

**Illinois Department of Revenue
Regulations**

Title 86 Part 131 Section 155 Tax Sourcing Provisions

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

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

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 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 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. (See 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, or sales for which they are considered the seller because the marketplace seller is not identified (see Section 131.130(b)). 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 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 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). 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).)

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). 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.

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). 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. Its location in Carbondale is where it is engaged in the occupation of selling tangible personal property applying the provisions of 86 Ill. Adm. Code 270.115. All the items sold are located in Carbondale at the time of sale. Conkle's engages in activities qualifying it as a marketplace, and meets the tax remittance threshold in Section 131.135(a)(2). It holds a weekly, in-person auction. Some, but not all, marketplace sellers are identified. Most purchasers take possession of their purchases in Carbondale at the time of sale. However, some instead request that Conkle's 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 always incurred at the tax rate in effect at the location of the auction house in Carbondale. The result is the same for both identified and unidentified marketplace sellers. For sales by identified marketplace sellers, tax is incurred at the rate in effect at the auction house in Carbondale because that is where the purchaser takes possession of the item (the destination rate). For sales by unidentified marketplace sellers, Conkle's is considered the seller. It will incur tax liability at the rate in effect at the auction house in Carbondale because, in this example, that is the location at which Conkle's is engaged in the occupation of selling tangible personal property in Illinois (and is also the location of inventory). (See subsection (c).) For items that are delivered to Illinois purchasers and that are sold on behalf of identified marketplace sellers, Conkle's incurs State and local retailers' occupation taxes in effect at the location to which the purchased items are shipped or delivered (destination rate). For items delivered to Illinois purchasers and that are sold on behalf of unidentified marketplace sellers, Conkle's is considered the seller. Tax for these sales will be incurred at the rate in effect at the location of the auction house in Carbondale because this is the location in this example where

Conkle's is engaged in the business of selling tangible personal property in Illinois (and is also the location of inventory). (See subsection (c).) If Conkle's ships the items sold to purchasers in California and meets all the other requirements of 86 Ill. Adm. Code 130.605, no State and local retailers' occupation taxes are incurred, because this is an exempt sale into interstate commerce.

EXAMPLE 5: Marketplace facilitator A operates a marketplace. It meets the tax remittance threshold of Section 131.135(a)(1). 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 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)]

EXAMPLE 1: Vichy Vines is a vintner in the Columbia River Valley that holds an Illinois Liquor Control Commission Winery Shipper's License and sells wine to Illinois purchasers over its website. It has no physical presence in Illinois and meets the tax remittance threshold of Section 131.115(a)(1). Consequently, for purposes of tax imposed under ROTA, 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). Tax on all sales Katy makes over Etc.com must be reported and remitted by Etc.com. as required in subsection (b). 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), 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), 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 86 Ill. Adm. Code 270.115). This 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 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) 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. It may, however, collect the tax and send it to DanubeDeliveries.com to remit to the Department, or, if the marketplace facilitator has obtained certification as a CSP or CAS, it may assist DanubeDeliveries.com in filing its returns and performing other tax functions, as provided in Section 131.160 or 131.165. 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 those items. (See 86 Ill. Adm. Code 270.101.) However, certain units of local government (i.e., transportation districts) are authorized to impose tax on these items. (See 86 Ill. Adm. Code 320.101. For detailed information, see the Illinois Tax Rate Finder on the Department's website.)

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