

This letter responds to an annual survey. (This is a GIL.)

March 30, 2023

NAME1
ADDRESS

Dear Ms. XXX:

This letter is in response to your letter dated January 4, 2023, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

January 2023

Dear survey recipient,

In May 1990, the COMPANY published its First Edition of the Third-Party Drop Shipment Survey. In subsequent years, over a dozen updates have been published, with the most recent, the Fourteenth Edition, conducted in 2018. In these surveys, each of the forty-five states (and the District of Columbia) that impose sales and use taxes were contacted with questions based upon a third-party drop shipment scenario. All of the taxing jurisdictions contacted for the survey responded.

Due to the popular reception of the survey, extensive legislative changes since 2018, world impacts that prevented a 2020 survey, and increased requests and need for a Fifteenth Edition, we are contacting you and other taxing jurisdictions to conduct the survey once again. In addition, due to legislative and regulatory

changes following the *Wayfair* decision as well as a longer interlude since the last published edition, we are also conducting the first ever Marketplace Facilitator/Seller Survey in conjunction with the Third-Party Drop Shipment Survey.

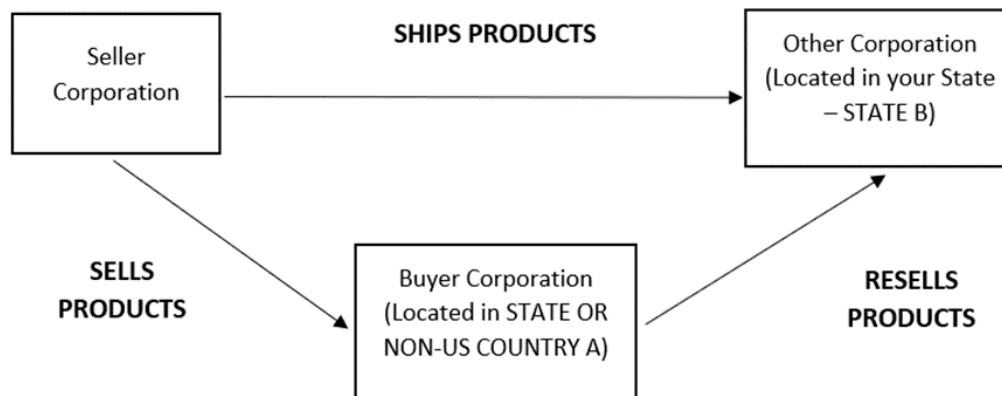
As you go through the following scenarios and questions, please keep in mind your answers will assist thousands of taxpayers in their desire to comply with sales and use taxes when conducting business across the country. Your responses are not only an invaluable tool to assist taxpayers conducting business in your taxing jurisdiction, but also an important reference guide as they navigate unknown and challenging tax scenarios to help make important business decisions.

The COMPANY is indebted to you and all of the other taxing jurisdictions for their full cooperation and assistance with these surveys and greatly appreciate your help in achieving the goal of 100% participation, as we have always achieved in the past.

Yours Very Truly,

NAME2
President

COMPANY DROP SHIPMENT SURVEY QUESTIONS 2023



SURVEY QUESTIONS:

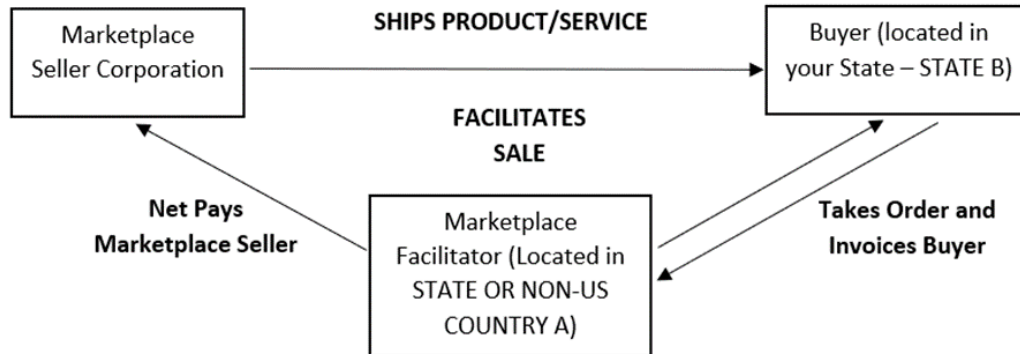
- **Please answer each question and provide the code section or guidance on which the state relies to reach its conclusion in each answer.**
1. Given that Buyer Corporation is not registered in, and has no nexus (either physical or economic) with your state (State B), will your

