DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Retailers' Occupation Tax

2) Code Citation: 86 Ill. Adm. Code 130

3)

Section Numbers:	Proposed Actions:
130.101	Amendment
130.102	New Section
130.103	New Section
130.110	Amendment
130.115	Amendment
130.201	Amendment
130.205	Amendment
130.210	Amendment
130.220	Amendment
130.305	Amendment
130.311	Amendment
130.330	Amendment
130.340	Amendment
130.350	Amendment
130.351	Amendment
130.454	New Section
130.455	Amendment
130.1934	Amendment
130.1946	Amendment
130.1947	Amendment
130.1948	Amendment
130.1957	Amendment
130.2010	Amendment
130.2011	Amendment
130.2012	Amendment
130.2013	Amendment
130.ILLUSTRATION E	New Section

4) Statutory Authority: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Sections 2505-25 and 2505-795 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].

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5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Part 130, Retailers' Occupation Tax, to implement Article 75 of Public Act 103-592 which imposes Retailers' Occupation Tax on leases of tangible personal property beginning January 1, 2025. This change does not apply to leases of motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. This rulemaking also implements Public Act 98-628 which provides that the taxable "selling price" of first division and certain second division motor vehicles sold incident to the contemporaneous long-term lease of those motor vehicles is equal to the amount due under the lease contract rather than the amount the lessor pays the seller for the motor vehicle.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

7) Will this proposed rulemaking replace an emergency rule currently in effect? No

8) Does this rulemaking contain an automatic repeal date? No

9) Does this proposed rulemaking contain incorporations by reference? No

10) Are there any other proposed rulemakings pending on this Part? Yes

Section Numbers	Proposed Actions	Illinois Register Citations
130.501	Amendment	49 Ill. Reg. 322; January 10, 2025
130.535	Amendment	49 Ill. Reg. 322; January 10, 2025
130.565	New Section	49 Ill. Reg. 322; January 10, 2025
130.1520	Amendment	49 Ill. Reg. 322; January 10, 2025
130.2500	Amendment	49 Ill. Reg. 322; January 10, 2025
130.225	Amendment	49 Ill. Reg. 1444; February 7, 2025
130.530	Amendment	49 Ill. Reg. 1444; February 7, 2025
130.715	Amendment	49 Ill. Reg. 1444; February 7, 2025
130.2075	Amendment	49 Ill. Reg. 1444; February 7, 2025

11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Samuel J. Moore
Associate Counsel
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62702

(217) 782-7055
REV.GCO@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: A small business, small municipality, or not for profit corporation that rents or leases tangible personal property to customers would be affected.

B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and computer skills.

C) Types of professional skills necessary for compliance: Basic accounting and computer skills.

14) Small Business Impact Analysis:

A) Types of businesses subject to the proposed rule:

23 Construction
44-45 Retail Trade
53 Real Estate Rental and Leasing
56 Administrative and Support and Waste Management and Remediation Services
71 Arts, Entertainment, and Recreation

72 Accommodation and Food Services
81 Other Services (except Public Administration)

B) Categories that the agency reasonably believes the rulemaking will impact, including:

ii. regulatory requirements;
iii. purchasing;
vi. equipment and material needs;
viii. record keeping;
x. other potential impacted categories.

15) Regulatory Agenda on which this rulemaking was summarized: January 2025

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF REVENUE

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 130
RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section

SUBPART B: SALE AT RETAIL

Section

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section

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SUBPART D: GROSS RECEIPTS

SUBPART E: RETURNS

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SUBPART F: INTERSTATE COMMERCE

SUBPART G: CERTIFICATE OF REGISTRATION

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SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

SUBPART R: POWER OF ATTORNEY

SUBPART S: SPECIFIC APPLICATIONS

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NOTICE OF PROPOSED AMENDMENTS

130.2011	Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals– Obsolete beginning January 1, 2025
130.2012	Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies – Obsolete beginning January 1, 2025
130.2013	Persons in the Business of Both Renting and Selling Tangible Personal Property – Tax Liabilities, Credit
130.2015	Persons Who Repair or Otherwise Service Tangible Personal Property
130.2020	Physicians and Surgeons
130.2025	Picture-Framers
130.2030	Public Amusement Places
130.2035	Registered Pharmacists and Druggists
130.2040	Retailers of Clothing
130.2045	Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
130.2050	Sales and Gifts By Employers to Employees
130.2055	Sales by Governmental Bodies
130.2060	Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
130.2065	Sales of Automobiles for Use In Demonstration (Repealed)
130.2070	Sales of Containers, Wrapping and Packing Materials and Related Products
130.2075	Sales To Construction Contractors, Real Estate Developers and Speculative Builders
130.2076	Sales to Purchasers Performing Contracts with Governmental Bodies
130.2080	Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
130.2081	Tax-Free Purchases By Exempt Entities, Their Employees and Representatives, and Documenting Sales to Exempt Entities, Their Employees and Representatives
130.2085	Sales to or by Banks, Savings and Loan Associations and Credit Unions
130.2090	Sales to Railroad Companies
130.2095	Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
130.2100	Sellers of Feed and Breeding Livestock
130.2101	Sellers of Floor Coverings
130.2105	Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings, and Their Suppliers; Transfers of Data Downloaded Electronically
130.2110	Sellers of Seeds and Fertilizer
130.2115	Sellers of Machinery, Tools and Special Order Items
130.2120	Suppliers of Persons Engaged in Service Occupations and Professions
130.2125	Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates

SUBPART T: DIRECT PAYMENT PROGRAM

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Sections 2505-25 and 2505-795 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].

SOURCE: Adopted July l, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13,

pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June l, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July l, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097,

effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26, 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621, effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg. 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008; amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill. Reg. 15781, effective October 27, 2009; amended at 33 Ill. Reg. 16711, effective November 20, 2009; amended at 34 Ill. Reg. 9405, effective June 23, 2010; amended at 34 Ill. Reg. 12935, effective August 19, 2010;

amended at 35 Ill. Reg. 2169, effective January 24, 2011; amended at 36 Ill. Reg. 6662, effective April 12, 2012; amended at 38 Ill. Reg. 12909, effective June 9, 2014; amended at 38 Ill. Reg. 17060, effective July 25, 2014; amended at 38 Ill. Reg. 17421, effective July 31, 2014; amended at 38 Ill. Reg. 17756, effective August 6, 2014; amended at 38 Ill. Reg. 19998, effective October 1, 2014; amended at 39 Ill. Reg. 1793, effective January 12, 2015; amended at 39 Ill. Reg. 12597, effective August 26, 2015; amended at 39 Ill. Reg. 14616, effective October 22, 2015; amended at 40 Ill. Reg. 6130, effective April 1, 2016; amended at 40 Ill. Reg. 13448, effective September 9, 2016; amended at 41 Ill. Reg. 10721, effective August 1, 2017; amended at 42 Ill. Reg. 2850, effective January 26, 2018; amended at 43 Ill. Reg. 4201, effective March 20, 2019; amended at 43 Ill. Reg. 5069, effective April 17, 2019; amended at 43 Ill. Reg. 8865, effective July 30, 2019; emergency amendment at 43 Ill. Reg. 9841, effective August 21, 2019, for a maximum of 150 days; emergency amendment at 44 Ill. Reg. 552, effective December 27, 2019, for a maximum of 150 days; emergency expired May 24, 2020; emergency amendment at 44 Ill. Reg. 2055, effective January 13, 2020, for a maximum of 180 days; amended at 44 Ill. Reg. 5392, effective March 16, 2020; amended at 44 Ill. Reg. 10981, effective June 10, 2020; amended at 44 Ill. Reg. 13975, effective August 11, 2020; amended at 45 Ill. Reg. 352, effective December 21, 2020; amended at 45 Ill. Reg. 7248, effective June 3, 2021; amended at 45 Ill. Reg. 14464, effective November 2, 2021; amended at 45 Ill. Reg. 16058, effective December 3, 2021; amended at 46 Ill. Reg. 6745, effective April 12, 2022; amended at 46 Ill. Reg. 7785, effective April 26, 2022; amended at 46 Ill. Reg. 10905, effective June 7, 2022; amended at 46 Ill. Reg. 15336, effective August 23, 2022; amended at 46 Ill. Reg. 18120, effective October 25, 2022; amended at 46 Ill. Reg. 18827, effective November 1, 2022; amended at 47 Ill. Reg. 1426, effective January 17, 2023; amended at 47 Ill. Reg. 2116, effective January 24, 2023; amended at 47 Ill. Reg. 5751, effective April 4, 2023; amended at 47 Ill. Reg. 6068, effective April 12, 2023; amended at 47 Ill. Reg. 6309, effective April 18, 2023; amended at 47 Ill. Reg. 19135, effective December 6, 2023; amended at 47 Ill. Reg. 19349, effective December 12, 2023; amended at 48 Ill. Reg. 1870, effective January 18, 2024; amended at 48 Ill. Reg. 2856, effective February 8, 2024; amended at 48 Ill. Reg. 10646, effective July 2, 2024; amended at 48 Ill. Reg. 14779, effective September 25, 2024; amended at 48 Ill. Reg. 16529, effective November 4, 2024; amended at 49 Ill. Reg. 2107, effective February 5, 2025; amended at 49 Ill. Reg. 3180, effective February 26, 2025; amended at 49 Ill. Reg. 5419, effective April 1, 2025; amended at 49 Ill. Reg. ____, effective _____.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

SUBPART A: NATURE OF THE TAX

Section 130.101 Character and Rate of Tax

a) Character of Tax
The Retailers' Occupation Tax Act (the Act) [35 ILCS 120] imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption, which, on and after January 1, 2025, includes leasing tangible personal property to lessees for use or consumption. The tax is measured by the seller''s gross receipts from such sales made in the course of such business. (For further information concerning gross receipts, see Subpart D of this Part.)

1) On and after January 1, 2021, a remote retailer that meets either of the tax remittance thresholds in 86 Ill. Adm. Code 131.115(a) is considered a retailer engaged in the occupation of selling at retail in Illinois and is liable for all applicable State and local retailers' occupation taxes administered by the Illinois Department of Revenue. (For further information on the application of the Act to remote retailers, see 86 Ill. Adm. Code 131.110, 131.115, 131.120, and 131.125).

2) On and after January 1, 2021, a marketplace facilitator that meets either of the tax remittance thresholds in 86 Ill. Adm. Code 131.135(a) is considered a retailer engaged in the occupation of selling at retail in Illinois and is liable for all applicable State and local retailers' occupation taxes administered by the Illinois Department of Revenue on all sales to Illinois purchasers made over the marketplace, including its own sales and sales made over the marketplace on behalf of marketplace sellers. (For further information on the application of the Act to marketplace facilitators, see 86 Ill. Adm. Code 131.130, 131.135, 131.140, and 131.145.)

3) *On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed* (Section 2 of the Act).

For purposes of this subsection (a)(3), the following definitions apply:

"Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement.
"Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan.
"Recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code.

"Telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. [35 ILCS 120/2-27]~~(Section 2-27 of the Act).~~

b) How to Determine Effective Rate

1) For the purposes of the Retailers' Occupation Tax Act, any tax liability incurred in respect to a sale of tangible personal property made in the regular course of business shall be computed by applying, to the gross receipts from such sale, the tax rate in effect as of the date of delivery of such property, provided that if delivery occurs after the tax rate changes, in a transaction in which receipts were received before the date of the rate change and tax was paid on such receipts when received by the seller in accordance with Section 130.430 of this Part at the rate which was in effect when the seller received such receipts,

no additional tax will be due or credit allowed because of the delivery of the property occurring after the rate changes. For the purposes of this subsection (b), an item that is subject to a lease with periodic payments is considered to be constructively delivered, for purposes of determining the effective rate, on the first day of each billing period. For example, if the monthly billing period runs from June 20, 2025 through July 19, 2025, and the tax rate change takes effect on July 1, 2025, that tax rate change takes effect for this lease for lease receipts received on or after July 1, 2025 for the billing period that runs from July 20, 2025 through August 19, 2025 (i.e. the first date of constructive delivery that occurs on or after July 1, 2025).

2) Furthermore, in the case of sales of building materials to real estate improvement construction contractors for use in performing construction contracts for third persons, if such property is delivered to the contractor after the effective date of a rate increase but will be used in performing a binding construction contract which was entered into before the effective date of the increase and under which the contractor is legally unable to shift the burden of the tax rate increase to the customer, the applicable tax rate will be the rate which was in effect before the effective date of the rate increase. Before a supplier may deliver materials to a construction contractor after the effective date of a tax rate increase at the rate which was in effect prior thereto, the purchasing contractor must give such supplier a written, signed certification stating that specifically described materials are being purchased for use in performing a binding contract which was entered into before the effective date of the rate increase (specifying such date) and under which the contractor is legally unable to shift the burden of the tax rate increase to the customer, identifying the construction contract in question by its date and by naming the contractor's construction work involved, and by giving the location on the job site where the construction contract is being performed or is to be performed.

c) Tax Rate in Effect

1) The effective rate from January 1, 1985, through December 31, 1989, is 5%. On and after January 1, 1990, the effective rate is 6.25%.

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Beginning on July 1, 2000 through December 31, 2000, with respect to motor fuel and gasohol, the tax is imposed at the rate of 1.25%. (Section 2-10 of the Act)

2) Definitions

A) "Diesel Fuel" *is defined as any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark*. [35 ILCS 505/2]

B) *"Gasohol" means motor fuel that is a blend of denatured ethanol and gasoline that contains no more than 1.25% water by weight. The blend must contain 90% gasoline and 10% denatured ethanol. A maximum of one percent error factor in the amount of denatured ethanol used in the blend is allowable to compensate for blending equipment variations*. [35 ILCS 105/3-40]

C) *"Motor Fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, "Motor Fuel" includes "Special Fuel"*. [35 ILCS 505/1.1]

i) By way of illustration and not limitation, the following are considered motor fuel:

- Gasoline
- Diesel fuel
- Combustible gases (e.g., liquified petroleum gas and compressed natural gas) delivered directly into the fuel supply tanks of motor vehicles
- Gasohol.

ii) By way of illustration and not limitation, the following are not considered motor fuel:

- Avgas
- Jet fuel
- 1-K kerosene
- Combustible gases unless delivered directly into the fuel supply tanks of motor vehicles
- Heating oil (e.g., kerosene and fuel oil) unless delivered directly into the fuel supply tanks of motor vehicles, in which case it is considered diesel fuel.

D) *"Special Fuel" means all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5, example (A) of the Motor Fuel Tax Law or combustible gases as defined in Section 5, example (B) of the Motor Fuel Tax Law. "Special Fuel" includes diesel fuel.* [35 ILCS 505/1.13]

d) Effective Date of New Taxes
When something that has been exempted becomes taxable as to sales that are made on and after some particular date, the date of sale for this purpose shall be deemed to be the date of the delivery of the property. This is true even if such delivery is made under a contract that was entered into before the effective date of the new tax. For the purposes of this subsection (d), an item that is subject to a lease with periodic payments is considered to be constructively delivered on the first day of each billing period. See subsection (c) for more details.

e) Relation of Retailers' Occupation Tax to Use Tax
The Retailers' Occupation Tax is an occupation tax whose legal incidence is on the seller, rather than on the purchaser. However, with the enactment of

the Use Tax Act in 1955 [35 ILCS 105], the retailer became a tax collector under that Act and is required to comply with the bracket systems or tax collection schedules prescribed in the Department's Use Tax Regulations for the collection of the Use Tax by retailers from users.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.102 Tax Imposed on Leases of Tangible Personal Property on and after January 1, 2025.

a) Pursuant to changes made by Article 75 of Public Act 103-592, beginning January 1, 2025, the tax imposed under the Retailers' Occupation Tax Act ("the Act"), except as otherwise provided in the Act, applies to persons engaged in the business of leasing at retail tangible personal property (other than motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State). The tax applies with respect to leases in effect, entered into, or renewed on or after January 1, 2025. [35 ILCS 120/1.05; 35 ILCS 120/2] Two decision points that frequently arise in determining the taxability of a transaction that includes the transfer of tangible personal property by lease (i.e., a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration), are whether or not the transaction is a service transaction, and, if not, whether service charges included with the lease are subject to retailers' occupation tax. To aid in those determinations, the following analysis should be applied:

1) True Object Test. If it is determined that a transaction includes a taxable lease of tangible personal property, it must be determined whether the transaction is a retail lease transaction or a transfer by lease of tangible personal property incident to a sale of service. To make this determination, the lessor must determine the true object or substance of the transaction. "If the article sold has no value to the purchaser except as a result of services rendered by the vendor and the transfer of the article to the purchaser is an actual and necessary part of the service rendered, then the vendor is engaged in the business of rendering service and not in the business of selling at retail. If the article sold is the substance of the transaction and the

service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail." Spagat v. Mahin, 50 Ill. 2d 183 (1971); Velten & Pulver, Inc. v. Department of Revenue, 29 Ill. 2d 524, 529 (1963); Dow Chemical Co. v. Department of Revenue, 26 Ill. 2d 283, 285 (1962); Kellogg Switchboard & Supply Corp. v. Department of Revenue, 14 Ill. 2d 434, 437 (1958). If the tangible personal property leased or rented would have value even without the services a company provides, the substance of the transaction is the tangible personal property.

2) Sale of Service. If it is determined that the true object of the transaction is the service and that the tangible personal property is transferred by lease incident to a sale of service, tax on the transfer of the tangible personal property by lease is calculated under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.101 et seq.

3) Sale at Retail - Inseparable Link Between Sale and Service Charges. If the true object of the transaction is the lease or rental of tangible personal property, any service charges, if inseparably linked to the lease or rental of the tangible personal property, are part of the lessor's costs of doing business and are includable in the lessor's taxable gross receipts. This is true even if the service charges are separately stated on the agreement or bill between the lessor and its customers.

A) When an "inseparable link" exists between the lease of tangible personal property and related service charges, including delivery charges, the related service charges are part of the gross receipts subject to the Retailers' Occupation Tax. See, for example, Section 130.415(b)(1)(B)(i). An inseparable link exists when (a) the service charges are not separately identified to the lessee on the contract or invoice or (b) the service charges are separately identified to the lessee on the contract or invoice, but the lessor does not offer the lessee the option to lease the property without the payment of service charges added to the lease or rental price of an item (e.g., the lessor does not offer the lessee the option to lease the tangible

personal property separately from the related service, or the lessor does not offer, or the lessee does not qualify for, a free service option). Section 130.415(b)(1)(B)(ii). In contrast, if the lessee can rent or lease the tangible personal property without payment of service charges to the lessor, then an inseparable link does not exist, and the service charges should not be included in the lease or rental price of the tangible personal property. Section 130.415(b)(1)(B)(ii)-(iii).

B) EXAMPLE: A business offers guided kayak tours that include the rental of a kayak for the one-hour tour duration. Renters are encouraged to participate in the tour but are allowed to venture off on their own. The business requires tour participants to use the provided rented kayaks. The business does not offer rentals of kayaks independent of purchasing the tour. The kayak rental is the true object of the transaction since the tour could not be done without the kayak, but the kayak rental would still have value without the tour. The charge for the tour is inseparably linked to the rental charges for the kayak, regardless of if they are separately stated, as you cannot rent the kayak without the tour charge. As such, the entirety of the proceeds of the transaction is includable in the business's gross receipts and subject to tax. However, if the business were to offer independent kayak rentals in addition to kayak tours, the charge for the tour would not be inseparably linked to the rental charges for the kayak. In this instance, if the business separately states the charge for kayak rental from the charge for the tour on the business's invoice, the charges for the tour would not be includable in the business's gross receipts for retailers' occupation tax purposes and would be a nontaxable service charge.

4) Sale at Retail – Space/Amusement. When tangible personal property is transferred as part of the rental of space or as part of providing an amusement, tax is due. The tax owed and the method to calculate the tax depend on two factors: (i) whether the tangible personal property is the true object of the transaction; and (ii) how the tangible

personal property is invoiced in the transaction. The following paragraphs address these issues.

