

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.1701 Bulk Sales: Notices of Sales of Business Assets

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130
RETAILERS' OCCUPATION TAX**

SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section 130.1701 Bulk Sales: Notices of Sales of Business Assets

- a) If any taxpayer, outside the usual course of his or her business, sells or transfers the major part of any one or more of:
- 1) the stock of goods which he is engaged in the business of selling, or
 - 2) the furniture or fixtures, or
 - 3) the machinery and equipment, or
 - 4) the real property of any business that is subject to the provisions of the Act,

the purchaser or transferee of such assets shall, no later than 10 business days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago Office of the Department disclosing the name and address of the seller or transferor, the name and address of the purchaser or transferee, the date of the sale or transfer, a copy of the sales contract and financing agreements that shall include a description of the property sold, the amount of the purchase price or a statement of other consideration for the sale or transfer, the terms for payment of the purchase price and such other information as the Department may reasonably require. If the purchaser or transferee fails to file the above-described report of sale with the Department within the prescribed time, the purchaser or transferee shall be personally liable for the amount owed under this Section by the seller or transferor to the Department up to the amount of the reasonable value of the property acquired by the purchaser or transferee. The seller or transferor shall pay the Department the amount of tax, penalty and interest (if any) due from him or her under the Act up to the date of the payment of tax. The seller or transferor, or the purchaser or transferee, at least 10 business days before the date of the sale or transfer, may notify the Department of the intended sale or transfer and request the Department to audit the books and records of the seller or transferor or to do whatever else may be necessary to determine how much the seller or transferor owes to the Department under the Act up to the date of the sale or transfer. The Department shall take such steps as may be appropriate to comply with the request.

- b) Any order issued by the Department pursuant to the Act and this Section to withhold from the purchase price shall be issued within 10 business days after the Department

receives notification of a sale as provided in the Act and this Section. The purchaser or transferee shall withhold such portion of the purchase price as may be directed by the Department, but not to exceed a minimum amount varying by type of business plus twice the outstanding unpaid liabilities and twice the average liability of preceding filings times the number of unfiled returns to cover the amount of all tax, penalty and interest due and unpaid by the seller or transferor under the Act or, if the payment of money or property is not involved, shall withhold the performance of the condition that constitutes the consideration for the sale or transfer. Within 60 business days after the issuance of the initial order to withhold, the Department shall provide written notice to the purchaser or transferee of the actual amount of all taxes, penalties and interest then due and whether or not additional amounts may become due as a result of unfiled returns, pending assessments and audits not completed. The purchaser or transferee shall continue to withhold the amount directed to be withheld by the initial order or to withhold the performance of the condition that constitutes the consideration for the sale or transfer until the purchaser or transferee receives from the Department a certificate showing that such tax, penalty and interest have been paid or a certificate from the Department showing that no tax, penalty or interest is due from the seller or transferor under the Act.

- c) The purchaser or transferee is relieved of any duty to continue to withhold from the purchase price and of any liability for tax, penalty or interest due under the Act from the seller or transferor if the Department fails to notify the purchaser or transferee in the manner provided in this Section of the amount to be withheld within 10 business days after the sale or transfer has been reported to the Department or within 60 business days after issuance of the initial order to withhold as the case may be. The Department shall have the right to determine amounts claimed on an estimated basis to allow for non-filed periods, pending assessments and audits not completed. However, the purchaser or transferee shall be personally liable only for the actual amount due when determined.
- d) If the seller or transferor fails to pay the tax, penalty and interest (if any) due from him or her under the Act and the Department makes timely claim therefor against the purchaser or transferee as provided in subsection (b), then the purchaser or transferee shall pay the amount so withheld from the purchase price to the Department. If the purchaser or transferee fails to comply with the requirements of this Section under the Act, the purchaser or transferee shall be personally liable to the Department for the amount owed under the Act by the seller or transferor to the Department up to the amount of the reasonable value of the property acquired by the purchaser or transferee.
- e) Any person who shall acquire any property or rights thereto which, at the time of such acquisition, is subject to a valid lien in favor of the Department shall be personally liable to the Department for a sum equal to the amount of taxes secured by such lien but not to exceed the reasonable value of such property acquired by him.
- f) Examples of situations where bulk sales reporting is required:
 - 1) When a store selling clothing and shoes sells the clothing inventory of the business to another entity, bulk sales reporting is required.
 - 2) When a company sells its business on a contract for deed basis, bulk sales reporting is required when the contract is entered into.

g) Examples of situations where bulk sales reporting is not required:

- 1) When a corporation is merged into another corporation pursuant to the Business Corporation Act, there are no bulk sales reporting requirements because the surviving corporation retains all of the liabilities of the merged corporation.
- 2) When one or more corporations are consolidated into a new corporation pursuant to the Illinois Business Corporation Act, there are no bulk sales reporting requirements because the new corporation retains all of the liabilities of the consolidated corporations.
- 3) A repossession of equipment and inventory by a lender upon default by a borrower does not constitute a transfer within the meaning of the Bulk Sales provisions of the Act. For example, when a company is in default on a loan for business furniture and fixtures and the holder of the security interest forecloses and enters the business to repossess the furniture and fixtures, bulk sales reporting is not required.
- 4) A transfer of the majority of assets from one location to another location where a business has multiple locations and operates the locations under the same Certificate of Registration number is not a transfer that requires bulk sales reporting.

(Source: Amended at 31 Ill. Reg. _____, effective _____)