state recognize the sale from Seller Corporation to Buyer Corporation as a sale for resale not subject to sales or use tax in your state? ("Yes" or "No").

- a. If the answer is yes, what documentation will your state accept as evidence that the sale from Seller Corporation to Buyer Corporation is a sale for resale?
 - b. If Seller Corporation is required to collect and/or remit the tax, is the tax calculated based on the price paid by Buyer Corporation, or by the price paid by Other Corporation?
 - c. If Seller Corporation is required to collect and remit the tax, and the tax is calculated based on the price paid by Other Corporation, what is Seller Corporation required to do if it does not know and has no right to know, the price paid by the Other Corporation?
2. If Seller Corporation delivers in its own equipment, rather than by common carrier, does this affect the Seller Corporation's tax requirements?
 3. Do the shipping terms of sale matter in the taxation of this type of transaction? If so, please explain.
 4. What are the tax consequences if Seller Corporation receives a State A Direct Pay Certificate from Buyer Corporation instead of a State A resale certificate?
 5. If Other Corporation is a consumer, would the execution of an affidavit (see Exhibit A) from Other Corporation to Buyer Corporation, furnished to Seller Corporation subsequent to the sale, be sufficient to relieve Seller Corporation from further responsibility or liability for your state's tax?
 6. If Other Corporation is reselling as opposed to consuming, can Buyer Corporation provide Seller Corporation with Other Corporation's resale certificate? If either Buyer Corporation or Other Corporation is an exempt entity or purchasing for an exempt purpose other than for resale, what documentation will your state accept as evidence that the sale is exempt?
 7. If Other Corporation is installing the items shipped in the performance of a construction contract with an exempt agency in your state, what are the tax requirements for Seller Corporation?

8. In a Marketplace Facilitator/Marketplace Seller business arrangement, does the Marketplace Seller have the same tax requirements as the Seller Corporation in a third party drop ship arrangement in your state?

**COMPANY MARKETPLACE FACILITATOR/SELLER SURVEY
QUESTIONS 2023**



SURVEY QUESTIONS:

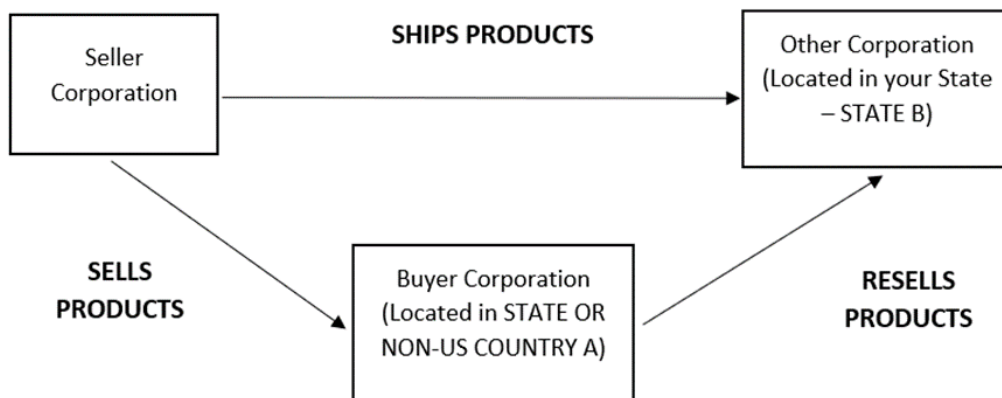
- **Please answer each question and provide the code section or guidance on which the state relies to reach its conclusion in each answer.**
1. What is your state's definition of a Marketplace Facilitator?
 2. When did your state's Marketplace Facilitator law become effective?
 - a. If the effective date of your state's Marketplace Facilitator law has changed, please explain what date change(s) have been made (e.g., indicate the effective date under a prior version of the law).
 3. What threshold(s) must be exceeded by the Marketplace Facilitator in order for it to be required to collect and remit sales/use tax?
 - a. If the threshold(s) for Marketplace Facilitators have changed, please explain what changes have been made.
 4. Is an out-of-state Marketplace Facilitator required to collect and remit sales tax or seller's use tax?
 - a. Are there specific circumstances which determine whether an out-of-state Marketplace Facilitator should collect sales

