**Section 131.107 Description of Different Types of Retailers On and After January 1, 2021 – Scope of Regulations**

a) Different Types of Retailers On and After January 1, 2021. Public Acts 101-0031 and 101-0604 added several new types of retailers with different tax liabilities to the State's existing sales tax structure. As a result, retailers now include the following:

1) Remote retailers incurring State and local retailers' occupation tax using destination sourcing for sales made to Illinois purchasers; a marketplace seller that makes sales over a marketplace that meets either of the required tax remittance thresholds in Section 131.115 of this Part and that also makes sales outside of that marketplace may also be considered a remote retailer for sales outside of the marketplace;

2) Marketplace facilitators incurring State and local retailers' occupation tax using destination sourcing for sales made over the marketplace on behalf of marketplace sellers to Illinois purchasers;

3) Marketplace facilitators incurring State and local retailers' occupation tax using origin sourcing for their own sales that are either fulfilled from inventory located in Illinois or for which selling activities otherwise occur in Illinois (the location at which the State and local retailers' occupation tax is incurred must be determined by applying the provisions of 86 Ill. Adm. Code 270.115 (c) and (d)); and incurring State and local retailers' occupation tax using destination sourcing for all other sales of its own;

4) Out-of-State sellers with a physical presence in Illinois incurring a Use Tax collection obligation for sales they make outside Illinois and ship or deliver to Illinois purchasers; such sellers however, incur State and local retailers' occupation taxes using origin sourcing for sales for which their selling activities occur in Illinois (see, e.g., 86 Ill. Adm. Code 270.115 (c) and (d)); if such sellers also make sales over a marketplace, they are considered marketplace sellers and the marketplace facilitator will incur State and local retailers’ occupation tax liability based on destination sourcing for these sales;

5) Illinois retailers, including brick and mortar retailers, incurring no State or local retailers' occupation taxes for sales made over a marketplace (the marketplace facilitator will now incur State and local retailers' occupation tax liability based on destination sourcing for these sales); and

6) Illinois retailers, including brick and mortar retailers, incurring State and local retailers' occupation taxes based on origin sourcing for sales made in Illinois.

7) Illinois retailers, including brick and mortar retailers, incurring a Use Tax collection obligation for sales fulfilled from out-of-state inventory and for which selling activities occur out of state.

b) As a result of these differing tax obligations, it is critical that retailers examine their selling activities to determine their specific tax liabilities. This is especially important for retailers that engage in multichannel retailing (for example, retailers that engage in selling through their own website, as well as through a marketplace, or Illinois brick and mortar retailers that also sell over a marketplace).

c) Scope of Regulations. The rules established in this Part for remote retailers, marketplace facilitators, and marketplace sellers apply only to the remittance of State Retailers' Occupation Tax and local retailers' occupation taxes administered by the Department. Remote retailers, marketplace facilitators or 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.

1) Taxes required to be remitted under this Part include the State and local retailers' occupation taxes commonly referred to as "sales taxes." These taxes include, but are not limited to:

A) the State Retailers' Occupation Tax and, except as otherwise provided in this subsection, all other local retailers' occupation taxes administered by the Department, including but not limited to, the Home Rule Municipal Retailers' Occupation Tax and the Regional Transportation Authority Retailers' Occupation Tax; and

B) beginning October 1, 2021, the Home Rule Municipal Soft Drink Retailers' Occupation Tax imposed at 65 ILCS 8-11-6b(b) ("Chicago Soft Drink ROT"). Remote retailers that meet a tax remittance threshold (see Section 131.115(a)) are deemed to be engaged in the business of selling soft drinks at the Illinois location to which the soft drinks are shipped or delivered or at which possession is taken by the purchaser. If that location is in Chicago, the remote retailer incurs and must register and remit the Chicago Soft Drink ROT. Similarly, the Chicago Soft Drink ROT is required to be remitted by marketplace facilitators making sales on behalf of marketplace sellers if the soft drinks are shipped or delivered to an address in Chicago, or if possession of the soft drinks is taken by the purchaser in Chicago. Marketplace facilitators making their own sales of soft drinks incur the Chicago Soft Drink ROT if the soft drinks are shipped or delivered to a location in Chicago or if possession is taken by the purchaser in Chicago, or if the selling activities of the marketplace facilitator occur in Chicago (see, e.g., 86 Ill. Adm. Code 270.115(c) and (d)); and

C) beginning October 1, 2021, the tax imposed at 70 ILCS 210/13 upon persons engaged in the business of selling food, alcoholic beverages and soft drinks within the boundaries of the Metropolitan Pier and Exposition Authority (MPEA ROT). Food delivery services that are considered marketplace facilitators are required to remit the MPEA ROT on sales made on behalf of a restaurant or other food establishment that is subject to the MPEA ROT.

i) Food delivery services that are considered marketplace facilitators meeting a tax remittance threshold in Section 131.135 of this Part are required to remit the 1% MPEA ROT only if the sale to a purchaser is made by a restaurant located within the MPEA district. The State ROT and local sales taxes (such as the Home Rule Municipal ROT or the Home Rule County or Regional Transportation Authority ROT) are required to be remitted, however, at the rate in effect at the location to which the food or beverages are shipped or delivered or at which possession is taken by the purchaser (destination rate).

