

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Leveling the Playing Field for Illinois Retail Act
- 2) Code Citation: 86 Ill. Adm. Code 131
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
131.105	Amendment
131.107	Amendment
131.110	Amendment
131.150	Amendment
131.155	Amendment
131.ILLUSTRATION A	Amendment
- 4) Statutory Authority: Implementing Article 5 of the Leveling the Playing Field for Illinois Retail Act [35 ILCS 185] and authorized by Section 12 of the Retailers' Occupation Tax Act [35 ILCS 120] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements Public Act 103-983, which changed the tax obligation for retailers maintaining a place of business in this State making sales to Illinois customers from outside of this State. Prior to January 1, 2025, such sales were subject to Use Tax only. On and after January 1, 2025, these retailers incur destination-based retailers' occupation tax on these sales.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
131.160	Amendment	49 Ill. Reg. 351; January 10, 2025
131.165	Amendment	49 Ill. Reg. 351; January 10, 2025

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- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Alexis K. Overstreet
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-7055
REV.GCO@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers with a physical presence in the State of Illinois making sales from locations outside of this State to consumers in Illinois.
- B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and computer skills.
- C) Types of professional skills necessary for compliance: Basic accounting and computer skills.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
- 44-45 Retail Trade

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B) Categories that the agency reasonably believes the rulemaking will impact, including:

- i. hiring and additional staffing;
- iii. purchasing;
- vi. equipment and material needs;
- vii. training requirements;
- viii. record keeping

15) Regulatory Agenda on which this rulemaking was summarized: July 2024

The full text of the Proposed Amendments begins on the next page:

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 131

LEVELING THE PLAYING FIELD FOR ILLINOIS RETAIL ACT

Section	
131.101	Purpose and Scope of Regulations
131.105	Definitions
131.107	Description of Different Types of Retailers On and After January 1, 2021 – Scope of Regulations
131.110	Remote Retailers – General Provisions
131.115	Remote Retailers – Determination of Status as a Remote Retailer
131.120	Factors Used by Remote Retailers in Determining if the Thresholds in Section 131.115(a) of this Part are Met
131.125	Remote Retailers – Obligations – Procedures – Hold Harmless Provisions
131.130	Marketplace Facilitators – General Provisions
131.135	Marketplace Facilitators – Determination of Obligation to Remit Tax
131.140	Factors Used by Marketplace Facilitators in Determining if Thresholds in Section 131.135 of this Part are Met
131.145	Marketplace Facilitators – Obligations – Procedures – Hold Harmless Provisions
131.150	Marketplace Sellers – Obligations – Procedures – Hold Harmless Provisions
131.155	Tax Sourcing Provisions
131.160	Certified Service Providers – Obligations – Procedures – Hold Harmless Provisions
131.165	Certified Automated Systems – Obligations – Procedures – Hold Harmless Provisions
131.170	Department Responsibilities
131.175	Local Taxing Jurisdiction Responsibilities
131.180	Application of Other Rules

131.ILLUSTRATION A [Leveling the Playing Field Retailer Flowchart – Provisions Controlling from January 1, 2021 through December 31, 2024](#)

AUTHORITY: Implementing Article 5 of the Leveling the Playing Field for Illinois Retail Act [35 ILCS 185] and authorized by Section 12 of the Retailers' Occupation Tax Act [35 ILCS 120] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505].

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SOURCE: Adopted at 45 Ill. Reg. 931, effective December 31, 2020; emergency amendment at 45 Ill. Reg. 9625, effective July 13, 2021, for a maximum of 150 days; emergency amendment suspended by the Joint Committee on Administrative Rules at 45 Ill. Reg. 10883, effective August 18, 2021; suspension withdrawn at 45 Ill. Reg. 12207, effective September 17, 2021; emergency amendment to emergency rule at 45 Ill. Reg. 12152, effective September 17, 2021, for the remainder of the 150 days; emergency rule as amended expired December 9, 2021; amended at 46 Ill. Reg. 2697, effective February 14, 2022; amended at 49 Ill. Reg. _____, effective _____.

Section 131.105 Definitions

As used in this Part:

"Affiliate" means a person that, with respect to another person:

has a direct or indirect ownership interest of more than 5% in the other person; or

is related to the other person because a third person, or a group of third persons who are affiliated with each other (under this definition), holds a direct or indirect ownership interest of more than 5% in the related person.

"Certified Service Provider" or "CSP" means an agent certified by the Department to perform the remote retailer's use and occupation tax functions, as outlined in the contract between the State and the certified service provider. [35 ILCS 185/5-10]

"Certified Automated System" or "CAS" means an automated software system that is certified by the State as meeting all performance and tax calculation standards required by this Part. References throughout this Part to a CAS mean the person that owns or provides the certified automated software system used by a remote retailer. [35 ILCS 185/5-10]

"Department" means the Department of Revenue. [35 ILCS 185/5-10]

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

"Marketplace Facilitator" means a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates, facilitates a retail sale by an unrelated third-party marketplace seller by:

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 [35 ILCS 120]; and

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 the second indented paragraph of this definition. [35 ILCS 120/1]

Effective August 27, 2021, "marketplace facilitator" does not include any person licensed under the Auction License Act, [225 ILCS 407]. This exemption does not apply to any person who is an Internet Auction listing service, as defined in Section 5-10 of the Auction License Act. [35 ILCS 120/1]

"Marketplace Seller" means a person that 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. A person that is an affiliate, as defined in this Section, of a marketplace facilitator is not a marketplace seller. [35 ILCS 120/1]

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"Out-of-State Seller" means:

A seller located outside Illinois but that has or maintains within Illinois, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the seller or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such seller or subsidiary is licensed to do business in this State. However, the ownership of property that is located at the premises of a printer with which the seller has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced shall not result in the seller being deemed to have or maintain an office, distribution house, sales house, warehouse, or other place of business within this State; or

A seller located outside Illinois but that has a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the seller, directly or indirectly refers potential customers to the seller by providing to the potential customers a promotional code or other mechanism that allows the seller to track purchases referred by such persons. Examples of mechanisms that allow the seller to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. These provisions shall apply only if the cumulative gross receipts from sales of tangible personal property by the seller to customers who are referred to the seller by all persons in this State under such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. A seller meeting the requirements of this paragraph shall be presumed to be an Out-of-State Seller but may rebut this presumption by submitting proof that the referrals or other activities

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pursued within this State by such persons were not sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods; or

A seller located outside Illinois but that has a contract with a person located in this State under which

the seller sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and

the seller provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the seller.