- tax vs. seller's use tax? If so, what are those circumstances?
- b. Are there different rates that could apply depending on the Marketplace Facilitator's requirement to collect sales tax vs. seller's use tax?
5. Is a Marketplace Facilitator required to obtain a separate registration for sales made on behalf of marketplace sellers from the Marketplace Facilitator's registration for its own direct sales?
 6. Is a Marketplace Facilitator required to identify sales made on behalf of marketplace sellers separately from its own direct sales on its return?
 7. With regard to the Marketplace Facilitator's reporting of facilitated sales on its return:
 - a. Must the Marketplace Facilitator report facilitated sales on the same return as its direct sales?
 - b. Can the Marketplace Facilitator file a separate return for any third-party sales it facilitates?
 8. Is the Marketplace Facilitator required to provide certification to a Marketplace Seller that the Marketplace Facilitator will collect and remit tax on behalf of the Marketplace Seller?
 - a. If yes, what language must be included on the Marketplace Facilitator's certification to the Marketplace Seller to be deemed acceptable by your jurisdiction?
 9. Can a Marketplace Facilitator rely on the Marketplace Seller's tax decisions, including:
 - a. Taxability of the products and services?
 - b. State and local location of the delivery/use of the product or service?
 - c. Exemption of the customer and/or exempt use of product or service?
 10. If the Marketplace Facilitator cannot rely on the Marketplace Seller's tax decisions:
 - a. Is there joint and several liability for the sales/use tax due on the sale of goods or services through the marketplace?
 - b. What protections does the Marketplace Facilitator have if an error was made by the Marketplace Seller?
 11. Aside from sales and use tax, is the Marketplace Facilitator required to collect any other taxes or fees (e.g., accommodation

- taxes, food and beverage taxes, electronic waste fees, tire disposal fees, 911 surcharges)?
- a. If so, which other taxes or fees must the Marketplace Facilitator collect?
12. Does your state allow the Marketplace Facilitator and/or Marketplace Seller to request a waiver from a requirement that the Marketplace Facilitator must collect tax for sales made through the marketplace?
- a. If so, what is the procedure for requesting a waiver?
 - b. What documentation should the Marketplace Facilitator maintain if it has been granted a waiver from collecting tax?
13. If a Marketplace Seller makes sales exclusively through a marketplace to customers in your state such that any sales tax is collected/remitted by the Marketplace Facilitator, what documentation should the Marketplace Seller provide to its supplier of inventory to exempt the purchase from sales tax as a sale for resale?
- a. Does your response differ depending on whether the Marketplace Seller has nexus?
14. If a Marketplace Seller makes direct sales and sells through a marketplace to customers in your state, what documentation should the Marketplace Seller provide to its supplier of inventory to exempt the purchase from sales tax as a sale for resale?
- a. Does your response differ depending on whether the Marketplace Seller has nexus?

