

This letter provides information regarding Retailers' Occupation Tax remittance obligation of remote retailers. See 86 Ill. Adm. Code 131. (This is a GIL.)

March 18, 2025

NAME, TITLE
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated February 11, 2025, 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 <https://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:

We are endeavoring to comply with Illinois's requirement for businesses that transact more than \$100,000 or 200 transactions with Illinois residents to register, collect, and remit sales tax. We

Regrettably, we are unable to file a return due to its complexity and burden which requires that we assess, withhold, and report taxes for dozens of jurisdictions within Illinois. In order to charge our customers the correct tax rate, we must do this real-time. Although there are paid services that can accomplish this, the subscription and integration costs far exceed the tax to be collected on Illinois's behalf. We contacted Illinois Taxpayer assistance and they could not offer a less burdensome alternative. They recommended that we seek answers from the Office of Legal Services or obtain a Private Letter Ruling.

Our annual sales to Illinois residents are significantly below the \$100,000 threshold mandated by most states (\$16,760 for Illinois in 2024). The 200 transaction threshold, initially deemed reasonable by the Wayfair decision, has been rescinded by most states recognizing that small business with low average transactions are burdened disproportionately to much larger businesses.

Illinois's tax reporting requirements surpass those considered by the Supreme Court. Unlike South Dakota at the time of the Wayfair decision, Illinois requires businesses to report and remit sales tax not only to the state but also to individual local jurisdictions (counties and cities) where sales occur. This necessitates businesses to calculate and collect sales tax based on specific rates applicable to each local jurisdiction.

Jurisdictional requirements imposed on out-of-state businesses present significant feasibility challenges. The Wayfair decision provides the rationale behind the \$100,000 or 200 transaction threshold, which is intended to balance the need for tax revenue with administrative feasibility. The court correctly reasoned that administration costs would increase as businesses were required to identify, assess, collect, remit and report taxes across various jurisdictions. Given that each state, regardless of population, is granted the same minimum threshold requirement, it was presumed that each state would impose similar reporting requirements, act as a single jurisdiction, designate a unified tax rate, and establish efficient means for tax remittance. Ideally, the state would act as an agent for its localities and distribute tax revenue accordingly. If businesses are compelled to assess taxes based on individual jurisdictions, then it stands to reason that each jurisdiction – not collectively the state – should be held to the \$100,000 in local sales or 200 transactions threshold.

A few states, including Illinois, remain fixated on systematically allocating tax revenue to each county based on the precise location of each sale, without considering that the distribution of sales tax revenue closely correlates with population. Many states have acknowledged this and have adopted a single tax rate, allocating revenue internally based on population. As a result, they have increased tax compliance among out-of-state businesses while simplifying administration.

While we strongly advocate for Illinois to eliminate the 200-transaction threshold, we are prepared and willing to collect and remit Illinois sales tax – provided that we can avoid the extreme administrative costs associated with compliance.

We respectfully request that Illinois accept our withholdings using a single tax rate and a simplified return. Upon confirmation of this accommodation, COMPANY will begin withholding and submitting sales tax collected from Illinois residents.

With rising costs, COMPANY finds itself in a financially precarious position. Our ability to continue providing goods and services to Illinois residents depends on maintaining reasonable administrative costs. We appreciate your attention to this request and look forward to your response.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Prior to October 1, 2018, out-of-State retailers had to have a physical presence in Illinois before they could be required to collect Use Tax. The types of activities constituting a physical presence are found in Section 2 of the Use Tax Act's definition of a "retailer maintaining a place of business in this State". 35 ILCS 105/2. Any out-of-State retailer that has a physical presence in Illinois will continue to be required to act as a Use Tax collector. Regulations describing these types of retailers are found at 86 Ill. Adm. Code 150.801 and 150.802.

In *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), the U.S. Supreme Court upheld a South Dakota statute that imposed tax collection obligations on out-of-State retailers that met specific selling thresholds but had no physical presence in the state. This decision abrogated the longstanding physical presence requirement. Illinois P.A. 100-0587 enacted nexus standards, effective October 1, 2018, that are virtually identical to those upheld in *Wayfair*. 35 ILCS 105/2. See 86 Ill. Adm. Code 150.803.

Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois must register with the Department and collect and remit Use Tax if:

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

Leveling the Playing Field Public Acts 101-0031 and 101-0604 implemented a series of structural changes to the Illinois sales tax law that are intended to “level the playing field” between Illinois-based retailers and remote retailers by imposing State and local retailers’ occupation taxes on Illinois retailers, remote retailers and marketplace facilitators alike. The regulations at 86 Ill. Adm. Code 131 implement the new requirements for remote retailers and marketplace facilitators.

A remote retailer is a retailer that does not maintain within this State, 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 this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a remote retailer. See 86 Ill. Adm. Code 131.105.

On and after January 1, 2021, a remote retailer that meets either of the above thresholds (also set out in 86 Ill. Adm. Code 131.115(a)) is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the Retailers’ Occupation Tax Act and is liable for all applicable State and local retailers’ occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers. Remote retailers 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. State and local retailers’ occupation taxes are incurred at the rate in effect at this location. 86 Ill. Adm. Code 131.110.

Finally, beginning January 1, 2025, all retailers maintaining a place of business in this State making retail sales of tangible personal property to Illinois customers from a location or locations outside of Illinois must remit State and local retailers’ occupation tax 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”) for sales that would otherwise be sourced outside of this State. See 35 ILCS 120/2 as amended by Public Act 103-983.

COMPANY

Page 5

March 18, 2025

We understand your concerns. However, the Department of Revenue is an administrative agency charged with administering the laws enacted by the legislature; it has no legislative authority. You may consider approaching your legislators or members of the Illinois General Assembly with your concerns.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

Alexis K. Overstreet
Deputy General Counsel

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