

This letter provides information regarding Retailers' Occupation Tax collection obligation of Marketplace Facilitators. See 86 Ill. Adm. Code 131. (This is a GIL.)

April 28, 2025

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated March 25, 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:

COMPANY1 ("COMPANY1" or "we") represents a company ("Company") that provides advertising services. For the reasons set forth below, we are requesting that the Illinois Department of Revenue ("Department") issue a General Information Letter ("GIL") confirming that Company's services do not meet the definition of a marketplace facilitator under Illinois' Sales and Use Tax Law. Because we are not presently providing Company's identity, Company understands that it will not enjoy the protection of 2 Ill. Admin. Code 1200.110 with respect to the written guidance the Department provides in response to this correspondence.

Also, for ease of review, it is assumed that Company meets economic nexus thresholds for purposes of this GIL request only. The Company is not requesting that the Department opine on a nexus question, rather, only those

questions related to whether the Company is considered a marketplace facilitator under Illinois' Sales and Use Tax Law.

Company Overview

Company is publicly traded and incorporated in the state of Delaware. Company owns and operates technology platforms accessible online via websites and downloadable apps (collectively, "Surfaces"). This request focuses on three hypothetical advertising services (collectively, "Ad Services") Company offers or could offer that assist third-party businesses ("Advertisers") with the promotion and marketing of Advertisers' products on Company's Surfaces. These Ad Services are technology enabled to increase the efficacy and return of investment on an advertisement. Advertiser is responsible for providing the content to utilize the Ads Services, including images, text, product descriptions, configuration options, links, pricing, as well as defining the period as to when the product in an Ad will be displayed.

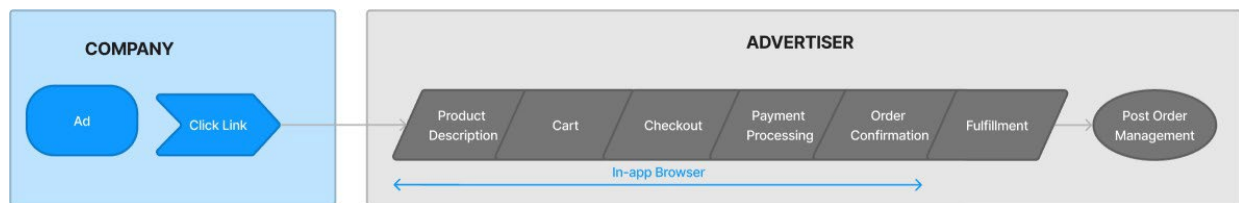
The price of Company's Ad Services is flexible but consistent across offerings. Generally, an Advertiser will set either a daily or lifetime budget, and Company will create a campaign based on the content and data approved by Advertiser. Company will charge Advertisers as ads are displayed at various thresholds. The pricing of the ad campaign depends on consumer interaction (i.e., views, ad-clicks, etc.) with the ad across all three potential offerings. However, the flow of the ad module and subsequent purchasing activity will differ between the offerings as described in more detail below. Company does not separately charge Advertisers for any of the technology features discussed below nor is Company compensated for any subsequent purchasing activity.

Ad Service 1

Ad Service 1 allows Advertisers to create an advertising campaign on Company's platform that targets consumers based on their interests ("Ad Consumer"). Under this offering, Company creates and delivers a technology enabled ad to a consumer on a Surface. The technology features generally include a gallery of product images selected by Advertiser. The images may be a gallery for the same product or may be different products offered for sale by Advertiser. Each product is linked to that specific item's product details page on an Advertiser's third-party website. Once redirected via an in-app browser, a consumer can purchase an item via Advertiser's website, browse other items on Advertiser's website or engage in other shopping-related activities directly with Advertiser. The in-app browser is labeled as a Company browser, but that is purely for data privacy purposes so that an Ad Consumer understands that he/she is navigating via a Company-hosted browser and that

Company may collect data from the Ad Consumer via Company's in-app browser or other pixel data. Company does not take orders, perform payment processing, fulfill or store items, set prices, or perform any post-purchasing activities such as customer service or the execution of refunds and exchanges, nor do any of its affiliates. Rather, all activity other than viewing the ad occurs on Advertiser's website, through a Company-hosted in-app browser. Finally, because Ad Consumer views Advertiser's products and completes the transaction on Advertiser's site, Company's brand is not associated with any checkout processes.

The chart below represents the respective activities performed on a Company's Surface versus those performed by Advertiser for Ad Service 1.