A) Regarding the rental of banquet and conference rooms, the Department has previously determined that if the true object of the transaction is the rental of the room and if food or beverages are provided incidentally to the rental of the room, no tax is incurred on the charges for the rental of the room. If no separate charge is made under the contract for the incidental amount of food or beverages provided, the rentor is considered the user of the food or beverages and incurs use tax on its cost price of the food or beverages transferred incidentally to the rental of the room. If a separate charge is made for any food and beverages transferred incidentally to the rental of the room, the rentor incurs retailers' occupation tax on the selling price of the food or beverages. See 86 Ill. Adm. Code 130.2145(e). However, if the true object of the transaction is the sale of food or beverages, any room rental charges are part of the seller's costs of doing business and are includable in the seller's taxable gross receipts even if the charges for the room rental are separately stated on the agreement or bill between the seller and its customers. In the context of a room rental, the providing of any food other than snacks is the true object of the transaction and not the rental of the room. If alcoholic beverages are either provided or sold by the rentor to the persons attending the event for which the room is rented, the true object of the transaction will always be deemed the sale of food or beverages and not the rental of the room. The rental of the room in these circumstances is considered an inseparable link in the sale of the food and beverages to the customer and is not merely incidental to the seller's business of selling food or beverages. Therefore, charges for room rental are includable in the seller's taxable gross receipts. See 86 Ill. Adm. Code 130.2145(e).

B) This same test applies to rentals of tangible personal property incident to a rental of space or providing an amusement, e.g. batting cages, mini golf courses, bowling alleys, skating rinks,

and golf courses. If the true object of the transaction is the rental of space or providing an amusement, no tax is incurred on the charges for the space or the amusement. If no separate charge is made under the agreement for the incidental amount of tangible personal property provided, the rentor is considered the user of the tangible personal property and incurs use tax on its cost price of the tangible personal property transferred incidentally to the purchaser of space or an amusement and used in the course of using that space or partaking in that amusement. If a separate charge is made for any tangible personal property transferred by rental or lease incidentally to the rental of space or providing an amusement, the rentor incurs retailers' occupation tax on the rental or lease price of the tangible personal property.

b) For purposes of the taxation of leases, the following relevant definitional changes were made to the Act:

"Sale at retail" means any transfer of the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration. [35 ILCS 120/1]

"Lease" means a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called. "Lease" does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. [35 ILCS 120/1]

On and after January 1, 2025, the term "sale", when used in the *Act, includes a lease.* [35 ILCS 120/1]

"Purchaser" means anyone who, through a sale at retail, acquires the ownership of, the title to, the possession or control of, the right to possess or

control, or a license to use tangible personal property for a valuable consideration. [35 ILCS 120/1]

c) Most titled and registered property excluded. *The inclusion of leases in the tax imposed under* the *Act by* Public Act 103-592 *does not, however, extend to motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. The taxation of these items shall continue in effect as prior to the effective date of the changes made by* Public Act 103-592 *(i.e., dealers owe retailers' occupation tax, lessors owe use tax, and lessees are not subject to retailers' occupation or use tax).* See, however, Section 130.454 regarding the definition of "selling price" when certain motor vehicles are purchased for lease. The only items of registered property subject to the lease tax under Public Act 103-592 are trailers (excluding semitrailers as defined in Section 1-187 of the Illinois Vehicle Code). [35 ILCS 120/2] In addition, items that are required to be titled with an agency of this State but not required to be registered with an agency of this State, such as all-terrain vehicles (ATVs), are subject to the lease tax under Public Act 103-592. See Section 130.103 regarding leases of these titled or registered items.

d) Tax imposed on gross receipts as received. *In the case of leases, except as otherwise provided in* the *Act, the lessor must remit, for each tax return period, only the tax applicable to that part of the selling price* [i.e., the lease payment] *actually received during such tax return period.* [35 ILCS 120/2] To determine the effective rate and the effective date of new taxes for leases with recurring periodic payments, see subsections (b) and (d), respectively, of Section 130.101.

e) Exemptions. The exemptions from tax under the Act apply to leases of tangible personal property in the same manner as the exemptions apply to other sales under the Act. See Section 130.120. The following two exemptions apply with respect to *gross receipts from the lease of the following tangible personal property:*

1) until January 1, 2030, *computer software transferred subject to a license that meets the following requirements:*

A) *it is evidenced by a written agreement signed by the licensor and the customer;*

i) *an electronic agreement in which the customer accepts the license by means of an electronic signature that is verifiable and can be authenticated and is attached to or made part of the license will comply with this requirement;*

ii) *a license agreement in which the customer electronically accepts the terms by clicking "I agree" does not comply with this requirement;*

B) *it restricts the customer's duplication and use of the software;*

C) *it prohibits the customer from licensing, sublicensing, or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;*

D) *the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and*

E) *the customer must destroy or return all copies of the software to the licensor at the end of the license period; this provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement; and*

2) until January 1, 2030, *property that is subject to a tax on lease receipts imposed by a home rule unit of local government if the ordinance imposing that tax was adopted prior to January 1, 2023.* [35 ILCS 120/2-5(49)]

f) In all respects lessors of tangible personal property subject to tax on lease receipts under Public Act 103-592 shall be treated as retailers under the Act, and all provisions of this Part apply to lessors unless otherwise provided in the Act. This includes, but is not limited to, the following:

1) Lessors of tangible personal property must register as retailers. See Subpart G. [35 ILCS 120/2a]

2) Lessors may make purchases of tangible personal property for lease tax-free as purchases for resale. See Section 130.210. [35 ILCS 120/2c]

3) Lessors shall calculate tax upon their business of leasing or renting tangible personal property to purchasers for use or consumption measured by the lessor's gross receipts from such leases or rentals made in the course of such business. See this Subpart A. Lessors shall file returns and pay tax on gross receipts received during the reporting period from the lease of tangible personal property in accordance with Subpart E, shall keep books and records in accordance with Subpart H, and are subject to penalties and interest in accordance with Subpart I.

4) Lessors are subject to tax on transportation and delivery charges for leased property in the same manner as transportation and delivery charges are taxed for sales other than leases of property. That is, transportation and delivery charges are part of the gross receipts subject to Retailers' Occupation Tax when there is an inseparable link between the lease of tangible personal property and the outgoing transportation and delivery of the property. (See Section 130.415 and Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351(2009)).

5) Lessors of equipment leased to construction contractors, which equipment is used by the construction contractor and is not incorporated into real estate, are subject to tax on the equipment in the same manner as equipment that is sold to a construction contractor for its own use. See Section 130.101. This is true even in cases where the construction contractor is engaging in a construction

contract with a customer who holds a tax exemption identification number (e.g., religious, educational, or governmental entity).

g) Leases or rentals taxed under other Acts. The provisions of Article 75 of Public Act 103-592 that apply the Retailers' Occupation Tax to persons engaged in the business of leasing tangible personal property at retail do not apply to (i) items subject to tax under the Rental Purchase Agreement Occupation and Use Tax Act [35 ILCS 180] and (ii) motor vehicles subject to tax under the Automobile Renting Occupation and Use Tax Act [35 ILCS 155]. These items continue to be exempt from tax under the Retailers' Occupation Tax Act and subject to tax under the respective Tax Acts.

h) No credit against tax on lease receipts for Use Tax paid. The legislation applying the retailers' occupation tax to persons engaged in the business of leasing tangible personal property at retail makes no provision for a credit for Use Tax paid prior to January 1, 2025 by lessors when they acquired property for leasing purposes. Lessors may not reduce the Retailers' Occupation Tax owed on their gross receipts from leasing by any Use Tax they paid for leased property acquired prior to January 1, 2025. A lessor who incurs a Retailers' Occupation Tax liability on the sale of an item coming off lease, however, may take a credit against that liability for any Use Tax and any local retailers[1]' occupation tax reimbursement the lessor paid to a supplier registered to collect Illinois tax when the lessor purchased that particular item. See Section 130.2013(h).

i) No impact on Software as a Service. The lease tax provisions of Article 75 of Public Act 103-592 extend to the lease, license, or rental of computer software, but exempt gross receipts from the lease of computer software transferred incident to a license meeting certain criteria. However, computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client's computer and is only accessed remotely – is not subject to tax. For more on leases of computer software, see subsection (e)(1).

j) Repair and replacement parts. A lessor's purchase of repair or replacement parts for the purpose of being attached to tangible personal property used solely for leasing or renting as a part thereof, which property is subject to the tax on leases under Public Act 103-592, is exempt as a purchase for resale.

However, if the same property is purchased by a lessee, the purchase is taxable.

(Source: Added at 49 Ill. Reg. _____, effective _____)

Section 130.103 Leases or Rentals of Trailers other than Semitrailers and Items that are Titled but not Registered

a) The provisions of Article 75 of Public Act 103-592 that apply the Retailers' Occupation Tax to persons engaged in the business of leasing tangible personal property at retail *do not extend to motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. The taxation of these items shall continue in effect as prior to the* enactment of Public Act 103-592 *(i.e. dealers owe retailers' occupation tax, lessors owe use tax, and lessees are not subject to retailers' occupation or use tax).* [35 ILCS 120/2] See, however, Section 130.454 regarding the definition of "selling price" when certain motor vehicles are purchased for lease.

b) The lease or rental of trailers, other than semitrailers as defined in Section 1-187 of the Illinois Vehicle Code, however, is subject to the provisions of Article 75 of Public Act 103-592 that apply the Retailers' Occupation Tax to persons engaged in the business of leasing tangible personal property at retail. In addition, the lease or rental of items that are required to be titled with an agency of this State but that are not required to be registered with an agency of this State, such as all-terrain vehicles (ATVs) and off-road motorcycles, is subject to the provisions of Article 75 of Public Act 103-592 that apply the Retailers' Occupation Tax to persons engaged in the business of leasing tangible personal property at retail. As such, the lease or rental of these items is subject to the parameters set forth in Section 130.102.

c) Items identified in subsection (b) that are purchased for lease and that are subject to tax on lease receipts may be purchased tax-free for resale. Lessors of such items *must remit, for each tax return period, only the tax applicable to that part of the selling price* [i.e., the lease payment] *actually received during such tax return period.* [35 ILCS 120/2]

(Source: Added at 49 Ill. Reg. _____, effective _____)

Section 130.110 Occasional Sales

a) Since the Act does not impose a tax upon persons who are not engaged in the business of selling tangible personal property, persons who make isolated or occasional sales thereof do not incur tax liability.

b) For example, if a retailer sells tangible personal property, such as machinery or other capital assets, which the retailer has used in its business and no longer needs, and which the retailer does not otherwise engage in selling, the retailer does not incur Retailers' Occupation Tax liability when selling such tangible personal property even if the sales are at retail and even if the retailer may be required to make a considerable number of such sales in order to dispose of such tangible personal property, because such sales are isolated or occasional and do not constitute a business of selling tangible personal property at retail.

c) However, construction contractors and real estate developers are not considered to be isolated or occasional sellers of tangible personal property to the extent noted in Section 130.1940(c) and (d) of this Part.

d) Where persons engage primarily in the business of selling tangible personal property other than for use or consumption (such as the business of selling tangible personal property primarily to purchasers for resale), the mere fact that their sales for use or consumption may comprise but a small fraction of their total sales does not make the retail sales isolated or occasional. The vendor is liable for tax measured by the gross receipts from such retail sales.

e) Regarding sale/leaseback situations, typically customer A purchases equipment from retailer B, and then sells it to lessor C who leases the equipment back to customer A. Customer A has paid tax when purchasing the equipment in the first transaction under a taxable retail sale and the second transaction where customer A sells the equipment to lessor C is a nontaxable occasional sale so long as A is not otherwise in the business of selling like-kind property. The leaseback transaction between lessor C and customer A is not a taxable lease if the *lease* is *entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee*. [35 ILCS 120/1]

f) When a person purchases an item of tangible personal property with the intent of reselling the item to a purchaser for use or consumption, that person engages in conduct equivalent to holding itself out as a retailer. In such a situation, the initial purchase is a sale for resale and the subsequent sale is a taxable sale at retail subject to Retailers' Occupation Tax, not an occasional sale. For example, if a hospital possessing an exemption identification number issued by the Department purchases a computer system with the intent of reselling the computer system to a group of doctors, the hospital may not resell the computer system to the group of doctors without incurring Retailers' Occupation Tax. In this instance, the hospital is holding itself out as a retailer and its sale of the computer system to the group of doctors is taxable. The hospital should provide a Certificate of Resale to its supplier on the purchase of the computer system. It is improper for the hospital to use its exemption identification number to purchase the computer system in these circumstances.

g) No sales made on a marketplace are considered to be occasional sales. (86 Ill. Adm. Code 131.140(b)(3)). (For further information on the application of the Act to marketplace facilitators, see 86 Ill. Adm. Code 131.130, 131.135, 131.140, and 131.145.)

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.115 Habitual Sales

Any person who habitually engages in selling, and, on and after January 1, 2025, leasing tangible personal property for use or consumption, or who, in any manner or at any time, advertises, solicits, offers for sale or lease or holds himself out to the public to be a seller or lessor of tangible personal property for use or consumption other than in the course of engaging in a service occupation is engaged in the business that is taxed by the Act, provided that such person is engaged in such business in this State (see Subpart F of this Part).

(Source: Amended at 49 Ill. Reg. _____, effective _____)

SUBPART B: SALE AT RETAIL

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Section 130.201 The Test of a Sale at Retail

a) Sale at Retail

1) "Sale at retail" means any transfer of the ownership of, the ~~or~~ title to, and on and after January 1, 2025, the possession or control of, the right to possess or control, or a license to use tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subject to a use for which it was purchased, for a valuable consideration, provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales.

2) "Sale at retail" includes any transfer (whether made for or without a valuable consideration) of the ownership of, the ~~or~~ title to, and on and after January 1, 2025, the possession or control of, the right to possess or control, or license to use tangible personal property to a purchaser for resale in any form as tangible personal property unless made in compliance with Section 2c of the Retailers' Occupation Tax Act and Section 130.1415 of this Part concerning the purchaser's possession and furnishing of a taxpayer registration number or resale number from the Department of Revenue to the seller (see Section 130.210 of this Subpart).

3) Even if the sale is at retail, the Retailers' Occupation Tax does not apply to receipts received by the seller from a sale to any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, to a limited liability company only if it is organized and operated exclusively for educational purposes, to a not-for-profit corporation, society, association, foundation, institution or organization that has no compensated officers or employees and that is organized and

operated primarily for the recreation of persons 55 years of age or older, or from any sale that is made to a governmental body.

4) *On and after January 1, 2025, the term "sale", when used in* the *Act, incudes a lease.*

b) Sales for Transfer as Gifts, etc.
Sales at retail also include any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without a valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property or service (see Sections 130.2120 and 130.2160 of this Part). For example, when a manufacturer orders, pays for and directly ships point-of-sale advertising items to retailers separately from the sale of other tangible personal property or service, the manufacturer is considered the user of the items and incurs Use Tax. For instance, when a beer manufacturer provides items, such as interior neon signs, clocks, and other devices intended to encourage a demand for the products that they manufacture, to retailers for display, the manufacturer is the user of the property and incurs Use Tax. (Miller Brewing Company v. Korshak (1966), 35 Ill.2d 86, 219 N.E.2d 494) However, when the tangible personal property is transferred along with other goods for which a charge is made, that transfer is deemed a sale for resale. When sewing needle display racks, for example, are transferred along with sewing needles for which a charge is made, the transfer is deemed a sale for resale. (Boye Needle Company v. Department of Revenue (1970), 45 Ill.2d 484, 259 N.E.2d 278) Grocery store display racks provided free of charge to grocery stores by a manufacturer, in exchange for the right to exclusively display its product on the rack, are another example of this type of sale for resale.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.205 Sales for Transfer Incident to Service

a) Sales of tangible personal property to a purchaser, who transfers the ownership of, the ~~or~~ title to, or, on and after January 1, 2025, the possession or control of, the right to possess or control, or a license to use the tangible

personal property to others in connection with his sale of other tangible personal property or in connection with his furnishing of service for which he makes a charge, are sales of tangible personal property to such purchaser for resale. This is the case unless the purchaser is a de minimis serviceman who has elected to handle his Service Occupation Tax liability in the manner provided at Section 2(g) of the Service Occupation Tax Act [35 ILCS 115/2(g)]. Sales of tangible personal property to such de minimis servicemen are generally subject to Retailers' Occupation Tax.

b) For specific information concerning the tax on persons engaged in the business of making sales of service, see the regulations pertaining to the Service Occupation Tax Act (86 Ill. Adm. Code 140).

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.210 Sales of Tangible Personal Property to Purchasers for Resale

a) The sale of tangible personal property to a purchaser for the purpose of resale in any form as tangible personal property, to the extent not first subjected to a use for which it was purchased, is not subject to the Retailers' Occupation Tax Act ("Act").

b) Sales of tangible personal property, which property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a "sale at retail", are not sales at retail as defined in the Act, provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced byproduct of manufacturing.

c) However, such sales for resale cannot be made tax-free unless the purchaser (except in the case of an out-of-State purchaser who will always resell and deliver the property to its customers outside Illinois) has an active registration number or active resale number from the Department and gives such number to suppliers in connection with certifying to any supplier that

any sale to such purchaser is nontaxable because of being a sale for resale. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale.

d) Divisible Type of Sale. There can also be a divisible type of sale where the tangible personal property is bought partly for "use" and partly for "resale" in the first place. For examples, see Sections 86 Ill. Adm. Code 130.215 and 130.330(h).

e) *On and after January 1, 2025, a sale to a lessor of tangible personal property who is subject to the tax on leases implemented by* Public Act 103-592 *for the purpose of leasing that property, shall be made tax-free on the ground of being a sale for resale, provided the other provisions of* this Section *are met.* [35 ILCS 120/2c]

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.220 Sales to Lessors of Tangible Personal Property

a) Effective August 1, 1967, and through December 31, 2024, the sale of tangible personal property to a purchaser who will act as a lessor of such tangible personal property is a sale at retail and is subject to Retailers' Occupation Tax. Also, effective August 1, 1967, and through December 31, 2024, the sale of tangible personal property that is used, employed or consumed by the purchaser in or upon other tangible personal property as to which such purchaser acts as a lessor is a sale at retail and so is subject to Retailers' Occupation Tax. (See also Section 130.2010 of this Part.) Effective January 1, 2025, the tax imposed under the Act, except as otherwise provided in the Act, applies to persons engaged in the business of leasing at retail tangible personal property (other than motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State). The tax applies with respect to leases in effect, entered into, or renewed on or after January 1, 2025. [35 ILCS 120/1.05; 35 ILCS 120/2]

b) *On and after January 1, 2025, a sale to a lessor of tangible personal property who is subject to the tax on leases implemented by* Public Act 103-592 *for the purpose of leasing that property, shall be made tax-free on the ground of being a sale for resale, provided the other provisions of* Section 130.210 *are met.* [35 ILCS 120/2c] Lessors of tangible personal property that are subject to a tax on lease receipts imposed by a home rule unit of local government whose ordinance imposing the lease tax was adopted prior to January 1, 2023 are authorized to purchase such property tax free for resale notwithstanding that they are exempt from Retailers' Occupation Tax on gross receipts from the lease of the property if it is subject to such local lease tax. [35 ILCS 120/2-5(49) and Section 130.210(e)]

c)~~b)~~ A separate exemption ~~However, an exception~~ exists for the sale of an automobile to an automobile rentor for use as a rental automobile under lease terms of one year or less, provided the lessor gives proper certification to the seller. 35 ILCS 120/2-5(5)] The exemption ~~exception~~ does not apply to a retail sale of repair or replacement parts for rental automobiles. (See Section 130.120(v).) For the sale of a motor vehicle to a purchaser who will act as lessor of the motor vehicle when the exemption under this subsection (c) does not apply, see Sections 130.454 and 130.455.

d)~~c)~~ All gross receipts received from the sale or lease of tangible personal property at retail~~, whether or not encumbered by leases or other rights vested in third parties,~~ are presumed to be subject to Retailers' Occupation Tax. No deduction will be permitted for any value attributable to intangible property or rights transferred in a sale of tangible personal property at retail if there is not clear evidence from the books and records of the retailer that the sale of such intangible property has been contracted for separately from the sale or lease of the tangible personal property. In no event will the combined sale of tangible and intangible property be permitted to reduce the tax base of the tangible personal property being sold below the fair market value of similar tangible personal property sold separately.

e)~~d)~~ Through December 31, 2024, sales~~Sales~~ of tangible personal property to lessors are subject to Retailers' Occupation Tax liability as provided in this Section even if the tangible personal property is leased to an exempt entity that has been issued an exemption identification number under Section 130.2007 of this Part. The only exemption from this provision is if the

purchases of the tangible personal property qualify under Section 130.2011 (computers, communications equipment, and equipment used in diagnosis, analysis, or treatment that are leased to exempt hospitals) or 130.2012 (tangible personal property leased to a governmental body) of this Part.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

