

**Illinois Department of Revenue
Regulations**

Title 86 Part 150 Section 150.804 Marketplace Facilitators

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 150
USE TAX**

**Section 150.804 Marketplace Facilitators
EMERGENCY**

a) Definitions

Affiliate means a person that, with respect to another person: (i) has a direct or indirect ownership interest of more than 5 percent in the other person; or (ii) is related to the other person because a third person, or a group of third persons who are affiliated with each other as defined herein, holds a direct or indirect ownership interest of more than 5% in the related person.

Marketplace means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell tangible personal property. Examples of marketplaces include, but are not limited to, auctions, internet marketplace platforms on which tangible personal property is offered for sale; antique malls, home shopping networks selling tangible personal property over television, cable or satellite networks; or consignment shops selling tangible personal property on behalf of numerous persons.

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 sale by an unrelated third-party marketplace seller by performing both of the activities outlined in subsection (c)(1) of this Section.

Marketplace seller means a person that sells or offers to sell tangible personal property through a marketplace operated by an unrelated third-party marketplace facilitator.

Retail sales. For purposes of this Section, all sales made through a marketplace by a marketplace facilitator on behalf of unrelated third-party marketplace sellers are considered sales made at retail by a retailer.

Unrelated third party, for purposes of this Section, means a person that, with respect to another person, has a direct or indirect ownership interest of 5 percent or less in the other person. A person is also considered to be an unrelated third party when a third person, or group of third persons who are affiliated with each other as defined in this subsection, hold a direct or indirect ownership interest of 5% or less in the other person.

b) General Provisions; Tax Collection

- 1) Scope of regulations – preliminary considerations. The provisions of this Section apply when the only tax required to be remitted to the Department by marketplace facilitators for sales made on behalf of marketplace sellers through the marketplace is Use Tax. A marketplace facilitator is considered the retailer for such sales and must register, collect Use Tax from purchasers and remit that Use Tax to the Department. Marketplace facilitators are not considered the retailer for sales made on behalf of marketplace sellers through the marketplace that are subject to Retailers' Occupation Tax. Marketplace sellers are considered the retailer for such sales. The manner in which these transactions are handled is set out in subsection (i) of this Section.

EXAMPLE 1: Ponchos for Pooches makes sales of rain gear for dogs through an internet marketplace that meets the requirements of subsection (d) of this Section. The rain gear is handmade in Portland, Oregon and then shipped directly to Illinois purchasers. Beginning on January 1, 2020, the marketplace facilitator is considered the retailer of the rain gear and must collect and remit Use Tax to the Department.

EXAMPLE 2: Sales made to Illinois purchasers by Ponchos for Pooches have skyrocketed. As a result, the company now has several employees located in Illinois, and the rain gear which the employees produce is inventoried in a warehouse located in Kankakee. Sales to Illinois purchasers are frequently shipped from the Kankakee warehouse. Any sales fulfilled from inventory in the Kankakee warehouse are subject to Retailers' Occupation Tax, including local occupation taxes, because the property sold is located in the inventory of Ponchos for Pooches in Kankakee at the time of sale. See, for example, 86 Ill. Adm. Code 270.115. The marketplace facilitator is no longer considered the retailer for these sales. Ponchos for Pooches is liable for Retailers' Occupation Tax on these sales and must register with the Department to remit Retailers' Occupation Tax on such sales. In this example, the marketplace facilitator has decided to collect all taxes due from purchasers on these sales (including any local occupation tax reimbursements) and transmits them to Ponchos for Pooches. Ponchos for Pooches then remits Retailers' Occupation Tax on these sales to the Department. In this situation, the marketplace facilitator is held harmless for tax on amounts collected and remitted to Ponchos for Pooches.

- 2) Tax Collection: On and after January 1, 2020, except as provided in subsection (i)(4) of this Section, every marketplace facilitator that meets either of the thresholds in subsection (d) of this Section is considered the retailer for each sale of tangible personal property made on behalf of marketplace sellers through its marketplace. The marketplace facilitator must register with the Department and collect and remit any Use Tax due for marketplace sales made on behalf of marketplace sellers to Illinois purchasers. The obligations of marketplace facilitators are more fully explained in subsection (h) of this Section.
- c) Determination of status as a marketplace facilitator
 - 1) A person is considered a marketplace facilitator if he or she, *pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a sale by an unrelated third party marketplace seller by doing both of the following:*

- A) *listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Use 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.*

EXAMPLE 1: Carabibi, a social media network, provides a forum in which persons using the network can buy and sell used tangible personal property. Carabibi functions solely as an advertising platform bringing buyers and sellers together. Once the buyer and seller have contacted each other over the network, they must negotiate the sale and make payment arrangements themselves. While the forum provided by Carabibi constitutes a marketplace as defined in subsection (a), Carabibi is not considered a marketplace facilitator because it does not engage in the activities described in subsection (c)(1)(B).