Ad Service 2

Ad Service 2 is the same as Ad Service 1, except that, while completing a checkout on Advertiser's site, a Company branded bottom sheet appears where customer information, including payment details, are passed to a third-party advertiser's website to complete checkout, payment processing, order confirmation, fulfillment, and post order management. For the avoidance of doubt, the product details page, cart, payment processing, order confirmation, fulfillment, and post order management flow is owned by Advertiser.

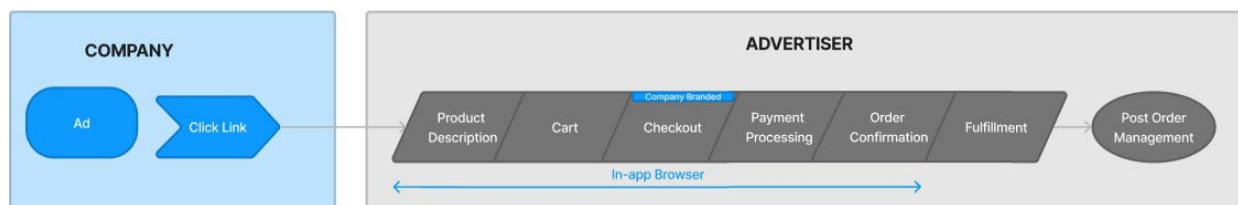
Under this offering, Company creates and delivers a technology enabled ad to a consumer on a Surface. The technology features generally include a gallery of product images selected by Advertiser. The images may be a gallery for the same product or may be different products offered for sale by Advertiser. Each product is linked to that specific item's product details page on an Advertiser's third-party website. Once redirected to Advertiser's website via an in-app browser, a consumer can make purchases from Advertiser, browse other items on Advertiser's website, or engage in other shopping-related activities directly with Advertiser.

The in-app browser is labeled as a Company browser, but that is purely for data privacy purposes, so that an Ad Consumer understands that he/she is navigating via a Company-hosted browser and that Company may collect data from the Ad Consumer via Company's in-app browser or other pixel data. Company does not take orders, process payment, fulfill or store items, set

prices, or perform any post-purchasing activities such as customer service or the execution of refunds and exchanges, nor do any of its affiliates.

In this scenario, in contrast to Ad Service 1, a Company-branded bottom sheet appears at checkout, in which secured credentials and other data elements are passed to Advertiser via a third-party service provider who facilitates the transaction, and the Ad Consumer must review and confirm, but Advertiser completes checkout and processes payment. Company's branding is the primary branding the Ad Consumer sees on the bottom sheet, but the Checkout still occurs on Advertiser's site. Advertiser completes the transaction with no Company branding on their own website and completes payment processing, order confirmation, fulfillment, and post order management as in Ad Service 1.

The chart below represents the respective activities performed on a Company's Surface versus those performed by Advertiser for Ad Service 2.



Ad Service 3

Ad Service 3 is the same as Ad Service 1, except the link in the ad is to the specific item's product description page on Company's Surface and Ad Consumers can add items to a shopping cart on Company's Surface. For ease of reference, we will refer to the shopping cart as a cart, however, it is merely an internet link that passes or refers information to the Advertiser or Advertiser's third-party technology provider.

The product description page is created by Advertiser on Company Surface and displays images of the product, along with a description of it. Advertisers can also add options to specify the size, color, quantity, or other configuration of the product.

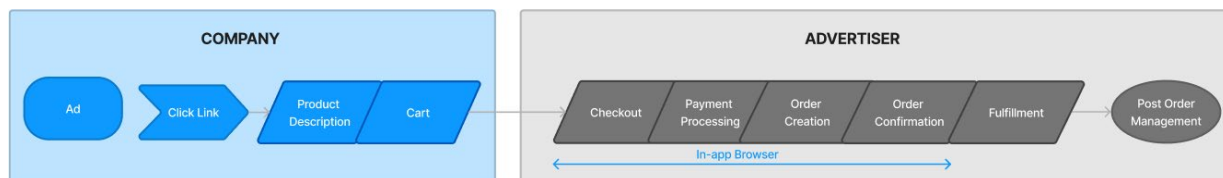
When an Ad Consumer selects "add to cart," on the product detail page, the item is added to a cart on Company's Surface along with any customizations specified (size, quantity, etc.). Once an item is added to a cart, Ad Consumers can navigate to other products to review or click checkout. Upon selecting checkout (or similar option) on Company's Surface, Ad Consumer's cart is opened via an internet link on a site powered by Advertiser or Advertiser's third-party technology provider ("Third Party") through Company's in-app

