

When a donor possesses or has the ability to exercise control over tangible personal property in Illinois and gives the property away for free, the donor has made use of the property in Illinois and is subject to Use Tax on the cost price of the property. See 86 Ill. Adm. Code 150.305(c). When tax is properly due and paid in another state on tangible personal property shipped into Illinois and tax is also due in Illinois, the taxpayer may credit the amount of the tax paid in the other state on its return in determining its Illinois Use Tax liability. See 86 Ill. Adm. Code 150.310(a)(3). Remote retailers who maintain inventory at the location of a marketplace facilitator in Illinois that is only used to fulfill sales through a marketplace that meets the tax remittance threshold do not have physical presence nexus based on that inventory being in Illinois. See 86 Ill. Adm. Code 131.105. (This is a GIL).

June 12, 2026

NAME
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated April 8, 2026, 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.

INQUIRY:

June 12, 2026

COMPANY respectfully requests guidance regarding the application of Illinois' use tax rules involving inventory purchased free of sales tax that is withdrawn and given away across state lines. We also request guidance on Illinois' consideration of physical nexus involving inventory owned by a remote seller, but held and controlled by third-party marketplace facilitators.

COMPANY is a private accounting firm specializing in sales and use tax compliance and consulting. Our clients are located throughout the United States, and the majority engage in interstate commerce. While we have reviewed available resources and informal guidance, we have encountered varying interpretations concerning the issues outlined below. To ensure accurate compliance and proper advice to our clients, we seek official guidance directly from Illinois.

Specifically, we request clarification regarding the following matters:

1. If inventory is withdrawn from within Illinois and shipped to another state for promotional or giveaway purposes (i.e. not sold), does Illinois consider the use tax due to Illinois?
2. If inventory is withdrawn from another state and is shipped into Illinois for promotional or giveaway purposes, does Illinois consider use tax due to Illinois?
3. If Illinois determines that use tax is due to Illinois, but the use tax has already been paid to the other state that the inventory was shipped-to or withdrawn from, would Illinois allow a credit for use tax legally paid to the other jurisdiction?
4. In the event that both states assert that use tax is due and no tax has yet been remitted, how does Illinois determine which state gets priority? Would Illinois consider themselves to have priority, or would Illinois consider the other state to have priority?
5. Does inventory owned by a remote seller but stored and controlled within Illinois by a third-party marketplace facilitator create physical nexus for the remote seller in Illinois?

We do not propose any redactions should Illinois elect to publish this correspondence and any related response, other than the removal of names and addresses as appropriate.

We appreciate your time and consideration of these questions and look forward to the Department's written guidance. For any questions, please contact NAME at EMAIL or NAME1 at EMAIL1.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. See 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.401. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. See 86 Ill. Adm. Code 150.130(b). If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department. See 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.701(a).

Questions 1 and 2

Donors who purchase tangible personal property and give it away in Illinois make a taxable use of the donated property, even though the donation was not a sale at retail. See 86 Ill. Adm. Code 150.305(c). "Use" is defined as the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. See 35 ILCS 105/2; 86 Ill. Adm. Code 150.201. The donee in a gift situation is not a taxable user, the donor who purchases the property and gives it away makes a taxable use of the property when making such a gift. See 86 Ill. Adm. Code 150.305(c).

If the donor's use occurs in Illinois, the donor incurs Use Tax liability on the cost price of the gifted property. A donor who ships or mails tangible personal property from Illinois to another State may incur Use Tax liability. If a donor possesses tangible personal property in Illinois for gift purposes, the donor has made a taxable use of the property in Illinois and is subject to Use Tax on the cost price of the property, even if the donor ships or mails that tangible personal property from Illinois to its agent in another State to give away or directly to a donee in another State. See 86 Ill. Adm. Code 150.305(c). When the donor ships or mails the tangible personal property to its agent in another State to give away, the donor may also be subject to use tax imposed by the receiving State. In that case, because Illinois's Use Tax was incurred when the donor purchased and possessed the property in Illinois, before the use tax was incurred in the other State, the donor could offset its use tax liability in the receiving State with its Illinois Use Tax. However, if the donor does not possess the tangible

personal property in Illinois prior to shipping or mailing it to its agent in another State to give away or directly to a donee in another State, e.g., the donor purchases the tangible personal property but never takes possession in Illinois and instead instructs the seller to ship or mail the tangible personal property to its agent in the receiving State or directly to a donee in the receiving State, the donor has not made use of the tangible personal property in Illinois, and is not subject to Illinois Use Tax on the donation of the property.