ii) Food delivery services considered marketplace facilitators must provide a certification to each food service establishment that sells over its marketplace that it assumes the rights and duties of a retailer under the ROTA and all applicable local retailers' occupation taxes administered by the Department (including the MPEA ROT and the Chicago Soft Drink Tax, if applicable) with respect to sales made by the food establishment through the marketplace; and that it will remit taxes imposed by the retailers' occupation tax and all applicable local retailers' occupation taxes administered by the Department (including the MPEA ROT and the Chicago Soft Drink Tax) for sales made through the marketplace. This certification must also contain the name, address, and Illinois Account ID number for the sales tax account of the marketplace facilitator and the name, address and Illinois Account ID number for the sales tax account of the food service establishment. Food service establishments that have obtained this certification shall be relieved of liability for tax on sales made over the marketplace unless the marketplace facilitator seeks relief from liability as a result of good faith reliance on incorrect information provided to it by the marketplace seller [35 ILCS 120/2] (see Section 131.150(b)-(c) of this Part), or until the food service establishment has been notified by a marketplace facilitator that the marketplace facilitator is no longer required to remit tax as provided in Section 131.135(f) of this Part.

2) Taxes or fees administered by the Department that are not subject to the provisions of this Part. Remote retailers, marketplace sellers and marketplace facilitators often sell tangible personal property that is subject to additional taxes, other than State and local retailers' occupation taxes which are required to be remitted under Section 2 of the Retailers’ Occupation Tax Act. They must determine whether they incur these additional taxes by examining the specific provisions of these additional tax acts. These additional taxes may commonly include, but are not limited to:

A) the Prepaid Wireless 9-1-1 Surcharge (E911 Surcharge) imposed at 50 ILCS 753/15 and

B) the Illinois Telecommunications Access Corporation Assessment (ITAC Assessment) imposed at 220 ILCS 5/13-703.

3) Taxes not administered by the Department include, but are not limited to, taxes imposed and administered by a home rule municipality on food prepared for immediate consumption and on alcoholic beverages under the authority of 65 ILCS 5/8-11-6a.

4) Remote retailers, marketplace sellers and marketplace facilitators that remain liable for Department-administered taxes not subject to this Part as described in subsection (c)(2) must register with the Department to remit those taxes. Remote retailers, marketplace sellers and marketplace facilitators must review the statutes imposing these taxes to determine whether they are required to register and remit them. In the case of marketplace sellers incurring these additional taxes for tangible personal property sold over a marketplace, the Department strongly encourages them to work with their marketplace facilitators to make arrangements allowing the marketplace facilitator to collect these taxes and remit them to the marketplace seller, along with the gross receipts from the sale, so that the marketplace seller can then remit the taxes to the Department as required.

5) Remote retailers, marketplace sellers, and marketplace facilitators that remain liable for taxes not administered by the Department are strongly encouraged to contact the appropriate local taxing authority with questions related to registration and remittance of tax.

EXAMPLE 1: T-Cell, Inc. sells prepaid mobile phones over a marketplace that is required to remit tax to the Department under this Part. A Chicago resident purchases a prepaid mobile phone which is delivered to her Chicago address. Her purchase is subject to both the Prepaid Wireless 911 Surcharge and the ITAC Assessment. These taxes are incurred because the laws imposing these surcharges/assessments provide that the surcharges/assessments are incurred whenever the sale of the tangible personal property is treated as occurring in Illinois for purposes of the Retailers' Occupation Tax Act (under the provisions of Section 2 of the Retailers’ Occupation Tax Act this is the case). Although the marketplace facilitator is required to collect and remit State and local retailers' occupation taxes on this sale, it is not required to collect and remit the E911 Surcharge or the ITAC Assessment. T-Cell, Inc. must register with the Department to collect and remit the E911 Surcharge and ITAC Assessment.

EXAMPLE 2: Greet N Eat is a food delivery service that is considered a marketplace facilitator required to remit tax under this Part. A customer in Oak Park orders a pizza and a liter bottle of a soft drink over Greet N Eat's application from a pizzeria in Chicago that is subject to the MPEA ROT. Greet N Eat incurs the State ROT (6.25%), the Home Rule Municipal ROT in Oak Park, the County Home Rule ROT for Cook County, and the RTA ROT for Cook County on this transaction. It also incurs the 1% MPEA ROT, since the pizzeria is subject to the MPEA ROT. It does not, however, incur the Chicago Soft Drink Tax, because the soft drink is not delivered to a purchaser within the City of Chicago.

EXAMPLE 3: Greet N Eat is a food delivery service that is considered a marketplace facilitator required to remit tax under this Part. A customer in the MPEA ROT district orders a pizza and a liter bottle of a soft drink over Greet N Eat's application from a pizzeria in Oak Park that is not subject to the MPEA ROT. Greet N Eat incurs the State ROT (6.25%), the Home Rule Municipal ROT in Chicago, the County Home Rule ROT for Cook County, and the RTA ROT for Cook County on this transaction. It incurs the Chicago Soft Drink Tax, because the soft drink is delivered to a purchaser within the City of Chicago. It does not, however, incur the 1% MPEA ROT since the pizzeria is not subject to the MPEA ROT.

(Source: Amended at 46 Ill. Reg. 2697, effective January 26, 2022)