

ST 25-0056-GIL 10/28/2025 MARKETPLACE FACILITATOR

A person must carry out both activities specified in 86 Ill. Adm. Code 131.150(a)(1) to qualify as a marketplace facilitator. (This is a GIL).

October 28, 2025

NAME, JD, CPA

COMPANY1

ADDRESS

EMAIL

Dear NAME:

This letter is in response to your letter dated July 15, 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:

Please allow this letter to serve as a request for a Private Letter Ruling ("PLR") pursuant to Illinois Administrative Code ("Ill. Admin. Code") 1200.110. COMPANY2 (f.k.a. COMPANY1) is authorized to request a private letter ruling on behalf of COMPANY ("COMPANY" or "the Company"), and an executed power of attorney is attached hereto. COMPANY is resubmitting this Private Letter Ruling request on the grounds that:

1. This is truly a novel issue not adequately addressed in Illinois' marketplace facilitator guidance because the guidance does not clarify who the true seller of the goods is. While the Company is committed to fulfilling its obligations, the lack of guidance on this issue leaves uncertainly about the appropriate course of action.

2. The Company is removing the request for the PLR to remain confidential.

If the Illinois Department of Revenue ("Department") will not provide a PLR to the Company on the issues described in this request, the Company would respectfully request the Department to issue a General Information Letter. To the best of COMPANY's knowledge, this matter is not under audit or in litigation. To the best of COMPANY's knowledge, the Department has not previously ruled on the same or any similar issues for the Company.

## **I. FACTS**

COMPANY ("COMPANY") is a company organized in the COUNTRY and is engaged in business in the payment processing industry. COMPANY is primarily engaged in providing card payment processing services and fraud prevention services to international e-commerce merchants ("Merchants") who sell their merchandise and/or services to end-customers ("Customers") in countries other than the Merchant's home country. As part of its services, COMPANY provides localization services that allow Merchants to list products for sale and execute such sales to their Customers in the currency of the Customers' home country.

Since inception, the manner in which COMPANY contracted with the Merchants to provide its services has evolved and the most current iteration began approximately at the start of 2024. This request for guidance is limited to the two different operating models that were originally deployed in periods preceding 2024 ("MODELS"). In the facts below, we will provide an overview of relevant contractual terms of the MODELS, how COMPANY's services function, and COMPANY's limited role in the Merchants' transactions with their Customers.

## ***MODELS***

COMPANY provided its card payment processing services under two different types of Master Service Agreements ("MSAs") that represent the two different MODELS which we will refer to individually herein as "MODEL A" and "MODEL B."

The different types of MSAs came about because of requirements imposed by the payment card networks (e.g., Visa, Mastercard, etc.). As an innovative and new type of payment localization service, the way COMPANY facilitated international payments did not clearly fit into any available account designations offered by the payment networks within their frameworks. Lacking a clear option and needing to be categorized within the existing

scheme, COMPANY concluded that the merchant account categorization of the payment networks most closely aligned with its payment flow model. COMPANY's MSAs were therefore tailored to comply with the applicable merchant account rules (e.g., a merchant account holder was required to take title to goods) so that COMPANY could continue to accept payment methods offered by the payment card networks. Notwithstanding this, COMPANY's actual role in the sales by Merchants to Customers was largely limited to merely acting as a traditional payment processor (e.g., Stripe, Square, PayPal, etc. -aka a payment facilitator or "PayFac").

The main differentiator between the two MODELS for purposes of this request is that MODEL A provided COMPANY, for a very brief time, title to the goods sold by Merchants to Customers (hereinafter described as "flash title").<sup>1</sup> Whereas, in MODEL B, COMPANY did not hold title to any goods being sold at any time and merely acted as a payment collection agent.<sup>2</sup> Under both MODELS, the actual services provided by COMPANY were identical despite the changes in the contractual language.

Below is a summary of the key relevant characteristics of COMPANY's relationship with the Merchants that are applicable to both MODELS:

- 1) All of COMPANY's MSAs included a paragraph stating that the Merchants were responsible for collecting, remitting, and otherwise administering any and all sales or use taxes.<sup>3</sup>
- 2) COMPANY does not have a website where Customers can browse, select, and purchase a Merchant's goods or services. COMPANY is not in the business of making sales itself other than sales of its payment processing service. COMPANY does not engage in any solicitation of the items owned by the Merchants via any communication medium for the purpose of effecting the sale of such items.
- 3) COMPANY had no control over Merchants' e-commerce platforms for purposes of being able to apply sales tax correctly based on situsing rules, collecting or maintaining exemption documentation, and/or otherwise administer sales taxes in any way. COMPANY was provided some transaction level data, but not 100% of the time and not enough to make an informed tax assessment of the products or services sold.
- 4) COMPANY had no responsibility for the Merchant's website displaying the goods available for sale, integrating systems for the catalog of products, pricing, establishing and maintaining

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<sup>1</sup> Exhibit A -MODEL A - par. 3.2.9(a). Note that COMPANY was formerly known as "COMPANY3" but conducted business as "COMPANY."

<sup>2</sup> Exhibit B - MODEL B - par. 5.4(a).

<sup>3</sup> See, e.g., Exhibit A - MODEL A - Sch. B, par. 6; Exhibit B - MODEL B - par. 5.4(1).

customer accounts, applying discounts and promotions, receiving and processing orders (aside from payment processing services provided by COMPANY), liability for defective products, or any other aspects of the retail relationship with the end customer. The Merchant was solely responsible for the accuracy of all product information displayed on Merchants' websites .<sup>4</sup>

- 5) COMPANY's name is not on any invoice or bill of lading for the items sold by the Merchants, and COMPANY is not listed as an exporter or importer of record for such transactions. The only documentation related to the payments processed where COMPANY's name is mentioned is in regard to the payment card networks and is generally listed along with the Merchant's name.
- 6) COMPANY never had any actual or constructive possession of the goods or inventory that were the subject of the sales by the Merchants. The Merchants handled all shipping and fulfillment of the goods and were responsible for all fees associated with inaccurate orders or replacements.<sup>5</sup>
- 7) COMPANY had the risk of fraud for the transactions but had no other responsibility to the Customer or Merchant's banks for refunds, shipping, replacing the products, or risk for delays or cancelled orders.<sup>6</sup>
- 8) COMPANY does not control, participate in, assist with, facilitate, or otherwise have any involvement in any of the activities that are typical of a retail vendor making retail sales to customers that would traditionally require the collection and remittance of sales tax.

