

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Leveling the Playing Field for Illinois Retail Act
- 2) Code Citation: 86 Ill. Adm. Code 131
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
131.101	New Section
131.105	New Section
131.107	New Section
131.110	New Section
131.115	New Section
131.120	New Section
131.125	New Section
131.130	New Section
131.135	New Section
131.140	New Section
131.145	New Section
131.150	New Section
131.155	New Section
131.160	New Section
131.165	New Section
131.170	New Section
131.175	New Section
131.180	New Section
131. ILLUSTRATION A	New Section
- 4) Statutory Authority: 35 ILCS 185/1; 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: Public Acts 101-31 and 101-604 amended the Retailers' Occupation Tax to implement a series of structural changes to the Illinois sales tax laws to require "remote retailers" to collect and remit State and local retailers'

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occupation taxes. This legislation provides that remote retailers may contract with certified service providers to perform their tax remittance functions. Remote retailers may also use certified automated systems to calculate and remit their own taxes. In addition to these changes, the legislation also modified the liability and role of marketplace facilitators. Beginning January 1, 2021, marketplace facilitators are required to remit State and local retailers' occupation taxes on sales made over the marketplace on their own sales and sales made on behalf of marketplace sellers. The legislation provides that State and local retailers' occupation taxes on sales made by remote retailers and marketplace facilitators on behalf of marketplace sellers are incurred based on the rate in effect at the location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing"). State and local retailers' occupation taxes for a marketplace facilitator's own marketplace sales are incurred, depending on the nature of the transaction, either at the rate in effect at the location of Illinois inventory from which a sale is fulfilled or the Illinois location where selling activities otherwise occur ("origin sourcing"), or by using destination sourcing. Section 131.155 of this Part explains the sourcing rules for different types of retailers. The changes made by Public Acts 101-0031 and 101-0604 are intended to "level the playing field" between Illinois-based retailers and remote retailers by imposing State and local retailers' occupation taxes on Illinois retailers, remote retailers and marketplace facilitators alike. These regulations implement the new requirements for remote retailers and marketplace facilitators, and explain the requirements for certified service providers and for the certified automated systems used by remote retailers.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

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- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Jerilynn Gorden
Illinois Department of Revenue
Legal Services Office, 5-500
101 West Jefferson
Springfield, Illinois 62794

(217) 782-2844

- 13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Remote retailers and marketplace facilitators that meet the economic nexus thresholds in the rule are required to register and remit tax on their sales.
- B) Reporting, bookkeeping or other procedures required for compliance: Persons required to remit tax will be required to register with the Department and remit taxes and maintain books and records currently required by law.
- C) Types of professional skills necessary for compliance: Bookkeeping; tax compliance skills.

- 14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule:

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B) Categories that the agency reasonably believes the rulemaking will impact, including:

- ii. regulatory requirements;
- iii. record keeping;

15) Regulatory Agenda on which this rulemaking was summarized: July 2020

The full text of the Proposed Rule begins on

Section 131.101 Purpose and Scope of Regulations.

Public Acts 101-0031 and 101-0604 implemented a series of structural changes to the Illinois sales tax law that are intended to “level the playing field” between Illinois-based retailers and remote retailers by imposing State and local retailers’ occupation taxes on Illinois retailers, remote retailers and marketplace facilitators alike. These regulations implement the new requirements for remote retailers and marketplace facilitators, and explain the requirements for certified service providers and for the certified automated systems used by remote retailers. Public Acts 101-0031 and 101-0604 require “remote retailers” to collect and remit State and local retailers’ occupation taxes. They also provide that remote retailers may contract with certified service providers to perform their tax remittance functions. Remote retailers may also use certified automated systems to calculate and remit their own taxes. In addition to these changes, the legislation also modified the liability and role of marketplace facilitators. Beginning January 1, 2021, marketplace facilitators are required to remit State and local retailers’ occupation taxes on sales made over the marketplace on their own sales and sales made on behalf of marketplace sellers. The legislation provides that State and local retailers’ occupation taxes on sales made by remote retailers and marketplace facilitators on behalf of marketplace sellers are incurred based on the rate in effect at the location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser (“destination sourcing”). State and local retailers’ occupation taxes for a marketplace facilitator’s own marketplace sales are incurred, depending on the nature of the transaction, either at the rate in effect at the location of Illinois inventory from which a sale is fulfilled or the Illinois location where selling activities otherwise occur (“origin sourcing”), or by using destination sourcing. Section 131.155 of this Part explains the sourcing rules for different types of retailers.

Section 131.105 Definitions

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As used in this Part:

"Affiliate" means a person that, with respect to another person: (i) has a direct or indirect ownership interest of more than 5% 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 herein defined, holds a direct or indirect ownership interest of more than 5% in the related person.

"Certified service provider" ("CSP") means an agent certified by the Department to perform the remote retailer's use and occupation tax functions, as outlined in the contract between the State and the certified service provider. [35 ILCS 185/5-10]

"Certified automated system" ("CAS") means an automated software system that is certified by the State as meeting all performance and tax calculation standards required by Department rules. References throughout this Part to a CAS mean the person that owns or provides the certified automated software system used by a remote retailer. [35 ILCS 185/5-10]

"Department" means the Department of Revenue. [35 ILCS 185/5-10]

"Marketplace" means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. [35 ILCS 120/1]

"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 the Retailers' Occupation Tax 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.*

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A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in paragraph (2) of this definition of "marketplace facilitator". [35 ILCS 120/1]

"Marketplace Seller" means a person that 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 Section 131.145 of this Part. A person that is an affiliate, as defined in this Section, of a marketplace facilitator is not a marketplace seller. [35 ILCS 120/1]

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court. [35 ILCS 120/1]

"Remote Retailer" means a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily or whether such retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a "remote retailer." [35 ILCS 120/1]

"Retailers' occupation tax" means the tax levied under the Retailers' Occupation Tax Act ("ROTA") and all applicable local retailers' occupation taxes collected by the Department in conjunction with the State retailers' occupation tax.

"Unrelated third party," means a person that, with respect to another person, has a direct or indirect ownership of 5% 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 herein defined, hold a direct or indirect ownership interest of 5% or less in the other person.

Section 131.107 Description of Different Types of Retailers on and After January 1, 2021

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- a) Different types of retailers on and after January 1, 2021. Public Acts 101-0031 and 101-0604 added several new types of retailers with different tax liabilities to the State's existing sales tax structure. As a result, retailers now include the following:
- 1) Remote retailers incurring State and local retailers' occupation tax using destination sourcing for sales made to Illinois purchasers;
 - 2) Marketplace facilitators incurring State and local retailers' occupation tax using destination sourcing for sales made over the marketplace on behalf of marketplace sellers to Illinois purchasers;
 - 3) Marketplace facilitators incurring State and local retailers' occupation tax using origin sourcing for their own sales that are fulfilled from inventory located in Illinois and incurring State and local retailers' occupation tax using destination sourcing for all other sales of its own;
 - 4) Out-of-State retailers with a physical presence in Illinois incurring 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;
 - 5) Illinois retailers, including brick and mortar retailers, incurring no State or local retailers' occupation taxes for sales made over a marketplace (the marketplace facilitator will now incur State and local retailers' occupation tax liability based on destination sourcing for these sales); and
 - 6) Illinois retailers, including brick and mortar retailers, incurring State and local retailers' occupation taxes based on origin sourcing for sales made in Illinois.
- b) As a result of these differing tax obligations, it is critical that retailers examine their selling activities to determine their specific tax liabilities. This is especially important for retailers that engage in multichannel retailing, (for example, retailers that engage in selling through their own website as well as through a marketplace, or Illinois brick and mortar retailers that also sell over a marketplace).

Section 131.110 Remote Retailers – General Provisions

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- a) On and after January 1, 2021, a remote retailer that meets either of the thresholds in Sections 131.115 (a) of this Part is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the ROTA and is liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers.
- b) Remote retailers are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers' occupation taxes are incurred at the rate in effect at this location. See Section 131.155 of this Part.
- c) Sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made by remote retailers to Illinois purchasers are not subject to the provisions of this Part. State and local use taxes shall continue to be paid by purchasers as required by law as a condition of titling or registering these items.
- d) Remote retailers are often multichannel retailers. That is, they may also sell their products through a marketplace and so are considered marketplace sellers. Marketplace facilitators required to register with the Department as provided in Section 131.135 of this Part incur State and local retailers' occupation taxes on sales made to Illinois purchasers on behalf of remote retailers making sales over the marketplace. Remote retailers do not incur tax on such sales. See Section 131.150 of this Part.

