

**Illinois Department of Revenue
Regulations**

Title 86 Part 140 Section 140.125 Examples of Nontaxability

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

**PART 140
SERVICE OCCUPATION TAX**

Section 140.125 Examples of Nontaxability

The tax does not apply to:

- a) sales of intangible personal property;
- b) sales of real property;
- c) sales of personal services as such;
- d) sales of tangible personal property which come within the protection of the Commerce Clause of the Constitution of the United States (see Subpart E of this Part);
- e) *personal property sold by a corporation, society, association, foundation, institution, or organization, other than a limited liability company, that is organized and operated as a not-for-profit service enterprise for the benefit of persons 65 years of age or older if the personal property was not purchased by the enterprise for the purpose of resale by the enterprise (Section 3-5(1) of the Act);*
- f) the retail selling of tangible personal property which is taxable under the Retailers' Occupation Tax Act [35 ILCS 120] or the Use Tax Act [35 ILCS 105];
- g) a sale of tangible personal property for the purpose of resale apart from the purchaser's engaging in a service occupation, made in compliance with Section 2c of the Retailers' Occupation Tax Act (Section 2 of the Act);
- h) sales of tangible personal property as an incident to sales of service:
 - 1) *to or by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes (Section 2(c) of the Act), in accordance with the provisions of 86 Ill. Adm. Code 130.2005, which is effective as if fully set forth in this subsection (h)(1);*
 - 2) *to or by any corporation, society, association, foundation or institution operated primarily for the recreation of persons aged 55 years or older which has no compensated officers or employees, in accordance with the provisions of 86 Ill.*

Adm. Code 130.2005, which is effective as if fully set forth in this subsection (h)(2) (Section 2(c) of the Act);

- 3) *to or by any governmental body* (Section 2(c) of the Act), in accordance with the provisions of 86 Ill. Adm. Code 130.2055 and 130.2080, which are effective as if fully set forth in this subsection (h)(3);
- 4) *to a not-for-profit Illinois county fair association for use in conducting, operating or promoting the county fair* (Section 3-5(2) of the Act);
- 5) *to any not-for-profit arts or cultural organization that has received an exemption under Section 501(c)(3) of the Internal Revenue Code (26 USCA 501) and that is organized and operated for the presentation or support of arts or cultural programming, activities, or services. On and after July 1, 2001, the qualifying organizations listed above must also be organized and operated primarily for the presentation or support of arts or cultural programming, activities, or services. These organizations include, but are not limited to, music and dramatic arts organizations such as symphony orchestras and theatrical groups, arts and cultural service organizations, local arts councils, visual arts organizations, and media arts organizations.* (Section 3-5 of the Act)

In order to qualify for exemption, all the above listed organizations (and on and after July 1, 2001, those described in subsection (h)(5)) must have been issued an active exemption identification number by the Department;

- i) the sale, employment and transfer of such tangible personal property as newsprint and ink for physical incorporation into newspapers or magazines;
- j) the incorporation of tangible personal property into real estate by a construction contractor, which activity constitutes a taxable "use" under the Retailers' Occupation Tax Act and the Use Tax Act, rather than the carrying on of a service occupation;
- k) through June 30, 2003, the sale, employment and transfer, as an incident to a sale of service, of such tangible personal property as pollution control facilities, in accordance with the provisions of 86 Ill. Adm. Code 130.335, which are effective as if fully set forth in this subsection (k). The sale, employment and transfer, as an incident to a sale of service of such tangible personal property as low sulphur dioxide coal fueled devices, in accordance with the provisions of 86 Ill. Adm. Code 130.335, which are effective as if fully set forth in this subsection (k);
- l) sales of stock tonics, serums and other medicinal products to veterinarians for retransfer as an incident to service in caring for animals that are to be sold or the products of which are to be sold;
- m) sales of sprays and farm chemicals as an incident to service by persons engaged in the service occupation of spraying crops or applying farm chemicals for others, in accordance with the provisions of 86 Ill. Adm. Code 130.1955, which are effective as if fully set forth in this subsection (m);

