

# 2019 POLICY BRIEF

## LEVELING THE PLAYING FIELD FOR ILLINOIS RETAIL LAW

### BACKGROUND:

The Supreme Court of the United States (SCOTUS) opened the door for the collection of sales taxes from online sales when the Court ruled in *South Dakota v. Wayfair* (2018) that states possess the authority to impose laws requiring remote sellers to collect and remit taxes to the state where a purchaser resides.

In anticipation of what would be a favorable SCOTUS ruling in *South Dakota v. Wayfair*, the Illinois General Assembly approved a provision within the State Fiscal Year (SFY) 2019 budget creating the “Marketplace Fairness Act” (P.A. 100-0587). This law authorized the state to require out-of-state retailers to collect Illinois’ Use Tax (6.25%) and remit the revenue to the state.

Under the Use Tax, the state receives 80% of collections with the remaining 20% being deposited into Illinois’ State and Local Sales Tax Reform Fund. After a set portion of this 20% is paid off the top to specified recipients (Chicago, Regional Transit Authority, Metro East Transit District and the Build Illinois Fund), the remainder is distributed monthly on a per capita basis between counties, municipalities and other government units.

While requiring collection of the Use Tax from remote sellers was a positive benefit for the state and local governments, the “Marketplace Fairness Act” did not allow for the collection and remittance of each local government’s Retail Occupation Tax (ROT). Unlike the per capita distribution of the Use Tax, 100% of the revenue generated based upon a unit of local government’s ROT belongs to the local government.

### LEVELING THE PLAYING FIELD FOR ILLINOIS RETAIL LAW:

The General Assembly took another step toward parity between online and in-store retail sales when it passed the “Leveling the Playing Field for Illinois Retail Law” in June 2019. Provisions for the “Leveling the Playing Field for Illinois Retail Law” are included in two bills. The first bill is Senate Bill 689 (SFY 2020 budget bill) and the second is Senate Bill 690 (capital infrastructure bill).

The “Leveling the Playing Field for Illinois Retail Law” defines “remote online retailers” as retailers either meeting a threshold of 200 transactions annually or those in receipt of \$100,000 in annual gross receipts.

### QUICK FACTS

- 2018 United States Supreme Court case allows collection of online sales tax revenue
- The Use Tax is already collected for online purchases and distributed on a per capita basis
- The “Leveling the Playing Field for Illinois Retail Law” would allow Retail Occupation Taxes (ROT) to be collected beginning July 1, 2020
- Significant increase in sales tax revenue for local governments would occur



The policy includes provisions that apply to sales that occur through third-party Marketplace Facilitators (e.g., Amazon and eBay) and sales transactions between online retailers and Illinois residents outside of a marketplace like Amazon.

It should be noted that the “Leveling the Playing Field for Illinois Retail Law” would not change sales tax policy for Illinois retailers that sell products directly, whether online or offline.

#### *Marketplace Facilitator Collections*

Beginning on January 1, 2020, Marketplace Facilitators must begin collecting the Use Tax from out-of-state retailers that utilize the third-party marketplace to sell products. This Use Tax revenue will be distributed to local governments on a per capita basis. On and after July 1, 2020, Marketplace Facilitators will collect and remit ROT instead of the Use Tax. The ROT revenue will be distributed to the units of local government where products are delivered (not on a per capita basis) based upon a jurisdiction’s ROT rate.

The language in the legislation concerning Marketplace Facilitators is flawed and would negatively impact sales tax collections for products involving warehouses and distribution centers. This flaw will be addressed during the 2019 fall veto session.

#### *Direct Sales Between Online Retailers and Consumers*

Beginning on July 1, 2020, remote online retailers that do not have a physical presence in Illinois or utilize a Marketplace Facilitator must collect and remit ROT to the state and units of local government where products are delivered.

### **FAIRNESS FOR RETAILERS AND RECOUPED REVENUES FOR LOCAL GOVERNMENTS**

Brick-and-mortar retailers have long been at a disadvantage as their online competitors marketed products without a sales tax mark-up. The “Leveling the Playing Field for Illinois Retail Law” will create more tax parity between traditional retailers and their online competition. This is the reason why the Illinois Retail Merchants Association (IRMA) developed and introduced the “Leveling the Playing Field for Illinois Retail Law.” ISACo worked with IRMA in support of the policy.

According to estimates provided by IRMA, the changes to sales tax policy brought about by the “Leveling the Playing Field for Illinois Retail Law” could generate an additional \$460 million annually in additional sales tax revenue. The state could receive an additional \$368 million annually and local governments could receive an additional \$92 million annually. These additional revenues **do not** include the additional revenues that would be collected by local governments based upon their locally-imposed sales taxes.

A consequence of this change in sales tax policy will be a decline in Use Tax revenues distributed to local governments. These revenue declines are anticipated to be more than offset by increases in ROT collections.