The provisions contained in the preceding two indented paragraphs *shall apply only if the cumulative gross receipts from sales of tangible personal property by the seller to customers in this State under all such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December.* [35 ILCS 105/2]

Until January 1, 2025, an out-of-State~~An out-of-state~~ seller incurs a Use Tax (6.25%) collection obligation for sales made to Illinois purchasers when both its selling activities occur outside Illinois and the inventory used to fill purchases for Illinois purchasers is located outside Illinois (see 86 Ill. Adm. Code 270.115(c) and (d) for factors used to make this determination). If either its selling activities occur in Illinois or its inventory is located in Illinois for a sale made to an Illinois purchaser, the ~~out-of-State~~out-of-state seller is considered an Illinois retailer for that transaction (like an Illinois brick and mortar retailer) and is subject to State and local retailers' occupation taxes at the origin rate at the location at which the selling activities occur or the location at which the inventory is located (see 86 Ill. Adm. Code 270.115(c) and (d) for factors used to make this determination).

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On and after January 1, 2025, for sales that would otherwise be sourced outside of this State, an out-of-State seller that makes retail sales of tangible personal property to Illinois customers from a location or locations outside of Illinois incurs State and local retailers' occupation tax liability at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. [35 ILCS 120/2-12] See 86 Ill. Adm. Code 270.115(c) and (d) for factors used to make this determination.

An out-of-State seller is a retailer maintaining a place of business in this State. On and after January 1, 2025, out-of-State sellers will be referred to as retailers maintaining a place of business in this State throughout this Part.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court. [35 ILCS 120/1]

"Remote Retailer" means a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its own inventory in Illinois is not a "remote retailer". [35 ILCS 120/1]. For purposes of this Part, beginning on January 1, 2021, a remote retailer's inventory at the location of a marketplace facilitator in Illinois does not create a physical presence nexus when used exclusively to fulfill orders made over the marketplace that meets a tax remittance threshold under Section 131.135(a) because the marketplace facilitator is considered the retailer with respect to sales over the marketplace. Remote retailers that meet a tax remittance threshold under Section 131.115 are retailers maintaining a place of business in this State.

For purposes of this Part, "retailer maintaining a place of business in this State" has the same meaning as defined in 86 Ill. Adm. Code 150.201.

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"Retailers' Occupation Tax" means the tax levied under the Retailers' Occupation Tax Act (ROTA) and all applicable local retailers' occupation taxes collected by the Department in conjunction with the State retailers' occupation tax.

"Unrelated Third Party" means a person that, with respect to another person, has a direct or indirect ownership of 5% or less in the other person. A person is also considered to be an unrelated third party when a third person, or group of third persons who are affiliated with each other as defined in this Section, hold a direct or indirect ownership interest of 5% or less in the other person.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 131.107 Description of Different Types of Retailers On and After January 1, 2021 – Scope of Regulations

- a) Different Types of Retailers On and After January 1, 2021. Public Acts 101-0031 and 101-0604 added several new types of retailers with different tax liabilities to the State's existing sales tax structure. On and after January 1, 2025, Public Act 103-0983 further amended tax liabilities for retailers maintaining a place of business in this State. As a result, retailers and their respective tax liabilities now include the following:
 - 1) Remote retailers that have met a tax remittance threshold in Section 131.115 (retailers maintaining a place of business in this State) incurring State and local retailers' occupation tax using destination sourcing for sales made to Illinois purchasers; a marketplace seller that makes sales over a marketplace that meets either of the required tax remittance thresholds in Section 131.115 of this Part and that also makes sales outside of that marketplace may also be considered a remote retailer for sales made outside of the marketplace;
 - 2) Marketplace facilitators incurring State and local retailers' occupation tax using destination sourcing for sales made over the marketplace on behalf of marketplace sellers to Illinois purchasers;

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- 3) Marketplace facilitators incurring State and local retailers' occupation tax using origin sourcing for their own sales that are either fulfilled from inventory located in Illinois or for which selling activities otherwise occur in Illinois (the location at which the State and local retailers' occupation tax is incurred must be determined by applying the provisions of 86 Ill. Adm. Code 270.115 (c) and (d)); and incurring State and local retailers' occupation tax using destination sourcing for all other sales of its own;
- 4) Until January 1, 2025, out-of-State~~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; such sellers however, incur State and local retailers' occupation taxes using origin sourcing for sales for which their selling activities occur in Illinois (see, e.g., 86 Ill. Adm. Code 270.115 (c) and (d)); if such sellers also make sales over a marketplace, they are considered marketplace sellers and the marketplace facilitator will incur State and local retailers' occupation tax liability based on destination sourcing for these sales;
- 5) Illinois retailers, including brick and mortar retailers, incurring no State or local retailers' occupation taxes for sales made over a marketplace (the marketplace facilitator will now incur State and local retailers' occupation tax liability based on destination sourcing for these sales); ~~and~~
- 6) Illinois retailers, including brick and mortar retailers, incurring State and local retailers' occupation taxes based on origin sourcing for sales made in Illinois;-
- 7) Until January 1, 2025, Illinois retailers, including brick and mortar retailers, incurring a Use Tax collection obligation for sales fulfilled from ~~out-of-State~~~~out-of-state~~ inventory and for which selling activities occur out of ~~State;~~~~state-~~
- 8) On and after January 1, 2025, retailers maintaining a place of business in this State with a physical presence in Illinois incurring State and local retailers' occupation tax liability based on destination

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sourcing for sales they make outside Illinois and ship or deliver to Illinois purchasers. Such sellers incur State and local retailers' occupation taxes using origin sourcing for sales for which their selling activities occur in Illinois (see 86 Ill. Adm. Code 270.115 (c) and (d)); if such sellers also make sales over a marketplace, they are considered marketplace sellers and the marketplace facilitator, if it has met a tax remittance threshold in Section 131.135, will incur State and local retailers' occupation tax liability based on destination sourcing for these sales;

- 9) On and after January 1, 2025, retailers maintaining a place of business in this State, including Illinois brick and mortar retailers, incurring State and local retailers' occupation tax liability based on destination sourcing for sales fulfilled from out-of-State inventory and for which selling activities occur outside of this State; and
- 10) Remote retailers that have not met a tax remittance threshold in Section 131.115 and that have no physical presence in Illinois making sales outside Illinois that are shipped or delivered to Illinois purchasers do not incur any State or local retailers' occupation tax on such sales. These remote retailers may register with the Department as voluntary Use Tax collectors as a courtesy to their Illinois customers who would still have an obligation to remit Use Tax on their purchases.