NOTE: All facts set forth in EXAMPLE 1 and in each subsequent example apply to each following example.

EXAMPLE 1: Ponchos for Pooches.com is a retailer of rain gear for dogs. Its sales are made exclusively from its manufacturing facility in Portland, Oregon. It has no physical presence in Illinois. Its annual gross receipts from sales to Illinois purchasers exceed \$100,000. Ponchos for Pooches.com is a remote retailer and is required to register with the Department and remit State and local retailers' occupation taxes in effect at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

EXAMPLE 2: Rain gear sold to Illinois purchasers by Ponchos for Pooches.com has skyrocketed. As a result, the company has begun sending sales representatives to Illinois to market its products through local pet stores. As a result of these activities, Ponchos for Pooches.com is no longer considered a remote retailer because it has a physical presence in Illinois due to the presence of its sales reps. At this point, its tax liability changes. It no longer incurs State and local retailers' occupation taxes on its sales. It

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instead incurs an obligation to collect and remit only the Use Tax (6.25%) on its sales. It no longer incurs any local retailers' occupation taxes.

EXAMPLE 3: Ponchos for Pooches.com has become so popular with Illinois purchasers that the company decides to open up a manufacturing facility in Illinois. Sales to Illinois purchasers are sometimes fulfilled from this facility. For all sales to Illinois purchasers that are fulfilled from its Illinois manufacturing facility, Ponchos for Pooches.com incurs State and local retailers' occupation taxes in effect at the location of the manufacturing facility ("origin sourcing"). In addition, Ponchos for Pooches.com incurs only a Use Tax collection obligation (6.25%) on sales made from its Oregon manufacturing facility. As illustrated in Example 2, Ponchos for Pooches.com is not considered a remote retailer because it has a physical presence in Illinois (its manufacturing facility).

EXAMPLE 4: Ponchos for Pooches.com decides to sell its products over a marketplace. The marketplace meets the tax remittance requirements of Section 131.135 (a) of this Part and so is required to remit State and local retailers' occupation taxes to the Department on all sales made to Illinois purchasers by its marketplace sellers. Ponchos for Pooches.com is not responsible for reporting and remitting tax on sales made over the marketplace.

As provided in Example 3, Ponchos for Pooches.com maintains a physical presence in Illinois due to its manufacturing facility. Ponchos for Pooches.com incurs State and local retailers' occupation taxes for all sales it makes to Illinois purchasers outside the marketplace that are fulfilled from its Illinois manufacturing facility ("origin sourcing"). In addition, Ponchos for Pooches.com incurs only a Use Tax collection obligation (6.25%) on sales it makes outside the marketplace to Illinois purchasers that are fulfilled from its Oregon manufacturing facility.

Section 131.115 Remote Retailers – Determination of Status as a Remote Retailer

- a) Beginning January 1, 2021, a remote retailer is a retailer engaged in the occupation of selling at retail in Illinois for purposes of the ROTA if either of the following thresholds is met:
 - 1) *The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or*

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- 2) *The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.*

Remote retailers that meet or exceed the thresholds in either subsection (a)(1) or (a)(2) of this Section shall be liable for all applicable State and locally imposed retailers' occupation taxes administered by the Department on all retail sales to Illinois purchasers.

- b) *A remote retailer shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets the threshold of either subsection (a)(1) or (a)(2) of this Section for the preceding 12-month period. If the remote retailer meets the criteria of either subsection (a)(1) or (a)(2) of this Section for a 12-month period, he or she is considered a retailer engaged in the occupation of selling at retail in Illinois and is required to remit the Retailers' Occupation Tax and all retailers' occupation taxes imposed by local taxing jurisdictions in Illinois, provided such local taxes are administered by the Department, and to file all applicable returns for one year. A remote retailer shall remit taxes for sales beginning on the first day of the quarter immediately following the end of the 12-month lookback period.*
- c) *At the end of that one-year period, during which the remote retailer was remitting taxes, the remote retailer shall determine whether it met the threshold of either subsection (a)(1) or (a)(2) of this Section for the preceding 12-month period. If the remote retailer met the threshold in either subsection (a)(1) or (a)(2) of this Section for the preceding 12-month period, he or she is considered a retailer engaged in the occupation of selling at retail in Illinois and is required to remit all applicable State and local retailers' occupation taxes and file returns for the subsequent year.*
- d) If at the end of the one-year collection period in subsection (c) of this Section, the remote retailer determines that its sales to Illinois purchasers did not meet either of the thresholds in subsection (a) of this Section during that year, it must discontinue remitting State and local retailers' occupation taxes. If a remote retailer is no longer required to remit State and local retailers' occupation taxes, it must notify the Department. However, it may alternatively notify the Department that it wishes to change its registration status to voluntarily collect and remit Use Tax as a courtesy to its Illinois purchasers, since those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. See 86 Ill. Adm. Code 150.805 for additional information. All notifications made under this subsection (d) shall be made electronically as required by the Department.
- e) *If a remote retailer is no longer required to remit State and local retailers' occupation taxes, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin remitting State and local retailers' occupation taxes. For each quarter ending on the last day of March, June, September, and December, the remote retailer must*

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examine its sales for the immediately preceding 12-month period to determine whether it met either of the thresholds in subsection (a) of this Section. If it met either of those thresholds during that 12-month lookback period, it must remit State and local retailers' occupation taxes for the following 12-month period. At the end of that 12-month period, it must examine its sales as provided in subsection (a) of this Section to determine if it must continue to remit tax.

Section 131.120 Factors Used by Remote Retailers in Determining if the Thresholds in Section 131.115 (a) of this Part are Met

- a) "Gross receipts" and "separate transactions" defined. The following definitions must be applied by a remote retailer when determining if it meets either of the thresholds establishing tax remittance obligations:
- 1) "Gross receipts" means *all the consideration actually received for a sale. See 86 Ill. Adm. Code 130.401 for additional information regarding gross receipts. Subsection (b) of this Section describes what kinds of transactions must be included or excluded when determining whether the threshold based on gross receipts 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.*
 - 3) "Entering into a sale" occurs when a remote retailer 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, 2020, a remote retailer takes actions binding it to a sale that is scheduled for shipment on January 15, 2021. This sale must be included in the calculation used to determine the remote retailer's sales transactions for its initial lookback period under subsection (b) of Section 131.115 (i.e., the lookback period of January 1, 2020 through December 31, 2020).

- 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 remote retailer. 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.

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EXAMPLE 2: A purchaser places an order of home repair tools at 8:00 a.m. from a remote retailer. 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 remote retailer. The remote retailer confirms this order with a separate invoice. In this example, two different transactions have occurred. This is the case, even if the remote retailer sends all the ordered tools to the purchaser in one package.

EXAMPLE 3: A mother places an order with a remote retailer 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.

b) Transactions that are included or excluded in determining if either of the thresholds establishing tax remittance obligations are met. A remote retailer 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 establishing tax remittance obligations:

1) Sales for resale must be excluded. See 86 Ill. Adm. Code 130.210.

EXAMPLE: A remote retailer makes a sale of seedlings to Company B. 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). When calculating its threshold using gross receipts, it should include only 40% of the gross receipts from this sale. When calculating its threshold using transactions, however, the remote retailer must include the entire transaction with Company B.

2) *Neither the gross receipts from nor the number of separate transactions for sales of tangible personal property to purchasers in Illinois that a remote retailer makes through a marketplace facilitator shall be included for the purposes of determining whether he or she has met either of the thresholds of Section (a) of Section 131.115 so long as the remote retailer has received certification from the marketplace facilitator as provided in Section 131.145 of this Part, that the*

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marketplace facilitator is legally responsible for payment of tax on such sales. [35 ILCS 120/2 (b-5)]

- 3) Sales of tangible personal property that is required to be titled or registered with an agency of this State, including motor vehicles, watercraft, aircraft, and trailers, that are made by remote retailers to Illinois purchasers must be excluded. State and local use taxes shall continue to be paid by purchasers as required by law as a condition of titling or registering these items.
- 4) All sales of tangible personal property, other than those excluded by this subsection (b), even if they are exempt from tax, must be included for purposes of calculating the thresholds.