April 28, 2025

browser. The shopping cart detail sent via the internet link includes a variety of information relating to the product, such as sizing, quantity, etc. However, no customer, payment information, or other checkout information such as billing or shipping address are included in this transfer of information. All that detail is entered on the checkout platform operated by Advertiser/Third Party. The cart merely includes product information. An Ad Consumer can choose to abandon their cart at any point in time while on Company's Surface without completing an order. If they do so, Company may send reminders to Ad Consumer of the products and/or their cart. Further, an Ad Consumer can abandon the cart even after the product information is passed to Advertiser/Third Party before completing the purchase.

Order initiation, order processing, and payment processing occur directly with Advertiser/Third Party. Upon order completion within Advertiser/Third-Party's system, Ad Consumer remains on Advertiser's checkout platform for order confirmation. Company does not take orders, perform any payment processing or fulfillment activities, and does not store items, set prices, or participate in any post- purchasing activities such as customer service or the execution of refunds and exchanges, nor do any of its affiliates. The checkout process is not associated with Company's brand and Ad Consumers do not see Company's branding on the platform on which the purchase transaction is processed.

The chart below represents the respective activities performed on a Company's Surface versus those performed by Advertiser for Ad Service 3.



Ruling Requested

- 1) Company is not acting as a marketplace facilitator for purposes of the Ad Service 1 as they do not meet the definition of a marketplace facilitator under 86 Ill. Adm. Code 131.130(a).
- 2) Company is not acting as a marketplace facilitator for purposes of the Ad Service 2 as they do not meet the definition of a marketplace facilitator under 86 Ill. Adm. Code 131.130(a).
- 3) Company is not acting as a marketplace facilitator for purposes of the Ad Service 3 as they do not meet the definition of a marketplace facilitator under 86 Ill. Adm. Code 131.130(a).

Relevant Authority

As provided in 35 ILCS 120/1, 86 Ill. Adm. Code 131.105, and 86 Ill. Adm. Code 131.130(a) a marketplace facilitator is defined as follows:

“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 this 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 and 86 Ill. Adm. Code 131.105 also defines a “Marketplace” as a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items.

Additionally, 86 Ill. Adm. Code 131.130(a)(2) specifically notes that “[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 subsection (a)(1)(B). [35 ILCS 120/1].”

86 Ill. Adm. Code 131.130(g) provides several examples for what are and are not marketplace facilitators.

EXAMPLE 1: Carabibi, a social media network, provides a forum in which persons using the network can buy and sell used tangible personal property. Carabibi functions solely as an advertising platform bringing buyers and sellers together. Once the buyer and seller have contacted each other over

the network, they must negotiate the sale and make payment arrangements themselves. While the forum provided by Carabibi constitutes a marketplace as defined in Section 131.101, Carabibi is not considered a marketplace facilitator because it does not engage in the activities described in subsection (a)(1)(B).

EXAMPLE 2: Paymate is a payment processing business appointed by merchants to handle payment transactions from various channels, such as credit cards and debit cards. Its sole activity with respect to marketplace sales is to handle financial transactions between two parties on the marketplace. Paymate is not a marketplace facilitator because it does not engage in the activities described in subsection (a)(1)(A).

EXAMPLE 5: Mandameal.com is an online and mobile food-ordering and delivery service that enters into over 200 transactions with Illinois purchasers. It contracts with a variety of restaurants by advertising meals available for purchase from restaurants; it also offers delivery service for the food orders. Customers place food orders using the Mandameal application or through its online website. Mandameal.com accepts payments from customers, completes the orders with the restaurants, and transmits payment on a regular basis to the restaurants. Mandameal.com engages in activities that make it a marketplace facilitator. ...

Discussion

- 1) Company is not acting as a marketplace facilitator for purposes of the Ad Service 1 as it does not meet the definition of a marketplace facilitator under 86 Ill. Adm. Code 131.130(a).***

Illinois defines a marketplace facilitator as 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. Company does not meet the second prong because it does not directly or indirectly collect the payment from the customer and transmit it to the seller. Accordingly, Company is not a marketplace facilitator with respect to Ad Services 1.

a. Tangible personal property is advertised on Company's Surface

Under the first prong, Illinois requires a marketplace facilitator to facilitate a retail sale by an unrelated third-party marketplace seller by listing or advertising for sale. As stated above, Illinois defines a "marketplace" to mean a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. 86 Ill. Adm. Code 131.105.

