



Illinois Department of Revenue

Legal Services Office
101 W. Jefferson St. MC 5-500
Springfield, IL 62794

SECOND NOTICE OF PROPOSED RULEMAKING

- 1) Agency: Illinois Department of Revenue
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: Service Use Tax, 86 Ill. Adm. Code 160
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: January 26, 2024, Issue 4, 48 Ill. Reg. 1598
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period:
 - A. On line 19, strike "160.140 Penalties, Interest, Statute of Limitations and"
 - B. On line 20, strike "Administrative Procedures" and in lieu thereof insert "160.140 Penalties, Interest, Statute of Limitations and Administrative Procedures"
 - C. On line 1602, after 150.803, insert "(excluding the provisions limiting the applicability of Section 150.803 to the period October 1, 2018, through December 31, 2020)"
 - D. On line 1603, after 150.804, insert "(excluding the provisions limiting the applicability of Section 150.804 to the period January 1, 2020, through December 31, 2020)"
- 5) Final Regulatory Flexibility Analysis:
 - A. Summary of the issues raised by affected small businesses during the First Notice Period: No issues were raised by small businesses.
 - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: No alternatives to the proposed rulemaking were proposed during the first notice period.
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: An analysis of the economic effects of the proposed rulemaking is attached.
- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply with the Codification Scheme: All changes requested by the Administrative Code Division have been made.

- 8) Evaluation of the comments received by the agency from interested persons during the first notice period (but not including any questions raised by the Joint Committee in a preliminary review) including:
- A. Date of any public hearing held during the first notice period. Name of the person or group requesting a hearing: No public hearing requested.
 - B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments: No individuals or groups requested an opportunity to make comments.
 - C. A list of all specific criticisms and suggestions raised in the comments: No criticisms or suggestions were received.
 - D. The agency's evaluation of each of the specific criticisms and suggestions: No criticisms or suggestions were received.
 - E. A statement that the agency has considered all comments received during the first notice period: No comments were received during the first notice period.
- 9) An analysis of the expected effects of the proposed rulemaking, including:
- A. Impact on the public: This rulemaking amends Part 160, Service Use Tax, to reflect new statutory developments, decisional law, and existing Department policies. This rulemaking also deletes outdated provisions in Part 160 and provides various technical changes.

Section 160.101 is amended by moving the language in Section 160.101(c)(2) regarding prepaid telephone arrangements to a new subsection 160.101(b), and the remaining subsections are relabeled accordingly.

Section 160.101(b) is relabeled as subsection (c) and amended to insert statutory text in lieu of the existing language.

Section 160.101(c) is relabeled as subsection (d) and paragraphs (1)-(6) are added to reflect the extension of the existing tax rates enacted by Public Act 100-0022 and to reflect the new tax rates enacted by Public Act 102-0700 on gasohol, majority blended ethanol fuel, biodiesel, and biodiesel blends. A paragraph (6) is added to include the existing statutory language that identifies the items that are taxed at the rate of 1%, such as food for human consumption consumed off the premises where

sold, prescription and nonprescription medicines, drugs, and medical appliances.

Section 160.105 is being amended to include additional statutory definitions.

Section 160.110 is being amended to include existing and recently enacted exemptions to the tax imposed by the Service Use Tax. Additional changes are being made to clarify existing provisions.

Section 160.111 is being repealed because the Commercial Distribution Fee Sales Tax exemption contained in the Section terminated by the express terms of the exemption.

Section 160.115 is being amended to include additional statutory language regarding the collection of the Service Use Tax by servicemen.

Section 160.116 is being amended to include additional statutory language, to reorganize the Section, and to reflect the dates when the exemption is in effect for certain equipment transferred incident to the sale of service to persons who lease those items to exempt hospitals.

Section 160.117 is being amended to include additional statutory language and reflect the dates when the exemption is in effect for certain equipment transferred incident to the sale of service to persons who lease those items to governmental bodies.

Section 160.125 is being amended to add statutory language that more fully explains the obligation to pay Service Use Tax when property is acquired as an incident to the purchase of a service from a serviceman for use in this State by a purchaser who did not pay the tax to the serviceman.

Section 160.130 is being amended to add statutory language that more fully explains the obligation to register as a serviceman, to specify the contents of an application to obtain a certificate of registration, and to identify the reasons when the Department of Revenue can refuse to issue, reissue, or revoke a certificate of registration.

Section 160.135 is being amended to add statutory language that explains when a serviceman is required to file returns and make tax payments electronically. The Section is also being amended to explain when the vendor discount will be disallowed.

Section 160.136 is being added to explain servicemen's statutory obligations to maintain books and records, to include the statutory penalties for failing to maintain or failing to produce books and records to the Department of Revenue, and to specify the rules promulgated under the Retailers' Occupation Tax Act that apply to servicemen filing returns under the Service Use Tax Act.

Section 160.160 is being amended to explain that, when the Department determines that the claimant is entitled to a refund, the refund must be made only from the Aviation Fuel Sales Tax Refund Fund or from such appropriation as may be available for that purpose.

Section 160.165 is being amended to update the provisions regarding the rate of interest that will be paid by the Department of Revenue to taxpayers.

Section 160.165 is being added to specify that the substance and provisions of 86 Ill. Adm. Code 150.803 and 150.804, without regard to the date limitations contained in these Sections, and which are not incompatible with the Service Use Tax Act or Part 160, will apply, as far as practicable, to the subject matter of Part 160.

Section 160.175 is being added to identify the sections of the Retailers' Occupation Tax Act and the Uniform Penalty and Interest Act that apply, as far as practicable, to the administration and enforcement of the Service Use Tax Act.

- B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: None.
 - C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any methods not utilized: This rulemaking simply implements new statutory developments, decisional law, and existing Department policies. This rulemaking also deletes outdated provisions. No additional skills are required to comply. The Department is currently implementing the Service Use Tax Act as required by the statute, and therefore, the methods described in 5 ILCS 100/30 are not legal or feasible in meeting the requirements of the Service Use Tax Act. The Department published the proposed rulemaking in the Illinois Register and on the Department's website.
- 10) A justification and rationale for the proposed rulemaking, including:

- A. Any changes in statutory language requiring the proposed rulemaking: Public Act 100-0022 and Public Act 102-0700
 - B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: None
 - C. Relationship to any relevant federal rules, regulations, or funding requirements: None
 - D. Court orders or rulings which are related to the rulemaking: None
 - E. A complete explanation of any other reasons for the proposed rulemaking: No other reasons exist.
- 11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No.

Agency Personnel Who Will Respond to Joint Committee Questions Regarding the Proposed Rulemaking:

Alexis K. Overstreet
Deputy General Counsel
Sales and Excise Taxes
Legal Services Office
Illinois Department of Revenue
101 W. Jefferson
Springfield, Illinois 62794
REV.GCO@illinois.gov

Phone: (217) 782-2844