

Sales/Use/Indirect:

Illinois DOR Addresses Nexus for Some Retailers and Marketplace Sellers Holding In-State Inventory

Frequently Asked Questions (FAQs) for Marketplace Facilitators, Marketplace Sellers, and Remote Retailers, Ill. Dept. of Rev. (updated 2/17/20). Reflecting Illinois legislation enacted in 2019 [see S.B. 690 (2019) and S.B. 689 (2019), and previously issued Multistate Tax Alert, for more details on these bills, as well as S.B. 119 (2019), a subsequently enacted clarification bill] that amended the Illinois “Retailers’ Occupation Tax” (ROT) to implement a series of structural changes to Illinois sales tax laws requiring some remote retailers and marketplace facilitators meeting certain thresholds to register to collect and remit Illinois ROT, the Illinois Department of Revenue addresses how holding inventory located in Illinois may impact a seller’s state and local ROT liability. In a situation involving an out-of-state retailer that makes sales on its own, as well as through a marketplace, the Department explains that the resulting tax liability “will depend on how the inventory is used.” Specifically, if the inventory is used strictly to fulfill orders made over the marketplace, the Department explains that such inventory does *not* create physical presence nexus for the retailer and thus it would be classified as a “remote retailer” for ROT purposes. Accordingly, if such remote retailer meets either of the tax remittance thresholds (*i.e.*, annual \$100,000 in sales or 200 separate sales transactions), it would incur state and local ROT on its own sales at 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 (that is, the destination rate).

URL: <https://www2.illinois.gov/rev/research/taxinformation/sales/Pages/Frequently-Asked-Questions-%28FAQs%29-for-Marketplace-Facilitators%2c-Marketplace-Sellers%2c-and-Remote-Retailers.aspx>

URL:
<http://www.ilga.gov/legislation/billstatus.asp?DocNum=690&GAID=15&GA=101&DocTypeID=SB&LegID=116627&SessionID=108>

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<http://www.ilga.gov/legislation/billstatus.asp?DocNum=0689&GAID=15&GA=101&DocTypeID=SB&LegID=116626&SessionID=108&SpecSess=>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/illinois-legislature-adopts-substantial-changes-to-tax-laws.html?id=us:2em:3na:stm:awa:tax:022621&sfid=7011O0000038I8UQAQ>

URL:
<http://www.ilga.gov/legislation/billstatus.asp?DocNum=0119&GAID=15&GA=101&DocTypeID=SB&LegID=115182&SessionID=108&SpecSess=>

However, the Department explains that if such in-state inventory is used to fulfill the retailer’s own sales, or if it is used to fulfill both its own sales and the marketplace sales, then the Illinois inventory creates physical presence nexus for the retailer. In these instances, when a sale is fulfilled from inventory located in Illinois, the Illinois retailer would incur state and local ROT at the rate in effect at the location of the inventory (that is, the origin rate); when such a sale is fulfilled from inventory located outside Illinois, the retailer would incur corresponding Illinois Use Tax. Please contact us with any questions.

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