

Determining Physical Presence or When the Tax Remittance Threshold Has Been Met and Where a Sale Is Sourced - Sales and Use Tax Help Guide

Illinois statutes, public acts, and administrative code may be found at the Illinois General Assembly's website at: <https://ilga.gov>.

The term "sale" in this document refers not only to a retail sale, lease, or rental of tangible personal property to customers, but also to a transfer of tangible personal property to a customer during a sale of service by retail sales, lease, or rental. Likewise the term "seller", as used in this document, refers to both a retailer and a serviceperson.

Sellers must determine if they either have physical presence or if they meet the \$100,000 tax remittance threshold (for sellers without physical presence in Illinois and marketplace facilitators) to determine what type of tax their sales are subject to.

Determining physical presence in Illinois

In-State sellers clearly have physical presence in Illinois. However, out-of-State sellers must determine if they have physical presence in the State to properly remit and pay the correct amount of tax for their sales.

Physical presence in Illinois means:

1. having or maintaining within Illinois, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within Illinois under the authority of the seller or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such seller or subsidiary is licensed to do business in Illinois [35 ILCS 105/2 (1) and 35 ILCS 110/2(1)];
2. having a contract with a person located in Illinois under which the person, for a commission or other consideration based on the sale of the retailer's product or serviceperson's service, refers potential customers to the seller by providing a promotional code or other mechanism that allows the seller to track purchases referred by such persons (only applies if income derived from the contract exceeds \$10,000 in prior year) [35 ILCS 105/2 (1.1) and 35 ILCS 110/2(1.1)]; or
3. having a contract with a person located in Illinois under which the retailer sells the same or substantially similar line of products or the serviceperson sells the same or substantially similar line of services as the person located in Illinois and the seller provides a commission or other consideration to the person located in Illinois based on the sale of the retailer's product or serviceperson's service (only applies if income derived from the contract exceeds \$10,000 in prior year) [35 ILCS 105/2 (1.2) and 35 ILCS 110/2(1.2)].

If any one of the above scenarios is accurate for the seller, the seller is considered to have physical presence in Illinois. Once the seller is considered to have physical presence in Illinois, the seller must evaluate where the sale is sourced for each sale to determine the proper amount of tax that is due.

NOTE: Inventory used to fulfill sales through a marketplace when the seller is not responsible for the taxes does not create physical presence. *For example, a seller has inventory in an Illinois warehouse run by a large marketplace facilitator and the marketplace facilitator remits the taxes for the marketplace sales on behalf of marketplace sellers. If the inventory is the only presence in Illinois the seller has and the inventory is only used to fulfill sales on the marketplace, the seller does not have physical presence in Illinois. However, if the inventory is also used to fulfill any sales by the seller outside the marketplace, it does create physical presence.*

Determining when the tax remittance threshold has been met

"Tax remittance threshold" means the nexus standards used to determine tax collection obligations for remote retailers or servicepersons that meet the selling threshold but have no physical presence in the State. Remote retailers or servicepersons that meet or exceed the threshold of \$100,000 or more in cumulative gross receipts from retail sales or sales of service shall be liable for all applicable State and locally imposed retailers' or service* occupation taxes administered by IDOR on all sales to Illinois purchasers. [86 Ill. Adm. Code 131.115]

Likewise, marketplace facilitators making retail sales or sales of service in Illinois are subject to State and local ROT or SOT on all sales made through the marketplace if the threshold of \$100,000 or more in cumulative gross receipts from retail sales or sales of service are made to purchasers in Illinois through the marketplace by the marketplace facilitator and by marketplace sellers or servicepersons. [86 Ill. Adm. Code 131.135]

NOTE: There is a \$100,000 remote retailer threshold for ROT and a \$100,000 remote serviceperson threshold for SOT. Sellers should not combine their retail sales and their sales of service when evaluating against the thresholds. *For example, a remote seller who makes \$75,000 in retail sales and \$40,000 in sales of service to Illinois customers will not meet either ROT or SOT thresholds despite their combined gross receipts being greater than \$100,000.*

*Some de minimis servicepersons may elect to remit Use Tax. See the Servicepersons section on the next page for more information.

Sellers must determine if they either have physical presence or if they meet the \$100,000 tax remittance threshold (for sellers without physical presence in Illinois and marketplace facilitators) by reviewing their sales on a quarterly basis (ending on the last day of March, June, September, and December).

For Retailers - If a retailer determines they have physical presence or meets or exceeds the \$100,000 tax remittance threshold, they are required to remit retailers' occupation taxes (ROT) and file all applicable returns for one year. At the end of that one-year period, the retailer shall re-evaluate their selling activities for the preceding 12-month period. If again they have physical presence or meet or exceed the \$100,000 tax remittance threshold, they must continue to remit tax for the following year. Otherwise, they will return to evaluating their situation on a quarterly basis.

For Servicepersons - If a serviceperson determines they have physical presence or meets or exceeds the \$100,000 gross receipts threshold, they must review their fiscal year cost ratio (the tangible personal property transferred incident to sales of service divided by the serviceperson's total annual gross receipts from all sales of service) to determine if they are a "de minimis" serviceperson. A de minimis serviceperson is a serviceperson with a cost ratio of less than 35% (or less than 75% if they are a serviceperson transferring prescription drugs or engaged in graphic arts production).