DEPARTMENT'S RESPONSE - COMPANY DROP SHIPMENT SURVEY QUESTIONS

2023:



1. Given that Buyer Corporation is not registered in, and has no nexus (either physical or economic) with your state (State B), will your state recognize the sale from Seller Corporation to Buyer Corporation as a sale for resale not subject to sales or use tax in your state? (“Yes” or “No”).

DEPARTMENT’S RESPONSE

While active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers' Occupation Tax Act provides that, “failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale.” See 86 Ill. Adm. Code 130.225(d).

- 1a. If the answer is yes, what documentation will your state accept as evidence that the sale from Seller Corporation to Buyer Corporation is a sale for resale?

DEPARTMENT’S RESPONSE

Documentation could include certifications from purchasers on Certificates of Resale in lieu of resale numbers that describe the drop-shipment situation. These certificates should comply with the requirements set out in 86 Ill. Adm. Code 130.1405(b) and state that purchasers have no contact with Illinois that would require them to be registered and that they do not have an Illinois resale number. This would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. See 86 Ill. Adm. Code 130.225(d). For information regarding requirements for Certificates of Resale see 86 Ill. Adm. Code 130.1405(b).

- 1b. If Seller Corporation is required to collect and/or remit the tax, is the tax calculated based on the price paid by Buyer Corporation, or by the price paid by Other Corporation?

DEPARTMENT’S RESPONSE

Not applicable.

- 1c. If Seller Corporation is required to collect and remit the tax, and the tax is calculated based on the price paid by Other Corporation, what is Seller Corporation required to do if it does not know and has no right to know, the price paid by the Other Corporation?

DEPARTMENT’S RESPONSE

Not Applicable. If the Buyer Corporation did not collect Illinois Use Tax from its customers, the customers would have to pay their tax liability directly to the Department of Revenue. See 86 Ill. Adm. Code 130.225(c).

2. If Seller Corporation delivers in its own equipment, rather than by common carrier, does this affect the Seller Corporation's tax requirements?

DEPARTMENT'S RESPONSE

No, assuming the seller corporation is registered with the Department of Revenue. See 86 Ill. Adm. Code 130.225.

3. Do the shipping terms of sale matter in the taxation of this type of transaction? If so, please explain.

DEPARTMENT'S RESPONSE

No, assuming the sale from Seller Corporation to Buyer Corporation is a valid sale for resale.

4. What are the tax consequences if Seller Corporation receives a State A Direct Pay Certificate from Buyer Corporation instead of a State A resale certificate?

DEPARTMENT'S RESPONSE

If a Direct Pay Certificate is provided then this is no longer a drop shipment situation. Applicants who have been approved to participate in the Direct Payment Program will be issued a Direct Pay Permit (permit) by the Department. Retailers who are provided with a permit from a permit holder purchasing qualifying tangible personal property are relieved of their obligation to remit the Retailers' Occupation Tax and are also relieved of the obligation to collect Use Tax (including any local occupation tax reimbursements of taxes administered by the Department) incurred on the sale. See 86 Ill. Adm. Code 130.2500. Qualifying tangible personal property does not include food or beverages, or tangible personal property required to be titled or registered with an agency of federal or state government. See 86 Ill. Adm. Code 130.2505(c).

5. If Other Corporation is a consumer, would the execution of an affidavit (see Exhibit A) from Other Corporation to Buyer Corporation, furnished to Seller Corporation subsequent to the sale, be sufficient to relieve Seller Corporation from further responsibility or liability for your state's tax?

DEPARTMENT'S RESPONSE

A person who sells tangible personal property to a purchaser who may use or consume such property but who also may resell such property, must determine, at the time when it sells the property to such purchaser, whether the purchaser is buying the property "for use or consumption" or whether the purchaser is buying the property "for resale". See 86 Ill. Adm. Code 130.1401. An affidavit from the Other Corporation does not satisfy the resale documentation requirement for the sale between the Seller Corporation and the Buyer Corporation but may constitute other evidence that the sale was for resale. See 86 Ill. Adm. Code 130.1405.