EXAMPLE 2: Paymate is a payment processing business appointed by merchants to handle payment transactions from various channels, such as credit cards and debit cards. Its sole activity with respect to marketplace sales is to handle financial transactions between two parties on the marketplace. Paymate is not a marketplace facilitator because it does not engage in the activities described in subsection (c)(1)(A).

EXAMPLE 3: CouponCrowd operates an online platform that sells coupons that can be redeemed by purchasers at various retail stores that have contracted with CouponCrowd to promote their businesses. CouponCrowd lists the coupons for sale, sells the coupons to purchasers, and processes payment for the purchase of the coupons. CouponCrowd is not a marketplace facilitator. The sale of a coupon is the sale of an intangible, not the sale of tangible personal property. Marketplace facilitators must engage in facilitating sales of tangible personal property.

EXAMPLE 4: Mandameal is a food delivery service platform operating in Chicago. Mandameal provides an app to users that lists menus from participating restaurants, sells the meals to customers, and processes payments for the meals that are purchased. Although Mandameal is considered a marketplace facilitator because it engages in the activities in subsection (c)(1), the provisions of this Section do not apply to it because the tax liability resulting from its sales is Retailers' Occupation Tax liability, not Use Tax liability. Mandameal must register as a retailer and remit Retailers' Occupation Tax to the Department for sales it makes over its app.

- d) Marketplace facilitators – Determination of obligation to collect and remit tax. Beginning January 1, 2020, except as provided in subsection (i)(4) of this Section, a marketplace facilitator, as defined in subsection (c)(1) of this Section, is considered the retailer for each sale of tangible personal property made through its marketplace on behalf of marketplace sellers if either of the following thresholds is met:
 - 1) *The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by the marketplace facilitator and by marketplace sellers are \$100,000 or more; or*

- 2) *The marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions through the marketplace for the sale of tangible personal property to purchasers in Illinois.*
- e) *A marketplace facilitator shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets the threshold of either paragraph (1) or (2) of subsection (d) for the preceding 12-month period. If the marketplace facilitator meets the threshold of either paragraph (1) or (2) of subsection (d) for a 12-month period, it is considered a retailer maintaining a place of business in Illinois and is required to collect and remit the Use Tax and file returns for one year for all sales made over its marketplace.*
- 1) *At the end of that one-year period, the marketplace facilitator shall determine whether it met the threshold of either paragraph (1) or (2) of subsection (d) during the preceding 12-month period. If the marketplace facilitator met the threshold of either paragraph (1) or (2) of subsection (d) for the preceding 12-month period, it is considered a retailer maintaining a place of business in Illinois and is required to collect and remit Use Tax and file returns for the subsequent year for all sales made over its marketplace.*
 - 2) *If at the end of a one-year period a marketplace facilitator that was required to collect and remit the Use Tax determines that it did not meet the threshold of either paragraph (1) or (2) of subsection (d) during the preceding 12-month period, the marketplace facilitator shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets the threshold of either paragraph (1) or (2) of subsection (d) for the preceding 12-month period.*
- f) “Gross receipts” and “separate transactions” defined. The following definitions must be applied by a marketplace facilitator when determining if it meets either of the thresholds in subsection (d):
- 1) “Gross receipts” means all the consideration actually received for a sale by a marketplace seller. See 86 Ill. Adm. Code 130.401 for additional information regarding gross receipts. Subsection (g) describes what kinds of transactions must be included or excluded when determining whether the threshold based on gross receipts in subsection (d)(1) is met.
 - 2) “Illinois purchaser” means *a person in Illinois who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration.* See 35 ILCS 105/2.
 - 3) “Entering into a sale” occurs when a marketplace seller has taken action that binds it to a sale. This may occur, even though the tangible personal property that has been sold has not yet shipped to the purchaser.