SUBPART C: CERTAIN STATUTORY EXMEMPTIONS

Section 130.305 Farm Machinery and Equipment

a) General: Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs, including any individual replacement part for such machinery and equipment. A purchaser must certify to the use of the equipment to obtain the exemption.

b) Production Agriculture is *the raising of or the propagation of: Livestock, crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or, for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also includes animal husbandry, floriculture, aquaculture, horticulture and viticulture*. (Section 2-35 of the Act)

c) Horticulture means the business of producing vegetables, vegetable plants, nursery stock, including the operation of nurseries and orchards, but not the sale of plants by retail outlets which do not grow the plant stock.

d) Floriculture means the business of producing flowers, Christmas trees or other decorative trees, plants, shrubs, sod, including such operations as greenhouses but not the sale of plants by retail outlets which do not grow plant stock.

e) Viticulture means the business of growing grapes or operating vineyards.

f) Production Agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide or fertilizer, harvesting and drying of crops. Specialized food production operations which produce plants under controlled environments in growing media other than soil, qualify as production agriculture. Activities such as the clearing of land, mowing of fence rows, creation of ponds or drainage facilities are not included, nor are the operations involved in the storing or transporting of crops and produce. The processing of crops into food or other products is not production agriculture. With respect to the raising of or propagation of livestock and husbandry of animals, the animals must be domestic farm animals raised for profit. The raising of wild animals, game birds and house pets would not be considered to be production agriculture.

g) The transport, slaughter and processing of animals or animal food products are not considered to be production agriculture.

h) Farm machinery and equipment. The exemption applies only to items of farm machinery and equipment, either new or used, certified by the purchaser to be used primarily for production agriculture or State or Federal agricultural programs, and including machinery and equipment purchased for lease. Included in this exemption are implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code, fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code. Excluded from this exemption are other motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Registered vehicles other than motor vehicles may qualify for the exemption if they are used primarily in production agriculture rather than in transportation or other nonexempt activities. Examples of this include implements of husbandry used primarily to supply and apply farm chemicals; trailers and nurse tanks used primarily to supply spreaders in the fields; and aircraft used primarily to apply farm chemicals. All-terrain vehicles (ATVs) may qualify if they are used primarily in production agriculture activities such as pulling sprayers while they apply chemicals to fields or collecting and mapping soil samples. The use of ATVs for farm transportation or recreation purposes does not constitute production agriculture. When ATVs are used in both production agriculture and nonqualifying activities, the primary use will determine if they qualify for

exemption. The law exempts only the purchase and use of farm machinery and equipment used in production agriculture or State or Federal agricultural programs. No other type or kind of tangible personal property will qualify for the exemption.

i) Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Farm machinery would include tractors, combines, balers, irrigation equipment, cattle and poultry feeders, but not improvements to real estate such as fences, barns, roads, grain bins, silos, and confinement buildings. A rotary mower which would not qualify for exemption if used to mow ditches or fence rows, would qualify for exemption if primarily used to mow crops or ground cover grown on acreage in State or Federal agricultural programs. Certain machines qualify for the exemption if purchased by farmers directly from retailers, even though they are installed as realty improvements. Such machines include but are not limited to augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials), automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), and water pumps serving production areas, specialty heating or lighting equipment specifically required by the production process, i.e., ultraviolet lights, and special heaters for incubation. General heating, lighting and ventilation equipment does not qualify as farm machinery or equipment. A person (such as a plumbing contractor) who contracts to provide and install an exempt machine or equipment permanently into real estate must obtain an exemption certificate from the person purchasing the machine. The contractor must furnish certification to the seller, attaching the certificate of the purchaser in order to claim the exemption.

j) A tractor or other machinery which qualifies for the exemption may include options or accessories which are not farm equipment. Except for precision farming equipment, these items must be installed and sold both as an integral part of the qualifying machine and in a single transaction. *Agricultural chemical tender tanks and dry boxes shall include units sold separately from a motor vehicle required to be licensed and units sold mounted on a motor vehicle required to be licensed if the selling price of the tender is separately stated.* (Section 2-5 of the Act)

k) Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Equipment does not include ordinary building materials to be permanently affixed to real estate. However, certain items of equipment can qualify for the exemption even though they are installed as realty improvements. Such items of equipment include, but are not limited to, farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery. Horticultural polyhouses or hoop houses used for propagating, growing, or overwintering plants are considered farm machinery and equipment. Wheeled, wire-mesh tables and wheeled, non-motorized, multiple-tray carts used primarily in floricultural or horticultural growing operations, such as those described in Mid-American Growers v. Department of Revenue (143 Ill.App.3d 600), are considered farm machinery and equipment. Equipment shall include precision farming equipment that is installed or purchased to be installed on farm machinery and equipment, including, but not limited to, tractors, harvesters, sprayers, planters, seeders, or spreaders. Precision farming equipment includes, but is not limited to, soil testing sensors, yield monitors, computers, monitors, software, global positioning and mapping systems, guidance systems, modems, and data communications equipment. It shall also include necessary mounting hardware, wiring and antennas. Farm machinery and equipment also includes computers, sensors, software and related equipment used primarily in the computer assisted operation of production agriculture facilities, equipment, and activities such as, but not limited to, the collection, monitoring and correlation of animal and crop data for the purpose of formulating animal diets and agricultural chemicals. Example: Precision farming and computer assisted operation of production agriculture facilities includes the collection of crop and soil data, the processing of that data, and the use of that data or its products in production agriculture. Thus, machinery and equipment such as soil sensors, moisture sensors and yield monitors would collect data on a particular field. This information would be precisely correlated to a specific location by use of satellite GPS systems linked to a computer. These devices would typically be mounted on a tractor or combine. These devices could also be hand held or mounted on other types of vehicles even though those vehicles, such as pick-up trucks, do not qualify for the exemption. The data collected from the farm field would then be transferred to a base station computer electronically by modem, or via magnetic media or CD ROM disk. The data would be processed by the base

station computer and integrated into or overlayed on digital maps of the farm field. The farmer could use the information to make decisions about what types of crops to plant and the type, formula and application rate of fertilizer, pesticide or other agricultural chemical to apply to the field. The processed and integrated data would then be available for use by the farmer in planting or could be transferred to a fertilizer dealer who applies farm chemicals. The fertilizer dealer would use the information about the farmer's field and the digital map to determine the type and formula of chemical to be applied to the farmer's field and the rate of application. That information would be transferred to the computer in the fertilizer spreader. With the aid of a GPS system linked to the computer in the fertilizer spreader, the fertilizer dealer would be able to precisely apply the necessary chemicals and vary the application rate to meet crop needs across the field. All of the sensors, computers, software and accessories described above would qualify for the exemption. A livestock farmer would use microchips and sensors to identify specific animals and determine individual growth information for animals. This information would be used by computers to determine the optimum feed/diet for the animal and could then be used to dispense the proper type and amount of feed to the animal. In confinement buildings, temperature and moisture sensors may be linked through computers to control heating, ventilation and lighting for livestock as well as regulating the automatic stock feeders and waterers. Precision farming equipment would include the microchips, sensors, computers and computer controlled feeding equipment and environmental controls. The use of computers to record and process crop and livestock management information gathered through the use of these types of sensors or monitors constitutes precision farming. However, the use of computers to record and process other farm related information such as accounts payable, correspondence, or marketing does not constitute precision farming. When a computer is used for both precision farming and nonqualifying purposes, the primary use of the computer will determine if it qualifies for the exemption. The use of computers to record and process land information about soil types and slope and pesticide, herbicide and fertilizer application also constitutes precision farming. Equipment used in farm management such as radios and office equipment, in repair and servicing of equipment, in security and fire protection, is not farm equipment; nor does the exemption apply to equipment used in farm maintenance, administration, selling, marketing or the exhibition of products. The exemption does include hand-operated

equipment such as wheelbarrows, hoes, rakes, pitchforks and shovels so long as they are used in production agriculture as that term is defined in subsection (b) of this Section. Hand tools used in maintenance activities, such as wrenches, pliers, wire stretchers, grease guns, hammers and screwdrivers, are not used in production and do not qualify for the exemption. Supplies, such as baling wire, baling twine, work gloves, boots, overshoes and chemicals for effluent systems are not exempt.

l) New or used repair or replacement parts, necessary for the operation of the machine used in production agriculture or in State or Federal agricultural programs, qualify for the exemption. With the exception of precision farming items, accessories or replacements not essential to the operation of the machinery itself, except when sold as an integral part of a qualified machine at the time of purchase, such as radios, tool or utility boxes, do not qualify for the exemption. Included in the repair or replacement parts category are: batteries, tires, fan belts, mufflers, spark plugs, plow points, standard type motors and cutting parts. Consumable supplies such as fuel, grease, oil and anti-freeze are not repair or replacement parts.

m) Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily in production agriculture or in State or Federal agricultural programs. Retailers may accept blanket certificates but have the responsibility to obtain and must maintain the certificates as a part of their books and records. Retailers are required to exercise good faith in accepting exemption certificates. If, however, a retailer reasonably believes that the purchaser will use farm machinery or equipment in production agriculture or in State or Federal agricultural programs and accepts the certificate in good faith and the purchaser does not, in fact, use the machinery or equipment in production agriculture or in State or Federal agricultural programs, the purchaser will be liable to the Department for the tax. An item of farm machinery and equipment which is initially used primarily in production agriculture and having been so used for less than one-half of its useful life, is converted to primarily nonexempt uses, will become subject to tax at the time of the conversion. Such tax will be collected on such portion of the price of the machinery and equipment as was excluded from tax at the time the sale or purchase was made.

n) Leasing.

1) Prior to January 1, 2025, farm~~Farm~~ machinery and equipment purchased for lease to be used by the lessee primarily in production agriculture or in State or Federal agricultural programs qualifies for the exemption. The lessor purchasing such equipment must certify that the equipment will be so used. Should a purchaser-lessor subsequently lease the machinery or equipment primarily to lessees who do not use it in a manner that would qualify for the exemption, the purchaser-lessor will become liable for the tax from which he was previously exempted.

2) On and after January 1, 2025, farm machinery and equipment that is subject to the tax on leases under the Act and that is purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the machinery or equipment will be used by the lessee primarily in an exempt manner, it qualifies for the exemption. The lessee leasing such machinery or equipment must certify that the machinery or equipment will be so used. If the lessee subsequently uses the machinery or equipment in a nonexempt manner, the lessor is liable for the tax on the gross receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If the lessee does not notify lessor of a nonexempt use, the lessee is liable for the tax.

o) Custom farmers or special service operators, i.e., crop dusting, fertilizer spraying, combining or corn shelling, who provide a service-for-hire on farms other than their own which is an integral part of production agriculture may also claim the exemption if the equipment is used primarily in production agriculture.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.311 Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products

a) General. *With respect to prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, blood sugar testing materials, syringes, and needles used by human diabetics, the tax is imposed at the rate of 1%. Beginning January 1, 2014, "prescription and nonprescription medicines and drugs" includes medical cannabis* and medical cannabis infused products *purchased from a registered dispensing organization under the Compassionate Use of Medical Cannabis Program Act* [410 ILCS 130]. [35 ILCS 120/2-10] Medical cannabis, including medical cannabis infused products, sold by registered dispensing organization under the Compassionate Use of Medical Cannabis Program Act, is subject to Retailers' Occupation Tax at the 1% rate, plus applicable local taxes. Cannabis paraphernalia is subject to Retailers' Occupation Tax at the general merchandise rate of 6.25%. Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%. [See 35 ILCS 120/2-10]
AGENCY NOTE: Medical cannabis is subject to tax under both the Metro East Mass Transit District Retailers' Occupation Tax (as provided in 70 ILCS 3610/5.01) and the Regional Transportation Authority Retailers' Occupation Tax (taxed at the rate established for prescription and nonprescription medicines in Cook County and at the rate established for general merchandise in all other areas of the metropolitan region that are subject to the tax, as provided in 70 ILCS 3615/4.03).

b) *Beginning January 1, 2017 and through December 31, 2026, menstrual pads, tampons, and menstrual cups* are exempt from the Retailers' Occupation Tax. [35 ILCS 120/2-5(42)] Menstrual pads (including pantiliners) are exempt even when the label indicates that those products are to be used as both menstrual products and incontinence products. However, incontinence products that do not indicate on the label that they can also be used as menstrual products are not exempt.

c) Medicines and Drugs. Except for grooming and hygiene products described in subsection (d), a medicine or drug is any pill, powder, potion, salve, or

other preparation for human use that purports on the label to have medicinal qualities. Medicines prescribed by veterinarians for animals are subject to the high rate of tax. A written claim on the label that a product is intended to cure or treat disease, illness, injury, or pain or to mitigate the symptoms of such disease, illness, injury, or pain constitutes a medicinal claim.

1) Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:

A) "medicated";

B) "heals (a medical condition)";

C) "cures (a medical condition)";

D) "for relief (of a medical condition)";

E) "fights infection";

F) "stops pain";

G) "relief from poison ivy or poison oak";

H) "relieves itching, cracking, burning";

I) "a soaking aid for sprains and bruises";

J) "relieves muscular aches and pains";

K) "cures athlete's foot";

L) "relieves skin irritation, chafing, heat rash, and diaper rash";

M) "relief from the pain of sunburn"; and

N) "soothes pain".

2) The use of the terms "antiseptic", "antibacterial", or "kills germs" may or may not constitute a medicinal claim.

A) The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim.

B) However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions, and burns does constitute a medicinal claim.

3) Examples of claims that do not constitute medicinal claims include, but are not limited to:

A) "cools";

B) "absorbs wetness that can breed fungus";

C) "deodorant" or "destroys odors";

D) "moisturizes";

E) "freshens breath";

F) "antiperspirant";

G) "sunscreen";

H) "prevents"; and

I) "protects".

d) Grooming and Hygiene Products. *Beginning September 1, 2009, "nonprescription medicines and drugs" does not include grooming and hygiene products. "Grooming and hygiene products" includes, but is not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and* sun *screens, unless those products are available by prescription only, regardless of whether the products meet*

the definition of "over-the-counter drugs". "Over-the-counter drug" means a drug for human use that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter drug" label includes a "Drug Facts" panel or a statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation. [35 ILCS 120/2-10]

1) As a result, on or after September 1, 2009:

   A) nonprescription medicines and drugs that are grooming and hygiene products do not qualify for the 1% rate of tax for medicines and drugs under subsection (c). Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims or meet the definition of over-the-counter drugs. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%.

   B) products available only with a prescription are not "grooming and hygiene products".

2) Examples of products that are grooming and hygiene products include, but are not limited to:

   A) all shampoos, hair conditioners, and hair care products;

   B) shaving creams or lotions;

   C) deodorants;

   D) moisturizers;

   E) breath spray;

   F) all condoms, with and without spermicide;

   G) baby diapers and adult diapers;

   H) baby powder;

I) contact lens solutions;

J) hand sanitizers;

K) acne products;

L) skin creams, lotions, ointments, and conditioners;

M) foot powders;

N) foot wear insoles that are intended to eliminate odor;

O) feminine hygiene products such as feminine wipes, washes, powders and douches, but, beginning January 1, 2017 through December 31, 2026, the following feminine hygiene products are exempt from tax: tampons, menstrual pads, and menstrual cups (see Section 130.120(vv)); and

P) lip balms.

3) The following products are not grooming and hygiene products and may qualify for the 1% rate if they meet the requirements of subsection (c):

A) hydrocortisone creams or ointments;

B) anti-itch creams or ointments;

C) vaginal creams or ointments;

D) nasal sprays;

E) eye drops;

F) topical pain relievers;

G) ice/heat creams;

H) rubbing alcohol;

I) denture creams or adhesives; and

J) styptic pencils.

4) Nonprescription medicines and drugs and products that are not grooming and hygiene products do not qualify for the 1% rate of tax unless they meet the requirements of subsection (c).

5) Products that are taken orally and ingested, such as vitamins, supplements and weight gain or weight loss products, are not grooming and hygiene products.

e) Medical Appliances: A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body.

1) For purposes of this Section, an item that becomes part of the human body by substituting for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors, or disease is considered a medical appliance. Examples of medical appliances that will qualify the product for the low rate of tax include, but are not limited to:

A) breast implants that restore breasts after removal due to cancer or for preventative, medical reasons;

B) heart pacemakers;

C) artificial limbs;

D) dental prosthetics;

E) crutches and orthopedic braces;

F) dialysis machines (including the dialyzer);

G) wheelchairs;

H) mastectomy forms and bras;

I) mobility scooters; and

J) sleep apnea devices.

2) Corrective medical appliances such as hearing aids, eyeglasses, contact lenses, and orthodontic braces qualify as medical appliances subject to the low rate of tax.

3) Sterile band-aids, dressings, bandages, and gauze qualify for the low rate because they serve as a substitute for skin.

4) Items transferred incident to cosmetic procedures are not considered medical appliances. For purposes of this Section, a cosmetic procedure means any procedure performed on an individual that is directed at improving the individual's appearance and that does not prevent or treat illness or disease, promote the proper function of the body or substitute for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors, or disease. Cosmetic procedures include, but are not limited to, elective breast, pectoral, or buttock augmentation.

5) Diagnostic equipment shall not be deemed to be a medical appliance, except as provided in Section 130.311(g). Other medical tools, devices, and equipment such as x-ray machines, laboratory equipment, and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as medical appliances. Sometimes a kit of items is sold where the purchaser will use the kit items to perform self-treatment. The kit will contain paraphernalia and sometimes medicines. An example is a kit sold for the removal of ear wax. Because the paraphernalia hardware is for treatment, it generally does not qualify as a medical appliance. However, the Department will consider the selling price of the entire

kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.

6) Supplies, such as cotton swabs, disposable diapers, toilet paper, tissues and towelettes and cosmetics, such as lipsticks, perfume, and hair tonics, do not qualify for the reduced rate.

7) Medical appliances may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients or purchased directly by individuals. On and after January 1, 2025, leases ~~Purchases~~ of medical appliances by lessors ~~that will be leased~~ to others for human use also qualify for the reduced rate of tax.

f) Certain Medical Devices. *Effective August 19, 2016, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, qualify for the 1% rate of tax*. [35 ILCS 120/2-10]

g) *Insulin, blood sugar testing materials, syringes, and needles used by human diabetics, the tax is imposed at the rate of 1%*. [35 ILCS 120/2-10]

h) Modifications Made to a Motor Vehicle for the Purpose of Rendering It Usable by a Person with a Disability

1) Effective August 17, 1995, *modifications made to a motor vehicle, as defined in Section 1-146 of the Illinois Vehicle Code* [625 ILCS 5/1-146], *for the purpose of rendering it usable by a person with a disability, qualify for the reduced rate of tax*. [35 ILCS 120/2-10] The low rate applies to modifications that enable a person with a disability to drive a vehicle or that assist in the transportation of persons with disabilities. Examples of such modifications include, but are not limited to, special steering, braking, shifting or acceleration equipment, or equipment that modifies the vehicle for accessibility, such as a chair lift.

2) For purposes of this subsection (h), the term "person with disabilities" has the meaning set forth in Section 1-159.1 of the Illinois Vehicle Code [625 ILCS 5/1-159.1].

i) Reporting

1) The retailer must keep an actual record of all sales and must report tax at the applicable rates, based on sales as reflected in the retailer's records. Books and records must be maintained in sufficient detail so that all receipts reported with respect to drugs, medicines, and medical appliances can be supported.

2) Suppliers that sell items to health professionals must collect tax based on the actual use of the items. Health professionals that purchase items that may or may not qualify for the low rate, depending upon the ultimate use of the items by the health professionals, may provide their suppliers with certificates that identify the percentage of items being purchased that qualify for the low rate, i.e., that are purchased to be used to replace a malfunctioning part of the body. (For example, cosmetic versus reconstructive procedures.)

A) The certificate should contain the following information:

i) the seller's name and address;

ii) the purchaser's name and address;

iii) a description of the medical appliances being purchased;

iv) the percentage of the medical appliances being purchased that qualify for the low rate;

v) the purchaser's signature or the signature of an authorized employee or agent of the purchaser and date of signing; and

vi) if the purchaser is registered with the Department, the purchaser's Registration Number or Resale Number.