6. If Other Corporation is reselling as opposed to consuming, can Buyer Corporation provide Seller Corporation with Other Corporation's resale certificate? If either Buyer Corporation or Other Corporation is an exempt entity or purchasing for an exempt purpose other than for resale, what documentation will your state accept as evidence that the sale is exempt?

DEPARTMENT'S RESPONSE

See response to 5. A seller must determine at the time of sale whether the sale is for "use or consumption" or for "resale". 86 Ill. Adm. Code 130.1401. A resale certificate from the Other Corporation does not satisfy the resale documentation requirement for the sale between the Seller Corporation and the Buyer Corporation. See 86 Ill. Adm. Code 130.1405. An entity which would otherwise qualify for tax-exempt status on its purchases of tangible personal property for use or consumption (refer to Section 130.2005 and Section 130.2080) cannot make tax-free purchases unless it has an active exemption identification number issued by the Department. See 86 Ill. Adm. Code 130.2007.

7. If Other Corporation is installing the items shipped in the performance of a construction contract with an exempt agency in your state, what are the tax requirements for Seller Corporation?

DEPARTMENT'S RESPONSE

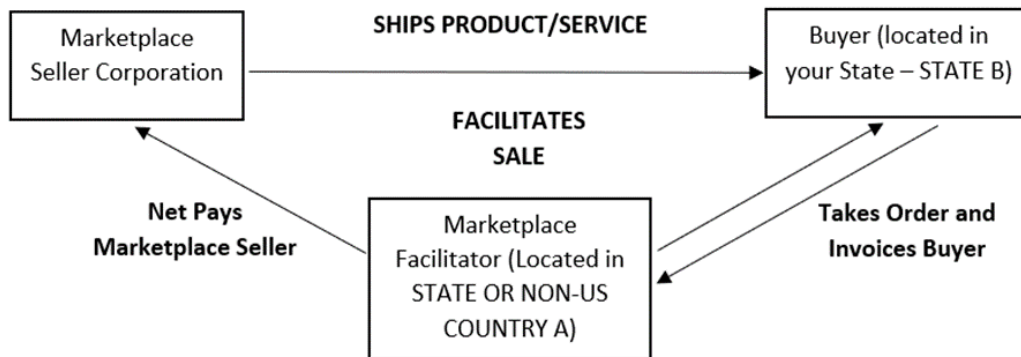
The manner of use of the property by Other Corporation does not satisfy the resale documentation requirement for the sale between the Seller Corporation and the Buyer Corporation. See 86 Ill. Adm. Code 130.1405.

8. In a Marketplace Facilitator/Marketplace Seller business arrangement, does the Marketplace Seller have the same tax requirements as the Seller Corporation in a third party drop ship arrangement in your state?

DEPARTMENT'S RESPONSE

Assuming the Marketplace Facilitator has met a tax remittance threshold, the Marketplace Facilitator would be responsible for remitting any tax due on sales through the marketplace. The Marketplace Facilitator would have the same tax requirements as the Seller Corporation in a third-party drop ship arrangement. A Marketplace Seller shall furnish to the Marketplace Facilitator information that is necessary for the Marketplace Facilitator to correctly remit tax on each sale made on its behalf over the marketplace. The information may include a certification that an item being sold is taxable, not taxable, exempt from taxation, or taxable at a specified rate. See 86 Ill. Adm. Code 131.150(b).

DEPARTMENT’S RESPONSE - COMPANY MARKETPLACE FACILITATOR/SELLER SURVEY QUESTIONS 2023:



1. What is your state’s definition of a Marketplace Facilitator?

DEPARTMENT’S RESPONSE

A Marketplace Facilitator is 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. 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

2. When did your state’s Marketplace Facilitator law become effective?

DEPARTMENT’S RESPONSE

Under the Use Tax Act, the law became effective on January 1, 2020. See 35 ILCS 105/2. Under the Retailers' Occupation Tax Act, the law became effective on January 1, 2021. See 35 ILCS 120/2.

