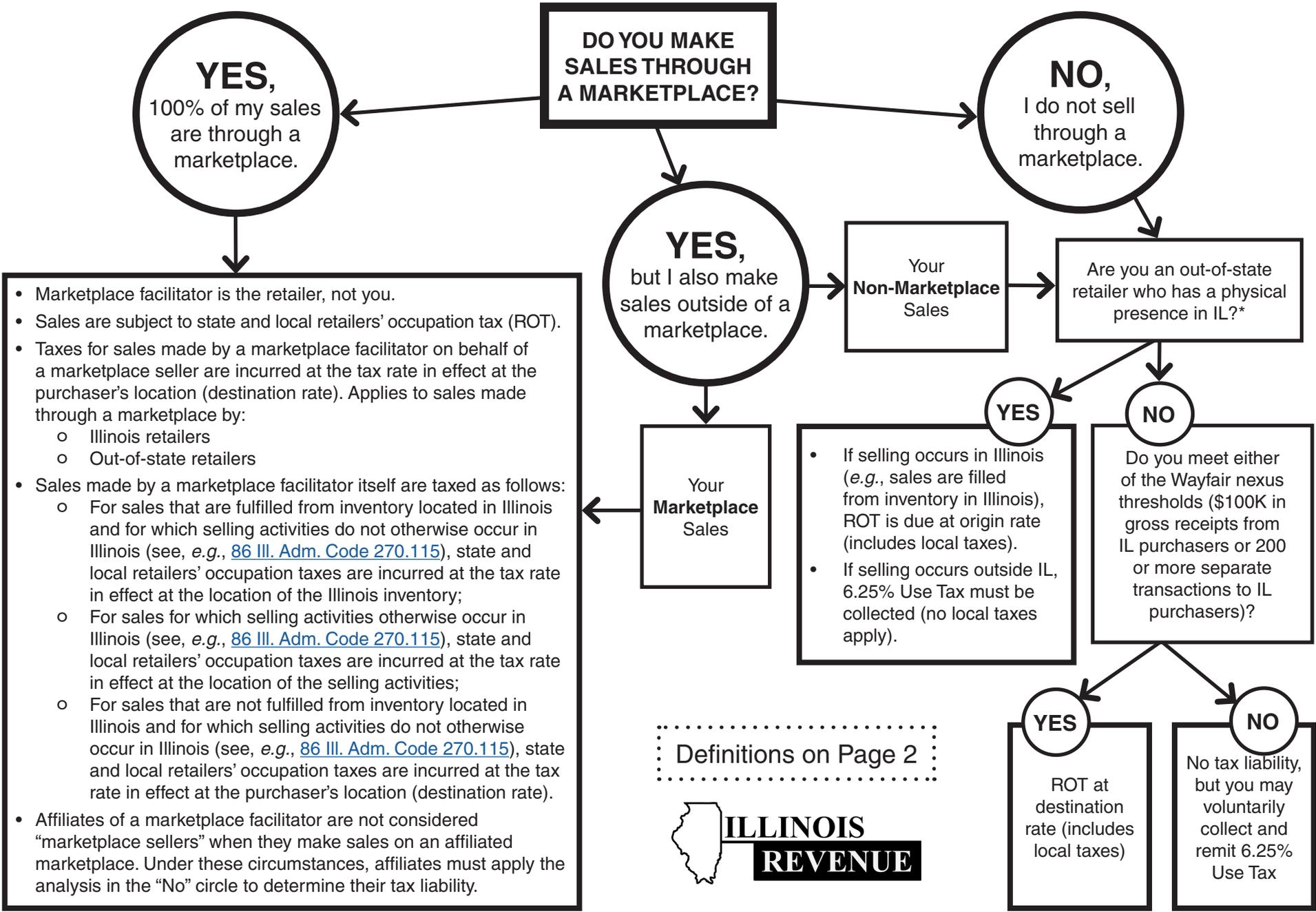


# Leveling the Playing Field Retailer Flowchart

effective January 1, 2021



- Marketplace facilitator is the retailer, not you.
- Sales are subject to state and local retailers' occupation tax (ROT).
- Taxes for sales made by a marketplace facilitator on behalf of a marketplace seller are incurred at the tax rate in effect at the purchaser's location (destination rate). Applies to sales made through a marketplace by:
  - Illinois retailers
  - Out-of-state retailers
- Sales made by a marketplace facilitator itself are taxed as follows:
  - For sales that are fulfilled from inventory located in Illinois and for which selling activities do not otherwise occur in Illinois (see, e.g., [86 Ill. Adm. Code 270.115](#)), state and local retailers' occupation taxes are incurred at the tax rate in effect at the location of the Illinois inventory;
  - For sales for which selling activities otherwise occur in Illinois (see, e.g., [86 Ill. Adm. Code 270.115](#)), state and local retailers' occupation taxes are incurred at the tax rate in effect at the location of the selling activities;
  - For sales that are not fulfilled from inventory located in Illinois and for which selling activities do not otherwise occur in Illinois (see, e.g., [86 Ill. Adm. Code 270.115](#)), state and local retailers' occupation taxes are incurred at the tax rate in effect at the purchaser's location (destination rate).
- Affiliates of a marketplace facilitator are not considered "marketplace sellers" when they make sales on an affiliated marketplace. Under these circumstances, affiliates must apply the analysis in the "No" circle to determine their tax liability.

- YES**
- If selling occurs in Illinois (e.g., sales are filled from inventory in Illinois), ROT is due at origin rate (includes local taxes).
  - If selling occurs outside IL, 6.25% Use Tax must be collected (no local taxes apply).

- NO**
- Do you meet either of the Wayfair nexus thresholds (\$100K in gross receipts from IL purchasers or 200 or more separate transactions to IL purchasers)?

**YES**

ROT at destination rate (includes local taxes)

**NO**

No tax liability, but you may voluntarily collect and remit 6.25% Use Tax

Definitions on Page 2



\* If you are an Illinois retailer engaged in the occupation of making sales of tangible personal property in Illinois, the provisions of this chart do not apply to you. You should handle your liability as you did prior to January 1, 2021. However, if you make sales over a marketplace, see the "YES" box for the treatment of those sales.

# Definitions

**“Marketplace”** means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. [[35 ILCS 120/1](#)]

**“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:

1. Listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Retailers’ Occupation Tax Act; and
2. 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.

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 paragraph (2) of this definition of “marketplace facilitator”. [[35 ILCS 120/1](#)]

