

ST 25-0032-GIL 05/28/2025 MARKETPLACE FACILITATORS

Generally, if a customer is directed to a seller's website on a platform from a code or link for that seller and the platform does not allow a customer to search or browse for other sellers for the same or different product, the platform is not acting as a marketplace facilitator. 86 Ill. Adm. Code 131.130. (This is a GIL).

May 28, 2025

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated February 5, 2025, 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. In your letter you have stated and made inquiry as follows:

I am requesting a general information letter ruling pursuant to 2 Illinois Administrative Code 1200.120 on behalf of a client of mine. The Client would like to know if Illinois considers it to be a marketplace facilitator under Ill. Admin. Code 131.130(a)(1).

Background - the Company's current product:

We have a client (the "Company") that started 15 years ago as an online tool for local, independent photography studio businesses (the "photographers") to convert paper order forms from customers to electronic versions of those forms for the photographer's own business. This helped photographers digitize their paper order taking. The Company's customers are the

photographers. Then and now, the photographers' primary customers are parents purchasing school or sports photos of their children.

The Company then added the ability for parents to view images of their child and choose their favorite images online through an individual photographer-centric website (the "Website"). As a result, parents can now choose a particular print package they want to purchase from the photographer. Photographer chooses what products to offer and sets pricing, coupons, and discounts for all products. The Company offered the ability for the photographers to add secure credit card information to the checkout section of the Website to improve the workflow and security for recurring customers. Over time, the Company has added tools to the Website for photographers to be able to setup email and text for automatic communications, based on customer actions. This is the current product offering of the Company to its photographer customers. Parents can only view images of their child and cannot "shop around" or view any products for other children or purchase products from other photographers.

For 90% of all orders, online consumer orders are communicated via the Website to the photographers, who receive payment for the orders. The photographers then decide if they will print the photos in house or if they will submit the product orders to a wholesale company to fulfill. The photographers determine their own sales tax liability, collect, and remit appropriate sales tax. Each photographer's customer base through the Website is largely his/her own geographical footprint, as he/she is the one physically taking the pictures on site for schools and sports clubs.

For the remaining 10% of orders, the Company sets up simple a la carte products that can be automatically fulfilled for the photographers to their clients. An example of this is a single 8x10 print, a button, or a pre-defined package of 2-5 photo prints from an image.

Again, parents can only view images of their child and cannot "shop around" or view any products for purchase for other photographers, or of other children from another event. The Website has specific parameters so individual customers can only view specific products related to their child through a unique URL, customer code, or QR code.

The Company's future product:

The Company's customers (the photographers) want to reduce the handling for their photography orders. Therefore, the photographers are asking the

Company to expand the tools for automation, payment processing, record keeping automated communication, and order fulfillment. Because the Company's current platform doesn't have the infrastructure to accomplish everything they are requesting, it is in the process of building its next generation of photographer e-commerce platform.

The features of this new cloud platform build on the existing platform and include the following:

- Ability for the photographer to setup his/her own sub domain and unique branding of web pages. The Company is successful if the photographer's customers don't know the Company's platform exists- instead, each consumer perceives the platform as the photographer's own website.
- Photographer chooses from 5-7 pre-defined sales experiences for their clients.
- Photographer configures the products he/she wishes to sell into price lists.
- Photographer sets up a sub domain to his/her unique URL for each organization he/she is photographing giving that organization a common place to go for the different events being photographed throughout the year.
- Photographer sets pricing, coupons and discounts.
- Platform provides tools for photographer to charge the consumer and receive that money in his/her bank account.
- Photographer chooses from some recommended communication messages and profiles and customizes those messages to help reduce customer service calls to his/her small business.
- Ability for the photographer to configure the different packages and products he/she sells and tell the platform which elements are photography services, which are digital images, and which are physical products, so the appropriate state sales tax rules can be applied.

- The photographer can choose which orders and products he/she wishes to fulfill after going back to the studio for additional artworks and which orders and products will be automatically fulfilled.
- Tools for the photographer's customer service employee to log in view orders, and send messages to clients.
- Reports to help the photographer see sales trends and automated communication responses, which will help him/her make informed decisions to improve customer service and sales.
- The Company charges a subscription fee and a commission on sales to pay for the cloud platform of tools.

The platform does not and will not, allow:

- Multivendor marketplace where multiple vendors can sell to one customer.
- Photographer search - the photographer must provide clients his unique URL.
- Consumers to shop across a marketplace of sellers. A single URL exists for a single business.

