
Compliance Alert - Tax Obligations of Marketplace Sellers Making Marketplace Sales Subject to Retailers' Occupation Tax



February 2020

Compliance Problem

The Illinois Department of Revenue (IDOR) has become aware that marketplace sellers have many questions about their tax obligations under the new marketplace facilitator law. These questions appear to stem from notices they have received from marketplace facilitators. This Compliance Alert is issued to clarify the tax obligations of marketplace sellers making sales through a marketplace that are subject to Retailers' Occupation Tax (ROT).

Background

Recent marketplace legislation generally shifted the obligation to collect and remit Illinois Use Tax (UT) from the marketplace seller to the marketplace facilitator, effective January 1, 2020. When the tax required to be remitted to IDOR for a marketplace sale is UT, a marketplace facilitator that has *Wayfair* nexus is now the retailer for that sale and you, as the marketplace seller, are not the retailer for that sale. The marketplace facilitator, not you, is required to collect and remit UT to IDOR. (See [FY 2020-18, Illinois Use Tax Requirements for Marketplace Facilitators and Marketplace Sellers.](#))

When the tax required to be remitted to IDOR for a marketplace sale is ROT, you, the marketplace seller, are the retailer for that sale, not the marketplace facilitator. You are required to be registered, file a return, and remit ROT for that sale (including all applicable local taxes). The marketplace facilitator is not the retailer and has no legal authority to remit ROT to IDOR for that sale. Most often, marketplace sellers incur ROT when purchases are filled from inventory in Illinois.

Some marketplace facilitators have notified their marketplace sellers that they will collect and remit UT on **all** marketplace sales, but they will not calculate and collect tax on any ROT sales made by marketplace sellers. The tax calculation systems used by many marketplace facilitators cannot calculate both the ROT and UT, whichever is required, at the time of sale. Consequently, when ROT is due, the marketplace facilitator is unable to collect the correct amount of tax from the purchaser at the time of sale and transmit it to you, the marketplace seller, so that you can remit it to IDOR. Despite these limitations, you remain liable for all ROT. IDOR has no authority to provide you with a credit against your ROT liability for the UT remitted by the marketplace facilitator.

Solution

Marketplace facilitators report that they are working to correct the limitations in their tax calculation systems. In the meantime, however, please be advised:

- If the tax required to be remitted to IDOR for a marketplace sale is ROT, you, not the marketplace facilitator, are the retailer for this sale. You must register or remain registered to remit this tax to IDOR.
- IDOR has no authority to provide you with a credit against your ROT liability for the tax that was remitted to IDOR by the marketplace facilitator.
- Consequently, you remain liable for the entire ROT liability, including applicable local taxes.

We strongly urge you to review your marketplace sales to determine if you incur any ROT liability. If you incur ROT for any marketplace sales, you must register or remain registered with IDOR. While we understand that limitations in a marketplace facilitator's tax calculation system will not allow you to recoup amounts at the time of sale that would satisfy your liability, you nonetheless remain liable for ROT on these sales.

Questions

If you have questions regarding this compliance alert, please contact the Central Registration Division at (217) 785-3707.