Section 131.125 Remote Retailers – Obligations – Procedures - Hold Harmless Provisions

- a) Remote retailers meeting either of the thresholds in Section 131.115 (a) of this Part are required to register with the Department to file returns and remit tax for all sales made to Illinois purchasers. However, a remote retailer that has entered into a Tax Remittance Agreement with a CSP is not required to register with the Department. The CSP shall instead register, as agent, for the remote retailer and file returns and make payment of tax as provided in Section 131.160 of this Part. A remote retailer that no longer has a Tax Remittance Agreement with a CSP as provided in Section 131.161 of this Part is required to register and file returns to remit tax as otherwise provided in this Part.
- b) A remote retailer may, but is not required to, use a CSP to file returns and remit taxes, as provided in Section 131.160 of this Part.
- c) A remote retailer may file its own returns, and may, but is not required to, utilize a CAS in filing its own returns and making payment of taxes. A remote retailer using a CAS shall maintain in its books and records the name of the owner or provider of the CAS it is using. A remote retailer shall also maintain this information in its books and records for any subsequent uses of a different CAS. This information shall be made available to the Department upon demand.
- d) If a remote retailer uses a CSP, the CSP is considered the agent of the remote retailer as provided in Section 131.160 of this Part. All notices, assessments and other communications shall be sent by the Department to the CSP, not the remote retailer. See Section 131.160 for additional information.
- e) Remote retailers that are “marketplace sellers” as defined in Section 131.105 of this Part are not required to file returns or make payment of tax for sales made to Illinois purchasers over a marketplace that meets the thresholds in Section 131.135 of this Part, provided that

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the remote retailer has received certification from the marketplace facilitator that the marketplace facilitator is legally responsible for payment of tax on such sales as provided in Section 131.145 of this Part. Such sales are considered to be sales made by the marketplace facilitator.

- f) *A remote retailer is subject to audit on all its sales, other than those which are made on a marketplace and for which a marketplace facilitator remitted the applicable State and local retailers' occupation taxes, unless the marketplace facilitator seeks relief as a result of incorrect information provided to the marketplace facilitator by the remote retailer as provided in Section 131.145 of this Part. [35 ILCS 120/2(c)].*
- g) A remote retailer shall maintain books and records for its sales, including all sales made over a marketplace, in accordance with the requirements of Section 7 of the ROTA.
- h) A remote retailer that files its own returns and makes payment of tax shall be entitled to the retailers' discount for all sales for which it timely files returns and makes payment of tax as required by Section 3 of the ROTA. However, a remote retailer is not entitled to the retailers' discount for sales reported on returns filed by a CSP with whom it has a Tax Remittance Agreement. Similarly, a remote retailer is not entitled to the retailers' discount for sales made over a marketplace as provided in subsection (e) of this Section.
- i) *Remote retailers using a certified service provider or a certified automated system provider are relieved from liability to the State for having remitted the incorrect amount of use or occupation tax resulting from a certified service provider or certified automated system relying, at the time of the sale, on erroneous data provided by the Department in database files on tax rates, boundaries, or taxing jurisdictions, or erroneous data provided by the Department in database files concerning the taxability of products and services. [35 ILCS 185/5-30]*
- j) *Remote retailers using a certified automated system shall be liable for any tax resulting from errors caused by use of an updated or upgraded certified automated system prior to recertification of the updated or upgraded certified automated system by the Department as provided in Section 131.165 of this Part. [35 ILCS 185/5-25(c)]*
- k) Unless otherwise provided to the contrary in this Part, a remote retailer is subject to all the rights and duties, and is subject to the same modes of procedure, as all other retailers under the ROTA.
- l) *Nothing in this Section affects the obligation of any consumer to remit Use Tax for any taxable transaction for which a remote retailer does not collect and remit the appropriate tax. [35 ILCS 120/2 (j)]*

Section 131.130 Marketplace Facilitators – General Provisions

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- a) *Activities of marketplace facilitators. Beginning January 1, 2021, a 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 the Retailers' Occupation Tax 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.*

A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in subsections (a) of this Section. [35 ILCS 120/1]

- b) A marketplace facilitator must indicate to purchasers on its marketplace that the tangible personal property is being sold on behalf of an identified marketplace seller. If the marketplace seller is not identified to the purchaser on the marketplace, then for tax remittance purposes, the marketplace facilitator is considered the seller of the tangible personal property. 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 subsection (a)(1) of this Section are not met. See EXAMPLE 4 at the end of this Section.
- c) Sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made over a marketplace to Illinois purchasers are not subject to the provisions of this Part. State and local uses taxes shall continue to be paid by purchasers as required by law as a condition of titling or registering these items.
- d) On and after January 1, 2021, a marketplace facilitator that meets either of the thresholds in subsection (a) of Section 131.135 is considered a retailer engaged in the occupation of selling at retail in Illinois and is liable for all applicable State and local retailers' occupation taxes administered by the Department on all sales to Illinois purchasers made over the marketplace, including its own sales and sales made over the marketplace on behalf of marketplace sellers.

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- e) Affiliates of a marketplace facilitator are not “marketplace sellers.” As a result, a marketplace facilitator is not considered to be the retailer and is not liable for tax on sales made to Illinois purchasers by affiliates selling over its marketplace. An affiliate must consider several factors in determining its tax liability. First, it must determine if it is a “remote retailer” under Section 131.110. See also 131.ILLUSTRATION A. If it is a remote retailer, it must calculate whether its sales meet either of the tax remittance thresholds in Section 131.115 (a) of this Part. If it is not a remote retailer, it must examine its selling activities to determine if it has any other type of tax liability. See, Section 131.155 of this Part. An affiliate of a marketplace facilitator that is a remote retailer and is liable for ROTA must register with the Department to file returns and make payment of the tax separately from any returns remitted to the Department by a marketplace facilitator. However, if a marketplace facilitator has obtained certification as a CSP or a CAS, it may assist affiliates in filing their returns and performing other tax functions as provided in Section 131.160 or 131.165 of this Part.

- f) Marketplace facilitators that meet either of the thresholds in Section 131.135 (a) are deemed to be engaged in the business of selling on behalf of their marketplace sellers at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers’ occupation taxes are incurred at the rate in effect at this location for all sales made on behalf of marketplace sellers over the marketplace. See Section 131.155 of this Part. [35 ILCS 120/2-12 (7)]

- g) Marketplace facilitators that meet either of the thresholds in Section 131.135 (a) and that make sales of their own over their marketplace are subject to State and local retailers’ occupation tax. For sales of their own that are fulfilled from inventory located in Illinois, the marketplace facilitator is deemed to be engaged in the business of selling at the location of the inventory. State and local retailers’ occupation tax is incurred at the rate in effect at the location of the inventory. For their own sales that are not fulfilled from inventory in Illinois or for which selling is not engaged in at any location in Illinois (See, i.e., 86 Ill. Adm. Code 270.115), the marketplace facilitator is deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers’ occupation tax is incurred at the rate in effect at this location for all such sales. See Section 131.155 of this Part.

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 Section 131.101, Carabibi is not considered a marketplace facilitator because it does not engage in the activities described in subsection (a)(2) of this Section.

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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 (a)(1) of this Section.

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: Visualeyeshis operates a specialized online marketplace that sells various brands of contact lenses to purchasers. Visualeyeshis makes purchases for resale from various suppliers of the contact lenses offered for sale on its marketplace. Its marketplace does not indicate to purchasers using the marketplace that the sales are made on behalf of any identified marketplace sellers. In this example, Visualeyeshis is not a marketplace facilitator. It is simply an online retailer making its own sales of contact lenses. Its tax liability will depend on its activities. See, 131.ILLUSTRATION A.

EXAMPLE 5: Mandameal.com is an online and mobile food-ordering and delivery service that enters into over 200 transactions with Illinois purchasers. It contracts with a variety of partner restaurants by advertising meals available for purchase from partner restaurants; it also offers delivery service for the food orders. Customers place food orders using the Mandameal app or through its online website. Mandameal.com accepts payments from customers, completes the orders with the restaurants, and transmits payment on a regular basis to the restaurants. Mandameal.com engages in activities that make it a marketplace facilitator. Mandameal.com is required to register with the Department and remit Retailers' Occupation Tax, including applicable local taxes, on sales made on its marketplace on behalf of partner restaurants. State and local retailers' occupation taxes are incurred at the rate in effect at the delivery location of the purchaser. For example, if the food order is delivered to a customer address, Mandameal.com incurs State and local retailers' occupation taxes in effect at the location where the order is delivered. If the order is picked up at the restaurant, however, Mandameal.com incurs State and local retailers' occupation taxes in effect at the restaurant location.

EXAMPLE 6: CanineCorner.com is a marketplace that sells dog gear. Its gross receipts from sales to Illinois purchasers are over \$100,000. Ponchos for Pooches.com decides to sell its rain gear over this marketplace. Some of the inventory Ponchos for Pooches.com sells over the marketplace is fulfilled from its manufacturing plant in Portland, Oregon, while other sales are fulfilled from its warehouse in Kankakee, Illinois. CanineCorner.com incurs

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Retailers' Occupation Tax, including all applicable local retailers' occupation taxes, for all sales of rain gear made over the marketplace on behalf of Ponchos for Pooches.com. Tax on all sales, both those fulfilled from Portland, Oregon and from the Kankakee, Illinois warehouse, is incurred at the rate in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser.