A typical transaction under either MODEL would generally function as follows.

- A. A Customer selects the products they wish to purchase from the Merchant and puts them in a digital shopping cart on the Merchant's website.<sup>7</sup> In the Merchant's digital shopping cart, applicable taxes and delivery fees would be added to the total purchase price. However, determination of tax collection obligations is made by each Merchant independently as they are responsible for collecting, remitting, and otherwise administering any and all sales or use taxes.<sup>8</sup>

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<sup>4</sup> Exhibit B - MODEL B - par. 8.1(a).

<sup>5</sup> Exhibit A - MODEL A- par. 4.2.1(b).

<sup>6</sup> Exhibit A - MODEL A- par. 3.2.9(b).

<sup>7</sup> Exhibit B - MODEL B - par. 5.6 (a).

<sup>8</sup> See, e.g., Exhibit A - MODEL A -Sch. B, par. 6; Exhibit B - MODEL B - par. 5.4(f).

- B. In response to an electronic request by a Merchant for a Transaction, COMPANY routes the requested transactions through their systems.<sup>9</sup>
- C. The Customer then enters their payment information into the Merchant's website. When the Customer enters their information, a notice (referred to as a "badge") appears to notify the Customer that they are transacting via COMPANY. This badge is no different from what a Customer would see if they were transaction with another payment facilitator, such as PayPal. Once the Consumer's payment information is verified by COMPANY, a Transaction shall be deemed to be executed.<sup>10</sup>
- D. The Merchant then ships the goods to the Customer and handles all product-related needs that may follow.
- E. Once the transaction has been settled, COMPANY is paid by the Merchant based on a percentage of the volume of sales processed by COMPANY.<sup>11</sup> The percentage can vary depending on the payment type (e.g. PayPal, local credit cards, etc.) and the countries that the transaction is dealing in.<sup>12</sup>

### **COMPANY's Technology & The Customer Experience**

In this section, relevant components of COMPANY's technology will be described to show how the technology operated in the background of the Merchant's website and what the Customers experienced.

Generally, COMPANY's payment processing system platform integrates with the Merchant's e-commerce platform, but only to the extent it is necessary for COMPANY to provide its payment processing services.<sup>13</sup> For this reason, COMPANY did not consistently receive information from the Merchants regarding what was being sold to make an informed decision regarding the product's taxability. Secondly, Customers have little knowledge that COMPANY is involved in the transactions, as shown by how the Customers pay, what the Customers see on their bank statements, and the lack of Customer support activities provided by COMPANY.

COMPANY provides Merchants with an API that integrates with the Merchant's e-commerce platform.<sup>14</sup> Once integrated, the API can then identify certain transactions where COMPANY's services are applicable<sup>15</sup> and apply the

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<sup>9</sup> Exhibit B - MODEL B - par. 5.6(b).

<sup>10</sup> Exhibit B - MODEL B - par. 5.6(b).

<sup>11</sup> Exhibit A - MODEL A - par. 2.3; Exhibit B - MODEL B - par. 12.1.

<sup>12</sup> Exhibit A - MODEL A - Schedule A FEES.

<sup>13</sup> Exhibit A - MODEL A - par. 3.1.2; Exhibit B - MODEL B - par. 2.2.

<sup>14</sup> Exhibit B - MODEL B - par. 2.2; par. 5.3.

<sup>15</sup> COMPANY'S services would be inapplicable, for instance, when the Merchant and the Customer are both wholly within the same country.

relevant foreign exchange rates to the products in the Customer's home currency.<sup>16</sup> When a Customer navigates to a Merchant's website, COMPANY's API identifies what country the Customer is in and what country the Merchant is in. Utilizing COMPANY's API, the Merchant's website then displays the prices of the Merchant's products in the Customer's home currency using information provided by COMPANY.<sup>17</sup> Although COMPANY's API is integrated with the Merchant's e-commerce platform to identify and route certain transactions for the purpose of currency conversion, this does not allow COMPANY control over the Merchant's e-commerce system or pricing in any way.

Once a Customer has selected the products they want to purchase and are ready to check out, they will be directed to the Merchant's digital shopping cart. After the Customer has entered a delivery address, the Merchant will then add any applicable sales tax and delivery fees to the total. This total amount due, which includes taxes and fees, is part of the information that is sent to COMPANY so they may help facilitate payment for the transaction. The Merchant is solely responsible for determining the application of sales taxes to the transactions as it is the only party that has the full set of information necessary to make such a determination (e.g., taxability, exemption documentation, etc.) and control over the Merchant's digital shopping cart to be able to add sales tax to the transaction. This is the case for both MODELS.

When the Customer comes to the point where they are required to pay the Merchant for the goods, the Customer enters their payment details via the Merchant's website which are then forwarded on to COMPANY to process the payment via COMPANY's API. On the Merchant's checkout page, there is a hyperlink labeled "Terms of Service" at the bottom that would bring the Customer to COMPANY's terms of service if clicked on. Customers can choose to view COMPANY's terms of service if they wish but are not required to view or acknowledge COMPANY's terms of service to complete the transaction. Once the transaction is complete, a charge will appear on the Customer's billing statement with information about both COMPANY and the Merchant.

In the payment card industry, there are what's known as "hard descriptors" and "soft descriptors" which collectively comprise the line of text explaining a transaction on a Customer's billing statement. The hard descriptor is required to indicate the owner of the bank account to which the Customer's funds are sent. Because COMPANY owns the bank account where the Customer's payment is initially sent, COMPANY appears on the Customers' credit card

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<sup>16</sup> Exhibit B - MODEL B - par. 3.1.