B) A supplier that obtains a certificate from a health professional that complies with subsection (i)(2)(A) will not be liable for additional retailers' occupation tax in the event the actual percentage of items purchased by the health professional that qualify for the low rate is less than the percentage claimed in the certificate if it remitted retailers' occupation tax to the Department based on the information contained in the certificate received from the health professional.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.330 Manufacturing Machinery and Equipment

a) General Provisions Applicable to All Types of Machinery and Equipment Under This Section
Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax Act does not apply to the sales of *machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether the 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 the sale or lease is made apart from or as an incident to the seller's engaging in the service occupation of producing machines, tools, dies, jigs, patterns, gauges, or other similar items of no commercial value on special order for a particular purchaser*. [35 ILCS 120/2-5(14)] *The manufacturing and assembly machinery and equipment exemption includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility as well as machinery and equipment that are for use in an expanded or new manufacturing facility*. [35 ILCS 120/2-45] In certain cases, purchases of machinery and equipment by a lessor will be exempt even though that lessor does not itself employ the machinery and equipment in an exempt manner. Initially, the exemption was for purchases of conventional machinery and equipment used or consumed primarily in the process of manufacturing or assembling tangible personal property for

wholesale or retail sale or lease. The exemption has expanded over time to include not only conventional machinery and equipment used or consumed in a manufacturing or assembling process in a manufacturing facility (see subsection (c)) but also chemicals (see subsection (d)), computer software (see subsection (e)), machinery and equipment used primarily in graphic arts production (see subsection (g)), and production related tangible personal property (see subsection (h)). For purposes of this Section, unless otherwise provided, all the types of tangible personal property that qualify for the exemption under this Section will be referred to as "machinery and equipment". The following provisions apply to all items under this Section:

1) There may be instances in which items of tangible personal property do not meet the definition of conventional "machinery and equipment" under subsection (c), but do meet the definition of "graphic arts production" in subsection (g) or "production related tangible personal property" in subsection (h) and so would qualify for the exemption.

2) *The manufacturing and assembling machinery and equipment exemption is exempt from the provisions of Section 2-70* of the Retailers' Occupation Tax Act. [35 ILCS 120/2-45]

3) All items considered machinery and equipment under this Section must be used primarily (over 50%) in manufacturing or assembling. Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for the exemption. However, the purchaser must be able to establish through adequate records that the machinery and equipment is used over 50% of the time in an exempt manner in order to claim the exemption.

4) An item of machinery and equipment that initially is used primarily in manufacturing or assembling and, having been so used for less than one-half of its useful life, is converted to primarily nonexempt uses will become subject to tax at the time of the conversion, allowing for reasonable depreciation on the machinery and equipment.

5) The fact that particular machinery and equipment may be considered essential to the conduct of the business of manufacturing or

assembling because its use is required by law or practical necessity does not, of itself, mean that machinery and equipment is used primarily in manufacturing or assembling.

6) Machinery and equipment used in the performance of a service, such as dry cleaning, is not used in the production of tangible personal property for wholesale or retail sale or lease and is thus taxable. However, a manufacturer or assembler who uses machinery and equipment to produce goods for wholesale or retail sale or lease by itself or another, or to perform assembly or fabricating work for a customer who retains the manufacturer or assembler only for its services, will not be liable for tax on the machinery and equipment it uses as long as the goods produced either for itself or another are destined for wholesale or retail sale or lease, rather than for use and consumption.

7) The exemption requires that the product produced as a result of the manufacturing or assembling process be tangible personal property for wholesale or retail sale or lease. Accordingly, a manufacturer or assembler who uses any significant portion of the output of its machinery and equipment, either for internal consumption or any other nonexempt use, or a lessor who leases otherwise exempt machinery and equipment to such a manufacturer or assembler, will not be eligible to claim the exemption on that machinery and equipment. No apportionment of production capacity between output for sale or lease and output for self-use will be permitted and no partial exemption for any item of machinery and equipment will be allowed. For example, the purchase of hot-mix asphalt machinery would be taxable if the majority of the asphalt produced (over 50%) was used to fulfill the purchaser's own construction contracts and not sold at wholesale or retail.

8) Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment.

b) Manufacturing and Assembling Processes Described

1) The manufacturing process is the production of any article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant.

2) The assembling process is the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling that results in an article or material of a different form, use, or name.

3) The process or activity must be commonly regarded as manufacturing. To be so regarded, it must be thought of as manufacturing by the general public. Generally, the scale, scope, and character of a process or operation will be considered to determine if the process or operation is commonly regarded as manufacturing. Manufacturing includes such activities as processing, fabricating, and refining.

4) The use of machinery and equipment in any industrial, commercial, or business activity that may be distinguished from manufacturing or assembling will not be an exempt use and the machinery and equipment will be subject to tax.

5) Manufacturing generally does not include extractive industrial activities. Logging and drilling for oil, gas, and water neither produce articles of tangible personal property nor effect any significant or substantial change in the form, use, or name of the materials or resources upon which they operate. However, the extractive processes of mining or quarrying may constitute manufacturing. (See Nokomis Quarry Co. v. Department of Revenue, 295 Ill. App. 3d 264, 692 N.E.2d 855, 860 (5th Dist. 1998) (holding that a calculated blasting method that is performed with specific desired results, which

changes limestone deposits into materials with a different form, possessing new qualities or combinations, constitutes manufacturing)). Blasting agents, high explosives, detonators, lead-in line, and blasting machines are examples of exempt tangible personal property that is often used in the extractive process of quarrying. Equipment used primarily to drill and load holes to place blasting material that fractures aggregate qualifies as manufacturing machinery and equipment. Dredges that are used primarily in a sand and gravel mining operation to pick up and sort materials from a riverbed also qualify for the exemption. Equipment, such as crawler dozers, used primarily to move shot rock after blasting, and wheel loaders, used primarily to load the mined product into off-highway, haulage trucks for transport to the crusher-sorter machine, will qualify for the exemption. In addition, wheel loaders used to transport the mined product to the crusher-sorter machine or onto a conveyor system will qualify for the exemption. Machinery and equipment used primarily in activities such as crushing, washing, sizing, and blending will qualify for the exemption if the process results in the assembling of an article of tangible personal property with a different form than the material extracted, which possesses new qualities or combinations. Other types of mining and quarrying equipment may be exempt under this subsection (b)(5) if used in qualifying activities.

6) Until July 1, 2017, the printing process was not commonly regarded as manufacturing. Therefore, machinery and equipment used in any printing application will not qualify for the exemption. This includes graphic arts, newspapers, or books, as well as other industrial or commercial applications. Beginning July 1, 2017, the exemption includes machinery and equipment used in graphic arts production. (See subsection (g)).

7) Agricultural, horticultural, and related, similar, or comparable activities, including commercial fishing, beekeeping, production of seedlings or seed corn, and development of hybrid seeds, plants, or shoots, are not manufacturing or assembling and, accordingly, machinery and equipment used in those activities is subject to tax

under this Section. (However, see Section 130.305 for the Farm Machinery and Equipment Exemption.)

8) The preparation of food and beverages by restaurants, food service establishments, and other retailers that prepare food for immediate consumption is not manufacturing.

9) Effective September 1, 1988, manufacturing includes photoprocessing if the products of photoprocessing are sold. Machinery and equipment that would qualify for exemption includes, but is not limited to, developers, dryers, enlargers, mounting machines, roll film splicers, film developing image makers, disc film opening and spindling devices, film indexers, photographic paper exposure equipment, photographic paper developing machines, densitometers, print inspection devices, photo print/negative cut assembly stations, film sleeve insertion machines, negative image producers, film coating equipment, photo transparency mounters, processor rack sanitizers, photo print embossers, photo print mounting presses, graphic slide generators, chemical mixing equipment, and paper exposure positioning and holding devices. Cameras and equipment used to take pictures or expose film are not eligible, as the photoprocessing begins after the film is exposed. Retail/net price calculation equipment and chemical reclamation equipment are not considered to be manufacturing machinery and equipment.

c) Machinery and Equipment. This subsection (c) describes "conventional" machinery and equipment that qualify for the exemption as it was originally enacted. Qualifying items that fall outside this definition of conventional machinery and equipment are described more fully in other subsections.

1) The exemption under this subsection (c) applies to machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. The manufacturing and assembly machinery and equipment exemption also includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility as well as machinery

and equipment that are for use in an expanded or new manufacturing facility. The machinery and equipment exemption also includes machinery and equipment used in the general maintenance or repair of exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment.

2) *Equipment includes an independent device or tool separate from any machinery but essential to an integrated manufacturing or assembly process, including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns, and molds; and any parts that require periodic replacement in the course of normal operation.* [35 ILCS 120/2-45]

3) By way of illustration and not limitation, machinery and equipment used primarily in the following activities will generally be considered exempt:

A) The use of machinery and equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;

B) The use of machinery and equipment to guide or measure a direct and immediate physical change upon the tangible personal property to be sold, provided this function is an integral and essential part of tuning, verifying or aligning the component parts of that property;

C) The use of machinery and equipment to inspect, test, or measure the tangible personal property to be sold, when the function is an integral part of the production flow;

D) The use of machinery and equipment to convey, handle, or transport the tangible personal property to be sold within production stations on the production line or directly between the production stations or buildings within the same plant;

E) The use of machinery and equipment to place the tangible personal property to be sold into the container, package, or wrapping in which this property is normally sold, when the machinery and equipment is used as a part of an integrated manufacturing process;

F) The production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store as long as the equipment is used primarily in the production or processing of food that is not for immediate consumption; and

G) The use of machinery and equipment such as buffers, builders, or vulcanizing equipment to retread tires, whether or not the tire casing is provided by the purchaser.

4) By way of illustration and not limitation, the machinery and equipment used primarily in the following activities will generally not be considered to be exempt:

A) The use of machinery and equipment to transport work in process, or semifinished goods, between plants;

B) The use of machinery or equipment in managerial, sales, or other nonproduction, nonoperational activities, including disposal of waste, scrap or residue, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection, or training;

C) The use of machinery and equipment pursuant to a retail sale to combine ingredients in the preparation of food and beverages or to dispense food and beverages by restaurants, vending machines, convenience stores, and other food service establishments, such as fountain drink machines, coffee

machines, soft serve ice cream machines, and frozen beverage machines;

D) The use of machinery and equipment used in the last step of the retail sale. Examples are embroidery or monogramming machines used by tee-shirt retailers or sewing machines used to hem garments sold by a clothing store; and

E) The use of machinery and equipment for general ventilation, heating, cooling, climate control, or general illumination.

d) The exemption for *equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease*. [35 ILCS 120/2-45] Effective July 1, 2019, chemicals that do not make a direct and immediate change or act as a catalyst may qualify if they are production related. See subsection (h)(2)(B). The following examples are illustrative:

EXAMPLE 1: A chemical acid is used to etch copper off the surface of a printed circuit board during the manufacturing process. The acid causes a direct and immediate change upon the product. The acid qualifies for the exemption.

EXAMPLE 2: An aluminum oxide catalyst is used in a catalytic cracking process to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or feed are broken up into smaller molecules. After the catalyst is injected into the feed and used in the cracking process, it is drawn off and reused in subsequent manufacturing processes. The catalyst qualifies for the exemption.

e) The exemption includes computer *software used to operate exempt machinery and equipment used in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease*. [35 ILCS 120/2-25]

f) The exemption includes the sale of materials to a purchaser who manufactures the materials into an exempted type of machinery and

equipment or tools that the purchaser uses in the manufacturing of tangible personal property or leases to a manufacturer of tangible personal property. However, the purchaser must maintain adequate records clearly demonstrating the incorporation of these materials into exempt machinery and equipment.

g) Beginning July 1, 2017, the manufacturing machinery and equipment exemption includes machinery and equipment used primarily in graphic arts production. *"Graphic arts production" means the production of tangible personal property for wholesale or retail sale or lease by means of printing, including ink jet printing, by one or more of the processes 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* (NAICS) *published by the U.S. Office of Management and Budget, 1997 edition. Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or audio-books. Persons engaged primarily in the business of printing or publishing newspapers or magazines that qualify as newsprint and ink, by one or more of the processes described in Groups 511110 through 511199 of Subsector 511 of the* NAICS *published by the U.S. Office of Management and Budget, 1997 edition, are deemed to be engaged in graphic arts production.* [35 ILCS 120/2-30]

1) The manufacturing machinery and equipment exemption applies to qualifying machinery and equipment used in graphic arts production processes, as those processes are described in the NAICS and includes repair and replacement parts, both new and used, and including equipment that is manufactured on special order to be used primarily in graphic arts production.

2) Manufacturing includes printing by methods of engraving, letterpress, lithography, gravure, flexography, and screen, quick, and digital printing. It also includes the printing of manifold business forms, blankbooks, looseleaf binders, books, periodicals, and newspapers. Included in graphic arts production are prepress services described in Subsector 323122 of the NAICS (e.g., the creation and preparation of negative or positive film from which plates are produced, plate

production, cylinder engraving, typesetting, and imagesetting). Also included are trade binding and related printing support activities set forth in Subsector 323121 of the NAICS (e.g., tradebinding, sample mounting, and postpress services, such as book or paper bronzing, edging, embossing, folding, gilding, gluing, die cutting, finishing, tabbing, and indexing).

3) By way of illustration and not limitation, the following activities will generally be considered graphic arts production:

A) Digital Printing and Quick Printing. This means the printing of graphical text or images by a process utilizing digital technology. It also includes the printing of what is commonly known as "digital photography" (e.g., use of a qualifying integrated computer and printer system to print a digital image). The exemption extends only to machinery and equipment, including repair and replacement parts, used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.

B) Prepress or Preliminary Processes. Prepress or preliminary processes include the steps required to transform an original into a state that is ready for reproduction by printing. Prepress or preliminary processes include typesetting, film production, color separation, final photocomposition (e.g., image assembly and imposition (stripping)), and platemaking. Prepress or preliminary processes include the manipulation of images or text in preparation for printing for the purpose of conforming those images to the specific requirements of the printing process being utilized. For example, the images must be conformed for a specific signature layout and formatted to a specific paper size. In addition, colors must be calibrated to the specific type of paper or printing process utilized, so that they conform to customer specifications. Prepress or preliminary processes do not, however, include the creation or artistic enhancement of images that will later be reproduced in printed form by a graphic arts process. For example, the

creation of an advertisement pursuant to customer direction, or enhancement of a photograph received from a customer by adding a border or text or rearranging the placement of images in the photograph, is not the performance of a qualifying prepress or preliminary process. Prepress or preliminary processes can be performed at the printing facility, a separate prepress or preliminary facility, the customer's location, or other location. The following are examples of equipment used in qualifying prepress or preliminary activities:

i) Large scale, fixed-position cameras used to photograph two-dimensional copy to produce negatives or positives used in the production of plates; film processors; scanners; imposetters; RIP (raster image processor) equipment; proofing equipment; imagesetters; plate processors; helioklischographs; and computer-to-plate and computer-to-press equipment.

ii) Computers that qualify include computers used primarily to receive, store, and manipulate images to conform them to the requirements of a specific printing process that will later be performed. Computers used in connection with what is commonly referred to as "digital photography" will qualify if used primarily to format the graphic image that will be printed (e.g., used to format the size and layout of images to be printed). If the computers are primarily used, however, to apply background colors, borders, or other artistic enhancements, or to view and select particular digital images to be printed, they will not qualify for the exemption.

iii) Digital cameras do not qualify if they are used primarily to create an original image that will later be reproduced by a graphic arts process.

iv) Servers used primarily to transfer images and text to qualifying equipment qualify, but do not qualify if used

primarily in a nonexempt activity (for example, servers used to maintain an in-house email system).

v) Scanners used primarily to input previously created images or text that will be reproduced by a graphic arts process qualify for the exemption.

C) Transfer of Images or Text from Computers, Plates, Cylinders, or Blankets to Paper or Other Stock to be Printed. This process begins when paper is introduced on the press. Examples of qualifying equipment used in this activity include printing plates, printing presses, blankets and rollers, automatic blanket washers, scorers and dies, folders, punchers, stackers, strappers used in the pressroom for signatures, dryers, chillers, and cooling towers. Laser or ink jet printers used to print on paper or other stock are also included in this exemption.

i) Equipment used primarily to handle or convey printed materials between production stations in an integrated on-line graphic arts process is included in the exemption (e.g., a forklift or bindery cart will qualify for the exemption if it is primarily used to convey book covers that have been printed and cut to binding and finishing equipment).

ii) Computer equipment used primarily to operate exempt graphic arts equipment also qualifies for the exemption.

iii) Equipment, such as transformers, used primarily to provide power to qualifying printing presses or bindery lines qualifies for the exemption. Similarly, heating and cooling machinery and equipment used to produce an environment necessary for the production of printed material qualifies for the exemption. For example, humidity-control equipment used to reduce static during the printing process qualifies for the exemption.

D) Activities Involving the Binding, Collating, or Finishing of the Graphic Arts Product. Equipment used in these activities includes, for instance, binders, packers, gatherers, joggers, trimmers, selectronic equipment, blow-in card feeders, inserters, stitchers, gluers, spiral binders, addressing machines, labelers, and ink-jet printers.

i) Machinery and equipment used to convey materials to packaging areas after the graphic arts product has been printed, bound, and finished qualifies for the exemption. That equipment includes, for instance, conveyor systems, hoists, or other conveyance mechanisms used to direct the final printed product into packaging areas.

ii) Machinery and equipment used to package materials after the graphic arts product has been printed, bound, and finished qualifies for the exemption. Packaging equipment includes, for instance, cartoning systems, palletizers, stretch wrappers, strappers, shrink tunnels, and similar equipment.

4) By way of illustration and not limitation, machinery and equipment used primarily in the following activities will generally not be considered exempt:

A) The use of machinery and equipment primarily to produce graphic arts items not for wholesale or retail sale or lease (e.g., items produced for internal consumption or items produced and distributed without charge).

B) The use of machinery and equipment (e.g., forklifts, roll clamps, and roll grabbers) to convey raw materials to the press.

C) The use of machinery and equipment to convey materials to final storage or shipping areas. That equipment includes, for

instance, forklifts used primarily to place the packaged printed product into final storage or shipping areas.

D) The use of machinery and equipment to gather information, track jobs, or perform data-related functions prior to a qualifying prepress activity (e.g., computers used primarily to edit or create text, data, or other copy). That equipment includes items such as inventory tracking devices and bar-code readers.

E) The use of machinery and equipment used primarily to photocopy printed matter. A copier that is capable of printing images or text transmitted to it in digital form may qualify if used primarily in that manner. However, a copier that produces photocopies by means of xerographic technology is subject to tax.

F) The use of machinery and equipment in managerial, sales, or other nonproduction, nonoperational activities, including production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, marketing, or personnel recruitment, selection, or training. Waste disposal equipment (e.g., equipment used to contain and recapture paper dust) does not qualify for the exemption.

G) The use of machinery and equipment for general ventilation, heating, cooling, climate control, or general illumination, except when the machinery and equipment is used to produce an environment necessary for the production of printed material.

5) An item of machinery or equipment that initially is used primarily in graphic arts production and, having been so used for less than one-half of its useful life, is converted to primarily nonexempt uses will become subject to the tax at the time of the conversion, allowing for reasonable depreciation on the item of machinery or equipment.

h) *Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property*. [35 ILCS 120/2-45]

1) Production related tangible personal property means all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process takes place or by a graphic arts producer in graphic arts production. Production related tangible personal property also means all tangible personal property that is used or consumed in research and development regardless of use within or without a manufacturing or graphic arts production facility.

2) By way of illustration and not limitation, the following uses of tangible personal property by manufacturers, including graphic arts producers, will be considered production related:

A) Tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process, or tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process.

B) Supplies and consumables used in a manufacturing process in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, and adhesives.

C) Hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility.

D) Tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging, and packing for shipping or transportation.

E) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of fuel used or consumed in transportation of the truck will not qualify as production related tangible personal property. The amount of fuel used in a qualifying manner to rotate the drum may be stated as a percentage of the entire amount of fuel used or consumed by the ready-mix truck.

3) By way of illustration and not limitation, the following uses of tangible personal property by manufacturers, including graphic arts producers, will not be considered production related:

A) The use of trucks, trailers, and motor vehicles that are required to be titled or registered pursuant to the Illinois Motor Vehicle Code [625 ILCS 5], and aircraft or watercraft required to be registered with an agency of State or federal government.

B) The use of office supplies, computers, desks, copiers, and equipment for sales, purchasing, accounting, fiscal management, marketing, and personnel recruitment or selection activities, even if the use takes place within a manufacturing or graphic arts production facility.