- If the serviceperson **is not** a de minimis serviceperson, they must register with IDOR and collect and remit SOT on either the selling price of the separately stated tangible personal property being transferred incident to the sales of service or 50% of the entire sales of service bill if the tangible personal property is not separately stated (but never less than the cost price of the tangible personal property).
- If the serviceperson **is** a de minimis serviceperson **and**
 - is registered or required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act or, if remote, makes any retail sales to Illinois purchasers, they are required to remit service occupation taxes (SOT) and file all applicable returns for one year. The serviceperson may elect to calculate SOT on the cost price of the tangible personal property being transferred to a customer during a sale of service.
 - is **not** registered or is **not** required to be registered as a retailer in Illinois, makes no retail sales in Illinois, or, if remote, makes no retail sales to Illinois purchasers, **and** either has physical presence or has met the \$100,000 gross receipts threshold, the serviceperson may elect to pay Use Tax on their cost price of tangible personal property transferred to customers during sales of service. The Use Tax is remitted to the supplier, if the supplier is registered to collect use tax, **or** to the Illinois Department of Revenue (IDOR), if the supplier is not registered to collect use tax (in which case the serviceperson must register with IDOR). [86 Ill. Adm. Code 140.108]

For de minimis servicepersons without physical presence in Illinois and who has remitted Use Tax to their supplier, no Illinois Use Tax will be owed because the purchase of tangible personal property occurred outside of Illinois. You may voluntarily register with IDOR and collect and remit Service Use Tax on behalf of your customer.

Any de minimis serviceperson who has physical presence or who has met the \$100,000 gross receipts threshold may opt to register with IDOR and collect and remit SOT as if they were **not** a de minimis serviceperson by calculating the SOT on either the selling price of the separately stated tangible personal property being transferred or 50% of the entire sales of service bill if the tangible personal property is not separately stated (but never less than the cost price of the tangible personal property).

Servicepersons who have physical presence or meet or exceed the \$100,000 gross receipts threshold file all applicable returns for one year. At the end of that one-year period, the serviceperson shall re-evaluate their selling activities for the preceding 12-month period. If again they have physical presence or meet or exceed the \$100,000 tax remittance threshold, they must review their cost ratio and continue to remit the applicable tax for the following year. Otherwise, they will return to evaluating their situation on a quarterly basis.

Sellers with physical presence - Continue to the "Determining where a sale is sourced" section to determine the correct source for each sale. The location where a sale is sourced will determine how much State and local ROT or SOT, plus other applicable State and local taxes, the sale is subject to.

Note: De minimis servicepersons who have elected to pay Use Tax on their cost price of tangible personal property transferred to customers during sales of service are excluded from this category and do not need to continue to the "Determining where a sale is sourced" section.

Sellers without physical presence - Sellers without physical presence do not need to continue to the "Determining where a sale is sourced" section. However, despite the lack of physical presence in Illinois, these sellers may still be subject to ROT or SOT.

- A seller with no physical presence in Illinois is a remote retailer or serviceperson. A remote retailer who meets or exceeds the \$100,000 tax remittance threshold must remit State and local ROT on sales to Illinois purchasers at the tax rate in effect at the location where the tangible personal property is shipped or delivered or at which possession is taken by the purchaser (destination rate). A remote serviceperson who meets or exceeds the \$100,000 tax remittance threshold must review their cost ratio (as described above). If the remote serviceperson is required to or elects to remit State and local SOT on tangible personal property transferred incident to sales of service, the tax rate is the rate in effect at the location where the tangible personal property is transferred to or at which possession is taken by the customer (destination rate). [35 ILCS 120/2-12]
 - A seller with no physical presence in Illinois and who does not meet or exceed the \$100,000 tax remittance threshold has no ROT or SOT obligation in Illinois. They may voluntarily collect and remit Use Tax or Service Use Tax on sales into Illinois as a courtesy to their customers. [35 ILCS 105/6 and 35 ILCS 110/7]
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Determining where a sale is sourced

Once physical presence in Illinois has been established, where the sale is sourced must be determined on a sale-by-sale basis.

If the sale is sourced **in** Illinois, the seller must remit State and local ROT or SOT¹, as well as any additional required State or local taxes, on that sale using the rates in effect at that location (**origin rate**). [86 Ill. Adm. Code 270.115]

If the sale is sourced **outside** of Illinois, the seller must remit State and local ROT or SOT¹, as well as any additional required State or local taxes, on that sale using the rates in effect at the location where the sale is shipped or delivered or at which possession is taken by the purchaser (**destination rate**). [86 Ill. Adm. Code 270.115]

Generally, the location where a sale is sourced is determined by evaluating the many selling activities of the sale (as outlined by the Steps on the following pages). The selling scenarios that define the location where a sale is sourced *regardless of the result* determined when evaluating the selling activities (see page 3) are discussed below.

Sales Made Over a Marketplace

Marketplace Facilitators who make sales to Illinois purchasers and meet or exceed the \$100,000 tax remittance threshold are responsible for remitting taxes on behalf of their marketplace sellers. These taxes on sales to Illinois purchasers are at the tax rate in effect at the location where the sale is shipped or delivered or at which possession is taken by the purchaser (**destination rate**) regardless of whether the marketplace seller has physical presence in Illinois or where the sale would otherwise be sourced.

For a marketplace facilitator's own sales over the marketplace, the following steps can be used to determine if the sale is sourced in Illinois. If the sale is sourced in Illinois, the sale is subject to ROT or SOT at the origin rate. If the sale is sourced outside Illinois, the sale is subject to ROT or SOT at the destination rate.

A marketplace facilitator's sale outside of the marketplace should be taxed at the location where the sale is sourced as determined according to this guide.

For sales to Illinois purchasers made over a marketplace in which the marketplace facilitator does not meet or exceed the \$100,000 tax remittance threshold, the marketplace seller is responsible for remitting the taxes and should determine where the sale is sourced according to this guide.