<sup>17</sup> Exhibit A - MODEL A -par. 1.11; Exhibit B – MODEL B - par. 2.3(ii).

statement as a hard descriptor.<sup>18</sup> For most of COMPANY's history, the hard descriptor used for transactions processed by COMPANY was COMPANY's name abbreviated as "COMPANY".

A soft descriptor will appear on a customer's credit card statement almost immediately after the charge has been made. This soft descriptor is subject to changes and shows a pending amount and preliminary description. This preliminary description generally lists the Merchant as the vendor of the products or services instead of who owns the bank account where the payment is sent to. In COMPANY's case, the soft descriptor would show the Merchant's name whose website the Customer ordered from.

Once the transaction is settled, the description appearing on a Customer's billing statement will include COMPANY's hard descriptor (COMPANY\*) first followed by the Merchant's soft descriptor name. For example, a purchase from a Merchant named "ABC Company" using COMPANY's payment processing services would appear on the Customer's billing statement as "COMPANY0000..0023\* -ABC Company (CA- 555-666-7788)."<sup>19</sup>

After a Customer receives the products shipped by the Merchant, they may wish to return the item, seek a refund, or require some other support from the Merchant regarding their purchase. Under both MODELS, the Merchants are solely responsible for all customer service matters, other than payment related queries, including approving and issuing refunds as well as all fees related to returning the item.<sup>20</sup> Other times, a Customer will dispute a charge on their credit card due to fraud and the charge will be reversed. This reversing of a charge is what is known as a "chargeback."<sup>21</sup> COMPANY is only liable for chargebacks that are the result of fraud.<sup>22</sup>

If a Customer has a question about their order, they may wish to call a customer service line. COMPANY is required to provide telephone support to comply with payment card network protocols. However, because COMPANY is not involved in the fulfillment of orders and has little knowledge of what was sold, Customers are immediately re-routed to the Merchant's customer service support telephone number to resolve any and all issues related to the transaction.

Throughout this process, COMPANY's role and existence is largely invisible to the Customer but for the Terms of Service hyperlink on the Merchant's payment page and what they see on their credit card billing statement. The

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<sup>18</sup> Exhibit C - Example of Hard Descriptor.

<sup>19</sup> Exhibit C - Example of Hard Descriptor.

<sup>20</sup> Exhibit A- MODEL A- par. 4.2.1(b); Exhibit B -MODEL B - par. 8.1 (a).

<sup>21</sup> MODEL B-par. 1.1(n).

<sup>22</sup> Exhibit B- MODEL B - par. 5.12(a).

Customer proceeds through the transaction with the understanding that they are doing business with the Merchant. While COMPANY's contract with the Merchant may describe a more substantial role in the transaction, it is important to understand that contractual language is merely present to conform to payment card network rules but does not reflect COMPANY stepping into the role of the retailer in any way.

## **II. ISSUES**

COMPANY requests a private letter ruling that:

1. Under Legacy Model A, whether COMPANY was engaged in the business of making "sales at retail" under ILCS Chapter 35 § 120/1, a retailer with physical presence in Illinois under Ill. Admin. Code 131.107, a marketplace facilitator under Ill. Admin. Code 131.130, or a peddler, hawker, or itinerant vendor under Ill. Admin. Code 130.1990?
2. Under MODEL B, whether COMPANY was engaged in the business of making "sales at retail" under ILCS Chapter 35 § 120/1, a retailer with physical presence in Illinois under Ill. Admin. Code 131.107, a marketplace facilitator under Ill. Admin. Code 131.130, or a peddler, hawker, or itinerant vendor under Ill. Admin. Code 130.1990?

## **III. CONCLUSIONS**

1. Under MODEL A, COMPANY was not engaged in the business of making "sales at retail" of the Merchants' goods because, although it had flash title to the goods, it could not effectuate sales to customers and the substance of the transactions was between the Merchant and the Customers. COMPANY was not a retailer with physical presence in Illinois because it did not have an employee in the state and did not maintain or occupy an office, place of distribution, or other place of business in Illinois. It was not a marketplace facilitator because it did not operate a physical or electronic place, forum, or platform to sell the Merchants' goods. It was also not a peddler, hawker, or itinerant vendor because it did not engage in sales techniques on behalf of undisclosed principals. Accordingly, COMPANY requests a ruling that it is not a retailer under Illinois law with regard to the sales of goods by the Merchants and is not liable for sales or use tax under MODEL A.



2. Under MODEL B, COMPANY was not engaged in the business of making "sales at retail" of the Merchants' goods because it did not have actual or constructive possession or title to the goods sold by the Merchants. COMPANY was not a retailer with physical presence in Illinois because it did not have an employee in the state and did not maintain or occupy an office, place of distribution, or other place of business in Illinois. It was not a marketplace facilitator because it did not operate a physical or electronic place, forum, or platform to sell the Merchants' goods. It was also not a peddler, hawker, or itinerate vendor because it did not engage in sales techniques on behalf of undisclosed principals. Accordingly, COMPANY requests a ruling that it is not a retailer under Illinois law with regard to the sales of goods by the Merchants and is not liable for sales or use tax under MODEL B.

#### **IV. AUTHORITY**

Generally, Illinois imposes its Retailers' Occupation Tax (herein after the "sales tax") on persons engaged in the business of selling tangible personal property ("TPP") at retail.<sup>23</sup> A "sale at retail" means any transfer of the ownership of, the title to, the possession or control of, or the right to possess or control of TPP to a purchaser for the purpose of consumption, and not for the purpose of resale.<sup>24</sup>

The tax is intended to be passed on to and borne by the purchaser but is ultimately levied on the retailer and is paid by them to the state.<sup>25</sup> Illinois provides the following different types of retailers who are relevant for COMPANY's situation and are subject to sales tax collection and remittance requirements:

1. Remote retailers incurring sales tax using destination sourcing for sales made to Illinois purchasers;
2. Marketplace facilitators incurring sales tax using destination sourcing for sales made over the marketplace on behalf of marketplace sellers to Illinois purchasers;
3. Out-of-State sellers with a physical presence in Illinois incurring a use tax collection obligation for sales they make outside Illinois and ship or deliver to Illinois purchasers; and

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<sup>23</sup> ILCS Chapter 35 § 120/2(a).