C) The use or consumption of tangible personal property for aesthetic or decorative purposes, including landscaping and artwork.

i) Sales to Lessors

1) Prior to January 1, 2025, for~~For~~ the exemption to apply, the purchaser need not itself employ the exempt machinery and equipment in manufacturing. If the purchaser leases that machinery and equipment to a lessee-manufacturer who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A vendor may exclude these sales from its taxable gross receipts provided the purchaser-lessor provides the vendor with a properly completed exemption certificate and this Section would support an

exemption if the sale were made directly to the lessee-manufacturer. If a purchaser-lessor subsequently leases the machinery and equipment to a lessee who does not use it in a manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax, allowing for reasonable depreciation on the machinery and equipment.

2) On and after January 1, 2025, manufacturing machinery and equipment that is subject to the tax on leases under the Act and that is purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the machinery or equipment will be used by the lessee primarily in an exempt manner, it qualifies for the exemption. The lessee leasing such machinery or equipment must certify that the machinery or equipment will be so used. If the lessee subsequently uses the machinery or equipment in a nonexempt manner, the lessor is liable for the tax on the gross receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If the lessee does not notify lessor of a nonexempt use, the lessee is liable for the tax. ~~If a purchaser-lessor subsequently leases the machinery and equipment to a lessee who does not use it in a manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax, allowing for reasonable depreciation on the machinery and equipment.~~

j) Exemption Certificates

1) A vendor that makes sales of machinery and equipment to a manufacturer or lessor of a manufacturer incurs retailers' occupation tax on that sale and must collect use tax unless the purchaser certifies the exempt nature of the purchase to the vendor as set out in this subsection (j). The use of blanket certificates of exemption will be permitted.

2) *The purchaser of the machinery and equipment who has an active resale registration number shall furnish that number to the seller at the time of purchase. A purchaser of the machinery, equipment, and tools without an active resale registration number shall furnish to the seller a certificate of exemption stating facts establishing the*

exemption, and that certificate shall be available to the Department for inspection or audit. [35 ILCS 120/2-45] Certificates shall be retained by the vendor and shall be made available to the Department for inspection or audit. The Department shall prescribe the form of the certificate.

3) If a manufacturer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must prepare the completed exemption certificate and retain it in its files. The exemption certificate shall be available to the Department for inspection or audit.

4) In the case of a vendor who makes sales of qualifying machinery and equipment to a contractor who will incorporate it into real estate so that the contractor, itself, would be the taxable user (see Sections 130.1940 and 130.2075), the purchasing contractor should provide the vendor with a certification that the machinery and equipment will be transferred to a manufacturer as manufacturing machinery and equipment in the performance of a construction contract for the manufacturer. The purchasing contractor should include the manufacturer's name and registration number on the certification when claiming the exemption.

k) *The exemption does not include machinery and equipment used in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains*. [35 ILCS 120/2-45] (The provisions of this subsection (k) were established by P.A. 98-583, which states that the provisions are declaratory of existing law as to the meaning and scope of this exemption.)

l) Opinions and Rulings
Informal ruling and opinion letters issued by the Department regarding the coverage and applicability of this exemption to specific devices will be maintained by the Department in Springfield. They are available for public inspection on the Department's website, https://tax.illinois.gov/, and may be

copied or reproduced at taxpayer's expense. Trade secrets or other confidential information in these letters will be deleted prior to release to public access files.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.340 Rolling Stock

a) Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to ~~*Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to*~~ *owners or~~,~~ lessors, lessees, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce* as long as the tangible personal property is used by the interstate carriers for hire~~*as long as so used by the interstate carriers for hire*~~. [35 ILCS 120/2-5(13)] This exemption is not only available to purchasers who are interstate carriers for hire and who otherwise meet the requirements of the exemption, but also to lessors who lease to interstate carriers who use the property as rolling stock moving in interstate commerce and to shippers, including manufacturers, who provide tangible personal property (such as shipping containers) to interstate carriers for hire when those interstate carriers use that property as rolling stock moving in interstate commerce. On and after January 1, 2025, this exemption is also available to lessors (and their lessees) who are subject to the lease tax imposed under the Act on persons engaged in the business of leasing at retail tangible personal property (other than motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State). The rolling stock exemption from the tax on leases does not have broad applicability, however, since the lease tax is not imposed on registered property, with the exception of trailers that are not semitrailers.

1) In making an initial determination of eligibility, two conditions that an item must meet in each instance are:

A) it must transport persons or property for hire; and

B) it must transport persons or property in interstate commerce.

2) The purchase of an item that does not meet both criteria in subsection (a)(1) is not eligible for the rolling stock exemption under any circumstances.

b) Definitions. As used in this Section:

"Aircraft" has the meaning prescribed in Section 3 of the Illinois Aeronautics Act. [620 ILCS 5/1]

"Commercial service or cargo service airport" means land, improvements to land, equipment, and appliances necessary for the receipt and transfer of persons and property onto or off of aircraft primarily for interstate or international transport.

"Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle. [625 ILCS 5/1-124.5]

"Limousine" means any privately owned first division vehicle intended to be used for the transportation of persons for-hire when the payment is not based on a meter charge, but is prearranged for a designated destination. [625 ILCS 5/1-139.1]

"Motor vehicle" means, except as otherwise provided in this Section, a motor vehicle as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146]. The term "motor vehicle" does not include aircraft or watercraft.

The term "Rolling Stock" includes transportation vehicles of any kind used by an interstate transportation company for hire (e.g., railroad, bus line, airline, trucking company, barge company, and limousine company), but not vehicles that are being used by a person to transport its officers, employees, customers or others not for hire (even if they cross State lines) or to transport property that the person owns or is selling and delivering to customers (even if the transportation crosses State lines). Railroad "rolling stock" includes all railroad cars, passenger and freight, and locomotives (including switching locomotives) or mobile power units of every nature for moving the cars, operating on railroad tracks, and includes all property purchased for the purpose of being attached to the cars or locomotives as a part of the cars or

locomotives. The exemption includes some equipment (such as shipping containers called trailers and shipping containers transferred at intermodal terminal facilities or commercial service or cargo service airports) that is used by interstate carriers for hire, loaded on railroad cars or aircraft, to transport property, but that does not operate under its own power and is not actually attached to the railroad cars or aircraft. The exemption does not apply to fuel nor to jacks or flares or other items that are used by interstate carriers for hire in servicing the transportation vehicles, but that do not become a part of the vehicles, and that do not participate directly in some way in the transportation process. The exemption does not include property of an interstate carrier for hire used in the company's office, such as furniture, computers, office supplies and the like.

"Trailer" means a trailer as defined in Section 1-209 of the Illinois Vehicle Code; a semitrailer as defined in Section 1-187 of the Illinois Vehicle Code; and a pole trailer as defined in Section 1-161~~1-209~~ of the Illinois Vehicle Code.

"Watercraft" means:

Class 2, Class 3, and Class 4 watercraft, as defined in Section 3-2 of the Boat Registration and Safety Act; [625 ILCS 45/3-2]; or

personal watercraft, as defined in Section 1-2 of the Boat Registration and Safety Act. [625 ILCS 45/1-2]

c) Generally, the rolling stock exemption cannot be claimed by a purely intrastate carrier for hire as to any tangible personal property that it purchases because it does not meet the statutory tests of being an interstate carrier for hire. However, *the rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside Illinois*. [35 ILCS 120/2-50].

d) Motor vehicles (other than limousines) and trailers. This subsection (d) sets forth the specific requirements to qualify for the rolling stock exemption for motor vehicles and trailers. This subsection (d) does not apply to

limousines. For discussion of the application of the rolling stock exemption to limousines, see subsection (e).

1) Rolling stock test for purchases on or after August 24, 2017. This subsection (d)(1) applies to motor vehicles and trailers (and repair and replacement parts) purchased on or after August 24, 2017 (the effective date of Public Act 100-321).

A) Application of the rolling stock test. *For motor vehicles and trailers purchased on or after* August 24, 2017, *"use as rolling stock moving in interstate commerce" means that:*

i) *the motor vehicle or trailer is used to transport persons or property for hire;*

ii) *the purchaser who is an owner or; lessor, lessee, or shipper claiming the exemption certifies that the motor vehicle or trailer will be utilized, from the time of purchase and continuing through the statute of limitations for issuing a Notice of Tax Liability under the* Retailers' Occupation Tax Act, *by an interstate carrier or carriers for hire who hold, and are required by Federal Motor Carrier Safety Administration* (FMCSA) *regulations to hold, an active USDOT* (United States Department of Transportation) *Number with the Carrier Operation listed as "Interstate" and the Operation Classification listed as "authorized for hire", "exempt for hire", or both "authorized for hire" and "exempt for hire"; except that this* subsection (d)(1)(A)(ii) *does not apply to a motor vehicle or trailer used at an airport to support the operation of an aircraft moving in interstate commerce, as long as (i) in the case of a motor vehicle, the motor vehicle meets the requirements of* subsections (d)(1)(A)(i) and (d)(1)(A)(iii) *or (ii) in the case of a trailer, the trailer meets* the requirements of subsection (d)(1)(A)(i); *and*

iii) *for motor vehicles, the motor vehicle's gross vehicle weight rating exceeds 16,000 pounds*. [35 ILCS 120/2-51(d-5)]

B) Repair and replacement parts purchased on or after August 24, 2017 for motor vehicles and trailers. *"Use as rolling stock moving in interstate commerce" in* this subsection (d)(1) *applies to all property purchased on or after* August 24, 2017 *for the purpose of being attached to a motor vehicle or trailer as a part thereof, regardless of whether the motor vehicle or trailer was purchased before, on, or after* August 24, 2017 [35 ILCS 120/2-51(d-5)]. This means that repair and replacement parts purchased on or after August 24, 2017 for the purpose of being attached to a motor vehicle or trailer as a part thereof qualify for the rolling stock exemption if, at the time of purchase of the repair or replacement parts, the motor vehicle or trailer to which the parts will be attached and the purchaser of the repair or replacement parts (or the carrier if the purchaser is not the carrier) meet the requirements of subsection (d)(1)(A), and the purchaser provides a certification to that effect as required in subsection (d)(1)(E), regardless of when the motor vehicle or trailer itself was purchased. For repair and replacement parts for limousines, see subsection (e)(2).

C) *If* a motor vehicle or trailer (or a repair or replacement part) *ceases to meet the requirements under* subsection (d)(1)(A), *then the tax is imposed on the selling price, allowing for a reasonable depreciation for the period during which the* motor vehicle or trailer *qualified for the exemption*. [35 ILCS 120/2-51(d-5)] Reasonable depreciation shall be determined in accordance with 86 Ill. Adm. Code 150.110.

D) *For purposes of* this subsection (d)(1), *"motor vehicle" excludes limousines, but otherwise means that term as defined in Section 1-146 of the Illinois Vehicle Code*.

E) Certification of exemption for motor vehicles and trailers purchased on or after August 24, 2017. To properly claim the rolling stock exemption, the purchaser must give the seller a certification that the purchaser is purchasing the property for use as rolling stock moving in interstate commerce.

i) If the purchaser is an interstate carrier for hire, the purchaser must include in the certification its active USDOT Number issued by the FMCSA. In addition, the purchaser must certify that its FMCSA Company Operation type is listed as "Interstate". Finally, the purchaser must certify that its FMCSA Operation Classification is listed as "Authorized For-Hire", "Exempt For-Hire", or both "Authorized For-Hire" and "Exempt For-Hire".

ii) The USDOT Number, FMCSA Company Operation type, and FMCSA Operation Classification requirement does not apply to a motor vehicle or trailer used at an airport to support the operation of an aircraft moving in interstate commerce, as long as it otherwise meets the other requirements of the exemption in subsection (d)(1)(A).

iii) If the purchaser is a lessor, the purchaser must give the seller of the property a certification to that effect, similarly certifying the lessee's interstate carrier for hire status (i.e., USDOT Number, FMCSA Company Operation type, and FMCSA Operation Classification).

iv) If the purchaser is an owner or shipper of tangible personal property that will be utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce, the purchaser must give the seller of the property a certification to that effect, similarly certifying the interstate carrier for hire status (i.e., USDOT Number, FMCSA Company Operation type,

and FMCSA Operation Classification) of the interstate carrier for hire that will utilize the property.

F) If a retailer accepts a certification under subsection (d)(1)(E), this does not preclude the Department from disregarding it and assessing Retailers' Occupation Tax against the retailer if the Department determines that, at the time the retailer accepted the certification, the purchaser, or the carrier identified by the purchaser in cases where the purchaser is not the carrier, did not meet the active USDOT Number, FMCSA Company Operation type, and FMCSA Operation Classification requirements.

G) The giving of a certification under subsection (d)(1)(E) by a purchaser does not preclude the Department from disregarding it and assessing Use Tax against the purchaser if, in examining the purchaser's records (or, in cases where the purchaser is not the carrier, the carrier's records), the Department finds that the certification was not true as to some fact that shows the purchase was taxable and should not have been certified as being tax exempt. The Department reserves the right to require the purchaser to provide a copy of the purchaser's (or carrier's, in cases where the purchaser is not the carrier) FMCSA documentation whenever the Department deems it necessary.

H) For sales where an active USDOT Number is required, a retailer can confirm whether the carrier meets the Company Operation type and Operation Classification by searching the Federal Motor Carrier Safety Administration's Safety and Fitness Electronic Records (SAFER) System using the carrier's USDOT Number. The information displayed will state whether the carrier's FMCSA Company Operation type is "Interstate" and whether the carrier's FMCSA Operation Classification is "Authorized For-Hire" or "Exempt For-Hire". If the USDOT Number is not active or if one or both of the requirements for FMCSA Company Operation type or FMCSA Operation

Classification is not met, the sale does not qualify for the rolling stock exemption.

I) The following examples apply the rolling stock test for purchases of motor vehicles on or after August 24, 2017.

EXAMPLE 1 – Exempt: An interstate trucking company decides to purchase a new truck with a gross vehicle weight rating exceeding 16,000 pounds for its business. The company has been issued a USDOT Number by the FMCSA within the United States Department of Transportation. The company's FMCSA Company Operation type is listed in the SAFER System as "Interstate" and its FMCSA Operation Classification is listed as "Authorized For-Hire". The company completes a RUT-7 Certification Form certifying that it meets the requirements for the exemption and the retailer uses the SAFER System to confirm the certification. The sale is exempt.

EXAMPLE 2 – Not Exempt: A company decides to become an interstate trucking company and purchases a new truck with a gross vehicle weight rating exceeding 16,000 pounds for its business. It has applied for but not yet received a USDOT Number. The purchase of the truck cannot meet the statutory requirements for exemption because the company has not yet been issued a USDOT Number and, therefore, does not have an active USDOT Number at the time of purchase.

EXAMPLE 3 – Not Exempt: A company decides to purchase a new truck with a gross vehicle weight rating exceeding 16,000 pounds for its business. The company has been issued a USDOT Number by the FMCSA within the United States Department of Transportation. The company's FMCSA Company Operation type is listed in the SAFER System as "Interstate". Its FMCSA Operation Classification is listed as "Private Property" (which designates a company that transports only its own cargo). The purchase of the truck cannot meet the statutory requirements for exemption

because the company's FMCSA Operation Classification is neither "Authorized For-Hire" nor "Exempt For-Hire."

2) Rolling stock test for purchases before August 24, 2017. This subsection (d)(2) applies to motor vehicles and trailers (and repair and replacement parts) purchased before August 24, 2017 (the effective date of Public Act 100-321). For motor vehicles and trailers (and repair and replacement parts for these items) purchased on or after August 24, 2017, subsection (d)(1) applies.

A) Application of the rolling stock test for motor vehicles purchased before August 24, 2017. A motor vehicle whose gross vehicle weight rating exceeds 16,000 pounds will qualify for the rolling stock exemption if, *during a 12-month period, it carries persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period*. The person claiming the rolling stock exemption for a motor vehicle must make an election at the time of purchase to use either the trips or mileage method to document that the motor vehicle will be used in a manner that qualifies for the exemption. [35 ILCS 120/2-51(c)]

i) If the purchase is from an Illinois retailer, the election must be made on a certification described in subsection (d)(2)(F). If the purchase is from an out-of-state retailer or from a non-retailer, the election must be documented in the purchaser's books and records.

ii) *If no election is made as required under the provisions of* subsection (d)(2)(A)(i), *the person will be deemed to have chosen the mileage method*. [35 ILCS 120/2-51(c)]

iii) Once such an election for a motor vehicle has been made, or is deemed to have been made, the method used to document the qualification of that motor vehicle for the rolling stock exemption *will remain in*

effect for the duration of the purchaser's ownership of that motor vehicle. [35 ILCS 120/2-51(f)]

B) Application of the rolling stock test for trailers purchased before August 24, 2017. To qualify for the rolling stock exemption the trailer must, *during a 12-month period, carry persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period*. Except as provided in subsections (d)(2)(B)(i) through (iii), *purchasers of trailers must make an election at the time of purchase to use either the trips or mileage method*. [35 ILCS 120/2-51(d)] If the purchase is from an Illinois retailer, the election must be made on a certification described in subsection (d)(2)(F). If the purchase is from an out-of-state retailer or from a non-retailer, the election must be documented in the purchaser's books and records. *If no election is made as required under the provisions of* this subsection (d)(2)(B), *the person will be deemed to have chosen the mileage method*. [35 ILCS 120/2-51(d)] *The election to use either the trips or mileage method made as required under* this subsection (d)(2)(B) *will remain in effect for the duration of the purchaser's ownership of that* trailer. [35 ILCS 120/2-51(f)] The owner of trailers that are dedicated to a motor vehicle, or group of motor vehicles, may elect at the time of purchase to alternatively document the qualifying use of those trailers in the following manner:

i) *if a trailer is dedicated to a single motor vehicle that qualifies under* subsection (d)(2)(A), *then that trailer will also qualify for the exemption*;

ii) *if a trailer is dedicated to a group of motor vehicles that all qualify under* subsection (d)(2)(A), *then that trailer will also qualify for the exemption*; or

iii) *if one or more trailers are dedicated to a group of motor vehicles and not all of those motor vehicles in that group qualify as rolling stock moving in interstate*

commerce under subsection (d)(2)(A), *then the percentage of those trailers that qualifies* for the exemption *is equal to the percentage of those motor vehicles in that group that qualify* for the exemption. *However, the mathematical application of the qualifying percentage to* the group of *trailers* will not be applied *to any fraction of a trailer*. If the owner of the trailers chooses to use the method provided under this subsection (d)(2)(B)(iii), any trailer or group of trailers that is not considered to qualify for the exemption under the mathematical application of the qualifying percentage will not qualify for the exemption even if documentation for a specific trailer or trailers in that group is provided to show that such a trailer or trailers would have met the test in subsection (d)(2)(B)(i).

iv) For purposes of this subsection (d)(2)(B), "dedicated" means that the trailer or trailers are used exclusively by a specific motor vehicle or specific group or fleet of motor vehicles.

C) Repair and replacement parts for motor vehicles and trailers purchased before August 24, 2017. The definition of "use as rolling stock moving in interstate commerce" required to meet the test for the rolling stock exemption as set forth in subsections (d)(2)(A) for motor vehicles and (d)(2)(B) for trailers *applies to all property purchased before* August 24, 2017 *for the purpose of being attached to motor vehicles or trailers as a part thereof*. [35 ILCS 120/2-51(c) and (d)] Repair and replacement parts purchased before August 24, 2017 for the purpose of being attached to a motor vehicle or trailer as a part thereof qualify for the rolling stock exemption if, at the time of purchase of the repair or replacement parts and for each of the corresponding motor vehicle's or trailer's consecutive 12-month periods thereafter (i.e. the parts follow the 12-month periods for the rolling stock that they become a part of), the motor vehicle or trailer to which the parts were to be attached met the requirements of subsection (d)(2)(A) or

(d)(2)(B), as appropriate, and the purchaser provided a certification to that effect as required in subsection (d)(2)(F), regardless of when the motor vehicle or trailer itself was purchased. For more detail on the application of 12-month periods for repair and replacement parts, see subsection (d)(2)(E)(iii).

D) Basic guidelines on the trips or miles that may and may not be used to claim the rolling stock exemption for motor vehicles and trailers purchased before August 24, 2017.

i) For interstate trips or interstate miles to qualify, the interstate trips or miles must be for hire. However, the total amount of trips taken or miles traveled by rolling stock within any 12-month period includes trips or miles for hire and those not for hire. An example of a not for hire trip or not for hire mileage is when a business uses its truck to transport its own merchandise.

