Illinois Passes 21st Century Sales Tax Law

On June 28, 2019, Governor JB Pritzker signed legislation that will change the way Retailers’ Occupation Taxes (ROT, aka sales taxes) and Use Taxes are collected in the state of Illinois. This concept and proposal was developed by the Illinois Retail Merchants Association (IRMA) in consultation and partnership with the Illinois Municipal League (IML).

After the spring session, it became clear that there were significant drafting errors in the legislation that would need to be fixed during the fall veto session in order to be implemented as intended. The General Assembly passed SB 119 (Sen. Steans, D-Chicago/Rep. Zalewski, D-Riverside), which addresses the drafting errors; IML supported this legislation.

WHERE WE BEGAN IN 2018

On June 21, 2018, the United States Supreme Court (USSC) overturned prior precedent in National Bellas Hess and Quill in South Dakota v. Wayfair. The court ruled that individual states have the authority to implement laws that require remote retailers to collect and remit taxes to the state where the purchaser lives.

In May 2018, Illinois enacted legislation that allowed for the required collection of the state’s Use Tax (P.A. 100-0587). The legislation required remote retailers (who make 200 or more annual transactions or $100,000 or more in annual gross receipts) to collect Use Tax on purchases made for use or consumption in Illinois.

More information about the Use Tax can be found via this link.

WHAT WAS MISSING?

While the required collection of the state’s Use Tax on certain remote sellers was a step in the right direction, Use Tax fails to fully level the playing field between brick-and-mortar retailers and their online counterparts. It also does not allow municipalities to collect any locally-imposed sales taxes on products being used or consumed in their communities.

IML has been a leader at the federal and state levels advocating for the required collection and remittance of the state and locally-imposed sales taxes instead of Use Tax. Most recently, IML filed HB 270 (Rep. Murphy, R-Springfield) and SB 2049 (Sen. Castro, D-Elgin), which would have required remote retailers to collect the state and local sales taxes on any purchase based on the delivery address or destination.

DEFINITIONS

Remote Online Retailer = A retailer who makes sales to Illinois residents for use or consumption in Illinois, but does not have a physical presence in Illinois.

Marketplaces = A space where third party sellers can sell their products online.

Marketplace Facilitators = Companies that provide marketplaces for third-party retailers (Examples: Amazon, Walmart, eBay, etc.).

Certified Service Providers = Agents certified by the state to perform the remote retailer's sales and use tax functions online.
LEVELING THE PLAYING FIELD FOR ILLINOIS RETAIL ACT

The amended “Leveling the Playing Field for Illinois Retail Act” was passed by the General Assembly on November 14, 2019, to require both Remote Retailers and Marketplace Facilitators to collect and remit the state and locally-imposed Retailers’ Occupation Tax (ROT, aka sales tax) for the jurisdictions where the product is delivered (its destination) starting January 1, 2021.

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<td>Meets sales thresholds of 200 annual transactions or $100,000 in annual gross receipts</td>
<td>Use Tax</td>
<td>Use Tax</td>
<td>ROT at destination</td>
<td>Significant Increase</td>
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<th>Marketplace Sales by non-IL Retailers (&lt;96% of IL Marketplace transactions)</th>
<th>Under Current Law</th>
<th>Starting January 1, 2020</th>
<th>Starting January 1, 2021</th>
<th>Municipal Revenue Impact</th>
<th>State Revenue Impact</th>
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<td>Marketplaces who meet sales threshold of 200 annual sales or $100,000 annual gross receipts</td>
<td>Use Tax, low compliance</td>
<td>Use Tax</td>
<td>ROT at destination</td>
<td>Significant Increase due to improved compliance and locally-imposed sales taxes collected where applicable</td>
<td>Significant increase</td>
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<th>Marketplace Sales by IL-based retailer (&lt;4% of IL Marketplace transactions)</th>
<th>Under Current Law</th>
<th>Starting January 1, 2020</th>
<th>Starting January 1, 2021</th>
<th>Municipal Revenue Impact</th>
<th>State Revenue Impact</th>
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<td>ROT at origin, low compliance</td>
<td>Use Tax</td>
<td>ROT at destination</td>
<td>Increased due to increased compliance</td>
<td>Significant increase</td>
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<th>IL retailer shipping to IL customer from IL warehouse</th>
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The law requires Remote Retailers (who either meet a threshold of 200 transactions annually or $100,000 in annual gross receipts) from Illinois residents to collect both state and locally-imposed sales taxes starting January 1, 2021. The local rate would be determined by the delivery destination or pick-up location. To assist in the collection of locally-imposed sales taxes, Remote Retailers are authorized to allow Certified Service Providers (CSP) to collect and remit state and local sales taxes on behalf of the retailer.