- b) As a result of these differing tax obligations, it is critical that retailers examine their selling activities to determine their specific tax liabilities. This is especially important for retailers that engage in multichannel retailing (for example, retailers that engage in selling through their own website, as well as through a marketplace, or Illinois brick and mortar retailers that also sell over a marketplace).
- c) Scope of Regulations. The rules established in this Part for remote retailers, marketplace facilitators, ~~and~~ marketplace sellers, and, beginning January 1, 2025, for all retailers maintaining a place of business in this State, apply only to the remittance of State Retailers' Occupation Tax and local retailers' occupation taxes administered by the Department. Remote retailers, marketplace facilitators, ~~or~~ marketplace sellers, and all retailers maintaining

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[a place of business in this State](#) 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.

- 1) Taxes required to be remitted under this Part include the State and local retailers' occupation taxes commonly referred to as "sales taxes." These taxes include, but are not limited to:
 - A) the State Retailers' Occupation Tax and, except as otherwise provided in this subsection, all other local retailers' occupation taxes administered by the Department, including but not limited to, the Home Rule Municipal Retailers' Occupation Tax and the Regional Transportation Authority Retailers' Occupation Tax; and
 - B) beginning October 1, 2021, the Home Rule Municipal Soft Drink Retailers' Occupation Tax imposed at 65 ILCS [5/8-11-6b\(b\)](#) ("Chicago Soft Drink ROT"). Remote retailers that meet a tax remittance threshold (see Section 131.115(a)) are deemed to be engaged in the business of selling soft drinks at the Illinois location to which the soft drinks are shipped or delivered or at which possession is taken by the purchaser. If that location is in Chicago, the remote retailer incurs and must register and remit the Chicago Soft Drink ROT. [On and after January 1, 2025, all retailers maintaining a place of business in this State must register and remit the Chicago Soft Drink ROT for sales of soft drinks made outside of Illinois and shipped or delivered to a location in Chicago or if possession is taken by the purchaser in Chicago.](#) Similarly, the Chicago Soft Drink ROT is required to be remitted by marketplace facilitators making sales on behalf of marketplace sellers if the soft drinks are shipped or delivered to an address in Chicago, or if possession of the soft drinks is taken by the purchaser in Chicago. Marketplace facilitators making their own sales of soft drinks incur the Chicago Soft Drink ROT if the soft drinks are shipped or delivered to a location in Chicago or if possession is taken by the purchaser in Chicago, or if the

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selling activities of the marketplace facilitator occur in Chicago (see, e.g., 86 Ill. Adm. Code 270.115(c) and (d)); and

- C) beginning October 1, 2021, the tax imposed at 70 ILCS 210/13 upon persons engaged in the business of selling food, alcoholic beverages and soft drinks within the boundaries of the Metropolitan Pier and Exposition Authority (MPEA ROT). Food delivery services that are considered marketplace facilitators are required to remit the MPEA ROT on sales made on behalf of a restaurant or other food establishment that is subject to the MPEA ROT.
- i) Food delivery services that are considered marketplace facilitators meeting a tax remittance threshold in Section 131.135 of this Part are required to remit the 1% MPEA ROT only if the sale to a purchaser is made by a restaurant located within the MPEA district. The State ROT and local sales taxes (such as the Home Rule Municipal ROT or the Home Rule County or Regional Transportation Authority ROT) are required to be remitted, however, at the rate in effect at the location to which the food or beverages are shipped or delivered or at which possession is taken by the purchaser (destination rate).
 - ii) Food delivery services considered marketplace facilitators must provide a certification to each food service establishment that sells over its marketplace that it assumes the rights and duties of a retailer under the ROTA and all applicable local retailers' occupation taxes administered by the Department (including the MPEA ROT and the Chicago Soft Drink Tax, if applicable) with respect to sales made by the food establishment through the marketplace; and that it will remit taxes imposed by the retailers' occupation tax and all applicable local retailers' occupation taxes administered by the Department (including the MPEA ROT and the Chicago Soft Drink Tax) for sales made

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through the marketplace. This certification must also contain the name, address, and Illinois Account ID number for the sales tax account of the marketplace facilitator and the name, address and Illinois Account ID number for the sales tax account of the food service establishment. Food service establishments that have obtained this certification shall be relieved of liability for tax on sales made over the marketplace unless the marketplace facilitator seeks relief from liability as a result of good faith reliance on incorrect information provided to it by the marketplace seller [35 ILCS 120/2] (see Section 131.150(b)-(c) of this Part), or until the food service establishment has been notified by a marketplace facilitator that the marketplace facilitator is no longer required to remit tax as provided in Section 131.135(f) of this Part.

- 2) Taxes or fees administered by the Department that are not subject to the provisions of this Part. Remote retailers, marketplace sellers, ~~and~~ marketplace facilitators, ~~and all retailers maintaining a place of business in this State~~ often sell tangible personal property that is subject to additional taxes, other than State and local retailers' occupation taxes which are required to be remitted under Section 2 of the Retailers' Occupation Tax Act. They must determine whether they incur these additional taxes by examining the specific provisions of these additional tax acts. These additional taxes may commonly include, but are not limited to:
- A) the Prepaid Wireless 9-1-1 Surcharge (E911 Surcharge) imposed at 50 ILCS 753/15 and
 - B) the Illinois Telecommunications Access Corporation Assessment (ITAC Assessment) imposed at 220 ILCS 5/13-703.
 - C) ~~the Tire User Fee imposed at 415 ILCS 5/55.8.~~