EXAMPLE – Non-Qualifying: A farmer in Decatur, Illinois sells grain to an interstate carrier. The carrier takes delivery of the grain in Decatur and hauls it to Oklahoma City, Oklahoma. The shipment from Decatur, Illinois to Oklahoma City, Oklahoma is not included in the carrier's qualifying interstate trips or miles for hire because the shipment was not for hire. The carrier owned the grain it was shipping interstate. For an interstate trip to qualify, it must be for hire.

ii) Any use of the rolling stock in a movement from one location to another, including but not limited to mileage incurred by rolling stock returning from a delivery without a load or passengers, shall be counted as a trip or mileage.

iii) However, the movement of the rolling stock in relation to the maintenance or repair of that rolling stock shall not count as a trip or mileage.

iv) Any mileage shown for rolling stock that is undocumented as a trip or trips shall be counted as part of the total trips or mileage taken by that rolling stock. If the trips method has been chosen for that rolling stock, the Department shall use its best judgment and information to determine the number of trips represented by such mileage.

v) A movement whereby rolling stock is returning empty from a trip for hire shall be counted as a trip or mileage for hire. A movement whereby rolling stock is moving to a location where property or passengers are being loaded for a trip for hire shall be counted as a trip or mileage for hire.

E) Twelve-month periods for motor vehicles and trailers (and repair and replacement parts) purchased before August 24, 2017.

i) To be eligible for the rolling stock exemption, motor vehicles and trailers must carry persons or property for hire in interstate commerce for greater than 50% of their total trips or for greater than 50% of their total miles for each 12-month period subject to the limitations period for issuing a Notice of Tax Liability under the Retailers' Occupation Tax Act [35 ILCS 120/4 and 5] and under the following Acts through incorporation of Sections 4 and 5 of the Retailers' Occupation Tax Act: the Use Tax Act [35 ILCS 105/12]; the Service Occupation Tax Act [35 ILCS 115/12]; and the Service Use Tax Act [35 ILCS 110/12]. The first 12-month period for the use of a motor vehicle or trailer begins on the date of registration or titling with an agency of this State, whichever occurs later. If the

motor vehicle or trailer is not required to be titled or registered with an agency of this State or the motor vehicle or trailer is not titled or registered with an agency of this State within the time required, the first 12-month period for use of that motor vehicle or trailer begins on its date of purchase or first use in Illinois, whichever is later.

ii) If a motor vehicle or trailer carries persons or property for hire in interstate commerce in a manner that qualifies for the rolling stock exemption in the first 12-month period, but then does not carry persons or property for hire in interstate commerce in a manner that qualifies for the rolling stock exemption in a subsequent 12-month period, the motor vehicle or trailer and any property attached to that motor vehicle or trailer upon which the rolling stock exemption was claimed will be subject to tax on its original purchase price and tax is due by the last day of the month following the conclusion of the 12-month period in which the exemption conditions are no longer met.

EXAMPLE: A motor vehicle is used in a qualifying manner for the first 12-month period but is not used in a qualifying manner for the second 12-month period. That motor vehicle will be subject to tax based upon its original purchase price, even if it is then used in a qualifying manner in the third 12-month period. As a result, by the last day of the month following the month in which the rolling stock ceases to qualify for the exemption (at the conclusion of the second 12-month period at which time the purchaser knows that the exemption conditions are no longer met), the purchaser must file a Use Tax return and pay the tax.

iii) For repair and replacement parts to qualify for the rolling stock exemption, the motor vehicle or trailer upon which those parts are installed must be used in a

qualifying manner for the motor vehicle's or trailer's 12-month period in which the purchase of the repair or replacement parts occurred and each consecutive 12-month period thereafter (i.e., the parts follow the 12-month periods for the rolling stock that they become a part of). For example, if repair parts were attached or incorporated into a qualifying motor vehicle that was titled and registered prior to the audit period (beyond the limitations period for issuing a Notice of Tax Liability for the vehicle), that motor vehicle must be used in a qualifying manner for the motor vehicle's 12-month period in which the purchase of the repair or replacement parts occurred and each consecutive 12-month period thereafter in order for the parts to qualify for the exemption. This applies regardless of whether the motor vehicle was originally used in a qualifying manner for the 12-month periods preceding the motor vehicle's 12-month period in which the purchase of the repair or replacement parts occurred.

F) Certification of exemption for motor vehicles and trailers purchased before August 24, 2017. To properly claim the rolling stock exemption for motor vehicles and trailers purchased before August 24, 2017, the purchaser must give the seller a certification that the purchaser is an interstate carrier for hire, and that the purchaser is purchasing the property for use as rolling stock moving in interstate commerce.

i) If the purchaser of a motor vehicle or trailer or repair or replacement parts for a motor vehicle or trailer is an interstate carrier for hire, the purchaser must include its USDOT Number and Interstate Operating Authority Number (MC Number) issued by the FMCSA or must certify that it is a type of interstate carrier for hire (such as an interstate carrier of agricultural commodities for hire) that is not required by law to have an MC Number.

In the latter event, the carrier must include its USDOT Number.

ii) If the carrier is a type that is subject to regulation by some Federal Government regulatory agency other than the FMCSA, the carrier must include its registration number from such other Federal Government regulatory agency in the certification claiming the benefit of the rolling stock exemption.

iii) If the purchaser of a motor vehicle or trailer or repair or replacement parts for a motor vehicle or trailer is a long-term lessor (under a lease of one year or more in duration), the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee interstate carrier for hire as provided above (i.e., USDOT Number, MC Number, other number if appropriate).

iv) If the purchaser is an owner, lessor, or shipper of tangible personal property that will be utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce, the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee or other interstate carrier for hire that will utilize the property.

v) The giving of a certification does not preclude the Department from disregarding it and assessing Use Tax against the purchaser if, in examining the purchaser's records or activities (or, in cases where the purchaser is not the carrier, the carrier's records or activities), the Department finds that the certification was not true as to some fact that shows that the purchase was taxable and should not have been certified as being tax exempt.

vi) The Department reserves the right to require the purchaser to provide a copy of the purchaser's (or

carrier's, in cases where the purchaser is not the carrier) FMCSA or other Federal Government regulatory agency Certificate of Operating Authority (or as much of the certificate as the Department deems adequate to verify the fact that the purchaser (or carrier, in cases where the purchaser is not the carrier) is an interstate carrier for hire) whenever the Department deems it necessary. In cases where the interstate carrier for hire is not required by law to have a USDOT Number, MC Number, or other Federal Government regulatory agency number, the Department reserves the right to require the carrier (or purchaser, if the carrier is not the purchaser) to provide other evidence of eligibility for the exemption and to keep records documenting the rolling stock's eligibility for the exemption.

G) Examples applying the limitations period for issuing a Notice of Tax Liability under the Retailers' Occupation Tax Act [35 ILCS 120/4 and 5] or the Use Tax Act [35 ILCS 105/12] incorporating Sections 4 and 5 of the Retailers' Occupation Tax Act for motor vehicles purchased before August 24, 2017. In general, except in the case of a fraudulent return, or in the case of an amended return (where a notice of tax liability may be issued on or after each January 1 and July 1 for an amended return filed not more than three years prior to such January 1 or July 1, respectively), no Notice of Tax Liability shall be issued on and after each January 1 and July 1 covering gross receipts received during any month or period of time more than three years prior to such January 1 and July 1, respectively. For further discussion of the statute of limitations for issuing a Notice of Tax Liability, see Section 130.815.

EXAMPLE 1: A qualifying vehicle was purchased on January 15, 2017 and titled and registered on that date and the appropriate return was timely filed claiming the rolling stock exemption. The vehicle was used in a qualifying manner for the first 12-month period ending on January 15, 2018. However, the vehicle was not used in a qualifying manner at

any time thereafter. The period in which the Department would be able to issue a Notice of Tax Liability for tax due regarding that vehicle would expire on June 30, 2020. If the vehicle had been originally purchased and registered outside Illinois and later relocated and registered in Illinois, the first 12-month period would begin on the date of registration in Illinois. For example, if the vehicle was purchased on January 15, 2017 and titled and registered on that date in Missouri, but later relocated to Illinois and registered in Illinois on July 20, 2017, then the period in which the Department would be able to issue a Notice of Tax Liability for Use Tax due regarding that vehicle would expire on December 31, 2020.

EXAMPLE 2: A qualifying vehicle was purchased on July 10, 2015, and was titled and registered on that date. On January 12, 2017, the owner purchased new tires for the vehicle and the vehicle was used in a qualifying manner for the vehicle's 12-month period ending on July 10, 2017, and the two subsequent 12-month periods ending on July 10, 2019. However, the vehicle was not used in a qualifying manner at any time thereafter. The period in which the Department would be able to issue a Notice of Tax Liability for tax due regarding the replacement parts (new tires) would expire on June 30, 2020.

H) Examples applying the greater than 50% trips test for motor vehicles purchased before August 24, 2017:

EXAMPLE 1 – Qualifying: An interstate carrier uses a truck whose gross vehicle weight rating exceeds 16,000 pounds to carry property for hire from Springfield, Illinois to Champaign, Illinois where part of the property is delivered. As documented on the bill of lading provided to the carrier, that property will be delivered, as part of the continuation of the shipment, by another carrier to a location outside of Illinois (qualifies as interstate trip because documentation of interstate shipment). The truck continues to Indianapolis, Indiana and delivers more of the property in that city (qualifies as interstate trip because

transported out of state). The truck then continues to Gary, Indiana and delivers the remainder of the property in that city (qualifies as interstate trip because shipment originated in Illinois). The truck then returns empty to Springfield, Illinois from the delivery in Gary, Indiana (qualifies as interstate trip because returning from qualifying trip (see subsection (d)(2)(D)(v)). The truck is considered to have made a total of four trips (one trip to Champaign, Illinois, one trip to Indianapolis, Indiana, one trip to Gary, Indiana, and a return trip back to Springfield, Illinois). If these were all the trips that the truck made within the first 12-month period (or were all the trips that truck made in a subsequent 12-month period), it would qualify for the test set forth in subsection (d)(2)(A) for that 12-month period because it made 4 qualifying interstate trips for hire, thereby resulting in a percentage of 100% of its total trips during that 12-month period. Any repair and replacement parts purchased for the truck during the first 12-month period would also have qualified for the exemption.

EXAMPLE 2 – Non-Qualifying: An interstate carrier uses a truck whose gross vehicle weight rating exceeds 16,000 pounds to carry property for hire from Chicago, Illinois to Joliet, Illinois where that property is delivered for use by the recipient (does not qualify as interstate trip because it is strictly intrastate transport). The truck then continues to Gary, Indiana and picks up property for use by that carrier's business (does not qualify because it is not for hire). The truck then returns to Chicago, Illinois (does not qualify because returning from a non-qualifying trip out of state). The truck is considered to have made a total of three trips (one to Joliet, Illinois, one to Gary, Indiana, and a return trip to Chicago, Illinois). If these were all the trips that the truck made within the first 12-month period (or were all the trips that truck made in a subsequent 12-month period), it would not qualify for the test set forth in subsection (d)(2)(A) for that 12-month period because these trips resulted in a 0 percentage of qualifying interstate trips for hire.

I) Examples of application of the greater than 50% mileage test for motor vehicles purchased before August 24, 2017:

EXAMPLE 1 – Qualifying: An interstate carrier uses a truck whose gross vehicle weight rating exceeds 16,000 pounds to carry property for hire from Springfield, Illinois to Champaign, Illinois (88 mile movement) where part of the property is delivered. As documented on the bill of lading provided to the carrier, that property will be delivered, as part of the continuation of the shipment, by another carrier to a location outside of Illinois (qualifies as interstate miles because documentation of interstate shipment). The truck continues to Indianapolis, Indiana (125 mile movement) and delivers more of the property in that city (qualifies as interstate trip because transported out of state). The truck then continues to Hammond, Indiana (151 mile movement) and delivers the remainder of the property in that city (qualifies as interstate trip because shipment originated in Illinois). The truck then returns empty to Springfield, Illinois (204 mile movement) from the delivery in Hammond, Indiana (qualifies as interstate trip because returning from qualifying trip (see subsection (d)(2)(D)(v)). The truck is considered to have driven a total of 568 qualifying miles. If these were all the miles that the truck was driven within the first 12-month period (or were all the miles that truck was driven in a subsequent 12-month period), it would qualify for the test set forth in subsection (d)(2)(A) for that 12-month period because 100% of its miles were for qualifying interstate movements for hire. Any repair or replacement parts purchased for the truck during the first 12-month period would also have qualified for the exemption.

EXAMPLE 2 – Non-Qualifying: If the truck described above in Example 1 had instead traveled a total of 1,568 miles during that 12-month period with 1,000 of those miles not being documented as qualifying miles, the truck would not have qualified for the exemption because it only had 568 qualifying miles out of 1,568 miles for a 36.22% qualifying percentage.

Any repair or replacement parts purchased for the truck would not have qualified for the exemption.

EXAMPLE 3 – Qualifying and Non-Qualifying: A short-term truck leasing company (e.g., 3 months) leases trucks whose gross vehicle weight rating exceeds 16,000 pounds. The trucks are typically leased to persons who transport property in interstate commerce. The leasing company requires its customers to provide detailed records of the destination of each trip of a leased truck and whether the transport was for hire. One of the leasing company's trucks travels 3,000 miles during its first 12-month period, 4,500 miles during its second 12-month period, and 2,800 miles during its third 12-month period. The leasing company can show through the records it collects that, for each 12-month period, the truck carried property in interstate commerce for hire for greater than 50% of the miles traveled by the truck. For another truck, however, the records show that, for the second 12-month period, the truck did not transport property in interstate commerce for hire. This is because of the combination of (i) trips that were strictly in-state and for which the property did not originate or terminate out of state and (ii) trips that were not for hire, but rather were trips in which the customer hauled its own property. A third truck did not qualify for the exemption because the leasing company could not provide the documentation to support its claim that the truck was used in each of the 12-month periods to carry persons or property for hire in interstate commerce for greater than 50% of its total trips or total miles for that period.

J) Examples where trailers are dedicated to a motor vehicle or motor vehicles.

EXAMPLE 1: A trucking company owns 2 trailers that are dedicated to the company's 2 trucks and the owner elected at purchase to document the qualification of the trailers based on the qualification of the trucks to which they would be dedicated. Both of these trucks qualify for the exemption.

Both the trailers will be considered to have met the requirements for the exemption during those periods.

EXAMPLE 2: A trucking company owns 30 trailers. All of those trailers are dedicated to a subsidiary company's 20 truck fleet and the owner elected at purchase to document the qualification of the trailers based on the qualification of the trucks to which they would be dedicated. Only 19 of those 20 trucks qualify for the exemption for the appropriate 12-month periods. The qualifying percentage for the group of trucks for which all of the trailers are dedicated is 95%. The application of the 95% qualifying percentage to the 30 trailer group would represent 28.5 trailers. Because no fraction of a trailer may qualify under the mathematical application of the qualifying percentage, only 28 of the 30 trailers will be considered to have met the requirements for the exemption during those periods.

e) Limousines. This subsection (e) sets forth the specific requirements to qualify for the rolling stock exemption for limousines.

1) Application of the rolling stock test for limousines. A limousine, as defined in subsection (b), will qualify for the rolling stock exemption if, *during a 12-month period, it carries persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. Persons claiming the rolling stock exemption for a limousine must make an election at the time of purchase to use either the trips or mileage method to document that the limousine will be used in a manner that qualifies for the exemption*. [35 ILCS 120/2-51(c)]

A) If the purchase is from an Illinois retailer, the election must be made on a certification as provided in subsection (e)(5). If the purchase is from an out-of-state retailer or from a non-retailer, the election must be documented in the purchaser's books and records.

B) *If no election is made as required under* subsection (e)(1)(A)*, the person will be deemed to have chosen the mileage method*.

C) Once such an election for a limousine has been made, or is deemed to have been made, the method used to document the qualification of that limousine for the rolling stock exemption *will remain in effect for the duration of the purchaser's ownership of that limousine*. [35 ILCS 120/2-51(f)]

2) Repair and replacement parts for limousines. The definition of "use as rolling stock moving in interstate commerce" required to meet the test for the rolling stock exemption as set forth in subsection (e)(1) *applies to all property purchased for the purpose of being attached to the limousine as a part thereof*. [35 ILCS 120/2-51(c)] Repair and replacement parts purchased for the purpose of being attached to a limousine as a part thereof qualify for the rolling stock exemption if, at the time of purchase of the repair or replacement parts and for each of the corresponding limousine's consecutive 12-month periods thereafter (i.e., the parts follow the 12-month periods for the rolling stock that they become a part of), the limousine to which the parts will be attached meets the requirements of subsection (e)(1) and the purchaser provides a certification to that effect as required in subsection (e)(5), regardless of when the limousine itself was purchased. For more detail on the application of 12-month periods for repair and replacement parts, see subsection (e)(4) incorporating the provision of subsection (d)(2)(E)(iii).

3) Basic guidelines on the trips or miles that may and may not be used to claim the rolling stock exemption for limousines.

A) For interstate trips or interstate miles to qualify, the interstate trips or miles must be for hire. However, the total amount of trips taken or miles traveled by a limousine in any 12-month period includes trips or miles for hire and those not for hire. An example of a not for hire trip or not for hire mileage is when a business uses its limousine to transport its own employees.

B) Any use of the limousine in a movement from one location to another, including but not limited to mileage incurred by a limousine returning from a delivery without a passenger, shall be counted as a trip or mileage.

C) However, the movement of the limousine in relation to the maintenance or repair of that limousine shall not count as a trip or mileage.

D) Any mileage shown for a limousine that is undocumented as a trip or trips shall be counted as part of the total trips or mileage taken by that limousine. If the trips method has been chosen for that limousine, the Department shall use its best judgment and information to determine the number of trips represented by such mileage.

E) A movement whereby a limousine is returning empty from a trip for hire shall be counted as a trip or mileage for hire. A movement whereby a limousine is moving to a location where passengers are being loaded for a trip for hire shall be counted as a trip or mileage for hire.

F) A limousine that carries for hire a person to or from an airport is presumed, absent evidence to the contrary, to be carrying a person whose journey originates or terminates outside Illinois, even if the limousine travels just between points in Illinois.

EXAMPLE 1 – Qualifying: A limousine picks up passengers at their residence in downtown Chicago and drives them to O'Hare International Airport. This trip is presumed, absent evidence to the contrary, to be a qualifying trip or miles for purposes of the exemption. In addition, the limousine picks up more passengers at O'Hare International Airport and drives them to a hotel in downtown Chicago. This trip is also presumed, absent evidence to the contrary, to be a qualifying trip or miles for purposes of the exemption.

EXAMPLE 2 – Non-Qualifying: A major corporation owns a limousine that it uses to transport employees to and from O'Hare International Airport for business travel. These limousine trips are not qualifying trips or miles for purposes of the exemption because they are not for hire.

4) Twelve-month periods for limousines (and repair and replacement parts for limousines). The guidelines provided in subsection (d)(2)(E) apply to limousines the same as if set forth here, except that the limitation in that subsection to purchases made before August 24, 2017, does not apply and references to motor vehicles and trailers mean limousines.

5) Certification of exemption for limousines. To properly claim the rolling stock exemption, the purchaser must give the seller a certification the purchaser is an interstate carrier for hire, and the purchaser is purchasing the limousine, as defined in this Section, or repair or replacement parts for a limousine for use as rolling stock moving in interstate commerce.

A) If the purchaser is an owner or lessor of a limousine that will be utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce, the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee or other interstate carrier for hire that will utilize the property.

B) The giving of a certification does not preclude the Department from disregarding it and assessing Use Tax against the purchaser if, in examining the purchaser's records or activities (or, in cases where the purchaser is not the carrier, the carrier's records or activities), the Department finds the certification was not true as to some fact that shows that the purchase was taxable and should not have been certified as being tax exempt.

C) In cases where the interstate carrier for hire is not required by law to have a USDOT Number, MC Number, or other Federal

Government regulatory agency number, the Department reserves the right to require the carrier (or purchaser, if the carrier is not the purchaser) to provide other evidence of eligibility for the exemption and to keep records documenting the rolling stock's eligibility for the exemption.

6) Examples. The Examples in subsections (d)(2)(G), (H), and (I) apply to limousines the same as if set forth here, except that references to motor vehicles mean limousines.

f) Aircraft.

1) Application of the rolling stock test for aircraft. *For aircraft purchased on or after January 1, 2014, "use as rolling stock moving in interstate commerce" occurs when, during a 12-month period, the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period.* [35 ILCS 120/2-51(e)] For aircraft purchased before January 1, 2014 to be eligible for the exemption, the taxpayer is required to show the aircraft transported persons or property for hire in interstate commerce on a "regular and frequent" basis. See National School Bus Service, Inc. v. Department of Revenue, 302 Ill. App. 3d 820 (1st Dist. 1998). *The person claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method and document that election in their books and records.* [35 ILCS 120/2-51(e)]

A) If the purchase is from an Illinois retailer, the election must be made on a certification as provided in subsection (f)(6). If the purchase is from an out-of-state retailer or from a non-retailer, the election must be documented in the purchaser's books and records.