- n) sale of either new or used farm machinery, equipment or replacement parts transferred as an incident to a sale of service for use in production agriculture or for use in State or federal agricultural programs, in accordance with the provisions of 86 Ill. Adm. Code 130.305, which are effective as if fully set forth in this subsection (n);
- o) *a sale or transfer of machinery and equipment used primarily in the process of manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease, whether such sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether such sale or lease is made apart from or as an incident to the seller's engaging in a service occupation and the applicable tax is a service occupation tax or service use tax, rather than retailers' occupation tax or use tax.* (Section 2 of the Act) (Amended by Public Act 87-876, effective January 1, 1993) The transfer of standard or stock parts in the repair of qualifying exempt manufacturing machinery and equipment is exempt. The provisions of 86 Ill. Adm. Code 130.330 are effective as if fully set forth in this subsection (o);
- p) through August 12, 1999, a sale or transfer of graphic arts machinery and equipment, including repair and replacement parts used primarily for graphic arts production by means of printing or other processes or *defined in Major Group 27 of the U.S. Standard Industrial Classification Manual.* However, effective August 13, 1999 and through June 30, 2003, this exemption applies to a sale or transfer of graphic arts machinery and equipment, including repair and replacement parts used primarily for graphic arts production by means of printing, *including ink jet printing, by one or more of the processes as described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511 and Group 512230 of Subsector 512 of the North American Industry Classification System published by the United States Office of Management and Budget, 1997 edition,* in accordance with the provisions of 86 Ill. Adm. Code 130.325, which are effective as if fully set forth in this subsection (p) (Sections 3-5 and 3-30 of the Act);
- q) through June 30, 2003, *sales of oil field exploration, drilling and production equipment and individual replacement parts,* in accordance with the provisions of 86 Ill. Adm. Code 130.345, which are effective as if fully set forth in this subsection (q) (Section 3-5(10) of the Act);
- r) through June 30, 2003, *sales of coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment and repair parts,* in accordance with the provisions of 86 Ill. Adm. Code 130.350, which are effective as if fully set forth in this subsection (r) (Section 3-5(12) of the Act);
- s) *a sale or transfer of tangible personal property as an incident to the rendering of service for interstate carriers for hire for use as rolling stock moving in interstate commerce or lessors under leases of one year or longer, executed or in effect at the time of purchase, to interstate carriers for hire for use as rolling stock moving in interstate commerce and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or*

affixed to aircraft moving in interstate commerce, in accordance with the provisions of 86 Ill. Adm. Code 130.340, which are effective as if fully set forth in this subsection (s);

- t) *a sale or transfer of tangible personal property as an incident to the rendering of service for owners, lessors or shippers of tangible personal property which is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce*, in accordance with the provisions of 86 Ill. Adm. Code 130.340, which are effective as if fully set forth in this subsection (t);
- u) *through June 30, 2003, the sale or transfer of distillation machinery and equipment, sold as a unit or kit and assembled or installed by the retailer, which machinery and equipment is certified by the user to be used only for the production of ethyl alcohol that will be used for consumption as motor fuel or as a component of motor fuel for the personal use of such user and not subject to sale or resale (Section 2 (f) of the Act);*
- v) *sales by teacher-sponsored student organizations affiliated with Illinois elementary and secondary schools*, in accordance with the provisions of 86 Ill. Adm. Code 130.2006, which are effective as if fully set forth in this subsection (v) (Section 3-5(6) of the Act);
- w) *sales of legal tender, currency, medallions, or gold or silver coinage issued by the State of Illinois, the government of the United States or any foreign country and bullion*, which shall mean gold, silver or platinum in a bulk state with a purity of not less than 980 parts per 1,000. In no circumstance shall items sold as jewelry or mounted for wear as jewelry qualify for this exemption (Section 3-5(4) of the Act);
- x) sales of modified or custom software are exempt. Sales of canned software in a service transaction are subject to tax. Computer software means all types of software including operational, applicational, utilities, compilers, templates, shells and all other forms. Software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. The sale at retail or transfer of canned software intended for general or repeated use is taxable, including the sale of software which is subject to manufacturer licenses restricting the use or reproduction of the software. Tax applies to the entire charge made to the customer, including charges for all associated documentation and materials. Charges for updates and maintenance of software are considered to be sales of software. Charges for training, telephone assistance, installation and consultation are exempt if they are separately stated from the selling price of software. For purposes of this subsection, the provisions of 86 Ill. Adm. Code 130.1935 are effective as if fully set forth in this subsection (x);
- y) *sales of semen used for artificial insemination of livestock for direct agricultural production*. Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address, the purchaser's registration number with the Department, the purchaser's signature and date of signing, and a statement that the semen purchased will be used for artificial insemination of livestock for direct agricultural production. The certificates shall be retained by the

retailer and shall be made available to the Department for inspection or audit (Section 3-5(14) of the Act);

