personal property (“TPP”). If the purchaser itself directly pays the purchase price to the seller, the person who facilitates the sale is not a marketplace facilitator even though such person satisfies the elements under paragraph (1) of the definition of “marketplace facilitator.”

B. In order for a person to be treated as indirectly collecting and transmitting payment under paragraph (2) of the definition of “marketplace facilitator” under 35 ILCS 120/1, the statutory language requires the existence of an agreement or arrangement between the facilitator and a third party. The phrase “through agreements or arrangements with third parties” modifies the word “indirectly” and not “directly”. As such, a facilitator could satisfy the definition of marketplace facilitator by directly collecting payment from the purchaser and directly transmitting such payment to the seller without entering into any agreement or arrangement with a third party. However, to be treated as “indirectly” collecting and transmitting payment, the definition of “marketplace facilitator” requires the existence of either an agreement or an arrangement with a third party. If the facilitator has not entered into an agreement or arrangement with a third party to collect and transmit payment, then such facilitator cannot be treated as “indirectly” collecting and transmitting payment.

C. The statutory use of the term “third party” within the context of the definition of “marketplace facilitator” under 35 ICLS 120/1 excludes the purchaser and the marketplace seller from falling within such definition.

D. A person who lists or advertises (and thus satisfies paragraph (1) of the definition of marketplace facilitator under 35 ILCS 120/1) is not treated as either directly or indirectly collecting and transmitting payment from the purchaser to the seller where the purchaser’s identity and credit card digits are communicated to the seller through such facilitator’s “marketplace” (i.e. website) and the seller uses of its own credit card processing merchant account to process payment. The use of the facilitator’s website to communicate the purchaser’s identity and credit card digits does not rise to level of either directly or indirectly “collecting” and “transmitting” payment from the purchaser to the seller. The actual processing of the credit card information is completed by the seller on its own credit card merchant account. In no event does the facilitator use its or an affiliated party’s merchant account to process payment of the purchase price. Furthermore, the facilitator has not entered into any agreement or arrangement with a third party to collect and transmit payment from the purchaser to the seller.

LAW

Illinois Compiled Statutes 35 ILCS 120/1 defines the following terms:

“Marketplace” means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items.

“Marketplace facilitator” means 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 this Act; and

(2) 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.

“Marketplace seller” means a person that makes sales through a marketplace operated by an unrelated third party marketplace facilitator.

FACTS

General background on the Taxpayer.

The Taxpayer is an entity formed under the laws of a State outside of Illinois. The Taxpayer has no employee, representative, agent, salesperson, canvasser, facilitator, solicitor, warehouse, or physical presence in Illinois. The Taxpayer owns and operates an auction-type website on which potential sellers post TPP for potential purchasers to place a bid.

Auction process.

Sellers and bidders typically interact with the Taxpayer’s website in the following manner:

1. Sellers submit pictures of TPP (owned by the seller) to the Taxpayer. The Taxpayer evaluates the pictures and the TPP to determine whether the TPP is appropriate to place for auction on the Taxpayer’s website. If the Taxpayer determines the TPP is appropriate to place for auction, the seller pays a flat listing fee of \$XX.XX to the Taxpayer to list the TPP

for auction. The Taxpayer and seller work together to prepare an accurate description and listing of the TPP. The TPP is placed on the Taxpayer's website for live bidding. The Taxpayer's website contains a photo gallery and a description of the TPP open for bidding. The Taxpayer never takes possession or title of the TPP either before, during, or after the auction process. The Taxpayer does not operate, control, or own any fulfillment center.

2. At the end of the auction, the seller can decide to accept the highest bidder's offer or make a counteroffer. If the purchaser and seller agree to a deal at the end of the auction, the Taxpayer qualifies the purchaser as being financially capable of making the purchase. The purchaser has the option to instruct the seller to ship the TPP to the purchaser or to deliver the TPP to a third party that is unaffiliated and unrelated to the Taxpayer to verify that the TPP has been accurately represented.

3. If the purchaser forgoes the third-party authentication process, the purchaser instructs the seller where to deliver the TPP. Seller uses the Taxpayer's website to inform the purchaser on the available method of payment that the seller will accept. Prior to shipping, the purchaser selects a method of payment, such as wire transfer, physical check, cash, Zelle, crypto, or credit card. If the parties agree on a credit card payment, the Taxpayer's website allows (but does not require) the purchaser to enter the purchaser's credit card information. The seller uses the Taxpayer's website to view such credit card information. Any charging, collecting, or processing of the purchaser's credit card is done by the seller using the seller's own merchant credit card processing system. The Taxpayer's website merely allows the seller to view the purchaser's name and credit card number. In no event does the Taxpayer process, collect, or charge in any manner the credit card payment or any other payment from the purchaser for the purchase of the TPP. In addition, the Taxpayer has no agreement or arrangement with any party to indirectly collect or transmit purchaser's payment to the seller.