2a. If the effective date of your state's Marketplace Facilitator law has changed, please explain what date change(s) have been made (e.g., indicate the effective date under a prior version of the law).

DEPARTMENT'S RESPONSE

Effective January 1, 2020, Illinois expanded the Use Tax Act nexus to include marketplace facilitators that met certain thresholds. See 35 ILCS 120/3.

Effective January 1, 2021, under the Retailers' Occupation Tax Act 35 ILCS 120/2(c), marketplace facilitators who met a threshold test became liable for the State and local taxes administered by the Department.

3. What threshold(s) must be exceeded by the Marketplace Facilitator in order for it to be required to collect and remit sales/use tax?

DEPARTMENT'S RESPONSE

Beginning January 1, 2021, a marketplace facilitator is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of following tax remittance thresholds is met:

- 1) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by the marketplace facilitator and marketplace sellers are \$100,000 or more; or
- 2) The marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions through the marketplace for the sale of tangible personal property to purchasers in Illinois.

See 86 Ill. Adm. Code 131.135(a).

The marketplace facilitator must determine on a quarterly basis, whether it meets either threshold for the proceeding 12-month period. See 86 Ill. Adm. Code 131.135(c).

3a. If the threshold(s) for Marketplace Facilitators have changed, please explain what changes have been made.

DEPARTMENT'S RESPONSE

No changes have been made. See 86 Ill. Adm. Code 131.135(c).

4. Is an out-of-state Marketplace Facilitator required to collect and remit sales tax or seller's use tax?

DEPARTMENT'S RESPONSE

If the Marketplace Facilitator meets one of the threshold tests in 86 Ill. Adm. Code 131.135(a), it is considered a retailer engaged in the occupation of selling at retail in Illinois and is required to remit all State and local retailers' occupation taxes which are administered by the Department.

4a. Are there specific circumstances which determine whether an out-of-state Marketplace Facilitator should collect sales tax vs. seller's use tax? If so, what are those circumstances?

DEPARTMENT'S RESPONSE

If the Marketplace Facilitator meets either of the thresholds in 86 Ill. Adm. Code 131.135(a), it must remit the State and local Retailers' Occupation Tax on sales made over the marketplace on behalf of marketplace sellers, as well as its own sales. See 86 Ill. Adm. Code 131.145.

4b. Are there different rates that could apply depending on the Marketplace Facilitator's requirement to collect sales tax vs. seller's use tax?

DEPARTMENT'S RESPONSE

Taxes for sales made by a marketplace facilitator on behalf of a marketplace seller are incurred at the tax 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 (destination rate). This applies to sales made through a marketplace by:

- Illinois retailers
- Out-of-state retailers (with or without a physical presence in Illinois)

See 35 ILCS 120/2-12(7).

Sales made over the marketplace 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, the State and local retailers' occupation taxes are incurred at the tax rate in effect at the location of the Illinois inventory

(origin rate).

- For sales for which selling activities otherwise occur in Illinois, the State and local retailers' occupation taxes are incurred at the tax rate in effect at the location of the selling activities (origin rate).
- For sales that are not fulfilled from inventory located in Illinois and for which selling activities do not otherwise occur in Illinois, the State and local retailers' occupation taxes are incurred at the tax 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 (destination rate).

See 86 Ill. Adm. Code 131.130(g); 86 Ill. Adm. Code 270.115.

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| 5. Is a Marketplace Facilitator required to obtain a separate registration for sales made on behalf of marketplace sellers from the Marketplace Facilitator's registration for its own direct sales? |
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DEPARTMENT'S RESPONSE

Marketplace Facilitators must separately register with the Department to file and pay tax on their own sales; tax on those sales shall be reported and paid on a return separate from the return filed on behalf of marketplace sellers. 86 Ill. Adm. Code 130.145(b).