B) *If no election is made under* subsection (f)(1)(A) *to use the trips or mileage method, the person shall be deemed to have chosen the mileage method.* [35 ILCS 120/2-51(e)] *For aircraft, flight hours may be used in lieu of recording miles in*

determining whether the aircraft meets the mileage test in subsection (f)(1). [35 ILCS 120/2-51(f)]

C) Once such an election for an aircraft has been made, or is deemed to have been made if no election is made, the method used to document the qualification of that aircraft for the rolling stock exemption *will remain in effect for the duration of the purchaser's ownership of that aircraft*. [35 ILCS 120/2-51(f)]

2) Repair and replacement parts for aircraft. *Notwithstanding any other provision of law to the contrary, property purchased on or after January 1, 2014 for the purpose of being attached to aircraft as a part thereof qualifies as rolling stock moving in interstate commerce only if the aircraft to which it will be attached qualifies as rolling stock moving in interstate commerce under the test set forth in* subsection (f)(1), *regardless of when the aircraft was purchased. Persons who purchased aircraft prior to January 1, 2014 shall make an election to use either the trips or mileage method and document that election in their books and records for the purpose of determining whether property purchased on or after January 1, 2014 for the purpose of being attached to aircraft as a part thereof qualifies as rolling stock moving in interstate commerce under* subsection (f)(1). [35 ILCS 120/2-51(e)] Repair and replacement parts purchased for the purpose of being attached to an aircraft as a part thereof qualify for the rolling stock exemption if, at the time of purchase of the repair or replacement parts and for each of the corresponding aircraft's consecutive 12-month periods thereafter (i.e., the parts follow the 12-month periods for the rolling stock that they become a part of), the aircraft to which the parts will be attached meets the requirements of subsection (f)(1) and the purchaser provides a certification to that effect as required in subsection (f)(6), regardless of when the aircraft itself was purchased. For more detail on the application of 12-month periods for repair and replacement parts, see subsection (f)(4) incorporating the provision of subsection (d)(2)(E)(iii).

3) Basic guidelines on the trips or miles that may and may not be used to claim the rolling stock exemption for aircraft.

A) For interstate trips or interstate miles (or flight hours used in lieu of miles) to qualify, the interstate trips or miles (or flight hours used in lieu of miles) must be for hire. However, the total amount of trips taken or miles (or flight hours used in lieu of miles) traveled by an aircraft within any 12-month period includes trips or miles (or flight hours used in lieu of miles) for hire and those not for hire. An example of a not for hire trip or not for hire mileage (or flight hours used in lieu of mileage) is when a business uses its aircraft to transport its own employees or cargo.

B) Any use of an aircraft in a movement from one location to another, including but not limited to mileage (or flight hours used in lieu of mileage) incurred by an aircraft returning from a delivery without a load or passengers, shall be counted as a trip or mileage (or flight hours used in lieu of mileage).

C) However, the movement of an aircraft in relation to the maintenance or repair of that aircraft shall not count as a trip or mileage (or flight hours used in lieu of mileage).

D) Any mileage (or flight hours used in lieu of mileage) shown for an aircraft that is undocumented as a trip or trips shall be counted as part of the total trips or mileage (or flight hours used in lieu of mileage) taken by that aircraft. If the trips method has been chosen for that aircraft, the Department shall use its best judgment and information to determine the number of trips represented by such mileage (or flight hours used in lieu of mileage).

E) A movement whereby an aircraft is returning empty from a trip for hire shall be counted as a trip or mileage (or flight hours used in lieu of mileage) for hire. A movement whereby an aircraft is moving to a location where property or passengers are being loaded for a trip for hire shall be counted as a trip or mileage (or flight hours used in lieu of mileage) for hire.

F) The movement of an aircraft during the first 6 months after purchase or during the first 100 flight hours after purchase, whichever comes first, in relation to inspection or in furtherance of aircraft certification under the Federal Aviation Regulations related to inspection or certification of aircraft for flights for hire does not count as a trip or mileage for purposes of determining whether the aircraft meets the trips or mileage (or flight hours used in lieu of mileage) test for the exemption. To qualify under this subsection (f)(3)(F), taxpayer must maintain records specifically documenting the nature of the inspection or certification.

EXAMPLE 1 – (Aircraft Inspection Flight): To generate more charter business, an aircraft owner decides to provide inflight Wi-Fi to passengers. Because the Wi-Fi equipment has the potential to create electromagnetic interference with an aircraft's instruments, the aircraft is required to conduct a test flight before returning to service. *See, e.g.,* Federal Aviation Administration ("FAA") Advisory Circular AC No. 25-7D (5/4/2018), § 32.1 *et seq*. If the test flight occurs within the first 6 months after purchase or during the first 100 flight hours after purchase, whichever comes first, then the test flight will not be included in the rolling stock determination as a trip or miles (or flight hours used in lieu of miles).

EXAMPLE 2 – (Aircraft Certification Flight): Pursuant to 14 C.F.R. 91 Appendix G, § 9, and FAA Advisory Circular AC No. 91-85B (1/29/2019), 4.3.5, the FAA has a recurrent height-monitoring program for all operators planning flights in Reduced Vertical Separation Minimum (RVSM) airspace. In the United States, RVS M monitoring requirements can be met by flying over an FAA Aircraft Geometric Height Measurement Element Constellation site. This RVSM monitory flight will not be included in the rolling stock determination as a trip or miles (or flight hours used in lieu of miles), if the flight is conducted within the first six months after purchase or during the first 100 flight hours after purchase, whichever comes first.

G) The movement of an aircraft during the first six months after purchase or during the first 100 flight hours per pilot after purchase, whichever comes first, in relation to flight time required for pilot certification of eligibility for conducting for hire flights, or the meeting of FAA or other governmental requirements, rules, or standards to carry persons or property for hire without pilot operating limitations does not count as a trip or mileage (or flight hours used in lieu of mileage) for purposes of determining whether the aircraft meets the trips or mileage (or flight hours used in lieu of mileage) test for the exemption. To qualify under this subsection (f)(3)(G), taxpayer's records must specifically document that the movement was for pilot certification of eligibility for conducting for hire flights or to meet other requirements to carry persons or property for hire without pilot operating limitations.

EXAMPLE 1 – (Pilot Certification Flight): Pursuant to 14 C.F.R. 135.299, no charter operator may use a pilot, nor may any person serve as a pilot in command of a flight, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a flight check in one of the types of aircraft in which that pilot is to fly. The flight check shall (i) be given by an approved check pilot or by an FAA administrator; (ii) consist of at least one flight over one route segment; and (iii) include takeoffs and landings at one or more representative airports. These pilot certification flights conducted pursuant to 14 C.F.R. 135.299 will not be included in the rolling stock determination as a trip or miles (or flight hours used in lieu of miles), if the flights are conducted within the first 6 months after purchase or during the first 100 flight hours per pilot after purchase, whichever comes first.

EXAMPLE 2 – (Pilot Certification Flight): Pursuant to 14 C.F.R. 135.4, for a two-pilot crew to operate an aircraft without pilot operating limitations under 14 C.F.R. 135 (on-demand charter operations), the two pilots are each required to have 100 hours of flight time in the aircraft type. Flights conducted in the

aircraft type which count towards the pilots meeting their 100 hours of flight time under Part 135.4 will not be included in the rolling stock determination as a trip or miles (or flight hours used in lieu of miles), if the flights occur within the first 6 months after purchase or during the first 100 flight hours per pilot after purchase, whichever comes first.

4) Twelve-month periods for aircraft (and repair and replacement parts for aircraft). The guidelines provided in subsection (d)(2)(E) apply to aircraft the same as if set forth here, except that the limitation in that subsection to purchases made before August 24, 2017, does not apply and references to motor vehicles and trailers mean aircraft.

5) Purchases by lessors of aircraft under a lease for one year or longer. *When* an aircraft *is purchased by a lessor, under a lease for one year or longer, executed or in effect at the time of purchase to an interstate carrier for hire, who did not pay the tax imposed by this Act to the retailer, such lessor (by the last day of the month following the calendar month in which such property reverts to the use of such lessor) shall file a return with the Department and pay the tax upon the fair market value of such property on the date of such reversion. However, in determining the fair market value at the time of reversion, the fair market value of such property shall not exceed the original purchase price of the property that was paid by the lessor at the time of purchase*. [35 ILCS 105/10] When the aircraft is no longer used in a manner that qualifies for the rolling stock exemption as provided in this subsection (f)(5), the lessor shall file a return with the Department and pay the tax to the Department by the last day of the month following the calendar month in which the property is no longer subject to a qualifying lease.

EXAMPLE: An aircraft was purchased for lease to an interstate carrier for hire on August 15, 2020 and was titled and registered on that date. The lease to the interstate carrier for hire was executed or in effect at the time of purchase. The appropriate return was timely filed claiming the rolling stock exemption. The qualifying lease ended on November 15, 2021, and the aircraft was no longer used in a qualifying manner. At the time the qualifying lease ends and the aircraft reverts to the

lessor, the lessor owes Use Tax on the fair market value of the aircraft on the date it reverts to the lessor. The return and the tax are due by the last day of the month following the month in which the aircraft reverts to the lessor. The period in which the Department would be able to issue a Notice of Tax Liability for Use Tax due regarding that aircraft would expire on December 31, 2024.

6) Certification of exemption for aircraft. To properly claim the rolling stock exemption, the purchaser must give the seller a certification that the purchaser is an interstate carrier for hire, and that the purchaser is purchasing the aircraft, or repair or replacement parts for an aircraft, for use as rolling stock moving in interstate commerce.

A) If the purchaser is a lessor, the purchaser must give the seller of the property a certification to that effect, identifying the lessee that will utilize the property.

B) If the purchaser of an aircraft or repair or replacement parts for an aircraft is an interstate carrier for hire, the purchaser must include its Air Carrier Certificate issued by the Federal Aviation Administration.

C) If the purchaser of an aircraft or repair or replacement parts for an aircraft is a long-term lessor (under a lease of one year or more in duration), the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee interstate carrier for hire as provided above (i.e., Air Carrier Certificate issued by the Federal Aviation Administration).

D) If the purchaser is an owner, lessor, or shipper of tangible personal property that will be utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce, the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee or other interstate carrier for hire that will utilize the property. For example, an Air Carrier Certificate issued by the Federal Aviation Administration to the purchaser (or the lessee of the purchaser

if the lessee is the carrier) that authorizes the certificate holder to operate as an air carrier and conduct common carriage operations in accordance with Part 135 of the Federal Aviation Regulations (49 C.F.R. 135) would be evidence the carrier is an authorized interstate carrier for hire.

E) The giving of a certification does not preclude the Department from disregarding it and assessing Use Tax against the purchaser if, in examining the purchaser's records or activities (or, in cases where the purchaser is not the carrier, the carrier's records or activities), the Department finds that the certification was not true as to some fact that shows the purchase was taxable and should not have been certified as being tax exempt.

F) In cases where the interstate carrier for hire is not required by law to have a federal government regulatory agency authorizing it to conduct common carriage operations, the Department reserves the right to require the carrier (or purchaser, if the carrier is not the purchaser) to provide other evidence of eligibility for the exemption and to keep records documenting the rolling stock's eligibility for the exemption.

7) Examples applying the limitations period for issuing a Notice of Tax Liability for aircraft. The Examples in subsection (d)(2)(G) apply to aircraft the same as if set forth here, except that references to motor vehicles mean aircraft.

8) Examples of application of the greater than 50% trips test for aircraft:

EXAMPLE 1 – (Aircraft – Qualifying): The owner of an aircraft has been issued an Air Carrier Certificate by the Federal Aviation Administration which authorizes the certificate holder to operate as an air carrier and conduct common carriage operations in accordance with Part 135 of the Federal Aviation Regulations (49 C.F.R. 135). The owner of the aircraft operates a charter air carrier company and uses the aircraft to carry passengers for hire from O'Hare Airport in Chicago, Illinois to MidAmerica St. Louis Airport in

Mascoutah, Illinois where some of the passengers deplane. As documented on the itinerary provided to the carrier, those passengers will be flown, as part of the continuation of their journey, by another carrier to a location outside of Illinois (qualifies as interstate trip because documentation of interstate travel). The aircraft continues to Indianapolis, Indiana and more passengers deplane in Indianapolis (qualifies as interstate trip because transported out of state). The aircraft then continues to Philadelphia, Pennsylvania and the remainder of the passengers deplane in Philadelphia (qualifies as interstate trip because transported out of state). The aircraft then returns empty to O'Hare Airport from Philadelphia (qualifies as interstate trip because returning from qualifying trip (see subsection (d)(2)(D)(v))). The aircraft is considered to have made a total of four trips (one trip to Mascoutah, Illinois, one trip to Indianapolis, Indiana, one trip to Philadelphia, Pennsylvania, and a return trip back to Chicago, Illinois). If these were all the trips that the aircraft made within the first 12-month period (or were all the trips that aircraft made in a subsequent 12-month period), it would qualify for the test set forth in subsection (f)(1) for that 12-month period because it made 4 qualifying interstate trips for hire, thereby resulting in a percentage of 100% of its total trips during that first 12-month period. Any repair or replacement parts purchased for the aircraft during that first 12-month period would also have qualified for the exemption.

EXAMPLE 2 – (Aircraft – Non-Qualifying): The owner of an aircraft has been issued an Air Carrier Certificate by the Federal Aviation Administration which authorizes the certificate holder to operate as an air carrier and conduct common carriage operations in accordance with Part 135 of the Federal Aviation Regulations (49 C.F.R. 135). The owner of the aircraft operates a charter air carrier company and uses the aircraft to carry passengers for hire from O'Hare Airport in Chicago, Illinois to Abraham Lincoln Capitol Airport in Springfield, Illinois where the passengers deplane (does not qualify as interstate trip because it is strictly intrastate transport). The aircraft then continues to Indianapolis, Indiana and picks up employees of the charter aircraft company (does not qualify because it must be for hire). The aircraft then returns to Chicago, Illinois (does not qualify because returning from a non-qualifying trip out of state).

The aircraft is considered to have made a total of three trips (one to Springfield, Illinois, one to Indianapolis, Indiana, and a return trip to Chicago, Illinois). If these were all the trips the aircraft made within the first 12-month period (or were all the trips that aircraft made in a subsequent 12-month period), it would not qualify for the test set forth in subsection (f)(1) for that 12-month period because 0% of these trips qualified as interstate trips for hire. Any repair or replacement parts purchased for the aircraft during that first 12-month period would also not have qualified for the exemption.

EXAMPLE 3 – (Aircraft – Non-Qualifying): A corporation purchases a jet aircraft and leases it to a qualifying interstate air carrier for hire. The lease was in effect at the time of purchase. An election is made to use the trips test method on the Rolling Stock Certification form. During the first 12-month period, the aircraft had 100 trips. Of that total, 50 trips were for the transportation of company employees. Another 25 trips were for non-qualifying intrastate flights for hire. The remaining 25 trips were for qualifying interstate movements for hire. The aircraft does not qualify for the rolling stock exemption as 75% of its trips (75/100) were for non-qualifying movements.

9) Examples of application of the greater than 50% mileage (or flight hours used in lieu of mileage) test for aircraft:

EXAMPLE 1 – (Aircraft – Qualifying): The owner of an aircraft has been issued an Air Carrier Certificate by the Federal Aviation Administration which authorizes the certificate holder to operate as an air carrier and conduct common carriage operations in accordance with Part 135 of the Federal Aviation Regulations (49 C.F.R. 135). The owner of the aircraft operates a charter air carrier company and uses the aircraft to carry passengers for hire from MidAmerica St. Louis Airport in Mascoutah, Illinois to Chicago Midway International Airport in Chicago, Illinois (1 hour flight time) where some of the passengers deplane. As documented on the itinerary provided to the carrier, those passengers will be flown, as part of the continuation of their journey, by another carrier to a location outside of Illinois (qualifies as interstate miles because documentation of interstate travel). The aircraft continues to LaGuardia Airport, New

York City, New York (2 hours flight time) and more passengers deplane at LaGuardia (qualifies as interstate trip because transported out of state). The aircraft then continues to Indianapolis International Airport, Indianapolis, Indiana (2 hours flight time) and the remainder of the passengers deplane in Indianapolis (qualifies as interstate trip because passengers originated in Illinois). The aircraft then returns empty to MidAmerica St. Louis Airport, Mascoutah, Illinois (30 minutes flight time) from the stop in Indianapolis, Indiana (qualifies as interstate trip because returning from qualifying trip (see subsection (d)(2)(D)(v))). The aircraft is considered to have flown a total of 5 hours and 30 minutes flight time. If these were all the flight hours that the aircraft flew within the first 12-month period (or were all the flight hours that the aircraft flew in a subsequent 12-month period), it would qualify for the test set forth in subsection (f)(1) for that 12-month period because 100% of its flight hours were for qualifying interstate movements for hire. Any repair or replacement parts purchased for the aircraft by the owner of the aircraft would also have qualified for the exemption.

EXAMPLE 2 – (Aircraft – Non-Qualifying): If the aircraft described above in Example 1 had traveled instead a total of 24 hours and 45 minutes during that 12-month period with 16 hours and 30 minutes of those flight hours not being documented as qualifying flight hours, the aircraft would not have qualified for the exemption because only 8 hours and 15 minutes of its flight hours qualified out of 24 hours and 45 minutes total flight hours for a 33.33% qualifying percentage. Any repair or replacement parts purchased by the owner for the aircraft would not have qualified for the exemption.

EXAMPLE 3 – (Aircraft – Non-Qualifying): A corporation purchases a jet aircraft and leases it to a qualifying interstate air carrier for hire. The lease was in effect at the time of purchase. An election is made to use the mileage test method on the Rolling Stock Certification form and use flight hours instead of mileage. During the first 12-month period, the aircraft had 400 hours of flight time. Of that total, 250 hours were for the transportation of company employees. Another 50 hours were for non-qualifying intrastate flights for hire. The remaining 100 hours of flight time were for qualifying interstate movements for

hire. The aircraft does not qualify for the rolling stock exemption as 75% of its flight hours (300/400) were for non-qualifying movements.

g) Watercraft.

1) Application of the rolling stock test for watercraft. *For watercraft purchased on or after January 1, 2014, "use as rolling stock moving in interstate commerce" occurs when, during a 12-month period, the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period*. [35 ILCS 120/2-51(e)] *Persons claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method and document that election in their books and records*.

A) If the purchase is from an Illinois retailer, the election must be made on a certification as provided in subsection (g)(6). If the purchase is from an out-of-state retailer or from a non-retailer, the election must be documented in the purchaser's books and records.

B) *If no election is made under* subsection (g)(1)(A) *to use the trips or mileage method, the person shall be deemed to have chosen the mileage method. For watercraft, nautical miles or trip hours may be used in lieu of recording miles in determining whether the watercraft meets the mileage test in* subsection (g)(1).

C) Once such an election for a watercraft has been made, or is deemed to have been made if no election is made, the method used to document the qualification of that watercraft for the rolling stock exemption *will remain in effect for the duration of the purchaser's ownership of that watercraft*. [35 ILCS 120/2-51(f)]

2) Repair and replacement parts for watercraft. *Notwithstanding any other provision of law to the contrary, property purchased on or after January 1, 2014 for the purpose of being attached to watercraft as a*

part thereof qualifies as rolling stock moving in interstate commerce only if the watercraft to which it will be attached qualifies as rolling stock moving in interstate commerce under the test set forth in subsection (g)(1), *regardless of when the watercraft was purchased. Persons who purchased watercraft prior to January 1, 2014 shall make an election to use either the trips or mileage method and document that election in their books and records for the purpose of determining whether property purchased on or after January 1, 2014 for the purpose of being attached to watercraft as a part thereof qualifies as rolling stock moving in interstate commerce under* subsection (g)(1). [35 ILCS 120/2-51(e)] Repair and replacement parts purchased for the purpose of being attached to a watercraft as a part thereof qualify for the rolling stock exemption if, at the time of purchase of the repair or replacement parts and for each of the corresponding watercraft's consecutive 12-month periods thereafter (i.e., the parts follow the 12-month periods for the rolling stock that they become a part of), the watercraft to which the parts will be attached meets the requirements of subsection (g)(1) and the purchaser provides a certification to that effect as required in subsection (g)(6), regardless of when the watercraft itself was purchased. For more detail on the application of 12-month periods for repair and replacement parts, see subsection (g)(4) incorporating the provision of subsection (d)(2)(E)(iii).