EXAMPLE 7: Antiquities, Inc. is an auction house located in Edwardsville, Illinois. It enters into agreements with individuals wanting to sell items at a weekly, in-person auction. A week before the auction, Antiquities, Inc. advertises the items that will be sold in an online posting. Once an item is sold, Antiquities, Inc. collects payment from the purchaser and pays the original owner of the item sold, minus an agreed-upon commission. Antiquities, Inc. is a marketplace facilitator operating a marketplace. Provided that it meets either of the thresholds in Section 131.135 (a), it is required to remit

State and local retailers' occupation taxes on all sales made through the marketplace. If purchasers take possession of the items sold in the auction house in Edwardsville, State and local retailers' occupation taxes are incurred at the rate in effect at the location of the auction house in Edwardsville. If the items sold are shipped to a purchaser in Chicago, State and local retailers' occupation taxes are imposed at the rate in effect at the location to which the items are shipped or delivered in Chicago. If the items sold are shipped to purchasers in California by Antiquities, Inc. and meet all the other requirements of Section 130.605, no State and location retailers' occupation taxes are incurred, because this is an exempt sale into interstate commerce.

EXAMPLE 8: Seconds for Less is an upscale resale shop in Evanston, Illinois. It buys and sells gently used clothing for children and adults. After inspecting the clothing offered by an individual for sale, it pays the individual, either in cash or with store credit, for the clothing it wishes to purchase. The clothing is then cleaned, pressed, and displayed for sale. In this example, Seconds for Less is not operating a marketplace and is not a marketplace facilitator because it owns the clothing it offers for sale.

Section 131.135 Marketplace Facilitators – Determination of Obligation to Remit Tax

- a) Beginning January 1, 2021, a marketplace facilitator, as defined in Section 131.101 of this Part, is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the ROTA 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 for the sale of tangible personal property to purchasers in Illinois.*

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- b) *Marketplace facilitators that meet or exceed either of the thresholds in subsection (a) of this Section shall be liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales to Illinois purchasers.*
- c) *The marketplace facilitator shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets either of the thresholds in subsection (a) of this Section for the preceding 12-month period. If the marketplace facilitator meets the either threshold for a 12-month period, he or she is considered a retailer engaged in the occupation of selling at retail in Illinois and is required to remit the Retailers' Occupation Tax and all retailers' occupation taxes imposed by local taxing jurisdictions in Illinois, provided such local taxes are administered by the Department, and to file all applicable returns for one year. A marketplace facilitator shall remit taxes for sales beginning on the first day of the quarter immediately following the end of the 12-month lookback period.*
- d) *At the end of that one-year period, the marketplace facilitator shall determine whether it met either of the thresholds in subsection (a) of this Section for the preceding 12-month period. If the marketplace facilitator met either threshold for the preceding 12-month period, he or she is considered a retailer engaged in the occupation of selling at retail in Illinois and is required to remit all applicable State and local retailers' occupation taxes and file returns for the subsequent year.*
- e) *If, at the end of the one-year collection period in subsection (d) of this Section, the marketplace facilitator determines that its sales to Illinois purchasers did not meet either of the thresholds in subsection (a) of this Section during that year, it must discontinue remitting State and local retailers' occupation taxes.*
- f) *If a marketplace facilitator is no longer required to remit State and local retailers' occupation taxes, it must notify the Department and its marketplace sellers of this change. It must also provide the Department with the name, address and FEIN of all marketplace sellers making sales to Illinois purchasers during the previous one-year period. Notification to the Department and provision of the information required by this subsection (f) shall be made electronically as required by the Department.*
- g) *If a marketplace facilitator is no longer required to remit State and local retailers' occupation taxes and has discontinued tax remittance, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin remitting State and local retailers' occupation taxes. For each quarter ending on the last day of March, June, September, and December, the marketplace facilitator must examine its sales for the immediately preceding 12-month period to determine whether it met either of the thresholds in subsection (a) of this Section. If it met either of those thresholds during that 12-month lookback period, it must remit State and local retailers' occupation taxes*

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for the following 12-month period. At the end of that 12-month period, it must examine its sales as provided in subsection (a) of this Section to determine if it must continue to remit tax. [35 ILCS 120/2]

Section 131.140 Factors Used by Marketplace Facilitators in Determining if Thresholds in Section 131.135 of this Part are Met.

a) “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 establishing tax remittance obligations:

- 1) “Gross receipts” means all the consideration actually received for a sale. See 86 Ill. Adm. Code 130.401 for additional information regarding gross receipts. Subsection (b) describes what kinds of transactions must be included or excluded when determining whether the threshold based on gross receipts is met.
- 2) “Illinois purchaser” means *a person in Illinois who, through a sale made over a marketplace, acquires the ownership of tangible personal property for a valuable consideration.*
- 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, 2020, a marketplace seller takes actions binding it to a sale that is scheduled for shipment on January 15, 2021. This sale must be included in the calculation used to determine the marketplace facilitator’s sales transactions for its initial lookback period under subsection (b) of Section 131.135 (i.e., the lookback period of January 1, 2020 through December 31, 2020).

- 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.

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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 a marketplace seller 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.

b) Transactions that are included or excluded in determining if either of the tax remittance thresholds in Section 131.135 (a) of this Part 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 establishing tax remittance obligations:

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 to Illinois purchasers that is required to be titled or registered with an agency of this State, including motor vehicles, watercraft, aircraft, and trailers, must be excluded.

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

Section 131.145 Marketplace Facilitators – Obligations – Procedures – Hold Harmless Provisions

- a) Marketplace facilitators meeting either of the thresholds in Section 131.135 (a) of this Part are required to register with the Department, file returns and remit tax for all sales made over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers.
- b) *A marketplace facilitator shall certify to each marketplace seller:*
 - 1) *That the marketplace facilitator assumes the rights and duties of a retailer under the Retailers' Occupation Tax Act and all applicable local retailers' occupation taxes administered by the Department with respect to sales made by the marketplace seller through the marketplace; and*
 - 2) *That the marketplace facilitator will remit taxes imposed by the Retailers' Occupation Tax and all applicable local retailers' occupation taxes administered by the Department for sales made through the marketplace. [35 ILCS 120/2(d)]*
- c) *A marketplace facilitator is liable for the remittance of all applicable State and local retailers' occupation taxes administered by the Department on sales made on behalf of marketplace sellers on the marketplace, as well as its own sales made over the marketplace, and is subject to audit on all such sales. A marketplace facilitator is not liable for tax on any sales made by a marketplace seller that take place outside of the marketplace and which are not a part of an agreement between a marketplace facilitator and a marketplace seller for the facilitation of sales by the marketplace seller over the marketplace. [35 ILCS 120/2(f)]*
- d) *Marketplace facilitators shall not be liable to State and local governments of Illinois for having charged and remitted an incorrect amount of State and local retailers' occupation tax if, at the time of the sale, the tax is computed based on erroneous data provided by the Department in database files on tax rates, boundaries, or taxing jurisdictions or on incorrect information provided to the marketplace facilitator by a marketplace seller. See also Section 131.150 (b) and (c) for further information. [35 ILCS 120/2(c)]*
- e) A marketplace facilitator shall maintain books and records for sales made over the marketplace to Illinois purchasers on behalf of marketplace sellers in accordance with the requirements of Section 7 of the ROTA.

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- f) *Marketplace facilitators shall file returns and remit tax on sales made over the marketplace to Illinois purchasers on behalf of marketplace sellers separately from any sales made directly by the marketplace facilitator itself. [35 ILCS 120/2]*
- g) Marketplace facilitators are not authorized to file returns and remit tax on sales made by affiliates over the marketplace to Illinois purchasers unless the marketplace facilitator is acting as a certified CSP or CAS for the affiliate.
- h) *A marketplace facilitator shall be entitled to any credits, deductions, or adjustments to the sales price otherwise provided to the marketplace seller, in addition to any such adjustments provided directly to the marketplace facilitator, such as discounts, coupons, and rebates. See regulations at 86 Ill. Adm. Code 130.2125. [35 ILCS 120/2]*
- i) *A marketplace facilitator shall be entitled to the retailers' discount as provided in Section 3 of the Retailers' Occupation Tax Act on all marketplace sales made to Illinois purchasers on behalf of marketplace sellers. [35 ILCS 120/2 (c)]*
- j) A marketplace is a location held out to the public as being habitually engaged in the selling of tangible personal property. As such, no sales made on a marketplace are considered to be occasional sales (See, 86 Ill. Adm. Code 130.110).
- k) *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. [35 ILCS 120/2 (h)]*
- l) *Nothing in this Part affects the obligation of any consumer to remit Use Tax for any taxable transaction for which a marketplace facilitator does not collect and remit the appropriate tax. [35 ILCS 120/2 (j)]*
- m) Unless otherwise provided to the contrary in this Part, a marketplace facilitator is subject to all the rights and duties, and is subject to the same modes of procedure, as all other retailers under the ROTA with respect to sales made over the marketplace.