On-line Sales

Excluding sales made through a marketplace, sales made over the internet are presumed to be sourced outside the State of Illinois and are subject to ROT or SOT¹ at the **destination rate** unless clear and convincing evidence states the seller's predominant and most important selling activities take place in this State. When such evidence exists, the on-line sales are subject to ROT or SOT at the **origin rate** with the locations where the sales are sourced as follows:

- **A sale is fulfilled from inventory located in Illinois but the sale is not determined to be sourced elsewhere in Illinois** → location where the sale is sourced = location of the inventory
- **The customer takes possession of the tangible personal property at a place of business owned or leased by the seller in Illinois** → location where the sale is sourced = location where the customer takes possession of the tangible personal property
- **If neither of the scenarios listed above pertain to your on-line sales and no other clear and convincing evidence exists that the selling activities took place in this State, the sales are sourced outside of Illinois and should be taxed at the destination rate.**

In-State Inventory/Out-of-State Selling Activity

If the location where the sale is sourced is determined to be outside of Illinois while evaluating the selling activities of a seller's sale, but the tangible personal property that is being sold is in the seller's inventory in Illinois at the time of its sale (or is subsequently produced by the seller in Illinois), the location of the inventory (or the location where the property is subsequently produced) is considered to be where the sale is sourced. [86 Ill. Adm. Code 270.115(d)(2)]

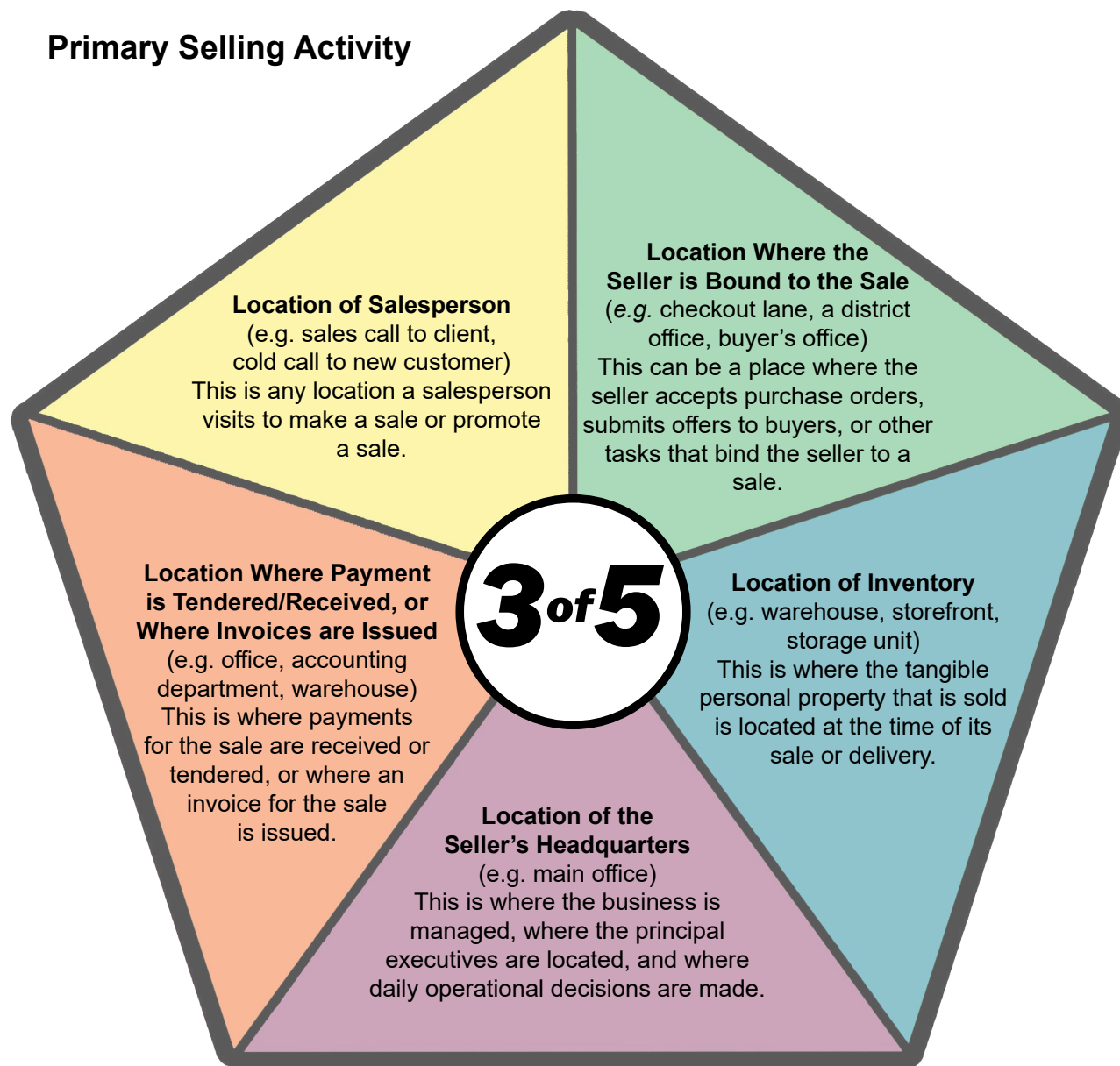
¹ Excludes de minimis servicepersons who have elected to pay Use Tax on their cost price of tangible personal property transferred to customers during sales of service.

Determining where a sale is sourced by evaluating selling activities

86 Ill. Adm. Code 270.115

STEP 1: Evaluate the **primary selling activities** of the sale in question. If any three of the five following primary selling activities occur in one location for that sale, that location is considered to be where the sale is sourced.

Primary Selling Activity



If the location where the sale is sourced has been determined using Step 1, skip Steps 2 and 3.
If the location where the sale is sourced cannot be determined using Step 1, continue to Step 2.
See the examples starting on page 6, for more information.

STEP 2: If three out of the five primary selling activities are not performed in one location for a sale, either the location of the **inventory** or the location of the **seller's main headquarters**, whichever has the most selling activity, is considered the location where the sale is sourced.

When evaluating which of the two locations has the most selling activity for the sale, primary selling activities and secondary selling activities must be considered. The list of selling activities are listed below.