<sup>24</sup> ILCS Chapter 35 § 120/1.

<sup>25</sup> Ill. Admin. Code 130.101(e).

4. Illinois retailers, including brick and mortar retailers, incurring sales tax based on origin sourcing for sales made in Illinois.<sup>26</sup>

Illinois generally provides that marketplace facilitators are "engaged in the business of selling TPP at retail" when they meet the state's economic nexus requirements.<sup>27</sup> A "marketplace facilitator" means a person that, through an agreement with a marketplace seller, helps facilitate retail sales of TPP that is subject to tax by either listing or advertising the TPP for sale and by collecting payment from customers and transmitting that payment to the marketplace seller.<sup>28</sup> A "marketplace seller" means a person that makes sales through a marketplace operated by an unrelated marketplace facilitator.<sup>29</sup> A "marketplace" means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items.<sup>30</sup> Marketplace facilitators are generally responsible for collecting and remitting sales tax on all sales facilitated through their marketplace.<sup>31</sup>

Peddlers, hawkers, or itinerant vendors (herein after "itinerant vendors") are also required to collect and remit tax on retail sales made by them in their own name.<sup>32</sup> The state holds that persons who transport a supply of tangible goods from place to place, solicit and negotiate sales of such goods, and immediately deliver the goods sold are considered itinerant vendors.<sup>33</sup> When such persons sell TPP at retail in Illinois on their own behalf, they are required to register with the Department, file tax returns, and remit tax to the state.<sup>34</sup> It is immaterial what methods are employed in consummating the sales, whether by door-to-door sales, solicitation by telephone or mail, or by display rooms in salesrooms.<sup>35</sup> However, such persons are not liable for the tax when the sales are not made on their own behalf, but rather on behalf of a disclosed principal such as a manufacturer or distributor.<sup>36</sup>

In Illinois, a drop-shipment transaction is one in which out-of-state purchasers that are not registered with the Department and that do not have sufficient nexus with the state make purchases for resale from companies that are registered with the Department and have those companies drop-ship the property to the purchasers' customers in Illinois.<sup>37</sup> In this case, the companies that drop-ship the property to the customers are selling the

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<sup>26</sup> Ill. Admin. Code 131.107(a)(1), (2), (4), (6).

<sup>27</sup> ILCS Chapter 35 § 120/2(c).

<sup>28</sup> ILCS Chapter 35 § 120/1; Ill. Admin. Code 131.130(a)(1).

<sup>29</sup> ILCS Chapter 35 § 120/1.

<sup>30</sup> ILCS Chapter 35 § 120/1.

<sup>31</sup> ILCS Chapter 35 § 120/2(c).

<sup>32</sup> Ill. Admin. Code 130.1990(a)(1).

<sup>33</sup> Ill. Admin. Code 130.1990(a)(1).

<sup>34</sup> Ill. Admin. Code 130.1990(a)(1).

<sup>35</sup> Ill. Admin. Code 130.1990(a)(2).

<sup>36</sup> Ill. Admin. Code 130.1990(b)(1).

<sup>37</sup> Ill. Admin. Code 130.225(a).

property to the purchaser as a sale for resale, and if the company is provided a valid resale certificate from the purchaser, the sale is not subject to tax.<sup>38</sup> However, if the purchaser has sufficient contact with Illinois that would require them to register with the Department, then they must collect and remit the tax on all retail sales made by them.<sup>39</sup> Therefore, Illinois generally considers the purchasers of the property to be liable for tax collection and remittance in drop-shipment transactions if they have sufficient contact with the state.

Illinois has long applied a substance over form approach when applying its sales tax statutes.<sup>40</sup> For example, in Illinois Dept. of Rev. General Information Letter ST 13-0033-GIL (2013), the Department applied this doctrine when a Seller could not sell TPP to a Buyer due to Illinois regulatory requirements.<sup>41</sup> In that case, the Seller operated a regulated business and did not hold itself out as selling TPP at retail. The seller entered into an agreement with a Buyer to sell a portion of the Seller's operating equipment and capital assets. Because of Illinois regulatory requirements, the Seller was not allowed to sell the TPP directly to the Buyer. Illinois instead required the Seller to transfer the assets to an intermediary who will then transfer the assets to the Buyer. The Department noted that if the intermediary were not involved in the transaction, then the transaction would qualify for the occasional sale exemption. The Department was asked whether this transaction would lead to sales tax liability.

Ultimately, the Department found that no tax was due. The Department found that because of the intermediary's limited role, the substance of the transaction was between the Seller and the Buyer.

Accordingly, the transaction was an occasional sale. The Department listed the following guidelines that, if fulfilled, allowed the intermediary's role in the transaction to be excluded:

1. The intermediary was merely acting as a conduit in facilitating the exchange and had no beneficial interest in the transaction;
2. The intermediary was required to re-convey title to the end purchasers upon receipt from the initial seller;
3. The intermediary had no liability for warranties to the end purchaser;

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<sup>38</sup> Ill. Admin. Code 130.225(a).

<sup>39</sup> Ill. Admin. Code 130.225(b).

<sup>40</sup> *Jl Aviation, Inc. v. Dep't of Rev.*, 335 Ill. App. 3d 905 (2002) (citing *Estate of Weinert v. Commissioner of the Internal Rev. Service*, 294 F.2d 750 (5th Cir.1961), "[T]ax law deals in economic realities, not legal abstractions."); *Melvin C. Young v. Harry L. Hulman, Director of Rev., et al.*, 39 Ill. 2d 219 (1968); *Frank's Ice Cream Vending Carts v. The Dep't of Rev.*, 34 Ill. 2d 324 (1966) ("[W]e must look to the substance rather than the form of a transaction, and the categorization given to a relationship by the interested parties is not conclusive of the nature of the relationship.")