Section 131.150 Marketplace Sellers – Obligations – Procedures – Hold Harmless Provisions

- a) Except as otherwise provided in this Section, 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 as established in Section 131.145 (b).
- b) *A marketplace seller shall furnish to the marketplace facilitator information that is necessary for the marketplace facilitator to correctly remit tax on each sale made on its behalf over the marketplace. The information may include a certification that an item being sold is*

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taxable, not taxable, exempt from taxation, or taxable at a specified rate (for example, at either the general merchandise rate or the preferential low rate of tax).

- c) A marketplace facilitator that relies in good faith on the information provided in subsection (b) by a marketplace seller shall be relieved of liability for the tax on that transaction. In this case, a marketplace seller is subject to audit on such transactions and shall be liable for any resulting State and local retailers' occupation taxes due.
- d) Books and records. *A marketplace seller shall maintain books and records for all sales made through a marketplace in accordance with Section 7 of the Retailers' Occupation Tax Act.* [35 ILCS 120/2(e)]
- e) A marketplace seller that makes sales to Illinois purchasers outside of a marketplace must examine its selling activities to determine its tax liabilities (i.e., determine if it is a remote retailer; retailer with a physical presence required to collect and remit Use Tax; or an Illinois retailer required to remit State and local retailers' occupation tax). See Section 131.115 and 131.ILLUSTRATION A. It must separately register with the Department to report and pay taxes incurred on such sales.
- f) A marketplace seller that incurs tax liability on sales made outside of a marketplace shall not include sales made through a marketplace on the separate returns filed with the Department, and shall not include any of its sales made through a marketplace when computing any retailers' discount on its separately filed returns.
- g) *If for any reason, the Department is prohibited from enforcing the marketplace facilitator's duty to remit taxes, the duty to remit such taxes remains with the marketplace seller, provided it is otherwise required to remit taxes under the Retailers' Occupation Tax Act or Use Tax Act.* [35 ILCS 120/2 (i)]
- h) *The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace seller and the marketplace facilitator on the same transaction.* [35 ILCS 120/2 (h)]

Section 131.155 Tax Sourcing Provisions

- a) Under P.A. 101-0031 and P.A. 101-604, the type of tax liability incurred by a retailer and the manner in which that liability is sourced depends upon the manner in which a retailer conducts its selling activities, as well as the type of nexus (or lack thereof) that a retailer has with the State. Retailers may incur State and local retailers' occupation taxes based either upon the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing") or upon the location in Illinois at which the selling activities occur ("origin sourcing;" see, e.g., 86 Ill. Adm. Code 270.115). Some retailers, in contrast, may incur only a Use Tax collection obligation. Still other retailers may incur no tax obligations at all. Multichannel retailers

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may incur a combination of any of these liabilities. Because of these distinctions, it is critical that retailers evaluate their selling activities carefully to determine their proper tax liability.

- b) Marketplace facilitators required to remit State and local retailers' occupation tax on sales to Illinois purchasers for sales made on behalf of marketplace sellers. On and after January 1, 2021, marketplace facilitators meeting either of the thresholds in Section 131.135 (a)(1) or (a)(2) are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser for sales made over the marketplace on behalf of a marketplace seller. [35 ILCS 120/2-12 (7)]
- c) Marketplace facilitators required to remit State and local retailers' occupation tax for their own sales to Illinois purchasers. On and after January 1, 2021, marketplace facilitators meeting either of the thresholds in Section 131.135 (a)(1) or (a)(2) may incur either destination sourcing or origin sourcing on a sale to an Illinois purchaser. When a marketplace facilitator makes a sale to an Illinois purchaser that is fulfilled from inventory located in Illinois (or for which selling activities otherwise occur at a location in Illinois; See, e.g., 86 Ill. Adm. Code 270.115), it is deemed to be engaged in the business of selling at the Illinois location at which the inventory is located or at which the selling activities otherwise occur ("origin sourcing"). When a marketplace facilitator makes a sale to an Illinois purchaser that is fulfilled from inventory located outside Illinois and for which selling activities otherwise occur at a location outside Illinois (See, e.g., 86 Ill. Adm. Code 270.115), it is deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

EXAMPLE 1: World of Spices operates a marketplace selling various spices on behalf of marketplace sellers. It meets the thresholds for tax remittance in Section 131.135(a)(1) of this Part. Purchaser A places an order for Ceylon Cinnamon, Asafetida and Ajwain from Marketplace seller A. She requests delivery to her residence in Chicago, Cook County. World of Spices incurs State and local retailers' occupation taxes in effect at the location in Chicago to which the spices are shipped or delivered. Local occupation taxes would include the Regional Transportation Authority Retailers' Occupation Tax at the 1.25% rate, but would not include any additional local occupation taxes. See subsection (f) of this Section.

EXAMPLE 2: A purchaser that resides in Chatham, Illinois, orders an espresso machine from a marketplace seller over a marketplace that meets the tax remittance threshold in Section 131.135 (a)(2) of this Part. The purchaser chooses an option to pick up the item at a Springfield, Illinois brick and mortar store that has partnered with the marketplace seller. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the Springfield store location.

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EXAMPLE 3: Home Appliances is a brick and mortar store in Bloomington, Illinois that sells appliances. It recently became a marketplace seller on a large multinational marketplace that meets the threshold for tax remittance in Section 131.135 (a) of this Part. Home Appliances fills all orders made over the marketplace from its store warehouse in Bloomington. Purchaser A orders a grilled cheese sandwich toaster over the marketplace and chooses delivery to his residence in Kankakee, Illinois. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the Kankakee location to which the grilled cheese sandwich maker was shipped or delivered.

EXAMPLE 4: Conkle's Auctioneers operates an auction house in Carbondale, Illinois. It engages in activities qualifying it as a marketplace, and meets the tax remittance threshold in Section 131.135 (a)(2) of this Part. It holds a weekly, in-person auction. Most purchasers take possession of their purchased items at the time of sale. However, some request that Conkle's directly ship their items to a different location. When purchasers take possession of their purchases at the auction house, State and local retailers' occupation taxes are incurred at the tax rate in effect at the location of the auction house in Carbondale. For items that are delivered to Illinois purchasers, Conkle's incurs State and local retailers' occupation taxes in effect at the location to which the purchased items are shipped or delivered.

EXAMPLE 5: Marketplace facilitator A operates a marketplace. It meets the tax remittance threshold of Section 131.135 (a)(1) of this Part. It makes sales of its own tangible personal property, as well as tangible personal property sold on behalf of marketplace sellers. It offers purchasers that pay it a yearly membership fee free and speedy delivery on selected items. Customer A in Champaign, Illinois, shops for a coffee grinder on the marketplace and compares similar products sold by Marketplace facilitator A and Marketplace seller B. He decides to purchase the product sold by Marketplace facilitator A because he has paid membership fees and receives faster delivery. Marketplace facilitator A does not engage in any selling activities in Illinois and fulfills the sale from a warehouse located in Missouri. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the location in Champaign where the coffee grinder is shipped or delivered.

EXAMPLE 6: The facts for this example are the same as for EXAMPLE 5. However, the marketplace facilitator fulfills the order from a warehouse located in Kankakee, Illinois. In this example, Marketplace facilitator A incurs State and local retailers' occupation taxes in effect at the location of the warehouse in Kankakee from which the order was fulfilled.

- d) Remote retailers required to remit State and local retailers' occupation tax on sales made to Illinois purchasers. *On and after January 1, 2021, remote retailers meeting the either of the tax remittance thresholds in Section 131.115 (a) of this Part are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser.* [35 ILCS 120/2-12 (6)]

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EXAMPLE 1: Vichy Vines is a vintner in the Columbia River Valley that sells wine to purchasers over its website. It has no physical presence in Illinois and meets the tax remittance threshold of Section 131.115 (a)(1) of this Part. Consequently, it is deemed to be engaged in the business of selling at the Illinois location to which its wine is shipped or delivered or at which possession is taken by the purchaser. Vichy Vines sells a case of its best Grenache to an Illinois purchaser and delivers it to an address in Chicago, Cook County. Vichy Vines incurs all State, municipal, county, and special district retailers' occupation taxes in effect at the location to which the wine is shipped or delivered.