- z) *beginning with taxable years ending on or after December 31, 1995 and ending with taxable years ending on or before December 31, 2004, sales of personal property that is donated for disaster relief to be used in a State or federally declared disaster area in Illinois or bordering Illinois by a manufacturer or retailer that is registered in this State to a corporation, society, association, foundation, or institution that has been issued a sales tax exemption identification number by the Department that assists victims of the disaster who reside within the declared disaster area. Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address, the purchaser's registration number with the Department, if applicable, the purchaser's signature and date of signing, a description of the items being purchased for donation, and a statement that the property purchased will be donated for disaster relief to be used in a State or federally declared disaster area in Illinois or bordering Illinois to a corporation, society, association, foundation, or institution that has been issued a sales tax exemption identification number by the Department that assists victims of the disaster who reside within the declared disaster area, and that entity's sales tax exemption identification number. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit (Section 3-5(18) of the Act);*

- aa) *beginning with taxable years ending on or after December 31, 1995 and ending with taxable years ending on or before December 31, 2004, sales of personal property that is used in the performance of infrastructure repairs in this State, including but not limited to municipal roads and streets, access roads, bridges, sidewalks, waste disposal systems, water and sewer line extensions, water distribution and purification facilities, storm water drainage and retention facilities, and sewage treatment facilities, resulting from a State or federally declared disaster in Illinois or bordering Illinois when such repairs are initiated on facilities located in the declared disaster area within six months after the disaster. Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address, the purchaser's registration number with the Department, if applicable, the purchaser's signature and date of signing, a description of the items being purchased, and a statement that the property purchased is for use in the performance of infrastructure repairs initiated on facilities located in the declared disaster area within six months after the disaster in this State resulting from a State or federally declared disaster area in Illinois or bordering Illinois. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit (Section 3-5(19) of the Act);*

- bb) *beginning July 20, 1999, game or game birds purchased incident to a sale of service at:*
 - 1) *a game breeding and hunting preserve area licensed by the Department of Natural Resources (see Section 3.27 of the Wildlife Code [520 ILCS 5/3.27]),*

 - 2) *an exotic game hunting area licensed by the Department of Natural Resources (see Section 3.34 of the Wildlife Code [520 ILCS 5/3.34]), or*

- 3) *a hunting enclosure approved through rules adopted by the Department of Natural Resources (Section 3-5 of the Act);*
- cc) *fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers (Section 3-5(8) of the Act);*
- dd) *proceeds of mandatory service charges separately stated on customers' bills for the purchase and consumption of food and beverages, to the extent that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed (Section 3-5(9) of the Act);*
- ee) *photoprocessing machinery and equipment, including repair and replacement parts, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily for photoprocessing, as photoprocessing is defined in Section 3-15 of the Act, and including photoprocessing machinery and equipment purchased for lease (Section 3-5(11) of the Act);*
- ff) *until May 31, 2000, horses, or interests in horses, registered with and meeting the requirements of any of the Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, as appropriate, used for purposes of breeding or racing for prizes (Section 3-5(15) of the Act);*
- gg) *effective January 1, 1996 through December 31, 2000, and on and after August 2, 2001, computers and communications equipment utilized for any hospital purpose and equipment used in the diagnosis, analysis, or treatment of hospital patients sold to a lessor who leases the equipment, under a lease of one year or longer executed or in effect at the time of the purchase, to a hospital that has been issued an active tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act in accordance with the provisions of 86 Ill. Adm. Code 130.2011, which are effective as fully as if set forth in this subsection (gg) (Section 3-5(16) of the Act);*
- hh) *effective January 1, 1996 through December 31, 2000, and on and after August 2, 2001, personal property sold to a lessor who leases the property, under a lease of one year or longer executed or in effect at the time of the purchase, to a governmental body that has been issued an active tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act, in accordance with the provisions of 86 Ill. Adm. Code 130.2012, which are effective as fully as if set forth in this subsection (hh) (Section 3-5(17) of the Act);*
- ii) *through June 30, 2003, aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment, including replacement parts and equipment, and including equipment purchased for lease, but excluding motor vehicles required to be registered under the Illinois Vehicle Code, in accordance with the provisions of 86 Ill.*

Adm. Code 130.351, which are effective as fully as if set forth in this subsection (ii) (Section 3-7 of the Act);

