

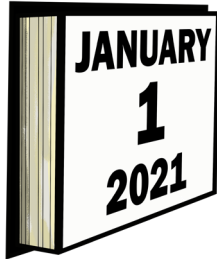
Leveling the Playing Field for Illinois Retail Act Flowchart

Illinois retailers should refer to the [Illinois \(In-State\) Retailer's Sales Tax Responsibilities Flowchart](#) for tax determination information.

For the purpose of this flowchart, it is assumed that the marketplace meets or exceeds a tax remittance threshold. For sales made over a marketplace that does not meet a threshold, use the "no" column.



Effective

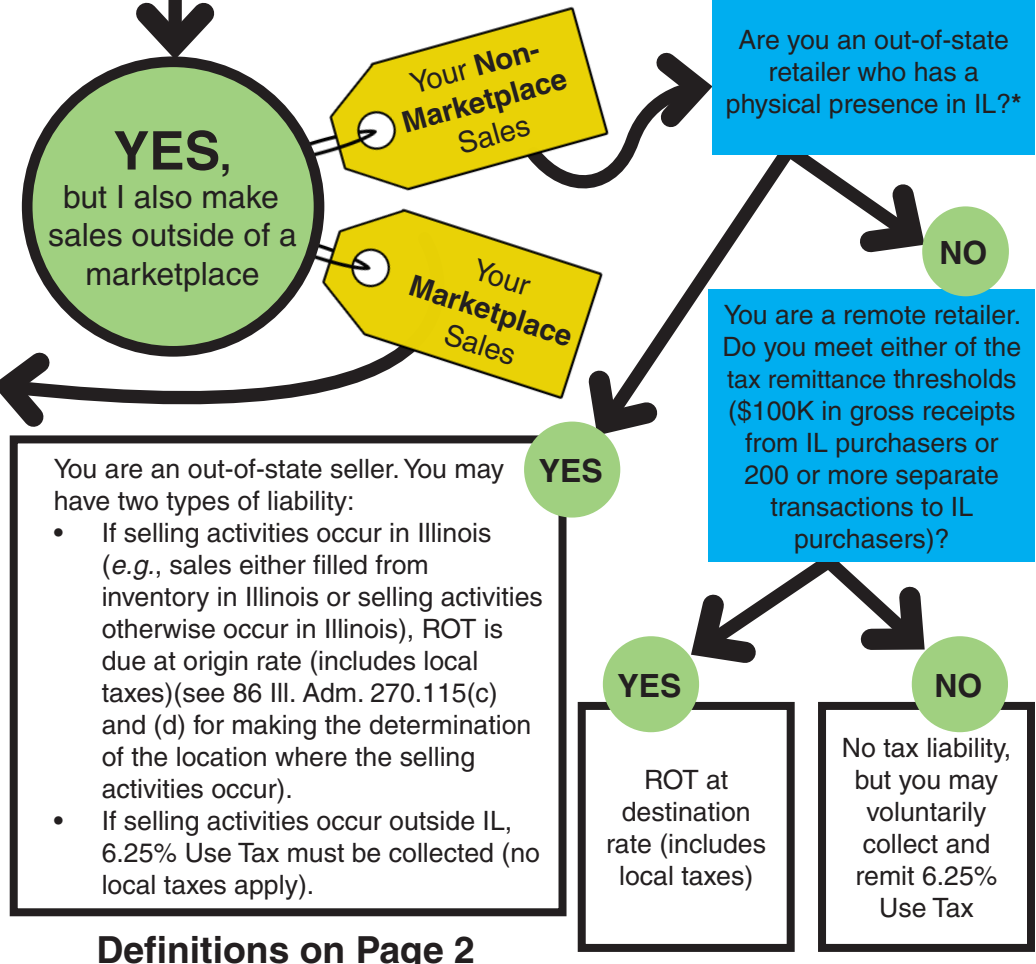


YES,
100% of my sales
are through a
marketplace



NO,
I do not sell
through a
marketplace

- Marketplace facilitator is the retailer, not you.
- Sales are subject to state and local retailers' occupation tax (ROT).
- Taxes for sales made by a marketplace facilitator on behalf of a marketplace seller are incurred at the tax rate in effect at the purchaser's location (destination rate). Applies to sales made through a marketplace by:
 - Illinois retailers
 - Out-of-state retailers (both those with and without physical presence)
- Sales made by a marketplace facilitator itself are taxed as follows:
 - For sales that are fulfilled from inventory located in Illinois and for which selling activities do not otherwise occur in Illinois (see, e.g., [86 Ill. Adm. Code 270.115](#)), state and local retailers' occupation taxes are incurred at the tax rate in effect at the location of the Illinois inventory;
 - For sales for which selling activities otherwise occur in Illinois (see, e.g., [86 Ill. Adm. Code 270.115](#)), state and local retailers' occupation taxes are incurred at the tax rate in effect at the location of the selling activities;
 - For sales that are not fulfilled from inventory located in Illinois and for which selling activities do not otherwise occur in Illinois (see, e.g., [86 Ill. Adm. Code 270.115](#)), state and local retailers' occupation taxes are incurred at the tax rate in effect at the purchaser's location (destination rate).
- Affiliates of a marketplace facilitator are not considered "marketplace sellers" when they make sales on an affiliated marketplace. Under these circumstances, affiliates must apply the analysis in the "No" circle to determine their tax liability.



You are an out-of-state seller. You may have two types of liability:

- If selling activities occur in Illinois (e.g., sales either filled from inventory in Illinois or selling activities otherwise occur in Illinois), ROT is due at origin rate (includes local taxes)(see 86 Ill. Adm. 270.115(c) and (d) for making the determination of the location where the selling activities occur).
- If selling activities occur outside IL, 6.25% Use Tax must be collected (no local taxes apply).

Definitions on Page 2

* If you are an Illinois retailer see the [Illinois \(In-State\) Retailer's Sales Tax Responsibilities Flowchart](#) for tax determination information.

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 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”. [\[35 ILCS 120/1\]](#)

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. [\[86 Ill. Adm. Code 131.105\]](#)

“Tax remittance thresholds” means the nexus standards established by Illinois [P.A. 100-587](#) and used to determine tax collection obligations for remote retailers that meet specific selling thresholds but have no physical presence in the state. These standards are based on the Supreme Court case, *South Dakota v. Wayfair, Inc.*, No. 17-494 (U.S. June 21, 2018) and are virtually identical to those upheld in the *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](#).**