EXAMPLE 2: Katy is an artist in Los Angeles that sells her jewelry through the Etc.com marketplace, as well as through her own website. Etc.com is a marketplace facilitator that meets the tax remittance threshold of Section 131.135 (a)(2) of this Part. Tax on all sales Katy makes over Etc.com must be reported and remitted by Etc.com. as required in subsection (b) of this Section.

Katy must next determine if she has tax liability for sales made through her own website. In making this determination, Katy should not include either the gross receipts from, or transactions made to, Illinois purchasers over Etc.com. Katy has no physical presence in Illinois, so she is considered a remote retailer. If she determines that she meets either of the tax remittance thresholds of Section 131.115 (a) of this Part, she is considered to be a retailer engaged in the business of selling at the Illinois location to which her jewelry is shipped or delivered or at which possession is taken by purchaser. She incurs State and local retailers' occupation taxes in effect at the different locations to which her jewelry is shipped or delivered or at which possession is taken by the purchaser. Alternatively, if Katy determines that she does not meet either of the thresholds in Section 131.115(a) of this Part, she is not required to register and remit taxes. She may, however, voluntarily register to collect and remit Use Tax as a courtesy to her Illinois purchasers, since those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. See 86 Ill. Adm. Code 150.805 for additional information.

- e) Out-of-State retailers with a physical presence in Illinois. Out of State retailers with a physical presence in Illinois are not remote retailers. However, they are "retailers maintaining a place of business in Illinois" under Section 2 of the Use Tax Act. As a result, they incur only a Use Tax collection obligation (6.25%) on sales made to Illinois purchasers from locations outside Illinois. If sales are made to Illinois purchasers from locations in Illinois, State and local retailers' occupation tax is incurred at the rate in effect where the sales are made ("origin sourcing;" see, for example, 86 Ill. Adm. Code 270.115). Such selling frequently occurs when sales made to Illinois purchasers are filled from inventory located in Illinois.

EXAMPLE 1: Company A is a sushi restaurant supply company headquartered in San Francisco. It routinely sends representatives to Illinois to market supplies to sushi

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restaurants. All of its sales to Illinois purchasers are filled from inventory in Oakland, California. The representatives make no sales from locations in Illinois. Company A is not a remote retailer because it has a physical presence in Illinois due the activities of its sales representatives. It is required to register to collect and remit Use Tax (6.25%) on its sales to Illinois purchasers.

EXAMPLE 2: DanubeDeliveries.com is an affiliate of a large multinational marketplace facilitator. The facilitator meets either of the tax remittance thresholds of Section 131.135 (a) of this Part and so is required to remit State and local retailers' occupation tax for sales made on behalf of marketplace sellers on the marketplace. DanubeDeliveries.com sells 35% of its products over the marketplace, and these sales are fulfilled from a warehouse of the marketplace facilitator located in Monee, Illinois. The remaining 65% of its sales to Illinois purchasers are made outside Illinois. Because DanubeDeliveries.com is an affiliate of the marketplace facilitator, it is not considered a marketplace seller. As a result, the marketplace facilitator is not authorized to remit tax on sales made over the marketplace on behalf of DanubeDeliveries.com, as it does for all its marketplace sellers.

DanubeDeliveries must next determine its tax obligations. In making this determination, it must first consider whether it is a remote retailer. It is not considered a remote retailer because it has a physical presence in Illinois due to inventory in Monee, Illinois, from which Illinois purchases are fulfilled. As a result, it incurs two different types of tax liability on its sales. It incurs State and local retailers' occupation tax at the rate in effect in Monee, Illinois for sales made to Illinois purchasers that are fulfilled from inventory in Monee ("origin sourcing"). For all sales made to Illinois purchasers from outside Illinois, DanubeDeliveries.com is required to collect and remit Illinois Use Tax (6.25%). DanubeDeliveries.com must register to report and remit tax on all its sales, including those made over the marketplace.

- f) Retailers that are required to remit State and local retailers' occupation taxes on their sales to Illinois purchasers generally incur no local retailers' occupation taxes on sales of tangible personal property subject to the preferential low 1% rate, since most local taxing jurisdictions lack authority to impose tax on such items. See, e.g., 86 Ill. Adm. Code 270.101. However, certain units of local government, i.e., transportation districts, are authorized to impose tax on such items. See, e.g., 86 Ill. Adm. Code 320.101. For detailed information, see the Illinois Tax Rate Finder on the Department's website.

Section 131.160 Certified Service Providers – Obligations - Procedures – Hold Harmless Provisions

- a) A certified service provider (CSP) is an agent of a remote retailer that performs all of a remote retailer's sales tax functions, as outlined in the contract between the Department and the CSP. Such functions include the preparation and filing of all required tax returns or amended returns, payment of tax, and resolution of any notices or audits of the remote

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retailer. Such functions do not include remittance of Use Tax by the remote retailer on its own purchases.

- b) The software of a CSP interfaces with a remote retailer's accounting system to:
 - 1) Identify which products are taxable;
 - 2) Apply the appropriate tax rate; and
 - 3) Maintain a record of the transaction
- c) A CSP will provide services necessary to:
 - 1) Set up and integrate the CSP's software with the remote retailer's system;
 - 2) As agent for the remote retailer, prepare and file all required returns or amended returns;
 - 3) As agent for the remote retailer, remit tax to the Department;
 - 4) As agent for the remote retailer, resolve any notices or audits by the Department; and
 - 5) Provide for the protection and confidentiality of tax information consistent with the requirements of Section 11 of the Retailers' Occupation Tax Act
- d) The Department shall send all notices, assessments and other communications regarding the remote retailer's tax functions to the CSP, as agent for the remote retailer. The Department shall not, except as noted below, send these communications to the remote retailer. A remote retailer must contact the CSP with whom it has contracted in order to receive copies of such notices, assessment and other communications. In the event that an assessment has been issued to a CSP, and the CSP demonstrates to the satisfaction of the Department that its failure to correctly remit tax on a retail sale resulted from its good faith reliance on incorrect or insufficient information provided by a remote retailer, the Department shall withdraw the assessment of the CSP and issue the assessment to the remote retailer, who shall be liable for any resulting tax, penalties and interest due.
- e) A CSP, or the remote retailer that has contracted with the CSP, shall be subject to all the same conditions, restrictions, limitations, penalties and modes of procedure as other retailers under the ROTA in cases where assessments have been issued as provided in subsection (d) of this Section.

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- f) Before acting as a CSP for a remote retailer, a CSP must be certified by the Department. Certification requires that a CSP applicant meet all established evaluation criteria. In addition, the systems of a CSP must have been tested and approved by the Department for properly determining the taxability of items to be sold, the correct rate of tax to apply to a transaction, and the appropriate jurisdictions to which the tax must be remitted.
- g) A CSP that has been certified by the Department shall enter into a contractual relationship with the Department. The contract shall, at a minimum:
- 1) *Provide that the CSP shall be held liable for State and local retailers' occupation taxes administered by the Department if the CSP fails to correctly remit the tax after having been provided with the tax and information by a remote retailer to correctly remit such taxes. However, if the CSP demonstrates to the satisfaction of the Department that its failure to correctly remit tax on a retail sale resulted from the CSP's good faith reliance on incorrect or insufficient information provided by the remote retailer, the CSP shall be relieved of liability for the tax on that retail sale, and the remote retailer shall be liable for any resulting tax, penalties and interest due;*
 - 2) *Provide for the responsibilities of the CSP and the remote retailers that contract with the CSP with respect to record keeping and auditing consistent with the requirements imposed under the Retailers' Occupation Tax Act;*
 - 3) *Provide for the protection and confidentiality of tax information consistent with the requirements of Section 11 of the Retailers' Occupation Tax Act;*
 - 4) *Provide that the CSP is entitled to compensation equal to 1.75% of the tax dollars remitted to the State by a CSP on a timely basis on a return that has been properly and timely filed by the CSP on behalf of a remote retailer, and that a remote retailer using a CSP may not claim the vendor's discount allowed under Section 3 of the ROTA;*
 - 5) *Provide that a CSP shall enter into a Tax Remittance Agreement with a remote retailer prior to acting as a CSP for that remote retailer, under which the CSP agrees to remit all State and local retailers' occupation taxes administered by the Department for sales made by the remote retailer. The agreement shall be retained by the CSP in its books and records and shall be provided to the Department upon demand;*