In this scenario, Company operates Surfaces that allow Advertisers to place technology enabled ads to advertise products and services for sale to potential customers (i.e., Ad Consumers). Ad Consumers can interact with an ad and initiate a variety of activity, both on the Company Surface such as viewing products and pricing, as well as off the Surface such as creating a cart and processing payments. As such, Company is merely an advertising service provider as clarified in 86 Ill. Adm. Code 131.130(a)(2).

b. Company does not, directly or indirectly, through agreements or arrangements with third parties, collect payment from the customer and transmit payment to the marketplace seller under 86 Ill. Adm. Code 131.130(a).

Regardless of whether Company meets the first prong under the definition of a marketplace facilitator in Illinois, Company does not meet the second prong. The ads that Company produces and displays on its Surfaces may include pictures, sales prices, and an internet link to the Advertiser's website; however, the Company takes no further steps to facilitate a sale. Upon clicking the hyperlink, potential customers are redirected off Company's Surface to the Advertiser's website on which all purchasing activity takes place including completing orders, payment processing, and fulfillment services. Company does not directly or indirectly collect payments from the customer and transmit that back to Advertiser (i.e., seller).¹ Rather, under Ad Service 1, the Ad Consumer (i.e., customer) is coordinating directly with Advertiser or an Advertiser's payment processor. As such, Company does not directly or indirectly collect payment from the customer and transmit it to the seller.

Therefore, the Company is not considered a marketplace facilitator in Illinois with respect to Ad Service 1 because the Company does not meet the second prong under 86 Ill. Adm. Code 131.130(a) and is considered merely an

¹ Any agreements for order and/or payment processing are solely between Advertiser and the Third-Party related to order processing and payment processing.

advertising service provider as clarified in 86 Ill. Adm. Code 131.130(a)(2).

2) *Company is not acting as a marketplace facilitator for purposes of the Ad Service 2 as it does not meet the definition of a marketplace facilitator under 86 Ill. Adm. Code 131.130(a).*

A marketplace facilitator in Illinois is defined as 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. 86 Ill. Adm. Code 131.105. Company is not a marketplace facilitator with respect to transactions that occur under Ad Service 2 because the transactions do not meet the second prong under the definition of a marketplace facilitator.

a. Tangible personal property is advertised on Company's Surface.

Under the first prong, Illinois requires a marketplace facilitator to facilitate a retail sale by an unrelated third-party marketplace seller by listing or advertising for sale. As stated above, Illinois defines a "marketplace" to mean a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. 86 Ill. Adm. Code 131.105.

In this scenario, Company operates Surfaces that allow Advertisers to place technology enabled ads to advertise products and services for sale to potential customers (i.e., Ad Consumers). Ad Consumers can interact with an ad and initiate a variety of activity, both on the Company Surface such as viewing products and pricing, as well as off the Surface such as creating a cart and processing payments. As such, Company is merely an advertising service provider as clarified in 86 Ill. Adm. Code 131.130(a)(2).

b. Company does not, directly or indirectly, through agreements or arrangements with third parties, collect payment from the customer and transmit all or part of the payment to the marketplace seller under 86 Ill. Adm. Code 131.130(a).

Regardless of whether Company meets the first prong under the definition of

a marketplace facilitator in Illinois, Company does not meet the second prong with respect to Ad Service 2. The ads that Company produces and displays on its Surfaces include pictures, sales prices, and an internet link to the Advertiser's website; however, the Company takes no further steps to facilitate a sale or transmit payments between the payment processor and the seller (i.e., Advertiser). As such, the second prong of the definition of a marketplace facilitator is not met as discussed in detail below.

i. Company does not meet the second prong of the definition from a functional perspective.

Under Ad Service 2, an Ad Consumer can view the product on a Company Surface. However, upon clicking the link, Ad Consumers are redirected from Company's Surface to Advertiser's website via in-app browser, on which all purchasing activity takes place. This includes completing orders, payment processing, and fulfillment services. The checkout experience is powered by Advertiser or Advertiser's Third-Party provider but branded as Company. While Company branding is located on the checkout platform, it is Advertiser or the Third-Party provider that processes the order and payments and causes the payment to be transmitted to Advertiser. Company may provide payment information and other details that Advertiser or the Third-Party provider uses to process payment and complete the order. However, Company does not process any payment.

