

This provides information regarding Retailers' Occupation Tax Collection operation of Marketplace Facilitators. See 86 Ill. Adm. Code 131. (This is a GIL.)

July 29, 2021

Dear NAME:

This letter is in response to your letter received September 28, 2020, 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 www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

RE: Sales Tax -BUSINESS Marketplace Facilitator

To Whom It May Concern,

We are a public accounting firm with a number of sales tax clients. Some of our clients are interested in selling their products on BUSINESS by becoming Marketplace Facilitators. This letter is a request for documentation on how to proceed with filing and paying the local city and/or county sales tax for our clients that is above the Illinois sales tax of 6.25%, which the state requires BUSINESS to collect, file and pay on behalf of our clients.

Please feel free to contact me or my staff at PHONE# if you require further details. We appreciate your time.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Cod 130.101. 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 86 Ill. Adm. Code 150.101. These taxes comprise what is

commonly known as “sales tax” in Illinois. Purchases of tangible personal property are subject to Illinois sales tax unless a purchase qualifies for an exemption under Illinois law.

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 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. 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; 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. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105, amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021, for a maximum of 150 days. A marketplace seller is a person who 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. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

Beginning January 1, 2021, a marketplace facilitator, as defined above, is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of following thresholds is met:

- 1) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by the marketplace facilitator and by marketplace sellers are \$100,000 or more; or
- 2) The marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

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

A marketplace facilitator meeting both of these thresholds, 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 over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. See 86 Ill. Adm. Code 131.145(a) and 131.145(c). Further, marketplace facilitators are subject to audit on all such sales. Section 131.145(c)

Generally, 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

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from the marketplace facilitator. See 86 Ill. Adm. Code 131.145(b) and 131.150(a). The marketplace facilitator would be liable for the applicable taxes on these sales unless the marketplace seller provides it with incorrect information. See Section 131.145(d). The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace facilitator and the marketplace seller on the same transaction. See 35 ILCS 120/2(h); 86 Ill. Adm. Code 131.145(k); 86 Ill. Adm. Code 131.150(h).

Please note that the rules established under 86 Ill. Adm. Code 131 apply only to the remittance of State Retailers' Occupation Tax and local retailers' occupation taxes administered by the Department. Marketplace sellers 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. See 86 Ill. Adm. Code 131.107(c), amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021, for a maximum of 150 days.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Alexis K. Overstreet
Associate Counsel

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