

Sales/Use/Indirect:

Illinois: Remote Seller Challenges Constitutionality of Post-*Wayfair* “Leveling the Playing Field” Law

Case No. 24TT119, Ill. Independent Tax Trib. (petition filed 12/9/24). A remote seller has filed a petition with the Illinois Independent Tax Tribunal that, among other claims, challenges the constitutionality of Illinois legislation enacted in response to *Wayfair* that requires certain out-of-state sellers to begin collecting and remitting certain Illinois taxes once their annual sales to Illinois customers exceed \$100,000, or the seller entered into 200 or more separate transactions in a year with Illinois customers. Specifically, the remote seller is challenging Illinois’ “Leveling the Playing Field” legislation under Public Acts 101-0031 and 101-0604 as it relates to Illinois Retailers’ Occupation Tax (ROT), alleging it “discriminates against interstate commerce by imposing destination sourcing on sales by remote retailers and origin sourcing on sales by similarly situated retailers that maintain an Illinois presence.” According to the filed petition, under this state law, “whereas an in-state retailer may impose a single local ROT rate based on its place of business, a remote retailer is instead arbitrarily subjected to a different, unique, local ROT rate for each sale into the state,” and this “disparate treatment discriminates against remote retailers by treating two similarly situated taxpayers differently solely due to the fact that one of the taxpayers has some form of physical presence in the state (however *de minimis*), while the other is engaged in interstate commerce.” Please contact us with any questions.

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