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- 6) Provide that a CSP shall obtain and provide to the Department upon request a Power of Attorney, in the form and manner required by the Department, for each remote retailer with whom it has a Tax Remittance Agreement;
 - 7) Provide that a CSP shall obtain and maintain updated information for each remote retailer with which it has a Tax Remittance Agreement. Such information shall include the name, post office address, email address, phone number, and FEIN or SSN of the remote retailer. It shall also include the name and address of the person or persons identified by the remote retailer who are responsible for filing returns and payment of taxes due under the ROTA.
 - 8) *Provide that a CSP shall file a separate return for each remote retailer with which it has a tax remittance agreement and make payment by electronic means as required by the Department. [35 ILCS 185/5-25]*
- h) A CSP that has been certified must electronically register with the Department. Registration shall include an acceptance of responsibility signed by the person or persons of the CSP who will be responsible for filing returns and payment of the taxes due under the ROTA. As part of its registration, a CSP must also certify that it has obtained from each remote retailer for whom it acts as agent an acceptance of responsibility signed by the person or persons of the remote retailer who are responsible for filing returns and making payment of taxes under the ROTA, that it will keep such information current, and that it will provide such information to the Department upon request.
- i) Once certified, a CSP must notify the Department that it has entered into a Tax Remittance Agreement with a remote retailer within 30 days of execution of the Tax Remittance Agreement. A CSP cannot file returns or pay tax on behalf of a remote retailer until it has notified the Department that it has entered into a Tax Remittance Agreement with a remote retailer. Returns and payment of tax made on behalf of a remote retailer may then be filed by the CSP only for periods beginning with the current reporting period of the remote retailer (monthly, quarterly or annual). The CSP is not authorized to file returns, including amended returns, for any periods prior to the commencement of the current reporting period. Only one CSP is authorized to file a return for a remote retailer for any given reporting period (e.g., if the remote retailer terminates its contract with a CSP and enters into a contract with a new CSP before the end of its current reporting period, only one of those CSPs can file the return for the remote retailer). A CSP shall notify the Department of the termination of a Tax Remittance Agreement within 30 days of the termination of the Tax Remittance Agreement. Notification shall be made electronically as required by the Department.
- j) *A CSP shall file a separate return for each remote retailer with whom it has a Tax Remittance Agreement. [35 ILCS 185/5-25]*

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- k) *A CSP shall be entitled to compensation equal to 1.75% of the tax which is remitted with a return that is timely and properly filed on behalf of a remote retailer. [35 ILCS 185/5-25]*
- l) *A CSP shall not be held liable for any State and local retailers' occupation taxes administered by the Department if the remote retailer does not provide the CSP with the tax and information to correctly remit all taxes due. A CSP that demonstrates that it relied in good faith on incorrect or insufficient information provided by the remote retailer shall be relieved of liability for the tax on that transaction. Incorrect or insufficient information includes, but is not limited to, incorrect information that an item being sold is taxable or not taxable, exempt from tax, or taxed at a specified rate (e.g., the rate applicable to either general merchandise or the low preferential 1% rate). Incorrect or insufficient information also includes failure of the remote retailer to report sales or to obtain properly executed documentation of an exemption as required by statute or regulations promulgated thereunder. [35 ILCS 185/5-25]*
- m) *A CSP is relieved of liability to the Department for having remitted the incorrect amount of tax resulting from reliance, at the time of the sale, on erroneous data provided by the Department in database files on tax rates, boundaries or taxing jurisdictions, or erroneous data provided by the Department concerning the taxability of products and services (Illinois Sales Tax Matrix). [35 ILCS 185/5-30]*
- n) *When the systems of a CSP are updated or upgraded, they must be recertified by the Department. The CSP must notify the Department 60 days before any changes. Upon receipt of such notification, the Department shall review and test the changes to assess whether the updated system of the CSP can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. The Department shall recertify updated systems that meet these requirements. A CSP shall be liable for any tax resulting from errors caused by use of an updated or upgraded system prior to recertification by the Department. [35 ILCS 185/5-25]*
- o) *The Department shall provide each CSP with a test deck two times per year, in December and June, as a check to ensure that the CSP's system can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. [35 ILCS 185/5-25]*
- p) *A CSP must be recertified every three years. At least 6 months prior to expiration of a CSP's certification status, the Department shall contact the CSP to initiate the recertification process. Once recertified, the Department's contract with the CSP shall be amended or renewed.*

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Section 131.165 Certified Automated Systems – Obligations – Procedures-Hold Harmless Provisions

- a) A certified automated system (CAS) is software that is designed for or by a remote retailer that wants to use certified tax calculation software but keep the responsibility for filing returns and remitting tax in-house.

- b) The software system of a CAS interfaces with a remote retailer's accounting system to:
 - 1) Identify which products are taxable;
 - 2) Apply the appropriate tax rate;

 - 3) Maintain a record of the transaction; and

 - 4) Determine the amount of tax the remote retailer must report and pay to the Department.

- c) Before a CAS can be utilized by a remote retailer, the CAS must be certified by the Department. Certification requires that a CAS applicant meet all established evaluation criteria. In addition, the systems of a CAS must have been tested and approved by the Department or properly determining the taxability of items to be sold, the correct rate of tax to apply to a transaction, and the appropriate jurisdictions to which the tax must be remitted.

- d) A remote retailer that uses a CAS shall, as a condition of its registration with the Department, agree to:
 - 1) *Comply with all record keeping and auditing requirements consistent with the requirements imposed under the ROTA;*

 - 2) *Provide for the protection and confidentiality of tax information consistent with the requirements of Section 11 of the ROTA, including the protection and confidentiality of tax information provided to or shared with a CAS; and*

 - 3) *Electronically file all returns and make payment by electronic means as required by the Department. [35 ILCS 185/5-25]*

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- e) A Remote retailer using a CAS shall maintain in its books and records the name of the owner or provider of the CAS it is using. A remote retailer shall also maintain this information in its books and records for any subsequent uses of a different CAS. This information shall be made available to the Department upon demand.
- f) A remote retailer using a CAS shall file its own returns and make payment of tax by electronic means, and perform all other sales and use tax functions.
- g) A remote retailer using a CAS shall be entitled to a retailers' discount of 1.75% of the tax that is remitted with a return that is timely and properly filed.
- h) *Remote retailers using certified automated systems and their certified automated systems providers are relieved of liability to the Department for having remitted the incorrect amount of tax resulting from reliance, at the time of the sale, on erroneous data provided by the Department in database files on tax rates, boundaries or taxing jurisdictions, or erroneous data provided by the Department concerning the taxability of products and services (Illinois Sales Tax Matrix). [35 ILCS 185/5-30]*
- i) *When the systems of a certified automated system are updated or upgraded, they must be recertified by the Department. The CAS must notify the Department 60 days before any changes. Upon receipt of such notification, the Department shall review and test the changes to assess whether the updated system of the CAS can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. The Department shall recertify updated systems that meet these requirements. A remote retailer using a CAS shall be liable for any tax resulting from errors caused by use of an updated or upgraded system prior to recertification by the Department. [35 ILCS 185/5-25]*
- j) The Department shall provide each CAS with a test deck two times per year, in December and June, as a check to ensure that the CAS's system can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. [35 ILCS 185/5-25]
- k) A CAS must be recertified every three years. At least 6 months prior to expiration of a CAS's certification status, the Department shall contact the CAS to initiate the recertification process.