Primary Selling Activity	Secondary Selling Activity
Location of salesperson	Location where marketing and solicitation occur
Location where the seller is bound to the sale	Location where the seller engages in activities necessary to procure goods for sale
Location where payment is tendered/received, or where invoices are issued	Location of the seller's officers, executives or employees with authority to set prices or determine other terms of sale, if different than the location of the salesperson
Location of inventory	Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled, if different from where they are received
Location of the seller's headquarters	Location where title passes from seller to buyer
	Location where the seller displays goods to prospective customers, such as a showroom



If the location where the sale is sourced has been determined using Step 2, skip Step 3.
If the location where the sale is sourced cannot be determined using Step 2, continue to Step 3.
See the examples starting on page 6, for more information.

STEP 3: If there is still no clear or convincing evidence as to where the sale is sourced, the location of the **seller's main headquarters** is deemed to be the location where the sale is sourced.

The location where the sale is sourced has now been determined.

If the location where the sale is sourced is in Illinois, the seller must remit State and local ROT or SOT*, as well as any additional required State or local taxes, on that sale using the rates in effect at that location (origin rate). If it is determined that the location where the sale is sourced is outside Illinois, the sale is subject to State and local ROT or SOT* at the tax rate in effect at the location where the tangible personal property is shipped or delivered or at which possession is taken by the purchaser (destination rate). [35 ILCS 120/2-12]

* Excludes de minimis servicepersons who have elected to pay Use Tax on their cost price of tangible personal property transferred to customers during sales of service.

Quick guide to determining how a sale should be taxed for Sales Tax purposes

Determine if the seller has physical presence

A seller has **physical presence** if they:

1. have or maintain an office, distribution house, sales house, warehouse, or other place of business in Illinois, or have any agent or other representative operating within Illinois;
2. have a contract* with an Illinois business under which the business refers potential customers to the seller by providing a promotional code or other mechanism that allows the seller to track purchases; or
3. have a contract* with an Illinois business under which the seller sells the same or substantially similar line of products or services as the business and the seller provides a commission or other consideration to the business.

* This only applies if income derived from the contract exceeds \$10,000 in prior year.

If the seller **has physical presence**:

- Determine where **each sale is sourced** to determine the correct tax rate.
- If a sale is sourced in Illinois, the seller must remit State and local ROT or SOT* on that sale at the origin rate.
- If a sale is sourced outside of Illinois, the seller must remit State and local ROT or SOT* on that sale at the destination rate.

If the seller **does not have physical presence** and:

- meets or exceeds the \$100,000 tax remittance threshold - Must remit State and local ROT or SOT* on sales to Illinois purchasers at the destination rate.
- does not meet or exceed the \$100,000 tax remittance threshold - No taxing obligation in Illinois but may voluntarily collect and remit Use Tax or Service Use Tax on its Illinois sales.

Presumptions/
Administrative Shortcuts

Marketplace Facilitators -

For sales made over the marketplace to IL purchasers on behalf of marketplace sellers:

- If the \$100,000 tax remittance threshold is met or exceeded, the facilitator must remit State and local ROT or SOT at the destination rate.
- If the \$100,000 tax remittance threshold is not met or exceeded, the marketplace facilitator has no obligation to remit Illinois taxes (the marketplace seller must properly determine their taxing obligations for these sales).

For the marketplace facilitator's own sales over the marketplace to IL purchasers:

- Sales made from inventory located in Illinois or if the selling activities are in Illinois, State and local ROT or SOT is due at the origin rate.
- Sales made from inventory outside of Illinois or if no selling activity is in Illinois, State and local ROT or SOT is due at the destination rate.

For the marketplace facilitator's own sales NOT over the marketplace - see the "Determine if the seller has physical presence" section.

On-line Sales -

Excluding sales made over a marketplace, sales made over the internet are presumed to be sourced outside Illinois (destination rate) unless clear and convincing evidence shows the seller's predominant and most important selling activities take place in Illinois (origin rate). Such evidence includes, but is not limited to:

- inventory in the State
- the customer takes possession of the tangible personal property at a place of business owned or leased by the seller in the State

In-State Inventory/Out-of-State Selling Activity -

Sales that can be determined to be sourced outside of Illinois, based off of an evaluation of selling activities, but the property being sold is located in the seller's inventory in Illinois at the time of the sale (or is subsequently produced by the seller in Illinois), will be sourced at the location of the inventory (or the location where the property is subsequently produced).

Determine where the sale is sourced

Step 1: 3 of 5 primary selling activities = location where the sale is sourced

- Location of salesperson
- Location where the seller is bound to the sale
- Location where payment is tendered/ received, or where invoices are issued
- Location of inventory
- Location of the seller's headquarters

If the location where the sale is sourced can be determined using this step, do not go on to Step 2.

Step 2: Inventory location or Main Headquarter location, whichever has the most primary and secondary selling activities = location where the sale is sourced

In addition to the primary selling activities listed in step 1 use the following secondary selling activities:

- Location where marketing and solicitation occur
- Location where the seller engages in activities necessary to procure goods for sale
- Location of the seller's officers, executives or employees with authority to set prices or determine other terms of sale, if different than the location of the salesperson
- Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled, if different from where they are received
- Location where title passes from seller to buyer
- Location where the seller displays goods to prospective customers, such as a showroom

If the location where the sale is sourced can be determined using this step, do not go on to Step 3.

Step 3: Seller's Main Headquarter Location = location where the sale is sourced

If there is no clear or convincing evidence as to where the sale is sourced, the location of the **seller's main headquarters** is deemed to be the location where the sale is sourced.

The location where the sale is sourced has now been determined.

If the sale is sourced in Illinois, the seller must remit State and local ROT or SOT* on that sale using the tax rate in effect at the location where the sale is sourced (origin rate).

If the sale is sourced outside Illinois, the seller must remit State and local ROT or SOT* on that sale using the tax rate in effect at the location where the sale is shipped or delivered or at which possession is taken by the purchaser (destination rate).

* Excludes de minimis servicepersons who have elected to pay Use Tax on their cost price of tangible personal property transferred to customers during sales of service.

