

**i** *informational**Bulletin*

Brian Hamer, Director

**Important notice of changes for out-of-state retailers*****To all out-of-state retailers and tax preparers***

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This bulletin is written to inform you of recent changes; it does not replace statutes, rules and regulations, or court decisions.

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**For information or forms**

Visit our website at:  
[tax.illinois.gov](http://tax.illinois.gov)

Call us at:  
1 800 732-8866 or  
217 782-3336

Call our TDD  
(telecommunications device  
for the deaf) at:  
1 800 544-5304

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Effective January 1, 2015, the type of out-of-state retailers required to register in Illinois and collect and remit Use Tax has expanded.

Public Act 98-1089, 35 ILCS 105/2(1.1) and 35 ILCS 110/2(1.1), applies to out-of-state retailers and servicemen that satisfy the following criteria:

- the out-of-state retailer has a contract with a person in Illinois;
- under the contract, the person in Illinois refers potential customers to the retailer and the retailer pays to the person in Illinois a commission or other consideration based on the sale of tangible personal property by the retailer;
- the person in Illinois provides to the potential customers a promotional code or other mechanism that allows the retailer to trace the purchases made by these customers;
- the retailer made cumulative gross sales of \$10,000 during the preceding four quarterly periods to customers referred by persons located in Illinois, regardless of the location of the customers.

If all of these conditions are met, the retailer is presumed to be maintaining a place of business in Illinois and is required to register and to collect and remit Use Tax on all of its sales to Illinois customers.

**Example**

Example.com sells books to customers throughout the United States and the world. It is based in Montana where its corporate headquarters and principal sales office are located. Example.com keeps its inventory in warehouses throughout the United States, though none of the warehouses are in Illinois. Example.com does not employ salespeople in Illinois and has no offices in Illinois.

Example.com has an agreement with Illinoisbased.com, a discount book finder located in Illinois. Under the agreement, Illinoisbased.com provides a link on its website to the website of Example.com, and Example.com compensates Illinoisbased.com based on the sales of books Example.com sells to customers that reached its website through the Illinoisbased.com link.

Example.com has similar agreements with other Illinois businesses, each of which provides a link on its website to Example.com, and/or provides promotional codes in its sales materials for Example.com, and each

of which is compensated by Example.com based on Example.com's sales to customers who were referred through the sales efforts of these Illinois businesses.

During the preceding four quarterly periods, Example.com cumulatively sold more than \$10,000 worth of books to customers referred by all of the Illinois-based businesses with which it has agreements, including \$500 worth of books to customers referred to it through Illinoisbased.com. Example.com's sales to Illinois customers were \$4,000 during the preceding four quarters through referrals and direct sales.

Under Public Act 98-1089, Example.com is presumed to be a retailer maintaining a place of business in Illinois. Example.com must register with the Illinois Department of Revenue and collect and remit Use Tax on its gross receipts on sales to all Illinois customers. It does not matter if total sales to Illinois consumers are less than \$10,000. Nor does it matter whether the Illinois sales were direct sales by Example.com or sales referred to Example.com by one of the websites or other referring businesses with which Example.com has agreements.

In the stated example, if the \$4,000 in sales to Illinois customers had occurred after January 1, 2015, Example.com would be responsible for collecting the tax on those sales at the time they occurred.

### **What is Illinois Use Tax and why am I, as an out-of-state retailer, responsible for collecting it?**

The Illinois Use Tax Act imposes a tax on the privilege of using in Illinois tangible personal property purchased from a retailer. Although this tax falls on the users of the property, the Illinois Use Tax Act requires retailers that "maintain[ ] a place of business in this State" to collect the tax from purchasers at the time of sale and to remit it to the Department.

### **Does the law change apply to all out-of-state-retailers?**

No. It only applies to entities that meet requirements of the law outlined on page one of this bulletin.

### **How do I determine whether the law applies to me?**

Each retailer must identify the location of its referring businesses, review its agreements with those businesses and examine the total sales referred by those businesses located in Illinois to determine whether its cumulative sales for the preceding four quarterly periods exceed \$10,000, regardless of the customer's locations.

### **What action must I take if I determine the law applies to me?**

Retailers must register with the Department and begin reporting, collecting and remitting Use Tax on sales to Illinois customers. Registration and reporting and payment of tax should be completed electronically using MyTax Illinois, available on our website at tax.illinois.gov. For more information, contact our Central Registration Division at **217 785-3707**.

### **What if I don't believe the law applies to my business?**

An entity can rebut the presumption that it is a retailer doing business in Illinois by presenting proof to the Department of Revenue upon audit that the persons in Illinois that referred customers to it had so little connection to Illinois that the nexus standards in the Commerce Clause of the U.S. Constitution prohibit imposing registration and collection requirements. Failure to collect and remit Use Tax if required by statute will subject a retailer to liability for the uncollected amounts, plus penalties and interest.

### **What if I am unable to come into compliance by January 1, 2015?**

The Department recognizes that there are many factors related to determining whether compliance is required and that many out-of-state-retailers, particularly smaller retailers, may struggle to achieve full compliance by the deadline, which coincides with the busiest retail selling period.

For the first 30 days following the effective date of the law, the Department will base its determination of whether enforcement action is warranted against an out-of-state retailer subject to registration and collection requirements under P.A. 98-1089 on whether the out-of-state retailer made reasonable and good faith efforts to comply with P.A. 98-1089. So long as retailers make reasonable efforts to understand the requirements of the law as applied to them, and take steps toward compliance, the Department will exercise its discretion against issuing assessments. Out-of-state retailers that are in full compliance with P.A. 98-1089 no later than February 1, 2015, will be presumed to have engaged in good faith efforts to comply with the law.