In this scenario, Company does not process payments or cause payment to be transmitted to Advertiser, those steps are solely between Advertiser and Third Parties. Because Company is not a party to Advertiser's agreements with the Third-Party, it is not directly or indirectly responsible for collection of the payment and transmitting it to Advertiser. Any agreement between Advertiser and Third-Party are outside the purview of Company and Company has no insight or control of those agreements. The mere fact that the bottom sheet is Company branded does not indicate that Company is a party to the transaction at issue with respect to collecting the payment and transmitting it to Advertiser.

This situation is analogous to Example 1 listed in 86 Ill. Adm. Code 131.130(g). Like the facts in this example, Company has an online platform. And, like the platform in the example, *Carabibi*, Ad Consumers do not make payments, directly or indirectly, to the Company. Rather, Ad Consumers are sent to the Advertiser's, or a Third Party's, platform that completes the order/checkout process, processes the payments, and then transmits the payment to the Advertiser (if needed). Company is not a party to the contracts that contemplate the order and payment processing on behalf of the Advertiser by the Third Party. Accordingly, Company does not meet the second prong under

86 Ill. Adm. Code 131.130(a) from a functional perspective.

ii. Company does not meet the second prong of the definition from a legal perspective.

In addition to the above, Company does not meet the definition of a marketplace facilitator from a legal perspective. It is one of the primary goals of statutory construction to ascertain and give effect to the intent of the legislature.² The determination as to the intent of the legislature is most reliably indicated by the language of the statute, which must be given its plain and ordinary meaning.³ This principle has long been upheld by the Illinois Supreme Court on a multitude of occasions and subject matters.⁴ Additionally, Illinois courts have held as a general rule that words in a statute should not be construed as surplusage and should instead attempt to give meaning to all of the words.⁵ Because no definition of “agreement” or “arrangements” is provided in the statute, it is necessary to look to principles of statutory construction.

Applying the principles of construction described above, we look to the definition of the term “agreement” found in *Black’s Law Dictionary*, Ninth Edition, in ascertaining the plain and ordinary meaning of said term. This definition states in pertinent part:

Agreement. (1) A mutual understanding between two or more persons about their respective rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons. (2) The parties’ actual bargain as found in their language or by implication from other circumstances, including course of dealings, usage of trade, and course of performance.

In drafting the definition of a “marketplace facilitator,” the Illinois Legislature included the words “directly or indirectly” through “agreement or arrangements” to limit the marketplace facilitator rule to parties that expressly create such agreements or arrangement for the facilitation of the payments to the seller. In this scenario, Company has done no such thing. Rather, the Advertiser (i.e., seller) and Third Party have structured such an agreement excluding the Company from the processing of the transaction and

² *In re Cnty. Collector*, 2022 IL 126929, ¶ 19, 201 N.E.3d 1064, 1068.

³ *Oswald v. Hamer*, 2018 IL 122203, ¶ 10, 115 N.E.3d 181, 186–87; *Walker v. Bruscato*, 2019 IL App (2d) 170775, ¶ 34, 134 N.E.3d 971, 980; *In re D.F.*, 208 Ill. 2d 223, 229, 802 N.E.2d 800, 804 (2003); *People v. Shinkle*, 128 Ill. 2d 480, 486, 539 N.E.2d 1238, 1241 (1989).

⁴ *Id.*

⁵ *Valfer v. Evanston Nw. Healthcare*, 2015 IL App (1st) 142284, ¶ 22, 31 N.E.3d 883, 888; *Bethania Ass’n v. Jackson*, 262 Ill.App.3d 773, 777, 200 Ill. Dec. 332, 635 N.E.2d 671 (1994).

facilitating the payments to the Advertiser. Company has no rights or duties with respect to the transaction and is not a party to any bargain therein. As such, Company's involvement in the transaction does not rise to the definition of an "agreement" or arrangement. Nor could Company be considered to have directly or indirectly facilitated such agreements because Advertisers can choose to work with any payment processor of their choosing. Company does not and cannot limit Advertiser's choice with respect to who the Advertiser decides to work with regarding the processing of payments related to the Advertiser's sale through its own website.

While there is Company branding located on the bottom sheet that may provide the Ad Consumer's details and transmits such detail to Advertiser's website, an Ad Consumer must review and confirm such details prior to any payment processing, Company is not party to any agreement or arrangement between the Advertiser and payment processor. As such, under the plain and ordinary meaning of the language in the statute, Company does not meet the second prong under the definition of a marketplace facilitator because it does not, directly or indirectly, collect payment from the customer and transmit all or part of the payment to the seller pursuant to an agreement or arrangement. To read Company into any such agreement causes the plain language of the statute to become meaningless and mere surplusage, in opposition of rules of statutory construction.⁶

Company does not directly, or indirectly through agreements or arrangements with Third Parties, collect payment from the customer and transmit all or part of the payment to the seller. Accordingly, Company is not a marketplace facilitator with respect to transactions that occur under Ad Service 2.