Examples for determining physical presence and where a sale is sourced

Example 1: *Shiny Things* is a retail store that sells tangible personal property. Its headquarters and sole warehouse is in Joliet, Illinois. There are *Shiny Things* stores in Joliet, Evanston, Chicago, and Kewanee, all in Illinois.

A customer picks out, pays for, and takes home a shiny jewelry box from the store in Joliet.

When determining how to tax this sale, it must first be determined if the business has physical presence in Illinois. It is apparent that *Shiny Things* has physical presence because its headquarters, warehouse, and stores are all in Illinois.

Next determine where the sale is sourced.

STEP 1: The salesperson (person making the sale or possibly cashier ringing up the sale), inventory (product stocked in the store), location where money is tendered (where the seller received payment for the item), and the place that the seller is bound to the sale (where customer agrees to purchase the item or a contract is written for purchase) are all located at the same Joliet store. Four out of the five primary selling activities associated with this sale are attributed to the Joliet store. If, by chance, the main headquarters were attached to the Joliet store, all five primary selling activities were performed at the Joliet location.

The address of the Joliet store is where the sale is sourced. The shiny jewelry box sale would be subject to any taxes in effect at the address of the store. The tax rates would be the rates in effect at the Joliet address.

Example 2: A customer picks out, pays for, and takes home a shiny toaster from the *Shiny Things* store located in Kewanee (see Example 1 for further details.)

Shiny Things has physical presence in Illinois (see example 1 for detailed explanation).

STEP 1: The location where the sale is sourced is considered to be the address of the Kewanee store. The salesperson, where money is tendered, inventory, and place where seller is bound to the sale are all performed in the Kewanee store. This sale has four of the five primary selling activities performed in the same Kewanee location (It cannot have all five primary activities because its headquarters is located in Joliet.)

The address of the Kewanee store is where the sale is sourced. The shiny toaster sale would be subject to any taxes in effect at the address of the store. The tax rates would be the rates in effect at the Kewanee address.

Example 3: A customer visits the Chicago *Shiny Things* store (see example 1 for further details.) The customer finds a shiny pair of scissors that they would like to buy, but the store has no scissors left in stock. The Chicago store agrees to ship the scissors to the customer when their stock is replenished. The customer pays for the scissors at the store.

Shiny Things has physical presence in Illinois (see example 1 for detailed explanation).

STEP 1: The location where the sale is sourced is considered to be the address of the Chicago store. Even though the inventory is not located at the address at the time of the sale, the salesperson, where money is tendered, and place where seller is bound to the sale are all performed in the Chicago store. This sale has three of the five primary selling activities performed in the same Chicago location.

The address of the Chicago store is where the sale is sourced. The shiny pair of scissors sale would be subject to any taxes in effect at the address of the store. The tax rates would be the rates in effect at the Chicago address.

Example 4: The *Shiny Things* company (see example 1 for further details) sends sales representatives to a home show in Peoria. The representatives use store catalogues to showcase their products and have no inventory with them. A customer places an order for four shiny shopping carts with a *Shiny Things* sales representative but does not pay at the show. Instead, a purchase agreement is signed at the show and the billing department at *Shiny Things*' headquarters will bill the customer at a later date. The carts will be shipped from the Joliet warehouse and sent to the customer's address.

Shiny Things has physical presence in Illinois (see example 1 for detailed explanation).

STEP 1: The salesperson and the place where the seller is bound to the sale (where the purchase order is accepted) is at the site of the Peoria home show. However, the inventory, headquarters, and place where payment is received is not at the Peoria address. The Peoria address cannot be the location where the sale is sourced because it only has two of the five primary selling activities.

If the payment is sent to the billing department at the headquarters and the warehouse is in the same taxing district as the headquarters, three of five primary selling activities would be at the Joliet headquarters' location. The location where the sale is sourced would be the Joliet headquarters address.

If the warehouse is in a different taxing district from the headquarters or the payment is sent to another location apart from the headquarters, three of the five primary selling activities cannot be attributed to one location. Step 2 of determining where the sale is sourced must be used.

STEP 2: In Step 2, the location of the inventory or the location of the headquarters is evaluated to determine which of them might be considered the location where the sale is sourced. Whichever location has the most selling activities, including both primary and secondary selling activities, is determined to be where the sale is sourced.

For this example, the inventory is in a different taxing district than the headquarters (if they both are in the same taxing district, either location can be used as the location where the sale is sourced), and the billing department is located at the headquarters.

The breakdown of primary and secondary selling activities per location for this sale is as follows:

Inventory Location	Headquarters Location
Location where the seller engages in activities necessary to procure goods for sale	Location where payment is tendered/received, or where invoices are issued
	Location where marketing and solicitation occur
	Location of the seller's officers, executives or employees with authority to set prices or determine other terms of sale, if different than the location of the salesperson

Because the *Shiny Things*' headquarters has more selling activity than the inventory location, the headquarters location is determined to be where the sale of the shiny shopping carts is sourced. The sale would be subject to any taxes in effect at the address of the headquarters. The tax rates would be the rates in effect at the headquarters' address.

Example 5: Similar to the scenario in Example 4, *Shiny Things* sent a salesperson to the Peoria Home Show the following year. The same customer requested four more shiny shopping carts that will be shipped to them from *Shiny Things*' warehouse. The customer will be billed and pay at a later date. This year, however, *Shiny Things* moved their accounting and payment offices to its warehouse location.

STEP 1: In this example, the salesperson and the place where the seller is bound to the sale (where the purchase order is accepted) is still at the site of the Peoria home show. The Peoria Home Show is still not the location where the sale is sourced because it only has two of the five primary selling activities.

As mentioned in Example 4, the inventory is in a different taxing district than the headquarters. Three of the five primary selling activities cannot be attributed to one location. Step 2 of determining where the sale is sourced must be used.

