



This Week in State Tax (TWIST)

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Illinois: Challenge Filed to “Leveling the Playing Field” Act

A remote seller of pet medications has filed a petition with the Illinois Tax Tribunal challenging Illinois’ Leveling the Playing Field Act (Act), which requires retailers without an Illinois physical presence to collect state and local Retailer’s Occupation Tax (ROT) based on the destination of the products sold. In contrast, in-state retailers are required to collect both state and local ROT on an origin sourcing basis. The taxpayer notes there can be seven different ways that ROT and use tax can apply to a transaction, depending on slightly different facts. The taxpayer was audited for compliance with Illinois ROT laws and was assessed over \$1 million in additional tax, interest, and penalties. In challenging the assessment, the taxpayer alleges that Act discriminates against interstate commerce by requiring destination-based sourcing on sales by remote retailers and origin-based sourcing on sales by similarly situated retailers with an Illinois presence. In the taxpayer’s view, destination-based sourcing requires compliance with significantly more local taxing rates and jurisdictions, which places greater burdens on remote retailers, as opposed to in-state retailers who enjoy the benefit of complying with one or significantly fewer local tax jurisdictions under the origin-based sourcing rules. The taxpayer also cites to *Wayfair* and alleges that the Act violates the Commerce Clause by imposing undue burdens (e.g., reporting to the state on ROT collected in over 900 local jurisdictions) on remote retailers that are not imposed on retailers with a slight physical presence in the state.

In Count II of the petition, the taxpayer argues that the Act also violates the Uniformity Clause of the Illinois Constitution, which provides that a tax must be “uniform as to the class upon which it operates.” To pass muster, a tax classification must be based on real and substantial differences between taxpayers and bear a rational relationship to the object of the legislation or public policy. Because similarly situated taxpayers are treated “vastly differently for tax purposes” under the Act, and there is no articulate policy justification for this treatment, the taxpayer argues that Uniformity Clause is implicated. Please stay tuned to TWIST for updates as *PetMeds Express, Inc. v. Illinois Dep’t of Revenue* progresses.

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