- jj) *effective August 20, 1999, sales of a motor vehicle, as that term is defined in Section 1-146 of the Illinois Vehicle Code, that is donated to a corporation, limited liability company, society, association, foundation, or institution that is determined by the Department to be organized and operated exclusively for educational purposes. For purposes of this exemption, a "corporation, limited liability company, society, association, foundation, or institution organized and operated exclusively for educational purposes" means all tax-supported public schools, private schools that offer systematic instruction in useful branches of learning by methods common to public schools and that compare favorably in their scope and intensity with the course of study presented in tax-supported schools, and vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business, or commercial occupation. (Section 3-5 of the Act) Exemption certificates must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address, the purchaser's registration number with the Department, if applicable, the purchaser's signature and date of signing, a description of the motor vehicle that is being purchased for immediate donation to a corporation, limited liability company, society, association, foundation, or institution that is determined by the Department to be organized and operated exclusively for educational purposes (see 86 Ill. Adm. Code 130.2005), such entity's tax exemption identification number, and a statement that the motor vehicle is being purchased for immediate donation to a corporation, limited liability company, society, association, foundation, or institution that is determined by the Department to be organized and operated exclusively for educational purposes. The certificates shall be retained by the retailer and made available to the Department for inspection or audit;*
- kk) *food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food that has been prepared for immediate consumption) and prescription and non-prescription medicine, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, when purchased for use by a person receiving medical assistance under Article V of the Illinois Public Aid Code [305 ILCS 5/Art.V] who resides in a licensed long-term care facility, as defined in the Nursing Home Care Act [210 ILCS 45] (Section 3-5(13) of the Act);*
- ll) *beginning January 1, 2000, personal property, including food, purchased through fundraising events for the benefit of a public or private elementary or secondary school, a group of those schools, or one or more school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children. This subsection (ll) does not apply to fundraising events:*
 - 1) *for the benefit of private home instruction; or*
 - 2) *for which the fundraising entity purchases the personal property sold at the events from another individual or entity that sold the property for the purpose of resale by*

the fundraising entity and that profits from the sale to the fundraising entity (Section 3-5 of the Act). For purposes of this subsection, the provisions of 86 Ill. Adm. Code 130.2009 are effective as if fully set forth in this subsection (ll);

- mm) *of jet fuel and petroleum products sold to and used in the conduct of the business of sorting, handling and redistribution of mail, freight, cargo or other parcels in the operation of a high impact service facility located within an enterprise zone established pursuant to the Illinois Enterprise Zone Act [20 ILCS 655], provided that the business enterprise has waived its right to a tax exemption of the charges imposed under Section 9-222.1 of the Public Utilities Act [220 ILCS 5/9-222.1] (Section 12 of the Act, referencing Section 1j.1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1j.1). High impact service facilities qualifying under the Act and seeking the exemption for such jet fuel and petroleum products shall be ineligible for the exemptions of taxes imposed under Section 9-222.1 of the Public Utilities Act. High impact service facilities qualifying under the Act and seeking the exemption under Section 9-222.1 of the Public Utilities Act shall be ineligible for the exemption for jet fuel and petroleum products described in this subsection. The certification of eligibility issued to the high impact service facility by the Department of Commerce and Community Affairs for exemption shall be presented by the high impact service facility to its supplier when making the purchase of jet fuel and petroleum products for which an exemption is granted, together with a certification by the high impact service facility that such jet fuel and petroleum product is exempt from taxation under Section 1j.1 of the Retailers' Occupation Tax Act, and by indicating the exempt status of each subsequent purchase on the face of the purchase order. (Section 1i of the Act) (Section 12 of the Act, referencing Section 1i of the Retailers' Occupation Tax Act [35 ILCS 120/1i]);*
- nn) *beginning January 1, 2000 through December 31, 2001, new or used automatic vending machines that prepare and serve hot food and beverages, including coffee, soup, and other items, and replacement parts for these machines. Beginning January 1, 2002 and through June 30, 2003, machines and parts for machines used in commercial, coin-operated amusement and vending business if a use or occupation tax is paid on the gross receipts from the use of the commercial, coin-operated amusement and vending machines. [35 ILCS 115/3-5 (23)] For purposes of this subsection, the provisions of 86 Ill. Adm. Code 130.332 are effective as if fully set forth in this subsection (nn).*

(Source: Amended at 29 Ill. Reg. 1940, effective January 24, 2005)