

# Compliance Alert -

## Compliance and Reporting Issues for Form ST-1, Sales and Use Tax Return



June 2021

### Compliance Problem

The Illinois Department of Revenue (IDOR) has identified a large number of retailers who filed Form ST-1 returns for periods after January 1, 2021, with sales amounts reported only on lines 6a and 7a, the lines used to report tax on sales subject only to Illinois Use Tax. These retailers may not be properly assessing, collecting, remitting, and reporting Illinois taxes on some or all of their sales. Some of their sales may be subject to Retailers' Occupation Tax at the origin rate or destination rate, depending on the specifics of each sale.

### Tax Rates

The **use tax rate** for general merchandise is a flat rate of 6.25%. The use tax rate for qualifying food, drugs, and medical appliances is a flat rate of 1%.

The sales tax **origin rate** is 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. [see, e.g., [86 Ill. Adm. Code 270.115](#)]

The sales tax **destination rate** is 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](#)]

**NOTE:** The **origin rates** and **destination rates** for general merchandise sales may be higher than the use tax rate due to local taxes that may be included in sales subject to retailers' occupation tax.

### Retailers

An **Illinois (in-state) retailer** (e.g., brick and mortar) is a retailer who makes sales of tangible personal property in Illinois. An Illinois retailer's inventory and headquarters are generally in Illinois. They must collect and remit state and local retailers' occupation tax at the origin rate.

An **out-of-state seller** is an out-of-state retailer who has physical presence in Illinois. 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 Illinois 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 \(1.2\)](#). Out-of-state sellers must determine on a sale-by-sale basis if their selling activities take place in Illinois or not.

- If selling activities occur in Illinois (for example, sales are filled from inventory in Illinois or other selling activities occur in Illinois; see, e.g., [86 Ill. Adm. Code 270.115](#)), then state and local retailers' occupation tax is calculated using the origin rate for that sale.
- If selling activities occur outside Illinois, then use tax must be collected and remitted for that sale.

A **remote retailer** is an out-of-state retailer with no physical presence in Illinois who meets a tax remittance threshold of

- \$100,000 or more in cumulative gross receipts from sales of tangible personal property to purchasers in Illinois; or
- 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

A remote retailer shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets or exceeds either threshold for the preceding 12-month period. If the remote retailer meets or exceeds either threshold for a 12-month period, it is required to collect and remit all applicable state and local retailers' occupation tax administered by IDOR on all retail sales to Illinois purchasers and to file all applicable returns for one year. Remote retailers must collect and remit state and local retailers' occupation tax at the destination rate.

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.

A **marketplace seller** is 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.

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:

- 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 (ROT); 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.

Marketplace facilitators must determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets or exceeds a tax remittance threshold for the preceding 12-month period. The tax remittance thresholds are:

- \$100,000 or more in cumulative gross receipts from sales of tangible personal property to purchasers in Illinois; or
- 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

Marketplace facilitators meeting a tax remittance threshold must then determine on a sale-by-sale basis if the sale through their marketplace is a sale on behalf of a marketplace seller or their own sale.

- 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). This applies to sales made through a marketplace by:
  - Illinois retailers
  - Out-of-state retailers (with or without physical presence)
- Sales made over the marketplace 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 (origin rate);
  - 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 (origin rate);

- 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).

## Background

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The Illinois sales tax structure imposes two separate but complementary taxes upon the sale and use of tangible personal property. The Illinois Retailers' Occupation Tax is an occupation tax imposed upon retailers selling tangible personal property. The Illinois Use Tax is a privilege tax imposed upon the privilege of using, in Illinois, tangible personal property purchased at retail from a retailer.

Retailers are liable for state and local retailers' occupation tax (sales tax) based on their gross receipts of tangible personal property sold. Retailers are also statutorily required to collect use tax from their customers. This use tax collection reimburses the retailer for their sales tax liability. If the use tax is not collected by the retailer, the customer is required to pay it directly to the state of Illinois.