STEP 2: In Step 2, the location of the inventory and the location of the headquarters is evaluated to determine which might be considered the location where the sale is sourced. Primary and secondary selling activities are used to make the determination. This sale's breakdown of primary and secondary selling activities per the two locations is as follows:

Inventory Location	Headquarters Location
Location where the seller engages in activities necessary to procure goods for sale	Location where marketing and solicitation occur
Location where payment is tendered/received, or where invoices are issued	Location of the seller's officers, executives or employees with authority to set prices or determine other terms of sale, if different than the location of the salesperson

Because it was determined that both locations have the same number of selling activities, Step 3 must be used to determine where the sale is sourced.

STEP 3: Step 3 states that if there is still uncertainty about where the sale is sourced, the location where the sale is sourced defaults to the seller's headquarters location.

For this sale of the shiny shopping carts, the location of *Shiny Things*' headquarters is where the sale is sourced. The sale would be subject to any taxes in effect at the address of the headquarters. The tax rates would be the rates in effect at the headquarters' address.

Example 6: *Shiny Things* (details in Example 1) has their own website. A customer chooses and pays for a shiny bracelet on-line from the site. *Shiny Things* ships the bracelet to the customer from its warehouse in Illinois.

Shiny Things has all of its selling activities in Illinois so its on-line sales are deemed to be inside Illinois. The location where the sale is sourced would be *Shiny Things*' headquarters location because most of the selling activities are performed at the headquarters (see prior examples). The bracelet sale would be subject to any taxes in effect at the address of the headquarters. The tax rates would be the rates in effect at the headquarters' address.

Example 7: *Dull Objects* is a retail store that sells tangible personal property. Its headquarters, billing/accounts receivable departments, and its inventory are located at the same location in Zwingle, Iowa. *Dull Objects* has stores throughout Iowa and one location in Rock Island, Illinois.

A customer picks out, pays for, and takes home a dull wooden spoon from the store in Rock Island.

Dull Objects has physical presence in Illinois because of its store located in Rock Island.

STEP 1: The location where the sale is sourced is considered to be the address of the Rock Island *Dull Objects* store. The salesperson, where money is tendered, inventory, and place where seller is bound to the sale are all performed in the Rock Island store. This sale has four of the five primary selling activities performed in the same Rock Island location.

The dull spoon sale would be subject to any taxes in effect at the address of the store. The tax rates would be the rates in effect at the Rock Island address.

Example 8: *Dull Objects* also sends sales representatives to the home show in Peoria. The *Dull Objects*' representatives use fliers to showcase their products and carry no inventory with them. A customer places an order for twenty dull wooden doors with a *Dull Objects* sales representative but does not pay at the show. Instead, a purchase agreement is signed at the show and the billing department at *Dull Objects*' headquarters will bill the customer at a later date. The doors will be shipped from the Iowa warehouse and sent to the customer's address.

Because *Dull Objects* has physical presence in Illinois (see example 7), ROT is due. The location where the sale is sourced must be determined to see whether the origin rate or destination rate is used.

STEP 1: The salesperson and the place where the seller is bound to the sale (where the purchase order is accepted) is at the site of the Peoria home show. However, the inventory, headquarters, and place where payment is received is not at the Peoria address. The Peoria address cannot be the location where the sale is sourced because it only has two of the five primary selling activities.

Three out of the five primary selling activities for the sale are performed at the Zwingle, Iowa location (headquarters, inventory, and place where payment is received.) The location of the *Dull Objects*' headquarters in Zwingle, Iowa is where the sale is sourced. Therefore, the sale of dull doors is subject to ROT at the destination rate (i.e., the rate in effect at the address where the doors are shipped).

Example 9: *Dull Objects* (see details in example 7) sells their product on-line through their own website. An Illinois customer chooses and pays for a dull plunger on-line from the site. *Dull Objects* ships the plunger to the customer from its warehouse in Iowa.

Dull Objects has physical presence in Illinois (store located in Rock Island).

Because there is no clear and convincing evidence that the seller's predominant and most important selling activities for this sale take place in Illinois, the location where the sale is sourced would be outside of Illinois. The dull plunger sale would be subject to ROT at the destination rate.

Example 10: *Dull Objects* (see details in example 7) sells their product on-line through their own website. An Illinois customer chooses and pays for a dull curtain rod on-line from the site but asks if they may pick up the curtain rod at the Rock Island store. *Dull Objects* ships the curtain rod to the Rock Island store from its warehouse in Iowa. The customer picks up the item at the Rock Island store.

Dull Objects has physical presence in Illinois (store located in Rock Island).

In this case, there is clear and convincing evidence that the seller's predominant and most important selling activities for this sale took place in this State (i.e. the customer takes possession of the tangible personal property at a place of business owned or leased by the seller in the State).

The location where the sale is sourced would be considered the Rock Island store where the customer took possession of the curtain rod. The dull curtain rod sale would be subject to any taxes in effect at the address of the store. The tax rates would be the rates in effect at the Rock Island store address.

Example 11: The *Stuff for Everyone* website is an on-line marketplace that allows sellers to list and sell their products on-line. Buyers pay for their items through the website. The website then sends the contact info and money to the marketplace sellers minus commission. The marketplace sellers handle the shipping and handling of the purchased product. Over \$200,000 in retail sales are made to Illinois customers over the *Stuff for Everyone* website. *Stuff for Everyone*'s main headquarters is located in New York.

Dull Objects makes sales over the *Stuff for Everyone* website. An Illinois customer chooses and pays for a dull rug on-line from the *Stuff for Everyone* website that was listed by *Dull Objects*. *Dull Objects* receives the info and money from *Stuff for Everyone*. *Dull Objects* then ships the rug from its Zwingle, Iowa inventory to the purchaser.