4. If the purchaser chooses to have the TPP authenticated by a third party, the purchaser instructs the seller to deliver the TPP to the third-party verification center. Upon authentication, the Taxpayer informs the purchaser that the TPP has been authenticated and the seller's accepted payment options are sent to the purchaser. The purchaser pays the seller directly in one of the manners as described in #3 above. Like the payment methods described in #3 above, the Taxpayer never

collects, charges, processes, or transmits the payment from the purchaser to the seller. After the seller confirms receipt of payment, the Taxpayer communicates to the authentication center to release the TPP to the purchaser. The purchaser may (1) pick up the TPP in person at the location of the authentication center, (2) provide the shipping address to the authentication center and pay the authentication center directly for shipping, or (3) provide the purchaser's own shipping label to the authentication center.

Registration of bidders.

All bidders must register with the Taxpayer before they can place a bid. Bidders provide credit card information to the Taxpayer as part of the registration process. When a bid is placed, the Taxpayer places a hold on the credit card on file for X percent of the bid amount. When the auction closes, if there is a winner, the hold is released for all bidders except for the winner. The purchaser (typically the highest bidder) pays the Taxpayer a fee equal to X% of the total purchase price of the TPP. This X percent fee is paid directly to the Taxpayer for operating the auction-type website. The X percent fee does not get subtracted from the purchase price upon the sale of the TPP. In no event is any of the X percent fee remitted to the seller. The purchaser is charged and obligated to pay the X percent fee to the Taxpayer even if the deal between the seller and purchaser falls through. To illustrate, if the deal between purchaser and seller is \$10,000, the Taxpayer charges \$500 to the credit card of the purchaser to manage the closing of the transaction and the purchaser pays the seller \$10,000 directly via a payment method of their choice as described above. As stated above, even if the deal fails to consummate for any reason, the purchaser is obligated to pay the Taxpayer the X percent fee.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Beginning January 1, 2021, an internet auction listing service meeting the requirements of a marketplace facilitator, including one of the tax remittance thresholds, is considered a marketplace facilitator subject to State and local retailers' occupation taxes

on sales made on its marketplace to purchasers in Illinois. See 86 Ill. Adm. Code 130.1915(c); 86 Ill. Adm. Code 131.105; 86 Ill. Adm. Code 131.135.

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 the Retailers' Occupation Tax Act; 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. Provision on a marketplace of functionality for connection to a payment mechanism meets the requirements of this subsection.

See 86 Ill. Adm. Code 131.130(a)(1).

Beginning January 1, 2021, an internet auction listing service meeting the requirements of a marketplace facilitator, as defined in Section 131.130(a)(1), is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of following thresholds was met during the preceding four quarterly periods ending on the last day of March, June, September, and December:

- A) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B) The marketplace facilitator enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois

See 86 Ill. Adm. Code 131.135.

The Department has encountered various marketing and payment arrangements used by ecommerce marketplace facilitators. Your inquiry concerns the participation of a marketplace facilitator in the collection and payment processes for sales over a marketplace on behalf of an identified marketplace seller. See 86 Ill. Adm. Code 131.130(a)(1)(B). Notably, the language in the statute and administrative rules dealing with this process includes such broad terms as: "facilitates", "indirectly", "arrangement", and "provision". See 35 ILCS 120/1; 86 Ill. Adm. Code 131.130(a)(1)(B). Accordingly, under Section 131.130(a)(1)(B), the participation of a marketplace is not limited to only those

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instances where the purchaser directly pays the marketplace facilitator and in turn, the marketplace facilitator directly remits the payment to the marketplace seller. Such a restrictive reading would be contrary to the language in 35 ILCS 120/1, and 86 Ill. Adm. Code 131.130(a)(1)(B).

Based on the limited information provided in your letter, the Department cannot determine the exact nature of the arrangement between your client and the marketplace sellers. Without reviewing the actual contractual arrangements between your client and the marketplace sellers, the Department cannot provide an opinion in a GIL whether your client would be considered a marketplace facilitator under 86 Ill. Adm. Code 131.130(a)(1).

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

Very truly yours,

Thomas Grudichak
Associate Counsel

TG:slc