Marketplace facilitators meeting either of the thresholds in the Wayfair nexus standards are required to register with IDOR, file returns, and remit tax for all sales made through the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. A marketplace facilitator shall certify to each marketplace seller that the marketplace facilitator will assume the rights and duties of a retailer under the ROT Act and all applicable local retailers’ occupation taxes administered by IDOR with respect to sales made by the marketplace seller through the marketplace. [86 Ill. Adm. Code 131.145]

**“Marketplace Seller”** means a person that makes sales through a marketplace operated by an unrelated third party marketplace facilitator. A person that is an affiliate of a marketplace facilitator is not a marketplace seller. [[35 ILCS 120/1](#)]

**“Affiliate”** means a person that, with respect to another person: (i) has a direct or indirect ownership interest of more than 5 percent in the other person; or (ii) is related to the other person because a third person, or a group of third persons who are affiliated with each other as herein defined, holds a direct or indirect ownership interest of more than 5% in the related person. [86 Ill. Adm. Code 131.105]

**“ROT” or “Retailers’ Occupation Tax”** means the tax levied under the Retailers’ Occupation Tax Act and all applicable local retailers’ occupation taxes collected by the Illinois Department of Revenue in conjunction with the state retailers’ occupation tax. [[35 ILCS 185/5-10](#)]

**“Destination Rate”** means the total state and local retailers’ occupation tax rate calculated for a sale using 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. [[35 ILCS 120/2-12](#)]

**“Origin Rate”** means the total state and local retailers’ occupation tax rate calculated for a sale using the rate in effect at the Illinois location at which the sales are determined to occur. [e.g. [86 Ill. Adm. Code 270.115](#)]

**“Physical Presence”** in Illinois means having or maintaining within IL, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within IL under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in IL. [[35 ILCS 105/2 \(1\)](#)] For other forms of physical presence, see [35 ILCS 105/2 \(1.1\) and \(1.2\)](#).

**“Wayfair nexus standards”** means the standards established by the Supreme Court case, *South Dakota v. Wayfair, Inc.*, No. 17-494 (U.S. June 21, 2018) and used to determine tax collection obligations for remote retailers that meet specific selling thresholds but have no physical presence in the state. Illinois [P.A. 100-587](#) enacted nexus standards that are virtually identical to those upheld in Wayfair decision. Beginning January 1, 2021, remote retailers that meet or exceed either of the following thresholds shall be liable for all applicable state and locally imposed retailers’ occupation taxes administered by IDOR on all retail sales to Illinois purchasers. [[P.A. 101-0031](#) and [101-0604](#)] The thresholds are:

1. The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
2. The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

**For further information and examples,  
see 86 Ill. Adm. Code 131.**