<sup>41</sup> Illinois Dept. of Rev. General Information Letter ST 13-0033-GIL, 07/30/2013.

4. The intermediary was required to re-convey the purchase price it received from the end purchaser;
5. The intermediary was contractually precluded from keeping any portion of the purchase price from the end purchaser; and
6. The intermediary did not pay any closing costs of the transaction.

The Department found that because the intermediary fit within all of the above guidelines, its limited role in the transaction was disregarded for sales tax purposes. Specifically, the Department found that the intermediary had no beneficial interest in the transaction because it was immediately required to convey the TPP to the Buyer and the purchase price without a markup to the seller. Thus, the intermediary was only involved in the transaction to satisfy regulatory requirements and did not purchase the operating equipment and capital assets to resell them for a profit. As such, the substance of the transaction was between the Seller and Buyer, and the intermediary's limited role was ignored for tax purposes.

Finally, Illinois generally provides that statutes that impose taxes should be strictly construed insofar as they may operate to deprive a citizen of their property or impose penalties upon them.<sup>42</sup> Conversely, statutes granting tax exemptions are strictly construed against the taxpayer.<sup>43</sup>

## **V. ANALYSIS**

1. **Under MODEL A, COMPANY was not engaged in the business of making "sales at retail" of the Merchants' goods because, although it had flash title to the goods, it could not effectuate sales to customers and the substance of the transaction was between the Merchant and the Customers. COMPANY was not a retailer with physical presence in Illinois because it did not have an employee in the state and did not maintain or occupy an office, place of distribution, or other place of business in Illinois. It was not a marketplace facilitator because it did not operate a physical or electronic place, forum, or platform to sell the Merchants' goods. It was also not a peddler, hawker, or itinerate vendor because it did not engage in sales techniques on behalf of undisclosed principals. Accordingly, COMPANY requests a ruling that it is not a retailer under Illinois law with regard to**

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<sup>42</sup> United Legal Found. and the Elijah Muhammad Found. v. Illinois Dep't of Rev., 272 Ill. App. 3d 666 (1995); *The People ex rel. Fern Conner, County Collector v. Burgess-Norton Mfg. Co.* 49111. 2d 397 (1971).

<sup>43</sup> *The People ex rel. Lawrence Cannon, County Collector v. Southern Illinois Hospital Corporation*, 404 Ill. 66 (1949).

**the sales of goods by the Merchants and is not liable for sales or use tax under MODEL A.**

**COMPANY Was Not Making "Sales at Retail" Under ILCS Chapter 35 § 120/1.**

Illinois provides that one type of retailer subject to collection and remittance requirements is a remote retailer incurring sales tax based on sales to Illinois purchasers.<sup>44</sup> Under MODEL A, although COMPANY did not have actual or constructive possession over the goods sold by the Merchants, it did have flash title to the goods. Illinois defines a "sale at retail" to mean a transfer of title or possession of TPP for consideration. In reviewing this issue, we must first analyze what it means to have the authority, power, or right to effectuate a transfer to determine who is doing the "transferring."

The definition of a "sale at retail" implies that the party who has the actual authority and right to effectuate the transfer of title or possession is the party responsible for sales tax collection and remittance. From a tax policy perspective, itinerant vendors are often responsible for sales tax collection and remittance because they have the authority to cause the transfer of title or possession to the customer. Similarly, a party that sets a sale in motion (the "purchaser," as that term is used above) in a drop-shipment transaction is liable for tax collection and remittance when it has sufficient contact with the state. Thus, the focus of this analysis should be on which party in the transaction has the ultimate authority to effectuate the transfer of title and/or possession to the customer.

As presented in the facts, at no point in the course of the transaction does COMPANY have any actual or constructive possession of the goods being sold. The Merchant is the sole party responsible for handling inventory and making arrangements for delivery to the Customer. Therefore, the Merchant is the only party capable of effectuating the transfer of possession to the Customer.

With regard to the title to the goods, title passes from the Merchant to COMPANY and then from COMPANY to the Customer. However, COMPANY is not the party "transferring" title to the Customer. Put another way, COMPANY is not the party causing the title to transfer to the Customer because COMPANY has no authority to initiate the chain of events which would cause the title to transfer to the Customer. The Merchant is the only party to the transaction who is authorized to accept a Customer's offer to purchase goods which then sets in motion the process of transferring both possession and title to the Customer. If the Merchant is the sole party who can cause title to

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<sup>44</sup> Ill. Admin. Code 131.107(a)(1).

transfer to the Customer, then the Merchant is the "transferor" -or the party doing the "transferring" -as the term is used in the definition of a "sale."

COMPANY had no authority to initiate the sale or begin the process of transferring title. It only received flash title because the Merchant received an order to purchase goods and then authorized COMPANY to facilitate payment. COMPANY could not exercise the degree of control that a person usually could when making sales. For example, COMPANY could not retain the property if it chose to or transfer title to anyone it wanted because title to the property needed to be transferred to the Customers. Therefore, because COMPANY could not effectuate the transfer of title and could not exercise the degree of control that someone with title typically could, it technically did not make a "sale at retail" under Illinois law.

In interpreting tax imposition statutes, the statute is generally construed in favor of the taxpayer.<sup>45</sup> In contrast, tax exemption statutes are strictly construed against the taxpayer.<sup>46</sup> Illinois's definition of a "sale at retail" means a transfer of title or possession of taxable items for consideration. The definition of a "sale at retail" is an essential and unavoidable component of the state's Retailer's Occupation Tax imposition statute. Thus, the definition of a "sale at retail," to the extent it is ambiguous in its application to COMPANY, is construed against imposing the tax. The imposition statute seeks to impose retail sales tax on the party making a "sale at retail" which is the party engaging in the overt acts that comprise the sale (i.e., transferring possession or title). As noted above, COMPANY was not "transferring" possession or title because it was not capable of effectuating such transfers. To the extent that the Department finds there is ambiguity as to who is doing the "transferring," such ambiguity must be resolved in favor of COMPANY.