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| 6. Is a Marketplace Facilitator required to identify sales made on behalf of marketplace sellers separately from its own direct sales on its return? |
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DEPARTMENT'S RESPONSE

Marketplace Facilitators shall file returns and remit tax on sales made over the marketplace to Illinois purchasers on behalf of marketplace sellers separately from any sales made directly by the marketplace facilitator itself. 35 ILCS 120/2(c).

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|-------------------------------------------------------------------------------------------------------|
| 7. With regard to the Marketplace Facilitator's reporting of facilitated sales on its return: |
| 7a. Must the Marketplace Facilitator report facilitated sales on the same return as its direct sales? |

DEPARTMENT'S RESPONSE

Marketplace facilitators must separately register with the Department to file and pay tax on their own sales; tax on those sales shall be reported and paid on a return separate from the return filed on behalf of marketplace sellers. See 86 Ill. Adm. Code 131.145(b).

7b. Can the Marketplace Facilitator file a separate return for any third-party sales it facilitates?

DEPARTMENT'S RESPONSE

A marketplace facilitator is considered a retailer engaged in the occupation of selling at retail in Illinois. As a retailer, the marketplace facilitator is responsible for filing a return and is liable for all applicable State and local retailers' occupation taxes administered by the Department on all sales to Illinois purchasers made over its marketplace on behalf of marketplace sellers. See 86 Ill. Adm. Code 130.145(b) and (d).

8. Is the Marketplace Facilitator required to provide certification to a Marketplace Seller that the Marketplace Facilitator will collect and remit tax on behalf of the Marketplace Seller?

DEPARTMENT'S RESPONSE

A marketplace facilitator shall certify to each marketplace seller:

- 1) That the marketplace facilitator assumes the rights and duties of a retailer under the Retailers' Occupation Tax Act and all applicable local retailers' occupation taxes administered by the Department with respect to sales made by the marketplace seller through the marketplace; and
- 2) That the marketplace facilitator will remit taxes imposed by the Retailers' Occupation Tax Act and all applicable local retailers' occupation taxes administered by the Department for sales made through the marketplace.

See 35 ILCS 120/2(d).

8a. If yes, what language must be included on the Marketplace Facilitator's certification to the Marketplace Seller to be deemed acceptable by your jurisdiction?

DEPARTMENT'S RESPONSE

All certificates required under shall include the following information:

- 1) the marketplace seller's name, DBA (if applicable), address, and Illinois Account ID for sales tax or FEIN, or SSN if the marketplace seller does not have an Illinois Account ID or FEIN;
- 2) the marketplace facilitator's name, address, and Illinois Account ID used for sales on behalf of its marketplace sellers;
- 3) the effective date of the certification;

- 4) a description of the taxes being collected and remitted by the marketplace facilitator;
- 5) the marketplace facilitator's signature and date of signing; and
- 6) any additional information that the Department may reasonably require.

See 86 Ill. Adm. Code 131.145(c).

9. Can a Marketplace Facilitator rely on the Marketplace Seller's tax decisions, including:
- 9a. Taxability of the products and services?

DEPARTMENT'S RESPONSE

Marketplace facilitators are not liable for having charged and remitted an incorrect amount of State and local retailers' occupation tax if, at the time of the sale, the tax is computed based on incorrect information provided to the marketplace facilitator by a marketplace seller. See 35 ILCS 120/2(c); 86 Ill. Adm. Code 131.150(b) and (c).

- 9b. State and local location of the delivery/use of the product or service?

DEPARTMENT'S RESPONSE

See response to 9(a).

- 9c. Exemption of the customer and/or exempt use of product or service?

DEPARTMENT'S RESPONSE

See response to 9(a).

10. If the Marketplace Facilitator cannot rely on the Marketplace Seller's tax decisions:
- 10a. Is there joint and several liability for the sales/use tax due on the sale of goods or services through the marketplace?