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- 3) Taxes not administered by the Department include, but are not limited to, taxes imposed and administered by a home rule municipality on food prepared for immediate consumption and on alcoholic beverages under the authority of 65 ILCS 5/8-11-6a.
- 4) Remote retailers, marketplace sellers, ~~and~~ marketplace facilitators, and all retailers maintaining a place of business in this State that remain liable for Department-administered taxes not subject to this Part as described in subsection (c)(2) must register with the Department to remit those taxes. Remote retailers, marketplace sellers, ~~and~~ marketplace facilitators, and all retailers maintaining a place of business in this State must review the statutes imposing these taxes to determine whether they are required to register and remit them. In the case of marketplace sellers incurring these additional taxes for tangible personal property sold over a marketplace, the Department strongly encourages them to work with their marketplace facilitators to make arrangements allowing the marketplace facilitator to collect these taxes and remit them to the marketplace seller, along with the gross receipts from the sale, so that the marketplace seller can then remit the taxes to the Department as required.
- 5) Remote retailers, marketplace sellers, ~~and~~ marketplace facilitators, and all retailers maintaining a place of business in this State that remain liable for taxes not administered by the Department are strongly encouraged to contact the appropriate local taxing authority with questions related to registration and remittance of tax.

EXAMPLE 1: T-Cell, Inc. sells prepaid mobile phones over a marketplace that is required to remit tax to the Department under this Part. A Chicago resident purchases a prepaid mobile phone which is delivered to her Chicago address. Her purchase is subject to both the Prepaid Wireless 911 Surcharge and the ITAC Assessment. These taxes are incurred because the laws imposing these surcharges/assessments provide that the surcharges/assessments are incurred whenever the sale of the tangible personal property is treated as occurring in Illinois for purposes of the Retailers' Occupation Tax Act (under the provisions of Section 2 of the Retailers'

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Occupation Tax Act this is the case). Although the marketplace facilitator is required to collect and remit State and local retailers' occupation taxes on this sale, it is not required to collect and remit the E911 Surcharge or the ITAC Assessment. T-Cell, Inc. must register with the Department to collect and remit the E911 Surcharge and ITAC Assessment.

EXAMPLE 2: Greet N Eat is a food delivery service that is considered a marketplace facilitator required to remit tax under this Part. A customer in Oak Park orders a pizza and a liter bottle of a soft drink over Greet N Eat's application from a pizzeria in Chicago that is subject to the MPEA ROT. Greet N Eat incurs the State ROT (6.25%), the Home Rule Municipal ROT in Oak Park, the County Home Rule ROT for Cook County, and the RTA ROT for Cook County on this transaction. It also incurs the 1% MPEA ROT, since the pizzeria is subject to the MPEA ROT. It does not, however, incur the Chicago Soft Drink Tax, because the soft drink is not delivered to a purchaser within the City of Chicago.

EXAMPLE 3: Greet N Eat is a food delivery service that is considered a marketplace facilitator required to remit tax under this Part. A customer in the MPEA ROT district orders a pizza and a liter bottle of a soft drink over Greet N Eat's application from a pizzeria in Oak Park that is not subject to the MPEA ROT. Greet N Eat incurs the State ROT (6.25%), the Home Rule Municipal ROT in Chicago, the County Home Rule ROT for Cook County, and the RTA ROT for Cook County on this transaction. It incurs the Chicago Soft Drink Tax, because the soft drink is delivered to a purchaser within the City of Chicago. It does not, however, incur the 1% MPEA ROT since the pizzeria is not subject to the MPEA ROT.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 131.110 Remote Retailers – General Provisions

- a) On and after January 1, 2021, a remote retailer that meets either of the thresholds in Section 131.115(a) is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the ROTA and is liable

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for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers.

- b) Remote retailers are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers' occupation taxes are incurred at the rate in effect at this location. (See Section 131.155.)

- c) Provisions of this Part – when not applicable. The provisions of this part do not apply to remote retailers who exclusively make nontaxable sales (i.e., 100% of their sales to Illinois purchasers are exempt). If a remote retailer makes any taxable sales, however, the provisions of this Part apply, and it must determine whether it meets either of the tax remittance thresholds in Section 131.115. The rules provided in Section 131.120 must be applied when making this determination.

EXAMPLE: If Remote Retailer A's only activities are sales of exempt manufacturing machinery and equipment to Illinois manufacturers, the provisions of this Part do not apply, and it is not required to register with the Department and file returns. If Remote Retailer A makes any taxable sales, however, the provisions of this Part apply, and it must determine whether it meets either of the tax remittance thresholds in Section 131.115. The rules provided in Section 131.120 must be applied when making this determination. For example, for purposes of determining if it has met either of the tax remittance thresholds, it must include its exempt sales as provided in Section 131.120(b)(5).

- d) Remote retailers are often multichannel retailers. That is, they may also sell their products through a marketplace and so are considered marketplace sellers. Marketplace facilitators required to register with the Department, as provided in Section 131.135, incur State and local retailers' occupation taxes on sales made to Illinois purchasers on behalf of remote retailers making sales over the marketplace. Remote retailers do not incur tax on these sales. (See Section 131.150.)

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- e) Beginning February 1, 2022, sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made by remote retailers to purchasers in Illinois are subject to the provisions of this Part.
- 1) ~~When a retailer located outside of Illinois ships or delivers titled or registered items to purchasers in Illinois using its own delivery vehicle the delivery vehicle would establish a physical presence in Illinois and the retailer would be a retailer maintaining a place of business in this State. In this situation, until January 1, 2025, the retailer would incur only a Use Tax collection obligation on the transaction. On and after January 1, 2025, such retailer would incur State and local retailers' occupation taxes at the rate in effect at the address to which the vehicle is delivered ("destination sourcing"). This Part does not apply when a retailer ships or delivers titled or registered items to purchasers in Illinois using its own delivery vehicle.~~
 - 2) In addition, for a transaction in which an Illinois purchaser travels to an ~~out-of-State~~~~out-of-state~~ location to take possession of an item that is required to be titled or registered with an agency of the State of Illinois, the provisions of this Part do not apply. In ~~this case~~~~these cases~~, only Use Tax is incurred by the Illinois purchaser.
- f) Examples.

EXAMPLE 1: On December 31, 2020, ABC Wines, an Illinois Liquor Control Commission Winery Shipper's License holder located in New York that has no physical presence in Illinois, determines that it has made sales to Illinois purchasers for the preceding 12 months that exceed \$100,000. Beginning January 1, 2021, ABC Wines must collect and remit State and local retailers' occupation tax in effect at the Illinois address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing") for sales to Illinois purchasers for one year.