Section 131.170 Department Responsibilities

- a) Provision of Databases. No later than July 1, 2020, the Department shall:

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- 1) provide and maintain an electronic database of defined product categories that identifies the taxability of each category. The Department shall meet this requirement by the provision and maintenance of the Illinois Sales Tax Matrix on the Department's website. The Department shall provide persons subject to this Part with as much advance notice as practicable of changes in the Sales Tax Matrix. Failure of the Department to provide notice or failure of a person to receive notice shall not relieve the person of its obligation to remit tax as required by law. However, persons may petition the Department for abatement of penalties on reasonable cause shown;
 - 2) provide and maintain an electronic database of all retailers' occupation tax rates for the jurisdictions in Illinois that levy a retailers' occupation tax administered by the Department. The Department shall meet this requirement by the provision and maintenance of the Tax Rate Finder Tax Rate Database on the Department's website. Local retailers' occupation taxes for jurisdictions in Illinois are generally subject to change twice a year, effective July 1 and January 1, and prior to these dates, any such changes are reflected on the Department's Tax Rate Finder Tax Rate Database. The Department shall, as much as practicable, provide CSPs and CASs with notice of such changes by publishing updated tax rates on the Tax Rate Finder Tax Rate Database on the Department's website at least one month prior to the effective date of any tax rate changes. However, failure of the Department to provide notice or failure of a person to receive notice shall not relieve the person of its obligation to remit tax as required by law. Persons subject to this Part may petition the Department for abatement of penalties on reasonable cause shown; and
 - 3) provide and maintain an electronic database that assigns delivery addresses in Illinois to the applicable taxing jurisdictions. The Department shall provide CSPs and CASs with notice of any changes to this database on January 1 and July 1 of each year. Until such notification, CSPs or CASs may rely upon the information in the database to correctly remit taxes as required in this Part. [35 ILCS 185/5-20]
- b) Certification of CSPs and CASs. No later than July 1, 2020, the Department shall:
- 1) establish uniform minimum standards that companies wishing to be designated as certified service providers in Illinois must meet;
 - 2) establish uniform minimum standards that certified automated systems must meet; and
 - 3) establish a certification process to review the systems of companies wishing to be designated as certified service providers in Illinois or of companies wishing to provide certified automated systems to remote retailers.

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- c) The Department shall enter into a contractual relationship with each company that qualifies as a certified service provider. See Section 131.160. As a condition of its registration, a remote retailer using a CAS must agree to comply with the requirements set forth in Section 131.165 (d) of this Part.

Section 131.175 Local Taxing Jurisdiction Responsibilities

- a) *Beginning February 1, 2022 and on or before February 1 of each year thereafter, the Department shall make available to each local taxing jurisdiction the taxing jurisdiction's boundaries, determined by the Department, for its verification. Jurisdictions shall verify these taxing jurisdiction boundaries and notify the Department of any changes, additions, or deletions by April 1 of each year in the form and manner required by the Department. The Department shall use its best judgment and information to confirm the information provided by the taxing jurisdictions and update its database. The Department shall administer and enforce such changes on the first day of the next following July.*
- b) *The clerk of any municipality or county from which territory has been annexed or disconnected shall notify the Department of that annexation or disconnection in the form and manner required by the Department. Required documentation shall include a certified copy of the plat of annexation or, in the case of disconnection, the ordinance, final judgment, or resolution of disconnection together with an accurate depiction of the territory disconnected. Notification shall be provided to the Department either (i) on or before the first day of April, whereupon the Department shall confirm the information provided by the municipality or county and update its database and proceed to administer and enforce the confirmed changes on the first day of July next following proper notification; or (ii) on or before the first day of October, whereupon the Department shall confirm the information provided by the municipality or county and update its database and proceed to administer and enforce the confirmed changes on the first day of January next following proper notification. [35 ILCS 185/5-30]*

Section 131.180 Incorporation by Reference

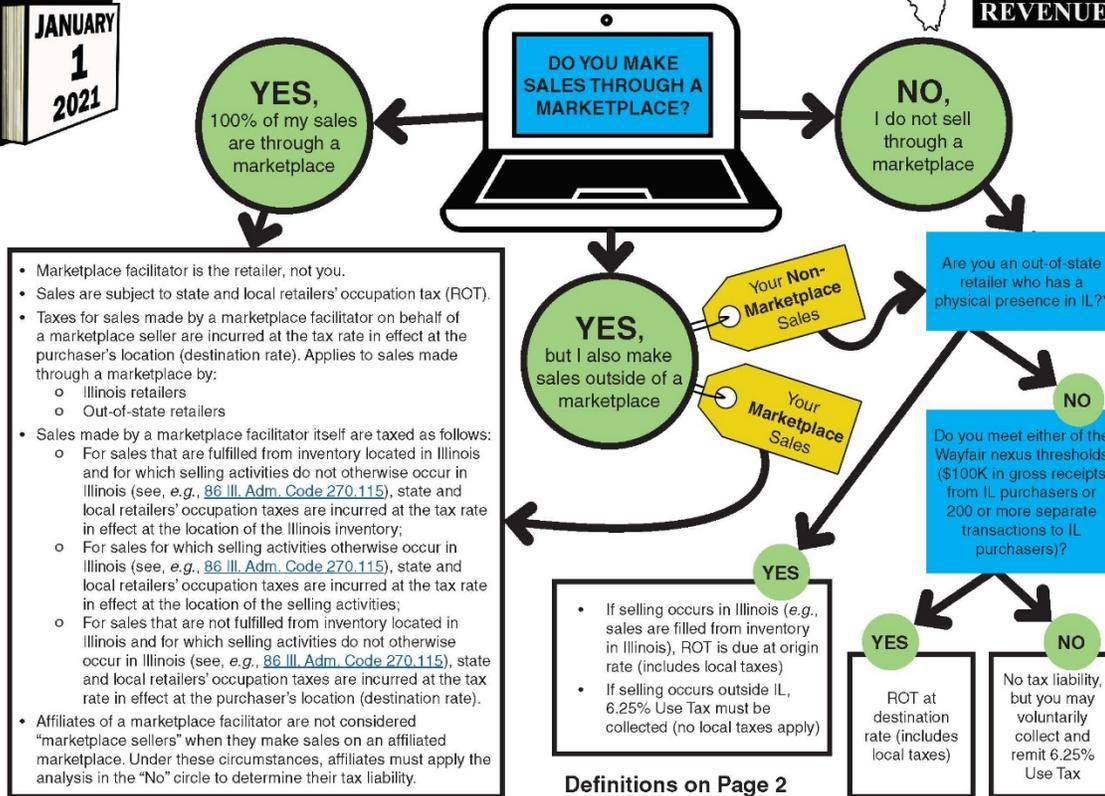
To avoid needless repetition, the substance and provisions of all Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130), are incorporated herein by reference and made a part hereof, to the extent not in conflict with the provisions of this Part.

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Effective



Leveling the Playing Field Retailer Flowchart



* If you are an Illinois retailer engaged in the occupation of making sales of tangible personal property in Illinois, the provisions of this chart do not apply to you. You should handle your liability as you did prior to January 1, 2021. However, if you make sales over a marketplace, see the "YES" box for the treatment of those sales.

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Definitions

“**Marketplace**” means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. [35 ILCS 120/1]

“**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 Retailers' Occupation Tax 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.

A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in paragraph (2) of this definition of “marketplace facilitator”. [35 ILCS 120/1]

Marketplace facilitators meeting either of the thresholds in the Wayfair nexus standards are required to register with IDOR, file returns, and remit tax for all sales made through the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. A marketplace facilitator shall certify to each marketplace seller that the marketplace facilitator will assume the rights and duties of a retailer under the ROT Act and all applicable local retailers' occupation taxes administered by IDOR with respect to sales made by the marketplace seller through the marketplace. [86 Ill. Adm. Code 131.145]

“**Marketplace Seller**” means a person that makes sales through a marketplace operated by an unrelated third party marketplace facilitator. A person that is an affiliate of a marketplace facilitator is not a marketplace seller. [35 ILCS 120/1]

“**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 herein defined, holds a direct or indirect ownership interest of more than 5% in the related person. [86 Ill. Adm. Code 131.105]

“**ROT**” or “**Retailers' Occupation Tax**” means the tax levied under the Retailers' Occupation Tax Act and all applicable local retailers' occupation taxes collected by the Illinois Department of Revenue in conjunction with the state retailers' occupation tax. [35 ILCS 185/5-10]

“**Destination Rate**” means the total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. [35 ILCS 120/2-12]

“**Origin Rate**” means the total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the Illinois location at which the sales are determined to occur. [e.g. 86 Ill. Adm. Code 270.115]

“**Physical Presence**” in Illinois means having or maintaining within IL, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within IL under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in IL. [35 ILCS 105/2 (1)] For other forms of physical presence, see 35 ILCS 105/2 (1.1) and (1.2).

“**Wayfair nexus standards**” means the standards established by the Supreme Court case, *South Dakota v. Wayfair, Inc.*, No. 17-494 (U.S. June 21, 2018) and used to determine tax collection obligations for remote retailers that meet specific selling thresholds but have no physical presence in the state. Illinois P.A. 100-587 enacted nexus standards that are virtually identical to those upheld in Wayfair decision. Beginning January 1, 2021, remote retailers that meet or exceed either of the following thresholds shall be liable for all applicable state and locally imposed retailers' occupation taxes administered by IDOR on all retail sales to Illinois purchasers. [P.A. 101-0031 and 101-0604] The thresholds are:

1. The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
2. The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

**For further information and examples,
see 86 Ill. Adm. Code 131.**