If tangible personal property is shipped or mailed into Illinois from an out-of-State location and the donor retains any control of the property in Illinois, e.g., the donor ships or mails the property to its agent in Illinois to give away to donees or the donor ships or mails the property directly to donees in Illinois but retains the power to recall the property after it has entered Illinois, the donor has made a taxable use of the property in Illinois, and is subject to Use Tax liability on the cost price of the property. See 86 Ill. Adm. Code 150.305(c). Converse to the scenario above where tangible personal property is shipped or mailed from Illinois to another State, the donor could offset its Illinois Use Tax liability with any use tax incurred in the other State before Illinois Use Tax was incurred. See 86 Ill. Adm. Code 150.310(a)(3). However, if the donor does not retain any control over the property in Illinois, e.g., when a donor ships or mails tangible personal property directly to a donee in Illinois without retaining the power to recall the property after it has entered Illinois, even though it is donating the tangible personal property to Illinois recipients, it has exercised no power or control over the property in Illinois, and has not made any taxable use of the property in Illinois. Thus, the donor is not subject to Illinois Use Tax liability.

Questions 3 and 4

When tax is properly due and paid in another state on tangible personal property shipped into Illinois and tax is also due in Illinois, the taxpayer may credit the amount of the tax paid in the other state on its return in determining its Illinois Use Tax liability. See 86 Ill. Adm. Code 150.310(a)(3). For other exemptions to avoid multi-state taxation, see 35 ILCS 105/3-55 and 86 Ill. Adm. Code 150.310. The Commerce Clause of the U.S. Constitution prohibits states from taxing interstate commerce. Illinois's Use Tax is a tax on the use of tangible personal property in Illinois. As such, Illinois's Use Tax cannot apply on the same use of tangible personal property as the use tax of another State; nor could another State's use tax apply on the use of tangible personal property in Illinois. If two states attempted to assert use tax liability on the same use of tangible personal property, one would necessarily be wrong. However, two states could tax the use of the same tangible personal property in their respective states. In that case, neither state is able to claim "priority" over the other, because each state is taxing a different thing, i.e., the use of tangible personal property in that state. In order to avoid multistate taxation, states' statutes and rules authorize deductions or credits for tax paid to another state on a given piece of tangible personal property. See 86 Ill. Adm. Code 150.310(a)(3).

Question 5

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:

A) 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

B) Either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller, regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

35 ILCS 120/1; 86 Ill. Adm. Code 131.130(a)(1).

Beginning January 1, 2026, 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, during the previous 12-month period, the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by the marketplace facilitator and marketplace sellers are \$100,000 or more. See 35 ILCS 120/2(c-5). A marketplace facilitator meeting the 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), (c). 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), 131.150(a).

A remote retailer is:

a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State

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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.

86 Ill. Adm. Code 131.105.

Remote retailers are subject to the same \$100,000 tax remittance threshold as marketplace facilitators for their own sales outside of a marketplace. When a remote retailer meets the tax remittance threshold, the 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. See 86 Ill. Adm. Code 131.110(a). A retailer that fulfills any orders from its inventory in Illinois is not a remote retailer and has physical presence nexus in Illinois. See 86 Ill. Adm. Code 131.105. However, as of 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 the tax remittance threshold because the marketplace facilitator is considered the retailer with respect to sale over the marketplace. See 86 Ill. Adm. Code 131.105.

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

Very truly yours,

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