EXAMPLE 2: Ponchos for Pooches.com is a retailer of rain gear for dogs. Its sales are made exclusively from its manufacturing facility in Portland,

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Oregon. It has no physical presence in Illinois. Its annual gross receipts from sales to Illinois purchasers exceed \$100,000. Ponchos for Pooches.com is a remote retailer and is required to register with the Department and remit State and local retailers' occupation taxes in effect at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

EXAMPLE 3: Rain gear sold to Illinois purchasers by Ponchos for Pooches.com has skyrocketed. As a result, the company has begun sending sales representatives to Illinois to market its products through local pet stores. As a result of these activities, Ponchos for Pooches.com is no longer considered a remote retailer because it has a physical presence in Illinois due to the presence of its sales reps. At this point, until January 1, 2025, its tax liability changes. It no longer incurs State and local retailers' occupation taxes on its sales. It instead incurs an obligation to collect and remit only the Use Tax (6.25%) on its sales until January 1, 2025. On and after January 1, 2025, Ponchos for Pooches.com incurs State and local retailers' occupation taxes at the rate in effect at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

EXAMPLE 4: Ponchos for Pooches.com has become so popular with Illinois purchasers that the company decides to open up a manufacturing facility in Illinois. Sales to Illinois purchasers are sometimes fulfilled from this facility. For all sales to Illinois purchasers that are fulfilled from its Illinois manufacturing facility, Ponchos for Pooches.com incurs State and local retailers' occupation taxes in effect at the location of the manufacturing facility ("origin sourcing"). In addition, until January 1, 2025, Ponchos for Pooches.com incurs only a Use Tax collection obligation (6.25%) on sales made from its Oregon manufacturing facility. As illustrated in Example 3, Ponchos for Pooches.com is not considered a remote retailer because it has a physical presence in Illinois (its manufacturing facility). On and after January 1, 2025, for sales made from its Oregon manufacturing facility, Ponchos for Pooches.com incurs State and local retailers' occupation taxes at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

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EXAMPLE 5: Ponchos for Pooches.com decides to sell its products over a marketplace. The marketplace meets the tax remittance requirements of Section 131.135(a) and so is required to remit State and local retailers' occupation taxes to the Department on all sales made over its marketplace to Illinois purchasers by its marketplace sellers. Ponchos for Pooches.com is not responsible for reporting and remitting tax on sales made over the marketplace. As provided in Example 4, Ponchos for Pooches.com maintains a physical presence in Illinois due to its manufacturing facility. Ponchos for Pooches.com incurs State and local retailers' occupation taxes for all sales it makes to Illinois purchasers outside the marketplace that are fulfilled from its Illinois manufacturing facility ("origin sourcing"). In addition, until January 1, 2025, Ponchos for Pooches.com incurs only a Use Tax collection obligation (6.25%) on sales it makes outside the marketplace to Illinois purchasers that are fulfilled from its Oregon manufacturing facility. On and after January 1, 2025, for sales made from its Oregon manufacturing facility, Ponchos for Pooches.com incurs State and local retailers' occupation taxes at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 131.150 Marketplace Sellers – Obligations – Procedures – Hold Harmless Provisions

- a) Except as otherwise provided in this Section, 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, provided that, prior to its sales, it has obtained a certification from the marketplace facilitator as established in Section 131.145(b).
- b) A marketplace seller shall furnish to the marketplace facilitator information that is necessary for the marketplace facilitator to correctly remit tax on each sale made on its behalf over the marketplace. The information may include a certification that an item being sold is taxable, not taxable, exempt from taxation, or taxable at a specified rate (for example, at either the general merchandise rate or the preferential low rate of tax).

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- c) A marketplace facilitator that relies in good faith on the information provided in subsection (b) by a marketplace seller shall be relieved of liability for the tax on that transaction. In this case, a marketplace seller is subject to audit on that transaction and shall be liable for any resulting State and local retailers' occupation taxes due.
- d) Books and Records. *A marketplace seller shall maintain books and records for all sales made through a marketplace in accordance with Section 7 of ~~the ROTAROTA~~. [35 ILCS 120/2(e)]*
- e) A marketplace seller that makes sales to Illinois purchasers outside of a marketplace must examine its selling activities to determine its tax liabilities (i.e., determine if it is a remote retailer; an ~~out-of-State~~ ~~out-of-state~~ seller ~~with a physical presence~~ required to collect and remit Use Tax ~~prior to January 1, 2025; on and after January 1, 2025, a retailer maintaining a place of business in this State required to remit State and local retailers' occupation taxes at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing"); or a retailer maintaining a place of business in this State incurring State and local retailers' occupation taxes based on origin sourcing for sales made in Illinois an Illinois retailer required to remit State and local retailers' occupation tax~~). (See Section 131.115 and Illustration A.) It must separately register with the Department to report and pay taxes incurred on these sales.
- f) A marketplace seller that incurs tax liability on sales made outside of a marketplace shall not include sales made through a marketplace on the separate returns filed with the Department; and shall not include any of its sales made through a marketplace when computing any retailers' discount on its separately filed returns.
- g) *If for any reason, the Department is prohibited from enforcing the marketplace facilitator's duty ~~under the ROTA~~ to remit taxes, the duty to remit ~~those~~ ~~those~~ taxes remains with the marketplace seller, ~~provided it is otherwise required to remit taxes under the ROTA or, prior to January 1, 2025, the Use Tax Act~~ ~~provided it is otherwise required to remit taxes under ROTA or the Use Tax Act~~. [35 ILCS 120/2(i)]*

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- h) *The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace seller and the marketplace facilitator on the same transaction. [35 ILCS 120/2(h)]*

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 131.155 Tax Sourcing Provisions