3) *Company is not acting as a marketplace facilitator for purposes of the Ad Service 3 as it does not meet the definition of a marketplace facilitator under 86 Ill. Adm. Code 131.130(a).*

As noted above, a marketplace facilitator in Illinois is defined as 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.

⁶ *Id.*

86 Ill. Adm. Code 131.105. Company is not considered a marketplace facilitator with respect to transactions that occur under Ad Service 3 because the transactions do not meet the second prong under the definition of a marketplace facilitator.

a. Tangible personal property is advertised on Company's Surface

Under the first prong, Illinois requires a marketplace facilitator to facilitate a retail sale by an unrelated third-party marketplace seller by listing or advertising for sale. As stated above, Illinois defines a "marketplace" to mean a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. 86 Ill. Adm. Code 131.105.

In this scenario, Company operates Surfaces that allow Advertisers to place technology enabled ads to advertise products and services for sale to potential customers (i.e., Ad Consumers). Ad Consumers can interact with an ad and initiate a variety of activity, both on the Company Surface such as viewing products and pricing, as well as off the Surface such as creating a cart and processing payments. As such, Company is merely an advertising service provider as clarified in 86 Ill. Adm. Code 131.130(a)(2).

b. Company does not, directly or indirectly, through agreements or arrangements with third parties, collect payment from the customer and transmit all or part of the payment to the marketplace seller under 86 Ill. Adm. Code 131.130(a).

Regardless of whether Company meets the first prong under the definition of a marketplace facilitator in Illinois, Company does not meet the second prong with respect to Ad Service 3. The ads that Company produces and displays on its Surfaces include pictures, sales prices, and an internet link to the Advertiser's website; however, the Company takes no further steps to facilitate a sale. As such, the second prong of the definition of a marketplace facilitator is not met as discussed in detail below.

i. Company does not meet the second prong of the definition from a functional perspective.

Under Ad Service 3, a customer can view the product on a Company Surface and create a virtual cart on the Company Surface. However, upon selecting checkout, the cart and the Ad Consumers are sent to a checkout experience powered by the Advertiser or the Advertiser's Third-Party provider.

In this scenario, Company does not process payments or cause payment to

be transmitted to Advertiser. Rather, those agreements are solely between Advertiser and the Third-Party. Because Company is not a party to those agreements, it is not directly or indirectly responsible for collection of the payment and transmitting it to Advertiser. Any agreement between Advertiser and the Third-Party are outside the purview of Company and Company has no insight or control of those agreements. The mere fact that Company refers customer interest via a cart does not, in fact, indicate that Company is a party to the transaction at issue with respect to collecting the payment and transmitting it to the Advertiser. Further, customers have no obligation to make a purchase upon passing a cart to Advertiser's site. Even if a purchase is ultimately made by the customer, any order details or payment information supplied by Company at the time the cart is referred to Advertiser must be reviewed and confirmed by the Ad Consumer. Therefore, not only is the Ad Consumer not obligated to buy anything, but they are also unable to buy anything at this point in the transaction flow, which highlights the de minimis nature of Company's involvement. As such, Company's involvement is minimal and is akin to referring interest in a product.

This scenario is analogous to Example 1 listed in 86 Ill. Adm. Code 131.130(g). Company has an online platform. However, like the platform in the example, *Carabibi*, Ad Consumers do not make payments, directly or indirectly, to the Company, and Company is not a party to the contracts, agreements or other arrangements that contemplate the order and payment processing on behalf of the Advertiser by the Third Party or transmitting such payment to the Advertiser.

Additionally, Company is not acting in any capacity as a payment processor under Example 2 listed in 86 Ill. Adm. Code 131.130(g). Unlike the *Paymate* example, Company is not processing any payments. Rather, an Advertiser is separately contracting with a third-party payment processor to process payments related to the online sale of its products. Company is not a party to any such agreements or arrangements between the Advertiser and the payment processor and Advertiser can choose to engage with any payment processor of its choosing.

Because the Company is not involved in the checkout portion of the transaction, Company does not meet the second prong under 86 Ill. Adm. Code 131.130(a) from a functional perspective.