In this case, because the *Stuff for Everyone* website has exceeded the \$100,000 tax remittance threshold, *Stuff for Everyone* would be considered the retailer. As a marketplace facilitator meeting the tax remittance threshold, it must certify to *Dull Objects* that it has taken over the responsibility of remitting State and local ROT on behalf of *Dull Objects*.

The *Stuff for Everyone* website would remit taxes on the sale of the dull rug at the tax rate in effect at the location where the sale is shipped or delivered or at which possession is taken by the purchaser.

The only time that *Dull Objects* would be required to remit taxes on the sales over the *Stuff for Everyone* website, would be if the *Stuff for Everyone* marketplace facilitator is not remitting the tax (i.e., does not meet the threshold) and *Dull Objects* has either met the tax remittance threshold or has physical presence in Illinois.

Example 12: *Stuff for Everyone* sells its own products over the *Stuff for Everyone* website (see example 11 for more info.) It has inventory located in Chicago, Illinois and in Utah. An Illinois customer chooses and pays for a pair of socks on-line from the *Stuff for Everyone* website and listed by *Stuff for Everyone*. *Stuff for Everyone* ships the socks from its inventory in Illinois.

Stuff for Everyone has physical presence in Illinois because it has inventory located in Illinois.

Stuff for Everyone is a marketplace facilitator. Sales made over the marketplace on its own behalf are taxed based on whether the sale is fulfilled from inventory located in Illinois or for which selling activities otherwise occur at a location in Illinois.

STEP 1: Three out of the five primary selling activities are not performed in Illinois.

The sale would be subject to any taxes in effect at the Illinois address of the inventory where the socks were shipped from. The tax rates would be the rates in effect at the inventory location.

Example 13: *Stuff for Everyone* (see examples 11 and 12 for more detail) sells one of its own products, a bath towel, through the *Stuff for Everyone* website to an Illinois purchaser. *Stuff for Everyone* ships the towel from its inventory in Utah.

Stuff for Everyone has physical presence in Illinois (location of inventory.)

Stuff for Everyone is a marketplace facilitator. Sales made over the marketplace on its own behalf are taxed based on whether the sale is fulfilled from inventory located in Illinois or for which selling activities otherwise occur at a location in Illinois.

STEP 1: Three out of the five primary selling activities are not performed in Illinois.

Because the sale is not sourced in Illinois and the sale is made over the marketplace that has met the \$100,000 tax remittance threshold, the sale would be subject to ROT at the destination rate.

Had the marketplace not met the tax remittance threshold, then *Stuff for Everyone*, as a seller, would have been required to determine if they were liable for tax on the transaction. Because *Stuff for Everyone* has physical presence in Illinois, they would have had a tax remittance requirement and would have been subject to ROT at the destination rate for the sale.

Example 14: *Stuff for Everyone* (see examples 11-13 for more detail) decides to open a retail store in San Francisco. An Illinois purchaser calls the store, gives payment information, and places an order for a spatula. The order is shipped to the customer from the inventory in Utah.

Stuff for Everyone has physical presence in Illinois because of the inventory located in Illinois.

Stuff for Everyone is a marketplace facilitator. However, for sales made outside of the marketplace, *Stuff for Everyone* would examine each sale independent of its marketplace status.

STEP 1: In this case, three out of the five primary selling activities is not performed in Illinois. Three of the five primary selling activities can be attributed to the location of the San Francisco store (salesperson, payment received, and place that the seller is bound to the sale).

The location where the sale is sourced is determined to be the San Francisco store location. Because the sale is not sourced in Illinois, the sale would be subject to ROT at the destination rate.

Example 15: *Mr. Fix-M-Up* is a service company located in Maywood, Missouri. A customer in Quincy contacts *Mr. Fix-M-Up* to have their high-powered telescope repaired at the customer's location in Quincy. *Mr. Fix-M-Up* charges a mandatory service charge for service performed at a customer's location. A customer must agree to the service charge before *Mr. Fix-M-Up* will send out a serviceperson. The customer agrees to the service charge and *Mr. Fix-M-Up* sends a serviceperson to the customer's location in Quincy to make repairs to the telescope. While servicing the telescope, the serviceperson replaces a cracked lens with a new lens that they brought with them during the service call. The new lens was in *Mr. Fix-M-Up*'s stockroom, which is located in *Mr. Fix-M-Up*'s headquarters, when the customer first made contact. The customer is billed from the *Mr. Fix-M-Up* headquarters in Maywood rather than paying the serviceperson during the service call.

Mr. Fix-M-Up has physical presence in Illinois because of the serviceperson working in Illinois. Because the serviceperson transferred ownership of the lens to the customer, *Mr. Fix-M-Up* must determine if the company is subject to Illinois SOT or Use Tax on the transfer of the lens during the service call. If SOT is due, the location where the sale is sourced must also be determined to see whether the origin rate or destination rate is used.

STEP 1: *Mr. Fix-M-Up* starts by reviewing their **cost ratio**. *Mr. Fix-M-Up* has \$54,000 in cost of parts and \$130,000 in total gross receipts.

$$\frac{\$54,000}{\$130,000} = 41.5\% \text{ cost ratio}$$

Because the cost ratio is over 35%, *Mr. Fix-M-Up* is subject to SOT. The location must be determined.

STEP 2: In this case, all of the primary selling activities can be attributed to *Mr. Fix-M-Up*'s headquarters in Maywood. The salesperson would be the person who made the service call agreement on the phone in Maywood. The invoice was sent from the headquarters in Maywood, which is also where the person is bound to the service call (the location the customer contacted to request service and agreed to the service charge). The lens was in the company's inventory at their headquarters when the service call was made.

The location where the sale of service is sourced is determined to be the Maywood headquarters location. Because the sale is not sourced in Illinois, the sale of service would be subject to SOT at the destination rate.