- a) Under Section 2 of the Retailers' Occupation Tax Act and Sections 2 and 2d of the Use Tax Act, the type of tax liability incurred by a retailer and the manner in which that liability is sourced depends upon the manner in which a retailer conducts its selling activities, as well as the type of nexus (or lack thereof) that a retailer has with the State. Retailers may incur State and local retailers' occupation taxes based either upon the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing") or upon the location in Illinois at which the selling activities occur ("origin sourcing"; see 86 Ill. Adm. Code 270.115). ~~Until January 1, 2025, some~~ ~~Some~~ retailers, in contrast, may incur only a Use Tax collection obligation. Still other retailers may incur no tax obligations at all. Multichannel retailers may incur a combination of these liabilities. Because of these distinctions, it is critical that retailers evaluate their selling activities carefully to determine their proper tax liability.
- b) Except as provided in subsection 131.107(c)(1)(C), marketplace facilitators required to remit State and local retailers' occupation tax on sales to Illinois purchasers for sales made on behalf of marketplace sellers. On and after January 1, 2021, marketplace facilitators meeting either of the thresholds in Section 131.135(a)(1) or (a)(2) are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser for sales made over the marketplace on behalf of a marketplace seller. (See 35 ILCS 120/2-12(7).)
- c) Marketplace facilitators required to remit State and local retailers' occupation tax for their own sales to Illinois purchasers, or sales for which they are considered the seller because the marketplace seller is not identified (see Section 131.130(b)). On and after January 1, 2021,

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marketplace facilitators meeting either of the thresholds in Section 131.135(a)(1) or (a)(2) may incur either destination sourcing or origin sourcing on a sale to an Illinois purchaser. A marketplace facilitator is deemed to be engaged in the business of selling at either the Illinois location at which the inventory is located or at which the selling activities otherwise occur ("origin sourcing"). The location at which State and local retailers' occupation tax is incurred must be determined by applying the provisions of 86 Ill. Adm. Code 270.115(c) and (d). When a marketplace facilitator makes a sale to an Illinois purchaser that is fulfilled from inventory located outside Illinois and for which selling activities otherwise occur at a location outside Illinois (see 86 Ill. Adm. Code 270.115), it is deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

EXAMPLE 1: World of Spices operates a marketplace selling various spices on behalf of marketplace sellers. It meets the thresholds for tax remittance in Section 131.135(a)(1). Purchaser A places an order for Ceylon Cinnamon, Asafetida and Ajwain from Marketplace seller A. She requests delivery to her residence in Chicago, Cook County. World of Spices incurs State and local retailers' occupation taxes in effect at the location in Chicago to which the spices are shipped or delivered. Local occupation taxes would include the Regional Transportation Authority Retailers' Occupation Tax at the 1.25% rate, but would not include any additional local occupation taxes. (See subsection (f).)

EXAMPLE 2: A purchaser that resides in Chatham, Illinois, orders an espresso machine from a marketplace seller over a marketplace that meets the tax remittance threshold in Section 131.135(a)(2). The purchaser chooses an option to pick up the item at a Springfield, Illinois brick and mortar store that has partnered with the marketplace seller. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the Springfield store location.

EXAMPLE 3: Home Appliances is a brick and mortar store in Bloomington, Illinois that sells appliances. It recently became a marketplace seller on a large multinational marketplace that meets the threshold for tax remittance in Section 131.135(a). Home Appliances fills all orders made over the

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marketplace from its warehouse in Bloomington. Purchaser A orders a grilled cheese sandwich toaster over the marketplace and chooses delivery to his residence in Kankakee, Illinois. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the Kankakee location to which the grilled cheese sandwich maker was shipped or delivered.

EXAMPLE 4: Marketplace facilitator A operates a marketplace. It meets the tax remittance threshold of Section 131.135(a)(1). It makes sales of its own tangible personal property, as well as tangible personal property sold on behalf of marketplace sellers. It offers purchasers that pay it a yearly membership fee free and speedy delivery on selected items. Customer A in Champaign, Illinois, shops for a coffee grinder on the marketplace and compares similar products sold by Marketplace facilitator A and Marketplace seller B. He decides to purchase the product sold by Marketplace facilitator A because he has paid membership fees and receives faster delivery. Marketplace facilitator A does not engage in any selling activities in Illinois and fulfills the sale from a warehouse located in Missouri. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the location in Champaign where the coffee grinder is shipped or delivered.

EXAMPLE 5: The facts for this example are the same as for EXAMPLE 4. However, the marketplace facilitator fulfills the order from a warehouse located in Kankakee, Illinois. In this example, Marketplace facilitator A incurs State and local retailers' occupation taxes in effect at the location of the warehouse in Kankakee from which the order was fulfilled.

- d) Remote retailers required to remit State and local retailers' occupation tax on sales made to Illinois purchasers. *On and after January 1, 2021, remote retailers meeting either of the tax remittance thresholds in Section 131.115(a) of this Part are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser.* [35 ILCS 120/2-12(6)]

EXAMPLE 1: Vichy Vines is a vintner in the Columbia River Valley that holds an Illinois Liquor Control Commission Winery Shipper's License and sells wine to Illinois purchasers over its website. It has no physical presence in

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Illinois and meets the tax remittance threshold of Section 131.115(a)(1). Consequently, for purposes of tax imposed under [the](#) ROTA, it is deemed to be engaged in the business of selling at the Illinois location to which its wine is shipped or delivered or at which possession is taken by the purchaser. Vichy Vines sells a case of its best grenache to an Illinois purchaser and delivers it to an address in Chicago, Cook County. Vichy Vines incurs all State, municipal, county, and special district retailers' occupation taxes in effect at the location to which the wine is shipped or delivered.

EXAMPLE 2: Katy is an artist in Los Angeles that sells her jewelry through the Etc.com marketplace, as well as through her own website. Etc.com is a marketplace facilitator that meets the tax remittance threshold of Section 131.135(a)(2). Tax on all sales Katy makes over Etc.com must be reported and remitted by Etc.com as required in subsection (b). Katy must next determine if she has tax liability for sales made through her own website. In making this determination, Katy should not include either the gross receipts from, or transactions made to, Illinois purchasers over Etc.com. Katy has no physical presence in Illinois, so she is considered a remote retailer. If she determines that she meets either of the tax remittance thresholds of Section 131.115(a), she is considered to be a retailer engaged in the business of selling at the Illinois location to which her jewelry is shipped or delivered or at which possession is taken by [the](#) purchaser. She incurs State and local retailers' occupation taxes in effect at the different Illinois locations to which her jewelry is shipped or delivered or at which possession is taken by the purchaser. Alternatively, if Katy determines that she does not meet either of the thresholds in Section 131.115(a), she is not required to register and remit taxes (however, she is required to monitor her selling activities to determine, on a quarterly basis, if she meets either of the tax remittance thresholds). If she does not meet either of the thresholds, she may, however, voluntarily register to collect and remit Use Tax as a courtesy to her Illinois purchasers, since those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. (See 86 Ill. Adm. Code 150.805 for additional information.)