Illinois retailers are subject to sales tax at the origin rate on gross receipts from sales made in Illinois. Sales subject to sales tax must be reported on the "Sales from locations within Illinois" lines (lines 4a and 5a) of the Illinois Form ST-1. Illinois retailers are only subject to use tax when they purchase items that they will use in Illinois and did not pay taxes for that purchase to the seller. They would report these purchases on the "Tax on Purchases" lines (lines 12a and 13a).

An out-of-state seller's sales have always been subject to either sales tax at the origin rate (when their selling activities for a sale occur in Illinois) or use tax (when their selling activities for a sale do not occur in Illinois). Sales subject to sales tax must be reported on the "Sales from locations within Illinois" lines (lines 4a and 5a) of the Illinois Form ST-1. Sales subject to use tax are reported on the "Sales from locations outside Illinois" lines (lines 6a and 7a).

The Leveling the Playing Field for Illinois Retail Act made significant changes to the Retailers' Occupation Tax Act for remote retailers, marketplace sellers, and marketplace facilitators. The Act, which went into effect on January 1, 2021, was enacted to address the tax rate differences between Illinois retailers (subject to sales taxes) and out-of-state retailers (generally only subject to use tax) by imposing state and local retailers' occupation taxes on both. The increased tax revenues resulting from the Act not only benefit the state of Illinois, but also local counties and municipalities.

Under the Leveling the Playing Field for Illinois Retail Act, remote retailers who meet or exceed one of the tax remittance thresholds must remit sales tax on sales of tangible personal property made into Illinois using the destination rate. Marketplace facilitators who meet or exceed one of the tax remittance thresholds are liable for the sales made over the marketplace by marketplace sellers and must collect and remit sales tax at the destination rate for those sales. In addition, a marketplace facilitator's own sales over the marketplace are subject to sales tax either at the origin rate (when their selling activities for a sale are fulfilled from within Illinois (see, e.g., [86 Ill. Adm. Code 270.115](#))) or at the destination rate (when their selling activities for a sale are not in Illinois). Destination rate sales, as well as origin rate sales, must be reported on the "Sales from locations within Illinois" lines (lines 4a and 5a) of the Illinois Form ST-1. Prior to January 1, 2021, out-of-state retailers with physical presence, out-of-state retailers without physical presence who met or exceeded a tax remittance threshold discussed above, and marketplace facilitators (who made sales on behalf of marketplace sellers, or their own sales with no selling activity in Illinois) were only required to remit use tax on sales to Illinois purchasers and reported them on the "Sales from locations outside Illinois" lines (lines 6a and 7a).

## Solution

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Retailers should review their sales and filing records to ensure they are meeting their tax collection and remittance requirements. Retailers who do not comply with the proper tax collection and remittance requirements can face additional penalties and interest.

Retailers should also ensure that they are reporting sales to the proper taxing jurisdiction. For those required to remit sales tax at the destination rate, this would include determining the correct state and local tax amounts to collect and remit based on the address of the purchaser or delivery, registering the taxing location to your account, and correctly completing the Form ST-2, Multiple Site Form. Failure to properly report the correct taxing jurisdiction results in misappropriation of revenue to local governments. Retailers who incorrectly report taxing jurisdictions may be subject to additional tax at the proper rate, late payment penalties, and interest associated with the tax.

Retailers who are not collecting and filing properly must correct their actions immediately. For any return previously filed incorrectly, an amended return must be filed to correct any errors and discrepancies. Any additional payments, due as a result of changes made to previously filed returns, should also be submitted.

## Questions

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For questions regarding the new requirements, email: [rev.CSPCAS@illinois.gov](mailto:rev.CSPCAS@illinois.gov)

For additional information, visit the:

- [Sales and Use Taxes Tax Information page](#)
- [Resource Page for the Leveling the Playing Field for Illinois Retail Act](#)

If you have questions regarding this compliance alert, contact us at 1 800 732-8866 or 217 782-3336.