

**Illinois Department of Revenue
Regulations**

Title 86 Part 180 Section 180.101 Character And Rate Of The Tax

TITLE 86: REVENUE

**PART 180
AUTOMOBILE RENTING OCCUPATION TAX**

SUBPART A: NATURE OF THE TAX

Section 180.101 Character And Rate Of The Tax

- a) The Automobile Renting Occupation and Use Tax Act [35 ILCS 155] (the Act) *imposes a tax upon persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less at the rate of 5% of the gross receipts from such business.* (Section 3 of the Act)

- b) *"Automobile" means any motor vehicle of the first division, a motor vehicle of the second division which is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat, or a motor vehicle of the second division which is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers, as defined in Section 1-146 of The Illinois Vehicle Code [625 ILCS 5/1-146].* (Section 2 of the Act) This includes motorcycles and motor driven cycles.
 - 1) Under Section 1-146 of the Illinois Vehicle Code, a motor vehicle is defined as *every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power and motorized wheelchairs.* [625 ILCS 5/1-146]

 - 2) Under Section 1-146 of the Illinois Vehicle Code, motor vehicles are classified as either first or second division motor vehicles. The manner in which a vehicle is classified generally reflects the purpose for which it is primarily used. As a result of this classification, a motor vehicle will be registered as either a first or second division vehicle, and will receive a plate reflecting such registration. The following examples are illustrative:
 - A) Under Section 1-146 of the Illinois Vehicle Code, first division motor vehicles are defined as *motor vehicles which are designed for carrying not more than 10 persons.* [625 ILCS 5/1-146] Under Section 2 of the Act, all motor vehicles registered with the Secretary of State as first division motor vehicles qualify as automobiles subject to tax under the Act. Consequently, passenger cars and motorcycles are "automobiles" subject to tax under the Act.

- B) Second division motor vehicles generally include motor vehicles serving purposes other than or in addition to serving as passenger cars. Second division vehicles include *motor vehicles designed for pulling or carrying freight, cargo or implements of husbandry; motor vehicles designed for carrying more than 10 persons; motor vehicles designed or used for living quarters; and motor vehicles of the first division remodeled for use and used as motor vehicles of the second division.* [625 ILCS 5/1-146] A pick-up truck is a second division vehicle because it is designed for pulling or carrying freight. Section 2 of the Act provides that the only types of second division vehicles subject to tax include:
- i) self-contained motor vehicles designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat; and
 - ii) motor vehicles which are of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers.
- C) Pick-up trucks are not subject to tax under the Act because they are not one of the types of second division motor vehicles specified as automobiles under the terms of the Act.
- D) Multipurpose passenger vehicles, commonly referred to as "sport utility vehicles (SUVs)", may be registered as either first or second division motor vehicles. If an SUV is registered as a first division motor vehicle, it is an automobile subject to tax under the Act. If an SUV is registered as a second division motor vehicle, it is not an automobile subject to tax under the Act because it is not one of the types of second division motor vehicles specified as automobiles under the terms of the Act.
- E) Effective date of subsections (b)(2)(C) and (D). If a rentor or rentee paid tax under the Act before April 5, 2002 for the type of motor vehicles described in subsections (b)(2)(C) or (D) of this Section, the Department shall not consider that tax to be improperly paid or seek additional tax liability under the provisions of the Use Tax Act [35 ILCS 105] for the rental of such motor vehicles. However, on and after April 5, 2002, the provisions of subsections (b)(2)(C) and (D) shall be fully enforced.
- 3) Lessors engaged in the business of leasing motor vehicles that are not subject to tax under the Act generally incur a Use Tax liability on the cost price of motor vehicles purchased for leasing purposes. For more information on the liability of lessors, see the provisions of 86 Ill. Adm. Code 130.220 and 130.2010.

c) How To Determine Effective Rate

Automobile Renting Occupation Tax liability shall be computed by applying to the gross receipts from taxable rental transactions, the tax rate in effect during the rentee's possession of the rented automobile. Where a rate change takes effect during a rentee's possession, all rental receipts received from that

rentee after the effective date of the rate change are subject to the new rate. If a rentee takes possession after a rate change in a rental transaction in which the rentor received rental receipts before the date of the rate change and the tax was paid on such receipts when received by the rentor at the rate in effect when the rentor received those receipts, no additional tax will be due or credit allowed because the rentee took possession after the effective date of the rate change.

d) Effective Date of New Taxes

When something that has been exempted becomes taxable as to rental transactions that are made on and after some particular date, the date of rental for this purpose shall be deemed to be the date of possession or right to possession of the automobile. This is true even if such possession is taken under a contract that was entered into before the effective date of the new tax.

e) Relation of Automobile Renting Occupation Tax To The Automobile Renting Use Tax

- 1) The Automobile Renting Occupation Tax is an occupation tax, the legal incidence of which is on the rentor rather than on the rentee.
- 2) However, the rentor becomes a tax collector under the Automobile Renting Use Tax and is required to collect that tax from rentees. In making that collection, rentors may rely on the tax collection schedules prescribed in the Department's Use Tax Regulations for the collection of the Use Tax by retailers from users. Consequently, the tax collection schedules set out in 86 Ill. Adm. Code 150. Table A are incorporated by reference herein.

(Source: Amended at 26 Ill. Reg. 4935, effective March 15, 2002)