Example 16: *Dr. Mend-M-Right* is a service company located in New London, Missouri. A customer in Quincy contacts *Dr. Mend-M-Right* to have their ice maker repaired at the customer's location in Quincy. *Dr. Mend-M-Right* charges a mandatory service charge for service performed at a customer's location. A customer must agree to the service charge before *Dr. Mend-M-Right* will send out a serviceperson. The customer agrees to the service charge and *Dr. Mend-M-Right* sends a serviceperson to the customer's location in Quincy to make repairs to the ice machine. While servicing the ice machine, the serviceperson has to replace a thermostat. The serviceperson picks up the thermostat from a local hardware store in Quincy. The customer pays the *Dr. Mend-M-Right* serviceperson upon completion of the service call.

Dr. Mend-M-Right has physical presence in Illinois because of the serviceperson working in Illinois. Because the serviceperson transferred ownership of the thermostat to the customer during the service call, *Dr. Mend-M-Right* must determine if the company is subject to Illinois SOT or Use Tax on the transfer of the thermostat. If SOT is due, the location where the sale is sourced must also be determined to see whether the origin rate or destination rate is used.

STEP 1: *Dr. Mend-M-Right* starts by reviewing their **cost ratio**. *Dr. Mend-M-Right* has \$60,000 in cost of parts and \$150,000 in total gross receipts.

$$\frac{\$60,000}{\$150,000} = 40\% \text{ cost ratio}$$

Because the cost ratio is over 35%, *Mr. Fix-M-Up* is subject to SOT. The location must be determined.

STEP 2: In this case, the inventory location and the location where the payment is received are in Quincy. However, the headquarters, the salesperson, and the location where the person is bound to the service call (the location the customer contacted to request service and agreed to the service charge) is in New London. Three of the five primary selling activities can be attributed to New London, Missouri.

The location where the sale of service is sourced is determined to be the New London headquarters location. Because the sale is not sourced in Illinois, the sale of service would be subject to SOT at the destination rate.

Example 17: *Sir Service-M-Best* is a service company located in Festus, Missouri. A customer in Chester contacts *Sir Service-M-Best* to have their garage door opener repaired at the customer's location in Chester. *Sir Service-M-Best* sends a serviceperson to the customer's location in Chester to make repairs to the door opener. While servicing the door opener, the serviceperson replaces a broken spring with a new spring that the serviceperson took out of their Festus inventory located at the headquarters and brought with them during the service call. The customer is billed from the *Sir Service-M-Best* headquarters in Festus rather than paying the serviceperson during the service call.

Sir Service-M-Best has physical presence in Illinois because of the serviceperson working in Illinois. Because the serviceperson transferred ownership of the spring to the customer during the service call, *Sir Service-M-Best* must determine if the company is subject to Illinois SOT or Use Tax on the transfer of the spring. If SOT is due, the location where the sale is sourced must also be determined to see whether the origin rate or destination rate is used.

STEP 1: *Sir Service-M-Best* starts by reviewing their **cost ratio**. *Sir Service-M-Best* has \$20,000 in cost of parts and \$120,000 in total gross receipts.

$$\frac{\$20,000}{\$120,000} = 16.7\% \text{ cost ratio}$$

Because the cost ratio is under 35%, *Sir Service-M-Best* is considered a de minimis serviceperson. De minimis servicepersons registered to sell tangible personal property at retail in Illinois are subject to SOT on the cost price of the tangible personal property transferred to customers as an incident of a sale of service. Otherwise, de minimis servicepersons may opt to remit Use Tax on the cost of the transferred tangible personal property.

If *Sir Service-M-Best* is registered to sell tangible personal property at retail in Illinois or elects not to remit Use Tax on cost price, it must determine where the sale of service is sourced to determine the SOT rate. In this example, the source is considered to be the location of the headquarters in Festus, Missouri. Because the transfer is not sourced in Illinois, the sale of service would be subject to SOT at the destination rate.

If *Sir Service-M-Best* is not registered to sell tangible personal property at retail in Illinois and elects to pay Use Tax, it must remit Use Tax to its supplier on the cost of the spring. If the purchase of the spring from its supplier took place outside of Illinois, and *Sir Service-M-Best* paid use tax to another state, it would have no Illinois Use Tax obligation if tax was paid at a rate equal or greater to 6.25%. If tax was paid in an amount less than 6.25%, *Sir Service-M-Best* would owe Use Tax to Illinois with a credit for tax properly paid to the other state. If *Sir Service-M-Best* did not pay use tax to another state, it should self-assess and remit Illinois Use Tax to the Department on the tangible personal property it purchased at retail and used in Illinois.

Example 18: *Mrs. Repair-M-Better* is a service company located in Louisiana, Missouri. A customer in Danville contacts *Mrs. Repair-M-Better* by phone to have their remote control airplane repaired. *Mrs. Repair-M-Better* agrees to repair the airplane. The customer sends the airplane by mail to the headquarters of *Mrs. Repair-M-Better* in Louisiana. A serviceperson for *Mrs. Repair-M-Better* repairs the airplane at their workshop located at the headquarters in Louisiana, but has to replace a broken rudder. Fortunately, there is a spare rudder in the stockroom at the headquarters in Louisiana which the serviceperson uses for the repair. *Mrs. Repair-M-Better* sends the repaired airplane back to the customer by mail along with a service bill. *Mrs. Repair-M-Better* has no physical presence in Illinois.

Because they do not have physical presence in Illinois, *Mrs. Repair-M-Better* must compare their annual gross receipts from sales of service to Illinois customers against the tax remittance threshold. If *Mrs. Repair-M-Better* has \$100,000 or over in sales of service to Illinois customers during the past 12 months, the transfer of the rudder would be subject to SOT at the destination rate as long as *Mrs. Repair-M-Better* is not a de minimis serviceperson and makes no retail sales to Illinois purchasers. If *Mrs. Repair-M-Better* had under \$100,000 in sales of service to Illinois customers during the past 12 months, they would not be subject to SOT but could voluntarily collect and remit Service Use Tax on behalf of the customer.