

**Illinois Department of Revenue
Regulations**

Title 86 Part 131 Section 140 Factors Used by Marketplace Facilitators in Determining if Thresholds in Section 131.135 of this Part are Met
--

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

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

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.* [35 ILCS 120/1]
 - 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 Section 131.135(b) (i.e., the lookback period of January 1, 2020 through December 31, 2020).

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

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

EXAMPLE 2: A purchaser places an order of home repair tools at 8:00 a.m. from a marketplace seller. She receives an invoice confirming her order at 8:15 a.m. At 2:00 p.m., the purchaser realizes she needs 5 other tools to complete the job, and orders

these tools from the same marketplace seller. The marketplace seller confirms this order with a separate invoice. In this example, two different transactions have occurred. This is the case, even if the marketplace seller sends all the ordered tools to the purchaser in one package.

EXAMPLE 3: A parent places an order with a marketplace seller for care packages to be delivered to his or 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) 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.
- 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.

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