Starting on January 1, 2020, Marketplace Facilitators, like Amazon, will be required to collect Use Tax on marketplace sales. On January 1, 2021, Marketplace Facilitators, who meet certain sales thresholds, will be required to collect state and locally-imposed sales taxes on marketplace sales.

Retailers that have a physical presence in Illinois, who do not sell through a marketplace, will see no change in how their sales tax is collected. For example, if a community has a local retailer that ships products to Illinois customers, that sales tax will still be origin-based, determined as the origin of the sale (the local retailer’s location). For Illinois retailers who sell through a marketplace, the Marketplace Facilitator will collect the sales tax based on destination (the shipped-to location of the purchaser or the pick up location) starting January 1, 2021.

This new law eventually requires that sales made in Marketplaces or by Remote Retailers be taxed at the same rate (including both state and local sales taxes) as brick-and-mortar businesses, therefore leveling the playing field for retailers and ensuring municipal governments have the revenues necessary to address their local needs.

**MUNICIPAL IMPACT OF LEVELING THE PLAYING FIELD**

This new law provides the ability for increased compliance with the collection of state sales tax, which means increased revenues, of which municipal governments receive a share. The law also provides that any locally-imposed sales taxes will be collected on Marketplace and Remote Retailer sales.

The Illinois Retail Merchants Association (IRMA) estimates that this new law could generate $465 million annually in additional sales tax revenue. The state could receive $380 million per state fiscal year and local governments could receive $85 million per state fiscal year, according to those estimates. These revenue estimates do not include the expanded revenues that locally-imposed sales taxes could generate from Remote Retailers and Marketplace sales.

**FREQUENTLY ASKED QUESTIONS**

**Q:** Does this legislation require the collection of locally-imposed sales tax on all online purchases?

**A:** Starting on January 1, 2021, this proposal requires the collection of state and locally-imposed sales tax, instead of the state use tax, on all purchases made in a Marketplace (like Amazon) when the Marketplace Facilitator meets the 200 annual sales or $100,000 in annual gross receipts threshold. If a Remote Retailer makes the sale, they have to meet the same thresholds to be required to collect the state and locally-imposed sales tax.

A person who makes a purchase from a Remote Retailer, who does not meet this threshold and does not collect taxes, is still required to pay the state Use Tax on their purchase when filing their state income tax.

It should be noted that if a Remote Retailer asks a CSP to collect sales taxes for Illinois purchases and is under the threshold, sales taxes could still be collected under this law, not the Use Tax.
Q: How does a retailer establish a presence in a marketplace setting?
A: Retailers will typically enter into an agreement with a Marketplace Facilitator (like Amazon) to sell their goods in an online Marketplace. In exchange for marketing their products in the Marketplace, the Facilitator receives compensation from the retailer.

Q: How does a Certified Service Provider (CSP) differ from a Marketplace?
A: Essentially, CSPs are tax software companies that work with states to provide tax collection services to retailers. They operate nationwide and currently aid in the collection of sales tax in 26 states. More information about CSPs is available via this link.

Q: Are sites like Craigslist or Facebook Marketplace marketplaces?
A: No, for a company to be considered a Marketplace they have to process the transaction. Craigslist and Facebook Marketplace only provide opportunities to advertise a product, but do not offer the opportunity to process the sale.

Q: How will the Marketplaces and CSPs know which sales tax rates to collect?
A: They will receive the tax rate information from the Illinois Department of Revenue. They will then use the shipping address to determine the rate of tax to be assessed on a transaction.

Q: Is there any sales tax benefit for a brick-and-mortar retailer to convert to a marketplace?
A: Under this legislation, no. The proposal would treat a resident of a municipality that goes to the local store versus a resident of the community ordering the same product and having it shipped to their home equally if the retailer meets the sales threshold by requiring the state and locally-imposed sales tax rates for that community be collected.

Q: What does my municipality have to do under this proposal?
A: The legislation does not require municipalities to do anything differently. Municipalities should continue to regularly report any changes to their locally-imposed sales tax rate and municipal boundaries to ensure the appropriate taxes are being collected on online purchases.

Q: Have marketplace laws worked anywhere else?
A: Marketplace laws are currently in effect in more than 26 other states and Washington, D.C. and they have been very successful. Pennsylvania, for example, is on track to raise around $200 million from their marketplace laws this year. New York is estimating $390 million in revenues from their marketplace law.

Q: Will my Use Tax revenues decline?
A: While your Use Tax revenue distribution will decline, your Retailer Occupation Tax (ROT, aka sales tax) revenues are likely to increase sufficiently to more than cover the loss in Use Tax revenues.