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Illinois Allows Easier Way For Remote Retailers to Collect Sales Tax

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Tax Controversy

Illinois has cleared one of the last remaining minefields for out-of-state businesses selling to Illinois residents to submit the state sales tax that they are required to collect on such sales. Starting in 2020, instead of trying to follow sometimes tricky state tax rules, these remote vendors can now use certified third-party providers to collect and remit required sales tax, often with no liability if mistakes are made.

Online retailers are generally the first type of business that come to mind when discussing sales tax. However, unless a specific exemption applies, Illinois sales tax applies to a “sale at retail,” which Illinois law defines as “the transfer of ownership of or title to tangible personal property, unless such personal property is to be used for the purpose of resale.” Thus, any out-of-state business – including a manufacturer – that makes a “sale at retail” may be considered a remote retailer for Illinois sales tax purposes.

The rise of e-commerce and the changing landscape of retail shopping in the last decade provided retailers and other vendors an unprecedented opportunity to provide their products to customers in various states where they had no brick-and-mortar stores. But the rush to buy items from these out-of-state businesses often meant that states were deprived of vital state sales tax revenue, even if consumers were pleased. The landmark 2018 U.S. Supreme Court case *South Dakota v. Wayfair* ended those days, with a closely divided court ruling that South Dakota could require out-of-state sellers to collect and remit sales tax if the out-of-state seller met certain thresholds.

Shortly after the *Wayfair* ruling, Illinois enacted its own requirement for out-of-state sellers to collect sales tax, following South Dakota’s model. Beginning Oct. 1, 2018, remote retailers who (a) collected gross receipts from sales of tangible personal property to purchasers in Illinois of \$100,000 or more in any calendar year, or (b) entered into 200 or more separate transactions with purchasers in Illinois in any calendar year were required to charge all state and locally imposed sales taxes on all retail sales to Illinois purchasers during that calendar year and the subsequent calendar year, and remit them to the Illinois Department of Revenue (IDOR).

On June 28, 2019, Illinois Governor J.B. Pritzker signed into law Senate Bill 690, which in part provides remote retailers with a simplified process for collecting and remitting sales tax to the state of Illinois and its local jurisdictions. Beginning Jan. 1, 2020, remote retailers may use the services of a certified services provider (CSP) or a certified automated system (CAS), at no cost to the remote retailers, to collect and remit its required sales tax.

A CSP and a CAS is a vendor certified by the IDOR to perform the retailer’s sales tax functions. The IDOR is required to establish standards for the certification of a CSP and a CAS no later than Dec. 31, 2019. In addition, no later than July 1, 2020, the IDOR must provide a database that includes the following:

1. An electronic, downloadable database of defined product categories that identifies the taxability of each category;

2. An electronic, downloadable database of all retailers' occupation tax rates for the jurisdictions in Illinois that levy a retailers' occupation tax (i.e., sales tax); and
3. An electronic, downloadable database that assigns delivery addresses in Illinois to the applicable taxing jurisdictions.

A remote retailer using a CSP or CAS will not be liable for collecting the incorrect amount of sales tax based on incorrect information provided by the IDOR in its database.

It is expected that the simplified process of collecting sales tax from remote retailers and other vendors will ensure an additional \$200 million in additional collections to the state of Illinois.

If you have any questions about Illinois sales tax and how it may affect you and your business, please don't hesitate to contact one of the members of our Tax Planning and Compliance team.