- e) [Until January 1, 2025](#) - Out-of-State Sellers with a Physical Presence in Illinois. Out-of-State sellers with a physical presence in Illinois are not remote retailers. However, they are "retailers maintaining a place of business in Illinois" under Section 2 of the Use Tax Act. As a result, [until](#)

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January 1, 2025, they generally incur only a Use Tax collection obligation (6.25%) on sales made to Illinois purchasers from locations outside Illinois. However, if sales are made to Illinois purchasers from locations in Illinois, State and local retailers' occupation tax is incurred at the rate in effect where the selling activities occur ("origin sourcing") (see 86 Ill. Adm. Code 270.115(c) and (d) to determine the location at which State and local retailers' occupation taxes are incurred). This selling frequently occurs when sales made to Illinois purchasers are filled from inventory located in Illinois.

~~EXAMPLE 1: Company A is a sushi restaurant supply company headquartered in San Francisco. It routinely sends representatives to Illinois to market supplies to sushi restaurants. All of its sales to Illinois purchasers are filled from inventory in Oakland, California. The representatives make no sales from locations in Illinois. Company A is not a remote retailer because it has a physical presence in Illinois due the activities of its sales representatives. It is required to register to collect and remit Use Tax (6.25%) on its sales to Illinois purchasers.~~

~~EXAMPLE 2: DanubeDeliveries.com is an affiliate of a large multinational marketplace facilitator. The facilitator meets either of the tax remittance thresholds of Section 131.135(a) and so is required to remit State and local retailers' occupation tax for sales made on behalf of marketplace sellers on the marketplace. DanubeDeliveries.com sells 35% of its products over the marketplace, and these sales are fulfilled from a warehouse of the marketplace facilitator located in Monee, Illinois. The remaining 65% of its sales to Illinois purchasers are made outside Illinois. Because DanubeDeliveries.com is an affiliate of the marketplace facilitator, it is not considered a marketplace seller. As a result, the marketplace facilitator is not authorized to remit tax on sales made over the marketplace on behalf of DanubeDeliveries.com, as it does for all its marketplace sellers. It may, however, collect the tax and send it to DanubeDeliveries.com to remit to the Department, or, if the marketplace facilitator has obtained certification as a GSP or CAS, it may assist DanubeDeliveries.com in filing its returns and performing other tax functions, as provided in Section 131.160 or 131.165. DanubeDeliveries.com must next determine its tax obligations. In making this determination, it must first consider whether it is a remote retailer. It is not considered a remote retailer because it has a physical presence in Illinois due to inventory in Monee, Illinois, from which Illinois purchases are~~

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~~fulfilled. As a result, it incurs two different types of tax liability on its sales. It incurs State and local retailers' occupation tax at the rate in effect in Monee, Illinois for sales made to Illinois purchasers that are fulfilled from inventory in Monee ("origin sourcing"). For all sales made to Illinois purchasers from outside Illinois, DanubeDeliveries.com is required to collect and remit Illinois Use Tax (6.25%). DanubeDeliveries.com must register to report and remit tax on all its sales, including those made over the marketplace.~~

- f) ~~On and after January 1, 2025 – Retailers Maintaining a Place of Business in this State with a Physical Presence in Illinois. Under Section 2 of the Retailers' Occupation Tax Act, retailers maintaining a place of business in this State with a physical presence in Illinois incur State and local retailers' occupation taxes at the address to which their products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing") on sales made to Illinois purchasers from locations outside Illinois. However, if sales are made to Illinois purchasers from locations in Illinois, State and local retailers' occupation tax is incurred at the rate in effect where the selling activities occur ("origin sourcing") (see 86 Ill. Adm. Code 270.115(c) and (d) to determine the location at which State and local retailers' occupation taxes are incurred). This selling frequently occurs when sales made to Illinois purchasers are filled from inventory located in Illinois.~~

~~EXAMPLE 1: Company A is a sushi restaurant supply company headquartered in San Francisco. It routinely sends representatives to Illinois to market supplies to sushi restaurants. All of its sales to Illinois purchasers are filled from inventory in Oakland, California. The representatives make no sales from locations in Illinois. Company A is not a remote retailer because it has a physical presence in Illinois due the activities of its sales representatives. Until January 1, 2025, Company A is required to register to collect and remit Use Tax (6.25%) on its sales to Illinois purchasers. On and after January 1, 2025, Company A is required to register and remit applicable State and local retailers' occupation tax at the rate in effect at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").~~

~~EXAMPLE 2: DanubeDeliveries.com is an affiliate of a large multinational marketplace facilitator. The facilitator meets either of the tax remittance thresholds of Section 131.135(a) and so is required to remit State and local~~

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retailers' occupation tax for sales made on behalf of marketplace sellers on the marketplace. DanubeDeliveries.com sells 35% of its products over the marketplace, and these sales are fulfilled from a warehouse of the marketplace facilitator located in Monee, Illinois. The remaining 65% of its sales to Illinois purchasers are made outside Illinois. Because DanubeDeliveries.com is an affiliate of the marketplace facilitator, it is not considered a marketplace seller. As a result, the marketplace facilitator is not authorized to remit tax on sales made over the marketplace on behalf of DanubeDeliveries.com as it does for all its marketplace sellers. It may, however, collect the tax and send it to DanubeDeliveries.com to remit to the Department, or, if the marketplace facilitator has obtained certification as a CSP or CAS, it may assist DanubeDeliveries.com in filing its returns and performing other tax functions, as provided in Section 131.160 or 131.165. DanubeDeliveries.com must next determine its tax obligations. In making this determination, it must first consider whether it is a remote retailer. It is not considered a remote retailer because it has a physical presence in Illinois due to inventory in Monee, Illinois, from which Illinois purchases are fulfilled. As a result, until January 1, 2025, it incurred two different types of tax liability on its sales. It incurred State and local retailers' occupation tax at the rate in effect in Monee, Illinois for sales made to Illinois purchasers that are fulfilled from inventory in Monee ("origin sourcing"). For all sales made to Illinois purchasers from outside Illinois, until January 1, 2025, DanubeDeliveries.com was required to collect and remit Illinois Use Tax (6.25%). On and after January 1, 2025, DanubeDeliveries.com still incurs two different types of tax liability on its sales. It continues to incur State and local retailers' occupation tax at the rate in effect in Monee, Illinois for sales made to Illinois purchasers that are fulfilled from inventory in Monee ("origin sourcing"). For all sales made to Illinois purchasers from outside Illinois, DanubeDeliveries.com incurs State and local retailers' occupation tax at the rate in effect at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing"). DanubeDeliveries.com must register to report and remit tax on all its sales, including those made over the marketplace.