- ii. Company does not meet the second prong of the definition from a legal perspective.

In addition to the above, Company does not meet the definition of a marketplace facilitator from a legal perspective. It is one of the primary goals

of statutory construction to ascertain and give effect to the intent of the legislature.⁷ The determination as to the intent of the legislature is most reliably indicated by the language of the statute, which must be given its plain and ordinary meaning.⁸ This principle has long been upheld by the Illinois Supreme Court on a multitude of occasions and subject matters.⁹ Additionally, Illinois courts have held as a general rule that words in a statute should not be construed as surplusage and should instead attempt to give meaning to all of the words.¹⁰ Because no definition of “indirectly”, “agreement”, or “arrangements” is provided in the statute, it is necessary to look to principles of statutory construction.

First, we look to the definition of the term “indirect” found in *Merriam Webster*, which defines it as “not direct” and includes the following examples in relevant part:

a (1): deviating from a direct line or course

...

c: not directly aimed at or achieved¹¹

Company is not, directly or indirectly, collecting payment from the Ad Consumer and transmitting that payment to the Advertiser. Company is not deviating from a direct line or course in order for these agreements to be put into place, nor does Company have an interest in or aim to ensure the Advertisers in fact make any further sales beyond its own interest in continuing to place advertisements on its Surface for purposes of ad revenue. Company merely provides advertising services and a platform on which these ads are placed. While Company also provides browser technology on which Advertiser’s website can be viewed, such websites can also be viewed on a number of other browsers at the Ad Consumer’s discretion. As such, Company cannot be found to be directly or indirectly collecting payment from the Ad consumer and transmitting that payment to the Advertiser.

Similarly, applying the principles of construction described above, we look to the definition of the term “agreement” found in *Black’s Law Dictionary*, Ninth Edition, in ascertaining the plain and ordinary meaning of said term. This definition states in pertinent part:

⁷ *In re Cnty. Collector*, 2022 IL 126929, ¶ 19, 201 N.E.3d 1064, 1068.

⁸ *Oswald v. Hamer*, 2018 IL 122203, ¶ 10, 115 N.E.3d 181, 186–87; *Walker v. Bruscato*, 2019 IL App (2d) 170775, ¶ 34, 134 N.E.3d 971, 980; *In re D.F.*, 208 Ill. 2d 223, 229, 802 N.E.2d 800, 804 (2003); *People v. Shinkle*, 128 Ill. 2d 480, 486, 539 N.E.2d 1238, 1241 (1989).

⁹ *Id.*

¹⁰ *Valfer v. Evanston Nw. Healthcare*, 2015 IL App (1st) 142284, ¶ 22, 31 N.E.3d 883, 888; *Bethania Ass’n v. Jackson*, 262 Ill.App.3d 773, 777, 200 Ill. Dec. 332, 635 N.E.2d 671 (1994).

¹¹ <https://www.merriam-webster.com/dictionary/indirectly>.

Agreement. (1) A mutual understanding between two or more persons about their respective rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons. 2. The parties' actual bargain as found in their language or by implication from other circumstances, including course of dealings, usage of trade, and course of performance.

Black's Law Dictionary does not define arrangement, as such we look to the common definition in *Merriam Webster*, which defines it as, in relevant part:

- (1) a: the state of being arranged b: the act of arranging
- (2) : something arranged: such as...

c: an informal agreement or settlement especially on personal, social, or political matters arrangements under the new regime...¹²

In drafting the definition of a "marketplace facilitator," the Illinois Legislature included the words "directly or indirectly" through "agreements or arrangements" to limit the marketplace facilitator rule to parties that expressly create such agreements or arrangement for the facilitation of the payments to the seller. In this scenario, Company has done no such thing. Rather, the Advertiser (i.e., seller) and Third Party have structured such an agreement excluding the Company from the processing of the transaction and facilitating the payments to the Advertiser. Company has no rights or duties with respect to the transaction and is not a party to any bargain therein. As such, Company's involvement in the transaction does not rise to the definition of an "agreement" or "arrangement" and Company does not directly or indirectly facilitate agreements because Advertisers can choose to work with any payment processor of their choosing. Company does not and cannot limit Advertiser's choice with respect to who the Advertiser decides to work with regarding the processing of payments related to the Advertiser's sale through its own website.