DEPARTMENT'S RESPONSE

The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace seller and the marketplace facilitator on the same transaction. See 35 ILCS 120/2(h). If, for any reason, the Department is prohibited from enforcing the marketplace facilitator's duty under this Act to remit taxes pursuant to this Section, the duty to remit such taxes remains with the marketplace seller. See 35 ILCS 120/2(i).

10b. What protections does the Marketplace Facilitator have if an error was made by the Marketplace Seller?

DEPARTMENT'S RESPONSE

A marketplace facilitator that relies in good faith on the information provided in subsection (b) by a marketplace seller shall be relieved of liability for the tax on that transaction. In this case, a marketplace seller is subject to audit on that transaction and shall be liable for any resulting State and local retailers' occupation taxes due. See 86 Ill. Adm. Code 131.150(c).

11. Aside from sales and use tax, is the Marketplace Facilitator required to collect any other taxes or fees (e.g., accommodation taxes, food and beverage taxes, electronic waste fees, tire disposal fees, 911 surcharges)?

11a. If so, which other taxes or fees must the Marketplace Facilitator collect?

DEPARTMENT'S RESPONSE

The rules established for marketplace facilitators apply to the remittance of State Retailers' Occupation Tax, Automobile Renting Occupation Tax, local retailers' occupation taxes, and local automobile renting occupation taxes administered by the Department. Marketplace facilitators that incur other taxes or fees administered by the Department, or other taxes not administered by the Department, remain liable for the remittance of those taxes to the Department or other taxing authority. See 86 Ill. Adm. Code 131.107(c), and ST 22-0002-PLR.

12. Does your state allow the Marketplace Facilitator and/or Marketplace Seller to request a waiver from a requirement that the Marketplace Facilitator must collect tax for sales made through the marketplace?

12a. If so, what is the procedure for requesting a waiver?

DEPARTMENT'S RESPONSE

Marketplace facilitators meeting either of the thresholds in Section 131.135(a) are required to register with the Department, file returns and remit tax for all sales made over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. Illinois does not allow waivers of this requirement.

12b. What documentation should the Marketplace Facilitator maintain if it has been granted a waiver from collecting tax?

DEPARTMENT'S RESPONSE

See answer to 12.

13. If a Marketplace Seller makes sales exclusively through a marketplace to customers in your state such that any sales tax is collected/remitted by the Marketplace Facilitator, what documentation should the Marketplace Seller provide to its supplier of inventory to exempt the purchase from sales tax as a sale for resale?

DEPARTMENT'S RESPONSE

Generally, a Certificate of Resale is required for proof that no tax is due on any sale that is made tax free as a sale for resale. The purchaser, at the seller's request, must provide the information that is needed to complete this certificate. If the supplier does not have nexus with Illinois, no resale certificate is necessary. See 86 Ill. Adm. Code 130.1405.

- 13a. Does your response differ depending on whether the Marketplace Seller has nexus?

DEPARTMENT'S RESPONSE

No. See answer to 13.

14. If a Marketplace Seller makes direct sales and sells through a marketplace to customers in your state, what documentation should the Marketplace Seller provide to its supplier of inventory to exempt the purchase from sales tax as a sale for resale?

DEPARTMENT'S RESPONSE

Generally, a Certificate of Resale is required for proof that no tax is due on any sale that is made tax free as a sale for resale. The purchaser, at the seller's request, must provide the information that is needed to complete this certificate. See 86 Ill. Adm. Code 130.1405. If the purchaser is not registered with the Department as a taxpayer but claims to be a reseller of the tangible personal property in such a way that such resales are not taxable, such purchaser who will always resell the property shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for tax on any of its resales and shall furnish such additional information as the Department may reasonably require. If the supplier does not have nexus with Illinois, no resale certificate is necessary. See 86 Ill. Adm. Code 130.1415.

- 14a. Does your response differ depending on whether the Marketplace Seller has nexus?

COMPANY/NAME1

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DEPARTMENT'S RESPONSE

No. See answer to 14.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Tom Grudichak
Associate Counsel

TG:dlb