- g) Retailers that are required to remit State and local retailers' occupation taxes on their sales to Illinois purchasers generally incur no local retailers' occupation taxes on sales of tangible personal property subject to the preferential low 1% rate, since most local taxing jurisdictions lack authority

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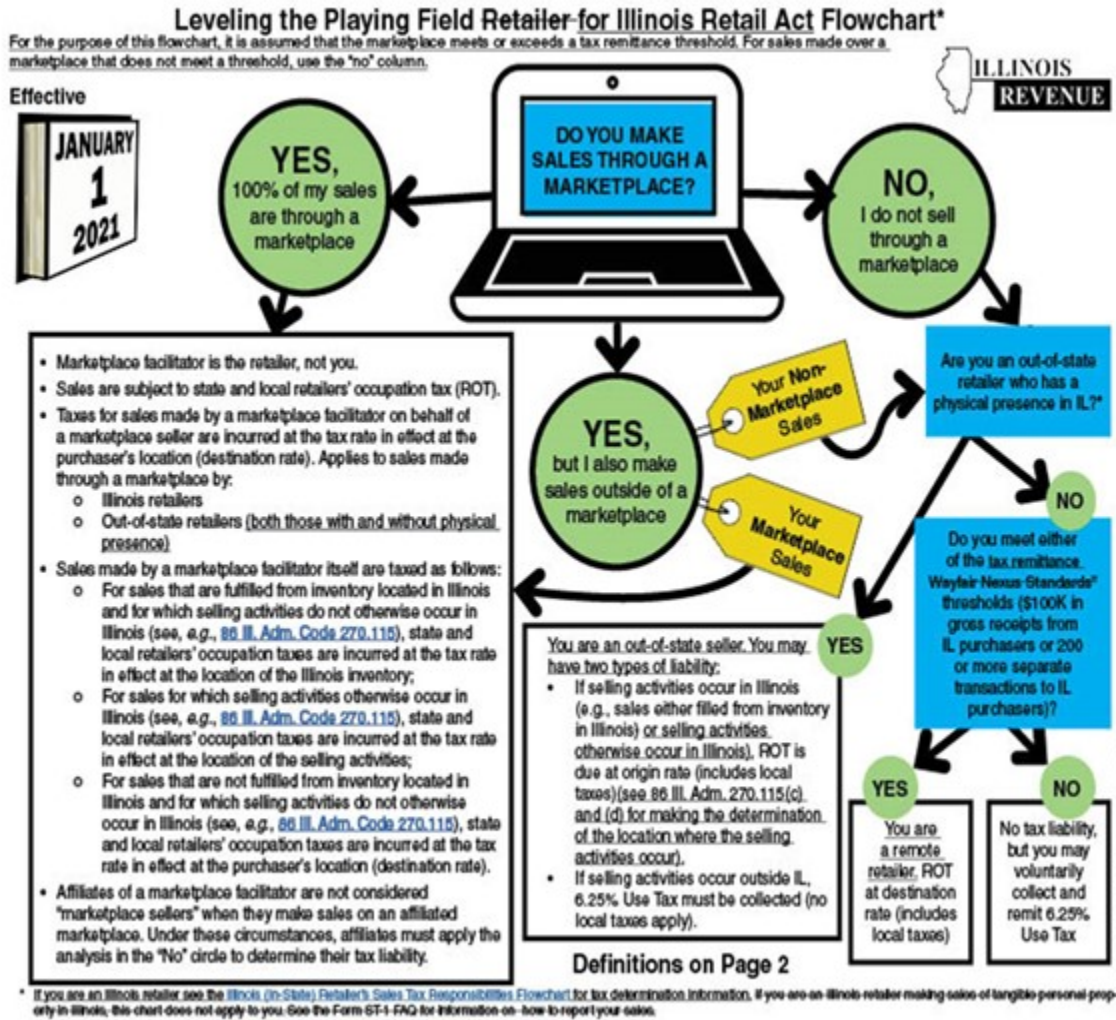
to impose tax on those items. (See 86 Ill. Adm. Code 270.101.) However, certain units of local government (i.e., transportation districts) are authorized to impose tax on these items. (See 86 Ill. Adm. Code 320.101. For detailed information, see the Illinois Tax Rate Finder on the Department's website.)

(Source: Amended at 49 Ill. Reg. _____, effective _____)

**Section 131.ILLUSTRATION A: Leveling the Playing Field Retailer Flowchart –
Provisions Controlling from January 1, 2021 through December 31, 2024**

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

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Definitions

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

"Marketplace facilitator" means a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a retail sale by an unrelated third-party marketplace seller by:

1. Listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under this Retailers' Occupation Tax Act; and
2. Either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in paragraph (2) of this definition of "marketplace facilitator". [35 ILCS 120/1]

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

"Marketplace seller" means a person that makes sales through a marketplace operated by an unrelated third party marketplace facilitator. A person that is an affiliate of a marketplace facilitator is not a marketplace seller. [35 ILCS 120/1]

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

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

"Destination rate" means the total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. [35 ILCS 120/2-12]

"Origin rate" means the total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the Illinois location at which the sales are determined to occur. [e.g. 86 Ill. Adm. Code 270.115]

"Out-of-state seller" means a seller located outside Illinois that has a physical presence, as defined below.

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

For other forms of physical presence, see 35 ILCS 105/2 (1.1) and (1.2).

"Remote retailer" means a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a "remote retailer". [35 ILCS 120/1]

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

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

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

(Source: Amended at 49 Ill. Reg. _____, effective _____)