However, if it is found that COMPANY did make a "sale at retail," then the substance, rather than the form, of the transaction should control. In Illinois Dept. of Rev. General Information Letter ST 13-0033-GIL, the Department applied the substance of form doctrine to find that no tax liability would be imposed on the transaction. Dispositive in the Department's analysis was the fact that the intermediary had a limited role in the transaction and was only involved in the transaction to solely to comply with government regulation. Specifically, the Department found that the intermediary had no beneficial interest in the transaction because it was immediately required to convey the TPP to the Buyer and the purchase price without a markup to the seller. Accordingly, the intermediary did not purchase the operating equipment and capital assets to resell them for a profit but was involved in the transaction

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<sup>45</sup> *United Legal Found. and the Elijah Muhammad Found.*, 272 Ill. App. 3d 666 (1995); *The People ex rel. Fem Conner, County Collector*, 49 Ill. 2d 397 (1971).

<sup>46</sup> *The People ex rel. Lawrence Cannon, County Collector*, 404 Ill. 66 (1949).

merely to satisfy regulatory requirements. As such, the substance of the transaction was between the Seller and Buyer, and the intermediary's limited role was ignored for tax purposes.

Similarly, COMPANY was merely an intermediary that title was transferred through to comply with payment network requirements as understood at the time. As COMPANY was offering a new type of payment localization service, its method for facilitating international payments did not fit into any available account designations offered by payment networks. As a result, COMPANY concluded that the merchant account categorization most closely aligned with its payment model. To fit this account categorization, COMPANY's MSAs under MODEL A were written to provide it with flash title to the Merchants' goods. COMPANY had no interest in the transaction except as a payment processor for the Merchants. COMPANY's role in the transaction was similar to that of the intermediary in Illinois Dept. of Rev. General Information Letter ST 13-0033-GIL in that it was merely acting as a conduit in facilitating the exchange, was required to convey title to the goods to the purchaser and had no responsibility for the quality of the goods. Additionally, COMPANY did not purchase the goods from the Merchants to mark up the price and then sell it to the Customers. COMPANY merely held bare legal title to the goods for a brief period of time after the sale from a Merchant to a Customer to comply with payment network requirements.

Further, when a Customer wished to purchase an item from a Merchant, it navigated to the Merchant's website, not COMPANY's. COMPANY does not have a website where Customers can browse or purchase a Merchant's goods. When the goods were shipped to a Customer, the Merchant handled all shipping and fulfillment of the goods. COMPANY's name is not on any invoice or bill of lading, and it is not listed as the importer or exporter of record for the transactions. Other than assuming the risk of fraudulent transactions as the payment processor, COMPANY had no responsibility to the Customer or the Merchants' banks for refunds, replacing products, or cancelled orders.<sup>47</sup>

The Merchants were also substantively the sellers from the Customers' perspective. The Customers would interact directly with the Merchants' website when browsing and selecting products to purchase. Once a Customer was ready to check out, the only indication that COMPANY was involved in the transaction was a badge at the bottom of the website and a link to the COMPANY's terms of service. Once the Customer's credit card was charged, the soft descriptor on their statement would list the Merchants as the seller, and the hard descriptor would appear as an abbreviation of

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<sup>47</sup> Exhibit A - MODEL A- par. 3.2.9(b).

COMPANY's name along with the Merchant's name. If a Customer wished to return an item or seek a refund, the Merchants were solely responsible for those customer service matters excluding payment processing related inquiries.

For the above reasons, COMPANY's brief holding of title to the goods should not make it subject to collection and remittance requirements in Illinois. The language in the MODEL A MSAs that gave COMPANY flash title to the goods were a way to comply with payment network requirements, but the transactions were truly between the Customers and the Merchants. Therefore, under MODEL A, COMPANY should not be subject to collection and remittance requirements.

**COMPANY Was Not a Retailer With Physical Presence in Illinois Under Ill. Admin. Code 131.107.**

Illinois provides that out-of-state sellers with physical presence in Illinois incur a use tax collection obligation for sales they make outside Illinois and that are delivered to Illinois purchasers.<sup>48</sup> As discussed above, COMPANY is not making "sales" of the Merchants' goods. Further, COMPANY does not have physical presence in Illinois. COMPANY does not have employees, an office or other business location, or a distribution warehouse or other fulfillment location in the state. Therefore, it is not an "out-of-state seller with physical presence in Illinois" and therefore does not have a use tax collection obligation in the state.

Illinois also provides that Illinois retailers, such as brick and mortar retailers, incur sales tax based on sales made in Illinois.<sup>49</sup> As both previously discussed, COMPANY is not making "sales" of the Merchants' goods and does not have physical presence in Illinois. Therefore, it is not an Illinois retailer that incurs sales tax based on sales made in Illinois.

**COMPANY Was Not a Marketplace Facilitator Under Ill. Admin. Code 131.130.**

Illinois provides that one type of retailer subject to collection and remittance requirements is a marketplace facilitator incurring sales tax based on sales made over a marketplace on behalf of marketplace sellers to Illinois purchasers.<sup>50</sup> A "marketplace facilitator" means a person that facilitates retail sales of TPP that is subject to tax by either listing or advertising the TPP for sale and by collecting payment from customers and transmitting that payment to

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<sup>48</sup> Ill. Admin. Code 131.107(a)(4).

<sup>49</sup> Ill. Admin. Code 131.107(a)(6).