EXAMPLE: On December 15, 2019, a marketplace seller takes actions binding it to a sale that is scheduled for shipment on January 15, 2020. This sale must be included in the calculation used to determine the marketplace facilitator’s sales transactions for its initial lookback period under subsection (e).

- 4) "Separate transactions" means sales transactions which are documented on separate invoices, regardless of the manner in which the tangible personal property is delivered to the purchaser.

EXAMPLE 1: A purchaser orders 12 items of clothing from a marketplace seller. He receives an invoice confirming his order of 12 items. However, due to a back order, 3 of the clothing items are shipped separately from the other 9 items. Shipment of the 3 back-ordered items, even with a separate shipping invoice, is not considered a separate transaction because the original transaction was invoiced as one sale.

EXAMPLE 2: A purchaser places an order of home repair tools at 8:00 a.m. from a marketplace seller. She receives an invoice confirming her order at 8:15 a.m. At 2:00 p.m., the purchaser realizes she needs 5 other tools to complete the job, and orders these tools from the same marketplace seller. The marketplace seller confirms this order with a separate invoice. In this example, two different transactions have occurred. This is the case, even if the marketplace seller sends all the ordered tools to the purchaser in one package.

EXAMPLE 3: A mother places an order with Marketplace Seller B for care packages to be delivered to her son's dormitory at 8 scheduled intervals during the school year. Each delivery is separately invoiced. These are counted as 8 separate transactions.

- g) Transactions that are included or excluded in determining if either of the thresholds in subsection (d) are met. A marketplace facilitator must apply the following provisions in determining whether a transaction should be included or excluded for purposes of determining if it meets either of the thresholds in subsection (d):

- 1) Sales for resale must be excluded. See 86 Ill. Adm. Code 130.201.

EXAMPLE: Marketplace Seller A makes a sale of seedlings to Company B over a marketplace. Company B provides a resale certificate indicating that 60% of the seedlings will be sold to customers at retail (a purchase for resale) and that it will use 40% of the seedlings in its landscaping business (a purchase for use). If the marketplace facilitator calculates its threshold using gross receipts, it should include only 40% of the gross receipts from this sale. If it calculates its threshold using transactions, however, the entire transaction with Company B must be included.

- 2) Sales of tangible personal property that is required to be registered with an agency of this State, including motor vehicles, watercraft, aircraft, and trailers, that are made from locations outside Illinois to Illinois purchasers must be excluded. Taxes on these items will continue to be paid, as required by Section 10 of the Use Tax Act (35 ILCS 105/10), by purchasers as a condition of titling or registering these items.
- 3) Sales made through the marketplace on behalf of a marketplace seller or by a marketplace facilitator that are subject to Retailers' Occupation Tax must be excluded. For example, sales made through a marketplace on behalf of a

marketplace seller that are filled from inventory located in an Illinois warehouse are excluded for purposes of calculating the thresholds in subsection (d).

- 4) All sales of tangible personal property, other than those excluded by this subsection (g), even if they are exempt from tax, must be included for purposes of calculating the thresholds in subsection (d).

h) Obligations of marketplace facilitators

- 1) A marketplace facilitator shall enter into an agreement with each of its marketplace sellers to facilitate sales of tangible personal property by that marketplace seller. *The agreement shall contain a certification by the marketplace facilitator that, except as provided in subsection (i), the marketplace facilitator assumes the rights and duties of a retailer under the Use Tax Act with respect to collection and remittance of Use Tax on all sales made by the marketplace seller through the marketplace.* The marketplace facilitator shall maintain the agreement in its books and records for review and inspection upon demand by the Department.
- 2) A marketplace facilitator must maintain books and records containing the name, address and FEIN number of all marketplace sellers making sales through its marketplace and provide such records to the Department upon demand.
- 3) A marketplace facilitator shall collect Use Tax as required by Section 3-45 of the Use Tax Act for all sales made through its marketplace, based on information provided by marketplace sellers. However, marketplace facilitators are not required to collect tax on sales of tangible personal property that is required to be registered with an agency of this State, including motor vehicles, watercraft, aircraft and trailers, that are made from locations outside Illinois to Illinois purchasers. Taxes on these items will continue to be paid, as required by Section 10 of the Use Tax Act, by purchasers as a condition of titling or registering these items. When Retailers' Occupation Tax is incurred on a sale made through the marketplace by a marketplace seller, a marketplace facilitator may, as provided in subsection (i)(5) of this Section, collect all taxes due from the purchaser on the sale, including any local tax reimbursements, and transmit them to the marketplace seller for remittance to the Department as Retailers' Occupation Tax.
- 4) A marketplace facilitator shall register with the Department and file returns in accordance with procedures required by the Use Tax Act.
- 5) A marketplace facilitator shall maintain books and records for all sales made through a marketplace on behalf of marketplace sellers consistent with the requirements in Section 11 of the Use Tax Act.
- 6) A marketplace facilitator may file a separate return for its own sales made over the marketplace, apart from the return for sales made through the marketplace on behalf of marketplace sellers.
- 7) An affiliate of a marketplace facilitator shall file its own return for sales it makes over the marketplace provided it is a retailer maintaining a place of business in this State pursuant to Section 2 of the Use Tax Act.

