**Section 130.1915 Auctioneers and Agents**

a) When Persons Act As Agents

1) Every auctioneer or agent, acting for an unknown or undisclosed principal, or entrusted with the possession of any bill of lading, custom house permit or warehouseman's receipt for delivery of any tangible personal property, or entrusted with the possession of any such personal property for the purpose of sale, is deemed to be the owner thereof, and upon the sale of such property to a purchaser for use or consumption, is required to file a return of the receipts from the sale and to pay to the Department a tax measured by such receipts.

2) The receipts from any such sale, when made by an auctioneer or agent who is acting for a known or disclosed principal, are taxable to the principal, provided the principal is engaged in the business of selling such tangible personal property at retail. For a sale to qualify under this subsection(a)(2), the principal must be clearly disclosed to the purchasers by the auctioneer or agent so that the purchasers are able to determine who owns the goods that are being sold.

3) The same rule applies to lienors such as storagemen and pawnbrokers.

b) When Principal is Disclosed

For the purposes of this Section, a principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. A verbal announcement of the principals' names at the auction is not sufficient to document disclosure. Acceptable evidence of disclosure includes:

1) naming the principals and their addresses (city only is sufficient) in newspapers and other public advertising;

2) posting a written list of the principals' names and their addresses (city only is sufficient) at the auction site;

3) distributing sale bills or brochures that name the principals and their addresses (city only is sufficient);

4) recording the principals' names and their addresses (city only is sufficient) on legal documents regarding the item that is sold, such as automobile titles; or

5) other methods that provide a permanent, written record of the disclosure of the names and addresses (city only is sufficient) of the principals.

c) Auctioneers as marketplace facilitators

1) Beginning January 1, 2020, through December 31, 2020, auctioneers are considered marketplace facilitators. These sales are governed by the disclosed and undisclosed principal rules set out in this Section. For sales sourced to Illinois, the disclosed principal, not the auctioneer, incurs State and local retailers’ occupation tax at the rate in effect at the location where the selling occurs (origin rate) (see 86 Ill. Adm. Code 270.115), subject to subsection (a)(2). However, if the principal is undisclosed, the auctioneer (acting as the retailer) would incur State and local retailers’ occupation tax at the rate in effect at the location where the selling occurs (origin rate) (see 86 Ill. Adm. Code 270.115) on these sales. For sales sourced outside of Illinois, the auctioneer, regardless of if the principal is disclosed or undisclosed, would be required to remit Use Tax and be considered the retailer for all such sales.

2) Beginning January 1, 2021, through August 26, 2021, auctioneers meeting a tax remittance threshold set out in 86 Ill. Adm. Code 131.135(a) are considered marketplace facilitators subject to State and local retailers’ occupation taxes on all sales made on their marketplace. These sales must be sourced as follows:

A) If an auctioneer makes a sale on behalf of an identified marketplace seller (e.g., a marketplace seller that is disclosed) the auctioneer will incur Retailers’ Occupation Tax at the rate in effect at the location where the tangible personal property is shipped or delivered or at which possession is taken by the purchaser (destination rate).

B) If an auctioneer makes a sale on behalf of a marketplace seller not identified to the purchaser on the marketplace (e.g., a marketplace seller that is not disclosed), then, for tax remittance purposes, the auctioneer is considered the seller and is required to file its own return, separate from the return for sales made on behalf of marketplace sellers and pay State and local retailers’ occupation taxes to the Department on that sale. The auctioneer would incur State and local retailers’ occupation tax at either the rate in effect at the location where the selling occurs (origin rate) (see 86 Ill. Adm. Code 270.115) or if the sale is fulfilled from inventory located outside Illinois and selling activities otherwise occur at a location outside of Illinois, the rate in effect at the location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser (destination rate). (For further information on the application of the Retailers’ Occupation Tax Act to marketplace facilitators, see 86 Ill. Adm. Code 131.130, 131.135, 131.140, 131.145, and 131.155).

3) On and after August 27, 2021, *“marketplace facilitator” does not include any person licensed under the Auction License Act. This exemption does not apply to any person who is an Internet auction listing service, as defined by the Auction License Act*. [35 ILCS 120/1]. Therefore, on and after August 27, 2021, except as otherwise provided in this subsection (c)(3), the Leveling the Playing Field for Illinois Retail Act administrative rules do not apply to transactions made by auctioneers. These transactions are governed by the rules under subsections (a) and (b) of this Section. However, those meeting the definition of “Internet auction listing service” are still considered marketplace facilitators and remain subject to the Leveling the Playing Field for Illinois Retail Act administrative rules, which apply as set forth in subsections (c)(1) and (c)(2), but without the August 26, 2021 ending date. (For further information on the application of the Act to marketplace facilitators, see 86 Ill. Adm. Code 131.130, 131.135, 131.140, and 131.145).

4) Definitions

A) *“Auctioneer” means a person or entity who, for another, for a fee, compensation, commission, or any other valuable consideration at auction or with the intention or expectation of receiving valuable consideration by the means of or process of an auction or sale at auction or providing an auction service, offers, negotiates, or attempts to negotiate an auction contract, sale, purchase, or exchange of goods, chattels, merchandise, personal property, real property, or any commodity that may be lawfully kept or offered for sale by or at auction*. [225 ILCS 407]

B) *“Internet Auction Listing Service” means a website on the Internet, or other interactive computer service, that is designed to allow or advertise as a means of allowing users to offer personal property or services for sale or lease to a prospective buyer or lessee through an online bid submission process using that website or interactive computer service and that does not examine, set the price, prepare the description of the personal property or service to be offered, or in any way utilize the services of a natural person as an auctioneer.* [225 ILCS 407]

(Source: Amended at 47 Ill. Reg. 2116, effective January 24, 2023)