<sup>50</sup> Ill. Admin. Code 131.107(a)(2).



the marketplace seller.<sup>51</sup> A "marketplace" means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items.<sup>52</sup> The applicable administrative code provides the following example that is instructive for COMPANY's situation:

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 [listing or advertising the marketplace seller's TPP for sale].<sup>53</sup>

Although COMPANY does provide payment processing services to the Merchants, COMPANY does not list or advertise the Merchants' TPP for sale. COMPANY does not have any physical or electronic place, forum, platform, or application where Customers can browse, select, or purchase items other than its own website which facilitates sales of its own payment localization and processing services. COMPANY's website also does not have links, banners advertisements, or other references that direct Customers to the Merchants' websites. Further, COMPANY has no responsibility (and is not paid by the Merchants to) engage in promoting, marketing, or advertising of the goods. Therefore, it is similar to Paymate in the example above. Although COMPANY provides payment processing services for the Merchants, it is not a marketplace facilitator because does [sic] not list or advertise the Merchants' TPP for sale.

**COMPANY Was Not Peddler, Hawker, or Itinerant Vendor Under Ill. Admin. Code 130.1990.**

Illinois imposes a sales tax collection and remittance obligation on persons who transport a supply of tangible goods from place to place, solicit and negotiate sales of such goods, and immediately deliver the goods sold.<sup>54</sup> When such persons sell TPP at retail in Illinois on their own behalf, they are required to register with the Department, file tax returns, and remit tax to the state.<sup>55</sup> It is immaterial what methods are employed in consummating the sales, whether by door-to-door sales, solicitation by telephone or mail, or by display rooms in salesrooms.<sup>56</sup> However, such persons are not liable for the tax when the sales are made on behalf of another such as a manufacturer or

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<sup>51</sup> Ill. Admin. Code 131.130(a)(1).

<sup>52</sup> ILCS Chapter 35 § 120/1

<sup>53</sup> Ill. Admin. Code 131.130(Example 2).

<sup>54</sup> Ill. Admin. Code 130.1990(a)(1).

<sup>55</sup> Ill. Admin. Code 130.1990(8)(1).

<sup>56</sup> Ill. Admin. Code 130.1990(8)(2).

distributor and such itinerant vendor is disclosed to the buyer.<sup>57</sup> Here, COMPANY is not an itinerant vendor because it did not make "sales" or engage in sales techniques on behalf of the Merchants. Even if it was found that COMPANY did make "sales" or engage in sales techniques, then it was acting on behalf of disclosed principals and therefore was not liable for sales tax collection and remittance.

As discussed in the section dealing with whether COMPANY made "sales at retail," COMPANY was not making "sales" on behalf of the Merchants because it could not initiate the chain of events to cause title or possession to be transferred. As discussed in the marketplace facilitator section, COMPANY does not engage in listing or advertising the Merchants' goods for sale. It also does not engage in door-to-door sales, solicitation by telephone or mail, displaying goods for sale in sales rooms, or negotiating for the sale of the Merchants' goods. Therefore, COMPANY is not an itinerant vendor for the Merchants and is liable for Illinois sales tax.

Even if it was found that COMPANY did engage in making "sales" and sales techniques on behalf of the Merchants, Illinois provides that itinerant vendors who sell on behalf of disclosed principals are not liable for tax.<sup>58</sup> The Customers are well aware that they are purchasing goods from the Merchants and not COMPANY. Although there are indications that COMPANY is processing the payment for the Merchants, such as their badge at the bottom of the website and a link to their terms of service, the Customers navigate to the Merchants' website to purchase goods, not COMPANY's. Further, the soft and hard descriptors on the Customers' bank statements both list the Merchants' name. Therefore, if it is found that COMPANY is an itinerant vendor for the Merchants, it is also working on behalf of a disclosed principal and therefore is not liable for the tax.

### **It Would Be Impractical for COMPANY to Collect Sales Tax on Behalf of The Merchants.**

It would also be impractical for COMPANY to collect and remit sales tax on behalf of the Merchants because COMPANY had no control over the Merchants' e-commerce platforms for purposes of adding sales tax to transactions. This is especially true when the Merchants agreed in their MSAs with COMPANY to be liable for all applicable taxes associated with the transactions. Although COMPANY had some transaction level details, it did not have enough information to make informed tax determinations across all transactions and Merchants. Therefore, it is not practical to hold it accountable for collecting and remitting sales tax.

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<sup>57</sup> Ill. Admin. Code 130.1990(b)(1).

<sup>58</sup> Ill. Admin. Code 130.1990(b)(1).

1. **Under MODEL B, COMPANY was not engaged in the business of making "sales at retail" of the Merchants' goods because it did not have actual or constructive possession or title to the goods sold by the Merchants. COMPANY was not a retailer with physical presence in Illinois because it did not have an employee in the state and did not maintain or occupy an office, place of distribution, or other place of business in Illinois. It was not a marketplace facilitator because it did not operate a physical or electronic place, forum, or platform to sell the Merchants' goods. It was also not a peddler, hawker, or itinerate vendor because it did not engage in sales techniques on behalf of undisclosed principals. Accordingly, COMPANY requests a ruling that it is not a retailer under Illinois law with regard to the sales of goods by the Merchants and is not liable for sales or use tax under MODEL B.**

#### **COMPANY Was Not Making "Sales at Retail" Under ILCS Chapter 35 § 120/1.**

Under MODEL B, COMPANY did not have flash title to the goods sold by the Merchants. It did not have actual or constructive possession over the goods either. Therefore, COMPANY did not transfer title or possession of TPP in exchange for consideration and did not make "retail sales" under Illinois law.<sup>59</sup> Because COMPANY did not make sales, it is not subject to collection and remittance requirements.

#### **COMPANY Was Not a Retailer With Physical Presence in Illinois Under Ill. Admin. Code 131.107.**

For the same reasons discussed above under the MODEL A analysis, COMPANY was not a retailer with physical presence in Illinois liable for sales or use tax collection for purposes of MODEL B.

#### **COMPANY Was Not a Marketplace Facilitator Under Ill. Admin. Code 131.130.**

For the same reasons discussed above under the MODEL A analysis, COMPANY was not a marketplace facilitator liable for sales tax collection for purposes of MODEL B.