- 8) *If, for any reason, the Department is prohibited from enforcing the marketplace facilitator's duty under this Act to collect and remit taxes pursuant to this Section, the duty to collect and remit such taxes reverts to the marketplace seller that is a retailer maintaining a place of business in this State pursuant to Section 2 of the Use Tax Act.*
- i) Obligations of marketplace sellers
 - 1) *A marketplace seller shall furnish to the marketplace facilitator information that is necessary for the marketplace facilitator to correctly collect and remit Use Tax on each retail sale. The information may include a certification that an item being sold is taxable, not taxable, exempt from taxation, or taxable at a specified rate.*
 - 2) Books and records. Each marketplace seller shall maintain books and records for all sales made through a marketplace in accordance with the requirements of the Use Tax Act. Each marketplace seller shall furnish such books and records to the marketplace facilitator upon the reasonable request of the marketplace facilitator.
 - 3) A marketplace seller that makes sales to Illinois purchasers in addition to those made through a marketplace must determine if it is required to separately register and collect and remit Use Tax on those sales. If the marketplace seller is a "retailer maintaining a place of business in this State" under Section 2 of the Use Tax Act, it is required to separately register and remit Use Tax on such sales to Illinois purchasers. In determining if it has *Wayfair* nexus (see 86 Ill. Adm. Code 150.803), *neither the gross receipts from nor the number of separate transactions for sales of tangible personal property to purchasers in Illinois that a marketplace seller makes through a marketplace facilitator and for which it has received a certification from the marketplace facilitator as provided in Section 2d of the Use Tax Act shall be included for purposes of determining whether it meets the Wayfair thresholds.*
 - 4) A marketplace seller must separately register and remit tax on all sales of tangible personal property, including those made over a marketplace, that result in Retailers' Occupation Tax. For sales made over the marketplace that result in Retailers' Occupation Tax, the marketplace seller is considered the retailer and must remit tax on such sales as provided in the Retailers' Occupation Tax, as well as applicable local occupation taxes. The marketplace facilitator is not considered the retailer with respect to such sales.
 - 5) If a marketplace seller is required to remit Retailers' Occupation Tax for sales to Illinois purchasers made through a marketplace, the marketplace facilitator is authorized to collect all taxes due from the purchaser on such sales, including local tax reimbursements, and transmit them to the marketplace seller for remittance to the Department as Retailers' Occupation Tax Act. If a marketplace facilitator collects and transmits tax in this manner, it is not liable for tax on amounts so collected and remitted.
- j) Hold Harmless provisions

- 1) A marketplace seller shall be held harmless for liability for the collection and remittance of Use Tax when a marketplace facilitator fails to correctly collect and remit tax after having been provided with information by a marketplace seller to correctly collect and remit tax.
 - 2) If a marketplace facilitator demonstrates to the satisfaction of the Department that its failure to correctly collect and remit Use Tax on a sale resulted from its good faith reliance on incorrect or insufficient information provided by a marketplace seller, it shall be relieved of liability for the tax on that sale. In this case, a marketplace seller is liable for any resulting Use Tax due.
- k) Nothing in this Section affects the tax liability of a purchaser. If the tax is not collected and remitted as required, the purchaser shall remit such tax to the Department.

(Source: Added by Emergency Rulemaking at 44 Ill. Reg. _____, effective _____, for a maximum of 150 days)