Questions:

- Is the Company's current website considered a marketplace for marketplace facilitator sales tax purposes pursuant to Ill. Admin. Code 131.130(a)(1)?
- Is the Company's new platform considered a marketplace for marketplace facilitator sales tax purposes pursuant to Ill. Admin Code 131.130(a)(1)?
- We believe some photographers will prefer to continue to collect and remit sales tax, while others will prefer to have the Company manage this complexity for them. Under current law, can the Company provide both options for them?
- Have there been any changes in statutes or regulations, or can we expect upcoming guidance or clarification of the Department's

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position on marketplace facilitators that would change how a platform like this is viewed so the Company can build it with those requirements in mind?

I appreciate your attention to this matter. Please feel free to contact me at EMAIL or PHONE with any questions.

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. Code 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.

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 that 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:

- 1) Listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under 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. 86 Ill. Adm. Code 131.130(a)(1). Provision on a marketplace of functionality for connection to a payment mechanism meets these requirements. 86 Ill. Adm. Code 131.130(a)(1)(B).

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

A marketplace facilitator meeting both 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).

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. 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 86 Ill. Adm. Code 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 86 Ill. Adm. Code 131.145(l) and 131.150(h).

The Department has encountered various marketing and payment arrangements used by ecommerce businesses. Notably, the broad language of the statute and administrative rules discussing marketplace facilitators allows for its application to a wide variety of ecommerce businesses. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

A marketplace connects multiple third-party sellers with buyers. The multiple seller model is a key difference between an online marketplace and a traditional ecommerce online store. An ecommerce store typically has a single seller. In contrast, a marketplace connects multiple, unrelated third-party sellers with buyers. While it is possible that a platform which hosts multiple sellers would not be considered a "marketplace" for purposes of meeting the requirements under 86 Ill. Adm. Code 131.105 and 131.130, such instance would be an exception to the general rule and would be based on the specific facts of each case. Some considerations could include whether: 1) a vendor's setup on the platform functions as its own online store or website and is perceived as such by the public; 2) a vendor will have its own URL; 3) a vendor sells a unique product that could not be found in a normal product search through the marketplace (e.g. customers are parents purchasing school photos of their children); and 4) the platform does not function as a traditional multiple seller marketplace (e.g. the platform does not allow multiple sellers to sell to a

customer). Generally, if a customer is directed to a platform from a code or link for a specified seller and the platform does not allow a customer to search or browse for other sellers for the same or different product, the platform is not acting as a marketplace facilitator.

As to the tax filing requirement, effective January 1, 2021, a marketplace facilitator that meets either of the thresholds in 86 Ill. Adm. Code 131.135(a) is considered a retailer engaged in the occupation of selling at retail in Illinois and is liable for all applicable State and local retailers' occupation taxes administered by the Department on all sales to Illinois purchasers made over the marketplace on behalf of marketplace sellers. See 35 ILCS 120/2(c). Marketplace sellers may not elect to collect and remit tax liability for their own sales made over a marketplace facilitated by a qualifying marketplace facilitator. Further, if a marketplace facilitator does not meet a threshold, it is not considered a retailer for sales taking place over its marketplace. Marketplace sellers must remit tax on their own behalf and file returns with the Department when selling over a marketplace that has not met a threshold.

Additionally, a marketplace facilitator is required to certify to each marketplace seller that:

- 1) It assumes the rights and duties of a retailer under the Retailers' Occupation Tax Act regarding sales made by the marketplace seller through the marketplace; and
- 2) It will remit all applicable State and local retailers' occupation taxes administered by the Department for sales made through the marketplace. 86 Ill. Adm. Code 131.145(b).

Generally, depending upon a retailer's average monthly sales tax liability, on or before the twentieth day of each calendar month, every person engaged in the business of selling tangible personal property at retail in this State during the preceding calendar month shall file a return with the Department for the preceding month. See 86 Ill. Adm. Code 130.501(a). For further information on sales tax return requirements, see 86 Ill. Adm. Code 130.501(a) and (b). Returns must be signed by the president, vice president, secretary or treasurer, or by the properly accredited agent whose power of attorney is on file with the Department, if the seller is a corporation. See 86 Ill. Adm. Code 130.525.

If a retailer chooses to have a third-party file its return, the Department's website includes a list of vendors who are approved by the Department to electronically file sales and use tax returns. Software vendors will be approved after they register and have their product approved through testing. These companies may be web-based companies or

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traditional software development companies who produce a product that formats and transmits electronic returns.

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,

Thomas Grudichak
Associate Counsel

TG:slc