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# Local Retailers Occupation Tax Tests POST- Leveling the Playing Field Act

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by

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# Local Retailers Occupation Tax Tests

- I. **1940's to 2013 – Origination test:**
  - (a) Acceptance location used to determine location of sale
  - (b) But with exceptions such as if order accepted outside Illinois and inventory for delivery is in Illinois then inventory location is used.
  
- II. **2014 to 2020 – Multi-Factor Origination test:**
  - (a) 5 primary factors used to determine sales location, plus additional 6 factors if first 5 are insufficient.
  - (b) But with exceptions and presumptions.

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III. 2021 and forward: Both a New “Destination test” and the “Multi-Factor Origination test” are used

(a) **Destination test (delivery location):**

- (i) When seller is a “remote retailer” (no physical presence in Illinois) the remote retailer must use **destination test** for its sales.
- (ii) When the seller is a Marketplace seller (inside or outside Illinois) then the Marketplace facilitator must use **destination test** for such sales – a marketplace seller does not include the marketplace facilitator itself or its affiliates. Also Illinois licensed auctioneers are not marketplace facilitators.

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## (b) Multi-Factor Origination test:

(i) Retailers with physical presence in Illinois selling on their own, as well as Marketplace facilitators and their affiliates with physical presence in Illinois when selling their own items, use the **multi-factor origination test** for sales made within Illinois.

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## (c) Examples of Strange results:

(i) Retailers with some physical presence in Illinois ( sales rep, office, inventory, etc) but only makes sales outside of Illinois collects **Use Tax** and **Not Local ROT**, unless delivered from inventory in Illinois.

(ii) For Retailers in Illinois that sell through Marketplace Facilitators, the Local ROT is based on delivery location and not sales origination location.

(iii) If an out-of-state Retailer has no physical presence in Illinois other than inventory in Illinois that it only sells through a marketplace facilitator, then the inventory is ignored as creating physical presence in Illinois and the Retailer is deemed a **remote retailer** subject to Local ROT based on **destination**.

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## IV. October, 2021: Expansion of “Destination test”:

- (a) MPEA Food and Beverage Tax is now subject to Marketplace Facilitator rules.
- (b) Chicago Home Rule Municipal Soft Drink Tax is now subject to Marketplace Facilitator rules.
- (c) Possibly other taxes like AROT?