

**Illinois Department of Revenue
Regulations**

Title 86 Part 131 Section 130 Marketplace Facilitators – General Provisions
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**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 131
LEVELING THE PLAYING FIELD FOR ILLINOIS RETAIL ACT**

Section 131.130 Marketplace Facilitators – General Provisions

- a) Activities of Marketplace Facilitators
 - 1) *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:*
 - A) *Listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under ROTA; and*
 - B) *Either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services. Provision on a marketplace of functionality for connection to a payment mechanism meets the requirements of this subsection (a)(1)(B).*
 - 2) *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 subsection (a)(1)(B). [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. A marketplace facilitator considered the seller of an item (either because the marketplace seller is not identified or because the marketplace facilitator is making a sale of its own) must register, file returns, and pay tax on its own sales separately from the return filed on behalf of marketplace sellers. Auctioneers that operate as marketplace facilitators must follow the provisions for disclosed or undisclosed principals at 86 Ill. Adm. Code 130.1915 in determining whether or not their marketplace sellers are identified. 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)(A) 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 Section 131.135(a) 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.
- 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 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). 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.) 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.
- 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 and 35 ILCS 120/2-12(7).)
- g) Marketplace facilitators that meet either of the thresholds in Section 131.135(a) and that make sales over their marketplace (or are considered to be the seller because the marketplace seller is not identified as explained in subsection (b)) are subject to State and local retailers' occupation tax. For sales 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 sales that are not fulfilled from inventory in Illinois or for which selling is not engaged in at any location in Illinois (see 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.)

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)(1)(B).

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

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

EXAMPLE 4: Visualey This operates a specialized online marketplace that sells various brands of contact lenses to purchasers. Visualey This 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, Visualey This 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 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 retailers' occupation taxes administered by the Department, 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 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 desiring to sell items at a weekly, in-person auction. A week before the auction, Antiquities, Inc. provides to the public an online listing of the items that will be sold. 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. The tax rate that is applicable will depend upon whether the marketplace seller is identified (see 86 Ill. Adm. Code 130.1915 for further information). Sales made by an identified marketplace seller are taxed at the destination rate. (See Section 131.155(b).) If the marketplace seller is not identified, the marketplace facilitator/auctioneer will be considered the seller of the item and the tax rate that is applicable will depend upon the location at which the marketplace facilitator/auctioneer is engaged in the business of selling. (See subsection (g) and Section 131.155(c).)

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.

(SOURCE: Adopted at 45 Ill. Reg. 931, effective December 31, 2020.)