#### **COMPANY Was Not Peddler, Hawker, or Itinerant Vendor Under Ill. Admin. Code 130.1990.**

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<sup>59</sup> ILCS Chapter 35 § 120/1.

For the same reasons discussed above under the MODEL A analysis, COMPANY was not an itinerant vendor liable for sales tax collection for purposes of MODEL B.

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For all of the above reasons, we ask the Department to confirm our understanding that COMPANY is not responsible for sales and use tax for transactions between the Merchants and their Customers under either MODEL period. Under MODEL A, COMPANY was not making sales because it never had possession of the goods, could not effectuate the transfer of title, and could not control the goods in a manner that a person with title usually could. Under MODEL B, it did not hold possession or title to the goods, and therefore could not make a sale. Under both MODELS, COMPANY did not have the characteristics of a retailer with physical presence in Illinois, marketplace facilitator, or itinerant vendor. Therefore, COMPANY is not responsible for sales and use tax in Illinois for the sales by the Merchants.

Thank you for your prompt consideration of this matter. If this ruling request does not provide sufficient information to support our conclusions reached herein, we request a meeting to state our positions more fully with respect to the foregoing. If the Department disagrees with any part or all our conclusions reached in this letter, we respectfully request the Department to contact us prior to issuance of a letter in response to this request. Please contact either me or NAME1 at PHONE or EMAIL.

#### **DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" states that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for a ruling will not be honored." See 2 Ill. Adm. Code 1200.110(a)(4). The Department has reviewed your request and decided to issue a general information letter because there are regulations dispositive of the subject of the request.

The Retailers' Occupation Tax Act imposes a tax on 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. Code 130.101. Use Tax is imposed on the privilege of using, in this State, 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.

Before 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”. See 35 ILCS 105/2. Regulations describing these types of retailers are found at 86 Ill. Adm. Code 150.201; 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 law that imposed sales tax obligations on retailers meeting specific gross sales or transaction thresholds, even if they had no physical presence in the state. The Court’s decision removed the long-standing requirement of physical presence. In response, Illinois P.A. 100-0587, effective October 1, 2018, amended the definition of a “retailer maintaining a place of business in this State” to include nearly identical nexus thresholds to those upheld in *Wayfair*. Following this, Illinois P.A. 101-0009, effective January 1, 2020, expanded the nexus standards to include marketplace facilitators. See 35 ILCS 105/2; 86 Ill. Adm. Code 150.803 and 804.

Effective January 1, 2021, Public Acts 101-0031 and 101-0604 implemented a series of structural changes to Illinois sales tax laws 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 et seq., sets forth the provisions and requirements for remote retailers and marketplace facilitators.

#### Marketplace Facilitator

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 86 Ill. Adm. Code 131.105. A marketplace seller is a person who makes sales through a marketplace operated by an unrelated third-party marketplace facilitator. *Id.* 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. 86 Ill. Adm.

Code 131.130(a)(1). A provision on a marketplace of functionality for connection to a payment mechanism meets these requirements. See 86 Ill. Adm. Code 131.130(a)(1)(B).

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

A marketplace facilitator meeting either threshold 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 through the marketplace to Illinois purchasers, including its own sales and sales made on behalf of marketplace sellers. See 86 Ill. Adm. Code 131.145(a) and 131.145(c). Please note that beginning January 1, 2026, the 200-transaction threshold for marketplace facilitators has been removed. See Article 25 Public Act 103-983.

A marketplace seller is generally 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 86 Ill. Adm. Code 131.145(l) and 131.150(h).

The Department has encountered various marketing and payment arrangements used by ecommerce businesses. Notably, the broad language of the statute and administrative rules concerning marketplace facilitators allows for its application to many different types of ecommerce businesses. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. This language enables a marketplace facilitator to be regarded as the retailer, even if it never owns the goods, ships the goods, or has any privity of contract with the marketplace customer beyond facilitating the sale in accordance with 86 Ill. Adm. Code 131.130(a)(1). However, despite such broad language, there are limitations. Examples of activities that do not meet the requirements of 86 Ill. Adm. Code 131.130(a)(1) are listed at 131.130(g). One

such example clarifies when a third-party payment processor is not regarded as a marketplace facilitator.

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).

In the above example, Paymate did not qualify as a marketplace facilitator because it did not operate a marketplace that listed or advertised products for sale by marketplace sellers. A person must carry out both activities specified in 86 Ill. Adm. Code 131.150(a)(1) to qualify as a marketplace facilitator.

#### Remote Retailer

A remote retailer is a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution location, sales office, 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.

As of January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for the 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, if either of the following thresholds is met:

- 1) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- 2) The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois. See 86 Ill. Adm. Code 131.115(a). Beginning January 1, 2026, the 200-transaction threshold for remote retailers has been removed. See Article 25 Public Act 103-983.

The Retailers' Occupation Tax Act imposes a tax on persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. The tax is measured by the seller's gross receipts from sales made in the course of such business. See 86 Ill. Adm. Code 130.101. Thus, the retailers' occupation tax applies to retailers in the business of selling tangible personal property, but only to the extent such sales are made in the person's normal course of business. Conversely, the

retailers' occupation tax is not imposed upon persons who are not engaged in the business of selling tangible personal property or who make a sale of tangible property outside their normal course of business. See 86 Ill. Adm. Code 130.110. Such sales are commonly referred to as "occasional sales". See 86 Ill. Adm. Code 130.110 for examples of exempt occasional sales by a retailer.

A person is engaged in making sales in the normal course of business if such person habitually engages in selling tangible personal property for use or consumption, or who, in any manner or at any time, advertises, solicits, offers for sale, or holds itself out to the public to be a seller of such tangible personal property for use or consumption. See 86 Ill. Adm. Code 130.115. Generally, a payment processing system that integrates with a third-party retailer's ecommerce platform and operates in the background to provide payment processing services would not be considered the retailer for sales made over a third-party retailer's ecommerce platform.

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 (217) 782-3336.

Very truly yours,

Thomas Grudichak  
Associate Counsel

TG:slc