Company is not a party to any agreement or arrangement related to payment processing. It merely provides the technology on which such a transaction transpires. As such, under the plain and ordinary meaning of the language in the statute, Company does not meet the second prong under the definition of a marketplace facilitator because it does not, directly or indirectly, collect payment from the customer and transmit all or part of the payment to the marketplace seller pursuant to an agreement. To read Company into any such agreement causes the plain language of the statute to become meaningless

¹² <https://www.merriam-webster.com/dictionary/arrangement>.

and mere surplusage, in opposition of the rules of statutory construction discussed above.

Unlike in Example 5, in which *Mandameal* is providing both a marketplace *and* payment processing services, Company is merely providing a marketplace with respect to Ad Service 3. All payment processing services occur on the Advertiser's platform and are specifically contracted for and by the Advertiser. Company is not a party to those agreements or arrangements, nor does it control the Advertiser's choice with respect to which payment processor to utilize.

As such, Company does not directly, or indirectly through agreements or arrangements with third parties, collect payment from the customer and transmit all or part of the payment to the marketplace seller. Thus, Company is not considered a marketplace facilitator with respect to transactions that occur with under Ad Service 3.

In summary, Company does not meet the definition of a marketplace facilitator with respect to Ad Service 1, 2, and 3, and therefore marketplace treatment is inappropriate with respect to these services.

We respectfully request your review of our request for a GIL. We also request a call to discuss this request and ensure that you have all the information needed to provide a determination prior to your issuance of any written guidance. If you have any questions or need additional information in advance of the requested call, please contact NAME via email at [EMAIL](#) or telephone at PHONE. Additionally, we respectfully request that any correspondence regarding this matter be emailed to my attention at [EMAIL](#).

In an email dated April 14, 2025, you provided the following additional information, in relevant part:

1. Can ad consumers "consolidate" and purchase multiple items from different Advertisers (i.e., retailers) in one transaction?
 - a. No, it is not possible for an ad consumer to purchase items from multiple Advertisers (i.e., retailers) in one transaction because each transaction occurs on the retailer's website, between the buyer and the seller. Ad consumers would need to check out separately on each of the seller's sites.
2. Are ad consumers re-directed back to the original site after clicking on an ad?
 - a. Yes, if an ad consumer exits from the in-app browser they are re-directed back to the original site.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Cod 130.101. 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois. Purchases of tangible personal property are subject to Illinois sales tax unless a purchase qualifies for an exemption under Illinois law.

A marketplace is a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

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 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. 86 Ill. Adm. Code 131.130(a)(1).

A marketplace seller is a person who makes sales through a marketplace operated by an unrelated third-party marketplace facilitator and who has obtained a certification from the marketplace facilitator as provided in Section 131.145. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

Beginning January 1, 2021, a marketplace facilitator, as defined above, 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 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 by 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 for the sale of tangible personal property to purchasers in Illinois. 86 Ill. Adm. Code

April 28, 2025

131.135(a).

A marketplace facilitator meeting either of these thresholds, is required to register with the Department, file returns, and remit all applicable State and local retailers' occupation taxes administered by the Department for all sales made over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. See 86 Ill. Adm. Code 131.145(a) and 131.145(c). Further, marketplace facilitators are subject to audit on all such sales.

Generally, a marketplace seller is not liable for State and local retailers' occupation taxes for sales of tangible personal property sold to Illinois purchasers through a marketplace. See 86 Ill. Adm. Code 131.145(b) and 131.150(a). The marketplace facilitator would be liable for the applicable taxes on these sales unless the marketplace seller provides it with incorrect information. See 86 Ill. Adm. Code 131.145(d). The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace facilitator and the marketplace seller on the same transaction. See 35 ILCS 120/2(h); 86 Ill. Adm. Code 131.145(k); 86 Ill. Adm. Code 131.150(h).

Please note that the rules established under 86 Ill. Adm. Code 131 apply only to the remittance of State retailers' occupation tax and local retailers' occupation taxes administered by the Department. Marketplace sellers 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).

Generally, if a customer is redirected from an advertiser's platform to a retailer's website where payment occurs without any further participation by the advertiser, such advertiser is not acting as a marketplace facilitator. In situations where a platform provides advertising only and all payments for tangible personal property are made either directly to the retailer or to a third-party with whom the retailer has contracted, the advertising platform is not acting as a marketplace facilitator. Marketplace facilitators must either directly collect payment from customers and transfer payment to sellers or indirectly, through agreements the marketplace facilitator has made with third parties, collect payments from customers and transmit payments to sellers.

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,

Kimberly Rossini
Associate Counsel

KAR:slc