

Sales made on a marketplace are not considered isolated or occasional sales. See 86 Ill. Adm. Code 131.145(j). (This is a GIL.)

January 28, 2021

Dear Xxxx:

This letter is in response to your email dated September 18, 2020, 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:

It was nice meeting you last week. Thank you so much for taking my call and being willing to pass along my question to the appropriate person.

The reason for reaching out today is to confirm my understanding of recent marketplace facilitator legislation effective January 1, 2020 in Illinois and its application to a 501C3 religious organization making isolated or occasional sales of items located in Illinois through a marketplace facilitator.

Background:

My client is a religious organization that has in the past made sales that qualify for the isolated or occasional sale exemption and such sales are not subject to Retailers' Occupation Tax. The organization is considering using a marketplace facilitator such as COMPANY to facilitate a sale of tangible personal property located in Illinois and potentially shipped to an Illinois buyer.

The sale qualifies for exemption under the isolated and occasional sales rules. However, I would like to confirm that if my client were to use a marketplace facilitator to broker the transaction the exemption would still be available to them. We want to avoid triggering liability to register and remit Retailers' Occupation Tax as a result of making a marketplace sale.

The reason the question arises is based on a reading of the emergency rules of January 3, 2020 (attached). Regarding obligations of a marketplace seller, Admin. Code tit. 86, §150.804(h) says:

“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 occupations taxes. The marketplace facilitator is not considered the retailer with respect so such sales.”

If my client were to make a sale through COMPANY, for example, they would be defined as a marketplace seller. It appears, however, the organization would only need to separately register and remit tax **if** the transaction results in Retailers’ Occupation Tax. The transaction should not result in Retailers’ Occupation Tax to the extent the exemption for isolated or occasional sales applies.

Question:

- Is the exemption for isolated or occasional sales available to marketplace sellers such as nonprofits selling over a marketplace?
- Can a marketplace seller such as a nonprofit claim a sale is occasional or isolated and not subject to Retailers’ Occupation Tax even when such sales are made over a marketplace? Including sales of items located in Illinois and sold to an Illinois purchaser?
- If the answer is yes, could you provide the specific code section that applies to support the answer?

I really appreciate your time and consideration of my question and I look forward to hearing from you.

DEPARTMENT’S RESPONSE:

As of January 1, 2021, the laws cited in your letter are no longer in effect. New administrative rules can be found at 86 Ill. Adm. Code 131.101 et seq. Further information can be found on the Department’s Resource Page for the “Leveling the Playing Field for Illinois Retail Act” at www2.illinois.gov/rev/research/taxinformation/sales/Pages/Level-the-Playing-Field.aspx.

Under the new rules, 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. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. 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 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 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. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. A Marketplace Seller is a person who makes sales through a marketplace operated by an unrelated third-party marketplace facilitator and who has obtained a certification from the marketplace facilitator as provided in 86 Ill. Adm. Code 131.145. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

Beginning January 1, 2021, a marketplace facilitator, as defined above, 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 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 for the sale of tangible personal property to purchasers in Illinois.

See 86 Ill. Adm. Code 131.135(a).

Marketplace facilitators meeting either of these thresholds are required to register with the Department, file returns, and remit all applicable State and local retailers' occupation taxes administered by the Department for all sales made over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. See 86 Ill. Adm. Code 131.145(a) and 131.145(c). Further, marketplace facilitators are subject to audit on all such sales. Section 131.145(c).

In your letter, you state that your client makes isolated or occasional sales, and therefore, does not collect or remit sales tax in Illinois. However, your client is considering using a marketplace facilitator to sell tangible personal property in Illinois. Under the new rules, a marketplace is a location held out to the public as being habitually engaged in the selling of tangible personal property. As such, sales made on a marketplace are not considered occasional sales. See 86 Ill. Adm. Code 131.145(j). If the marketplace facilitator meets one of the two thresholds mentioned above, it would be liable for collecting and remitting all applicable sales tax on any tangible personal property sold by your client through the marketplace.

Generally, a marketplace seller is not liable for State and local retailers' occupation taxes for sales of tangible personal property sold to Illinois purchasers through a marketplace, provided that, prior to its sales, it has obtained a certification from the marketplace facilitator. See 86 Ill. Adm. Code 131.145(b) and 131.150(a). The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace facilitator and the marketplace seller on the same transaction. See 35 ILCS 120/2(h); 86 Ill. Adm. Code 131.145(k); 86 Ill. Adm. Code 131.150(h).

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,

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