3) Basic guidelines on the trips or miles (or nautical miles or trip hours) that may and may not be used to claim the rolling stock exemption for watercraft.

A) For interstate trips or interstate miles (or nautical miles or trip hours) to qualify, the interstate trips or miles (or nautical miles or trip hours) must be for hire. However, the total amount of trips taken or miles (or nautical miles or trip hours) traveled by watercraft within any 12-month period includes trips or miles (or nautical miles or trip hours) for hire and those not for hire. An example of a not for hire trip or not for hire mileage (or nautical miles or trip hours) is when a business uses its watercraft to transport its own merchandise.

B) Any use of watercraft in a movement from one location to another, including but not limited to mileage (or nautical miles or trip hours) incurred by watercraft returning from a delivery without a load or passengers, shall be counted as a trip or mileage (or nautical miles or trip hours).

C) However, the movement of watercraft in relation to the maintenance or repair of that watercraft shall not count as a trip or mileage (or nautical miles or trip hours).

D) Any mileage (or nautical miles or trip hours) shown for watercraft that is undocumented as a trip or trips shall be counted as part of the total trips or mileage (or nautical miles or trip hours) taken by that watercraft. If the trips method has been chosen for that watercraft, the Department shall use its best judgment and information to determine the number of trips represented by such mileage (or nautical miles or trip hours).

E) A movement whereby watercraft is returning empty from a trip for hire shall be counted as a trip or mileage (or nautical miles or trip hours) for hire. A movement whereby watercraft is moving to a location where property or passengers are being loaded for a trip for hire shall be counted as a trip or mileage (or nautical miles or trip hours) for hire.

4) Twelve-month periods for watercraft (and repair and replacement parts for watercraft). The guidelines provided in subsection (d)(2)(E) apply to watercraft the same as if set forth here, except that the limitation in that subsection to purchases made before August 24, 2017, does not apply and references to motor vehicles and trailers mean watercraft.

5) Purchases by lessors of watercraft under a lease for one year or longer. *When* a watercraft *is purchased by a lessor, under a lease for one year or longer, executed or in effect at the time of purchase to an interstate carrier for hire, who did not pay the tax imposed by this Act to the retailer, such lessor (by the last day of the month following the*

calendar month in which such property reverts to the use of such lessor) shall file a return with the Department and pay the tax upon the fair market value of such property on the date of such reversion. However, in determining the fair market value at the time of reversion, the fair market value of such property shall not exceed the original purchase price of the property that was paid by the lessor at the time of purchase. [35 ILCS 105/10] When the watercraft is no longer used in a manner that qualifies for the rolling stock exemption as provided in this subsection (g)(5), the lessor shall file a return with the Department and pay the tax to the Department by the last day of the month following the calendar month in which the property is no longer subject to a qualifying lease.

EXAMPLE: A watercraft was purchased for lease to an interstate carrier for hire on August 15, 2020 and was titled and registered on that date. The lease to the interstate carrier for hire was executed or in effect at the time of purchase. The appropriate return was timely filed claiming the rolling stock exemption. The qualifying lease ended on November 15, 2021, and the watercraft was no longer used in a qualifying manner. At the time the qualifying lease ends and the watercraft reverts to the lessor, the lessor owes Use Tax on the fair market value of the watercraft on the date it reverts to the lessor. The return and the tax are due by the last day of the month following the month in which the watercraft reverts to the lessor. The period in which the Department would be able to issue a Notice of Tax Liability for Use Tax due regarding that watercraft would expire on December 31, 2024.

6) Certification of exemption for watercraft. To properly claim the rolling stock exemption, the purchaser must give the seller a certification that the purchaser is an interstate carrier for hire, and that the purchaser is purchasing the watercraft, or repair or replacement parts for a watercraft, for use as rolling stock moving in interstate commerce.

A) If the purchaser is a lessor, the purchaser must give the seller of the property a certification to that effect, identifying the lessee that will utilize the property.

B) If the purchaser of a watercraft or repair or replacement parts for a watercraft is an interstate carrier for hire, the purchaser must include documentation that shows that that the purchaser is authorized by an agency of the federal government to carry persons or property for hire in interstate commerce.

C) If the purchaser is an owner, lessor, or shipper of tangible personal property that will be utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce, the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee or other interstate carrier for hire that will utilize the property. For example, the purchaser may have documentation from the United States Coast Guard's National Vessel Documentation Center that authorizes the certificate holder to carry persons or property interstate for hire as evidence the carrier is an authorized carrier for hire in interstate commerce.

D) The giving of a certification does not preclude the Department from disregarding it and assessing Use Tax against the purchaser if, in examining the purchaser's records or activities (or, in cases where the purchaser is not the carrier, the carrier's records or activities), the Department finds that the certification was not true as to some fact that shows the purchase was taxable and should not have been certified as being tax exempt.

E) In cases where the interstate carrier for hire is not required by law to have a federal government regulatory agency authorizing it to carry persons or property for hire in interstate commerce, the Department reserves the right to require the carrier (or purchaser, if the carrier is not the purchaser) to provide other evidence of eligibility for the exemption and to keep records documenting the rolling stock's eligibility for the exemption.

7) Examples applying the limitations period for issuing a Notice of Tax Liability for watercraft. The Examples in subsection (d)(2)(G) apply to watercraft the same as if set forth here, except that references to motor vehicles mean watercraft.

8) Examples of application of the greater than 50% trips test for watercraft:

EXAMPLE 1 – (Watercraft – Qualifying): An interstate carrier uses a watercraft to carry property for hire from Moline, Illinois to Quincy, Illinois where part of the property is delivered. As documented on the bill of lading provided to the carrier, that property will be delivered, as part of the continuation of the shipment, by another carrier to a location outside of Illinois (qualifies as interstate trip because documentation of interstate shipment). The watercraft continues to St. Louis, Missouri and delivers more of the property in that city (qualifies as interstate trip because transported out of state). The watercraft then continues to Memphis, Tennessee and delivers the remainder of the property in that city (qualifies as interstate trip because shipment originated in Illinois). The watercraft then returns empty to Moline, Illinois from the delivery in Memphis, Tennessee (qualifies as interstate trip because returning from qualifying trip (see subsection (d)(2)(D)(v))). The watercraft is considered to have made a total of four trips (one trip to Quincy, Illinois, one trip to St. Louis, Missouri, one trip to Memphis, Tennessee, and a return trip to Moline, Illinois). If these were all the trips the watercraft made within the first 12-month period (or were all the trips that watercraft made in a subsequent 12-month period), it would qualify for the test set forth in subsection (g)(1) for that 12-month period because it made four qualifying interstate trips for hire, thereby resulting in a percentage of 100% of its total trips during that first 12-month period. Any repair or replacement parts purchased for the watercraft during that first 12-month period would also have qualified for the exemption.

EXAMPLE 2 – (Watercraft – Non-Qualifying): An interstate carrier uses a watercraft to carry property for hire from Chicago, Illinois to Peoria, Illinois where that property is delivered for use by the recipient (does not qualify as interstate trip because it is strictly intrastate transport).

The watercraft then continues to St. Louis, Missouri and picks up property for use by that carrier's business (does not qualify because it must be for hire). The watercraft then returns to Chicago, Illinois (does not qualify because returning from a non-qualifying trip out of state). The watercraft is considered to have made a total of three trips (one to Peoria, Illinois, one to St. Louis, Missouri, and a return trip to Chicago, Illinois). If these were all the trips that the watercraft made within the first 12-month period (or were all the trips that watercraft made in a subsequent 12-month period), it would not qualify for the test set forth in subsection (g)(1) for that 12-month period because 0% of these trips qualified as interstate trips for hire.

9) Examples of application of the greater than 50% mileage (or nautical miles or trip hours) test for watercraft:

EXAMPLE 1 – (Watercraft – Qualifying): An interstate carrier uses a watercraft to carry property for hire from Chicago, Illinois to Peoria, Illinois (144 nautical mile movement) where part of the property is delivered. As documented on the bill of lading provided to the carrier, that property will be delivered, as part of the continuation of the shipment, by another carrier to a location outside of Illinois (qualifies as interstate miles because documentation of interstate shipment). The watercraft continues to St. Louis, Missouri (148 nautical mile movement) and delivers more of the property in that city (qualifies as interstate trip because transported out of state). The watercraft then continues to Cape Girardeau, Missouri (102 nautical mile movement) and delivers the remainder of the property in that city (qualifies as interstate trip because shipment originated in Illinois). The watercraft then returns empty to Chicago, Illinois (394 nautical mile movement) from the delivery in Cape Girardeau, Missouri (qualifies as interstate trip because returning from qualifying trip (see subsection (d)(2)(D)(v))). The watercraft is considered to have traveled a total of 788 qualifying nautical miles. If these were all the miles that the watercraft traveled within the first 12-month period (or were all the miles that watercraft traveled in a subsequent 12-month period), it would qualify for the test set forth in subsection (g)(1) for that 12-month period because 100% of its miles were for qualifying interstate

movements for hire. Any repair or replacement parts purchased for the watercraft would also have qualified for the exemption.

EXAMPLE 2 – (Watercraft – Non-Qualifying): If the watercraft described above in Example 4 had traveled instead a total of 2,788 nautical miles during that 12-month period with 2,000 of those nautical miles not being documented as qualifying nautical miles, the watercraft would not have qualified for the exemption because it only had 788 qualifying nautical miles out of 2,788 nautical miles for a 28.26% qualifying percentage. Any repair or replacement parts purchased for the watercraft would not have qualified for the exemption.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.350 Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

a) General. The exemption provided in this Section terminated on June 30, 2003, pursuant to P.A. 93-24. P.A. 98-456, effective August 16, 2013, reinstated the coal exemption retroactive to July 1, 2003. The Department, however, will not approve any claims or refunds on or after August 16, 2013, for taxes due or paid during the period beginning July 1, 2003 through August 16, 2013. The exemption for coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment will terminate by operation of the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act on August 16, 2018. Pursuant to P.A. 100-0594, effective June 29, 2018, the exemption provided in this Section is extended until July 1, 2023. Pursuant to P.A. 102-0700, effective April 19, 2022, the exemption provided in this Section is extended until July 1, 2028. The exemption does not apply to motor vehicles required to be registered pursuant to the Illinois Vehicle Code [625 ILCS 5]. This exemption applies only to equipment used primarily in coal exploration, mining, off highway hauling, processing, maintenance and reclamation. Equipment used 50% or less in exploration, mining, off highway hauling, processing, maintenance and reclamation will not qualify for this exemption. Excluded from this exemption are motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Special mobile equipment other than motor vehicles may qualify for the

exemption if it is used primarily in coal exploration, mining, off highway hauling, processing, maintenance and reclamation. This exemption does not include supplies (such as chemicals, rust inhibitors and adhesives), coolants, lubricants, inert limestone, magnetite and other materials added to the coal washing medium, reclamation materials (such as seed, plants and limestone), items of personal apparel (such as gloves, shoes, hats, helmets, coveralls, masks, mask air filters, belts, harnesses or holsters) or fuel of any type.

b) Definitions

1) "Coal" means a mineral deposit or finished product comprised of combustible, carbon based plant fossil matter used as fuel.

2) "Coal Exploration" means the search for coal. Exploration includes, but is not limited to, geophysical exploration, excavating and drilling to locate coal deposits.

3) "Kits" means commercially-packaged sets of parts that are ordered from a manufacturer, inventoried and sold by a retailer as a single item. An example would be a "tire assembly" comprised of the rim, tire, foam filling and valve stem.

4) "Maintenance" means keeping coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment in a state of repair and efficiency.

5) "Mining" means the extraction of coal from the earth by underground and surface mining and includes the extraction of coal by the mine owner or operator.

6) "Off Highway Hauling" means carrying or transporting and would include transport of overburden, waste material, including gob from the processing facility for disposal, and coal from the coal seam to the processing facility by conveyors or unlicensed vehicles, and conveying coal from the beginning of the processing cycle through the last stage of coal production, which ends at the time the coal is stored.

7) "Processing" means preparation activities performed directly on the coal which are necessary for converting coal into a finished product so that it is ready for sale or the reprocessing of coal mine waste to extract and recycle coal from the waste by the mine owner, operator or a third party contractor or successor. Processing includes, but is not limited to, sizing, crushing, drying and washing.

8) "Reclamation" means conditioning areas affected by mining operations. Examples of reclamation activities include, but are not limited to, backfilling, grading, seeding and planting.

9) "Replacement Parts" means parts that are used to replace parts of qualifying equipment and that require periodic replacement. To be considered a replacement part, the part must be purchased for the purpose of being installed and must, in fact, become a physical component part of coal exploration, mining, off highway hauling, processing, maintenance or reclamation equipment.

10) "Used primarily" means equipment that is used more than 50% of the time in coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

c) Exempt Activities
By way of illustration and not limitation, the following activities will be considered to constitute coal exploration, mining, off highway hauling, processing, maintenance and reclamation:

1) Coal is produced in a surface mining operation that begins with locating the coal deposit to be mined, clearing of surface obstacles and overburden from the land above the coal deposit to be mined, continues with the removal of waste material and with the extraction of the coal, continues with the transportation from the coal seam to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material from a subsequently mined area, continues further with the processing of the coal, and ends with the stockpiling of the coal to allow moisture to

drain and evaporate from the washed coal. By way of illustration and not limitation, the following equipment is exempt:

A) Geophysical surveying, excavating, dredging and drilling machinery and equipment used primarily to locate surface mine coal deposits (e.g., data logger transducer; photoionization detector; optical televiewer; acoustic televiewer; petrographic survey equipment; and inclinometer survey equipment).

B) Equipment used primarily to drill and load holes for blasting material to dislodge the overburden, blasting agents (such as ammonium nitrate and fuel oil or ANFO); equipment used primarily to ignite blasting agents, including, but not limited to, high explosives, detonators, lead-in lines and blasting machines; and equipment used primarily to transport the blasting material.

C) Equipment used primarily to remove overburden and other waste materials from the pit to be mined.

D) Equipment used primarily to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use on exempt equipment (e.g., transformers, capacitors and other equipment used to reduce, increase, stabilize or otherwise control the amperage, voltage or frequency of the electric current and transmit the electrical current to coal mining and processing equipment).

E) Pumps and hoses used primarily to remove water or to divert water from the active pit area.

F) Equipment used primarily to load the overburden, waste material or coal to be transported to the processing facility into off highway haulage trucks or onto a conveyor system.

G) Equipment used primarily to extract coal from the earth.

H) Unlicensed off highway haulage trucks or a conveyor system to transport overburden, waste material or coal to the processing facility.

I) Equipment used primarily to backfill, grade, seed, plant or otherwise reclaim previously mined land.

J) Equipment used primarily in a coal wash plant to clean the coal prior to sale to customers. Equipment used primarily in the cleaning, sizing or grading of coal in a coal preparation plant may qualify as manufacturing machinery and equipment (see Section 130.330).

K) Equipment used primarily to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.

L) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field (e.g., draglines and shovels that move and load overburden and shovels that load coal in the pit).

M) Computers and electrical control panels integral to and used primarily to operate exempt equipment used in coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

N) Remote audio visual equipment integral to and used primarily in connection with coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

O) Electric generators used primarily to power exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

P) Communication equipment integral to and used primarily in production and operation activities in connection with coal

exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

2) Coal is produced in an underground mining operation that begins with locating the coal deposit to be mined, continues with the boring of a shaft from the surface to the coal deposit to be mined, continues with the removal of waste material and the extraction of coal, continues further with the transportation from the coal seam to the processing facility, continues further with the installation of roof supports and the coating of walls with rock dust to prevent mine explosions and collapse, continues further with the processing of coal and disposal of waste material from the mine and processing facility, and ends with the stockpiling of coal to allow moisture to drain and evaporate from the washed coal. By way of illustration and not limitation, the following equipment is exempt:

A) Geophysical surveying, excavating and drilling machinery and equipment used primarily to locate underground mine coal deposits (e.g., data logger transducer; photoionization detector; optical televiewer; acoustic televiewer; petrographic survey equipment; and inclinometer survey equipment).

B) Equipment used primarily to create access to the coal deposit (e.g., a rotary drill or a track drill), equipment used primarily to sever coal from the deposit (e.g., continuous miners and long wall mining equipment), and equipment used primarily to load coal onto conveyor belts, into trucks or other conveyances used to transport coal from the deposit to the processing operation (e.g., shuttle cars and battery powered haulers).

C) Shuttle cars used primarily to transport the coal from the point of severance to the feeder-breaker at the end of a conveyor belt or other transportation system.

D) The feeder-breaker which breaks the large lumps of coal and feeds the coal onto the conveyor belt which carries the coal outside the mine where it is temporarily stockpiled or transported to the processing facility.

E) Equipment used primarily to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use on exempt equipment, e.g., transformers, capacitors and other equipment used to reduce, increase, stabilize or otherwise control the amperage, voltage or frequency of the electrical current and transmit the electrical current to mining and processing equipment.

F) Pumps and hoses, piping and discharge apparatus used primarily in the movement or removal of water or to divert water from the underground mine area.

G) Equipment used primarily to install roof bolts, roof bolt supports and side rib bolt supports and in scaling (e.g., the removal of loose rock and slabs of rock) prior to roof bolting to prevent mine collapse.

H) Roof bolts and plates, side rib bolts and plates, and epoxy resin cartridges used primarily to secure roof bolts and side rib bolts installed to prevent mine collapse.

I) Equipment used primarily to coat mine walls with inert limestone as the coal is removed to prevent explosions caused by the escape of volatile materials.

J) Equipment installed as improvements to real estate in underground mining such as elevators, rail, ventilating and illuminating systems, including the foundations for that equipment as long as those foundations are located within the underground mine.

K) Equipment used primarily in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of underground mine structures. Materials, such as lumber, steel, concrete, rock and other building materials, qualify for the exemption only when used in underground mine

structures, including use as roof support to prevent mine collapse.

L) Additions to exempt underground rail conveyors, ventilating and illumination systems due to the progression of mining.

M) Longwall equipment consisting of shields, shearers, face conveyors and equipment used primarily for recovery, handling and transportation of longwall equipment.

N) Machinery and equipment used primarily to transport coal to aboveground facilities.

O) Machinery and equipment used primarily to convey coal from the beginning of the processing cycle through the last stage of coal production.

P) Equipment used primarily in a coal wash plant to clean the coal prior to sale to customers. Equipment used primarily in the cleaning, sizing, or grading of coal in a coal preparation plant may qualify as manufacturing machinery and equipment (see Section 130.330).

Q) Equipment used primarily to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.

R) Equipment, other than motor vehicles required to be registered pursuant to the Illinois Vehicle Code, used primarily to transport miners into and out of an underground mine (e.g., mantrips, utility vehicles, mobile equipment and scoops).

S) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment at the mine site (e.g., draglines and shovels that move and load overburden and shovels that load coal in the pit).

T) Computers and electrical control panels integral to and used primarily to operate exempt equipment used in coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

U) Remote audio visual equipment integral to and used primarily in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

V) Electrical generators used primarily to power exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

W) Communication equipment integral to and used primarily in production and operation activities in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

3) By way of illustration and not limitation, the following maintenance equipment is exempt:

A) Unlicensed maintenance and welding trucks used primarily for field repair of exempt equipment.

B) Lathes, drill presses, air compressors and welders used primarily to build, modify or rework exempt repair parts or equipment.

C) Mobile and overhead cranes and manlifts used primarily in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

4) By way of illustration and not limitation, the following coal exploration equipment is exempt unless registered pursuant to the Illinois Vehicle Code:

A) Drill rigs used primarily to drill exploration core holes.

B) Water trucks used primarily in the drilling process.

C) Winch and casing trucks used primarily in the drilling process.

D) Field maintenance trucks used primarily to make repairs on exempt field equipment.

E) Air compressors used in connection with exempt coal exploration, mining, off highway hauling, processing, maintenance and reclamation.

d) Nonexempt Activities
By way of illustration and not limitation, the following activities will not be considered to constitute coal exploration, mining, off highway hauling, processing, maintenance and reclamation:

1) The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate except for underground mine structures. Material, such as lumber, steel, concrete, rock and other building materials, will not qualify for the exemption except when used in underground mine structures, such as roof support to prevent mine collapse;

2) the use of equipment in research and development for new uses of coal;

3) the use of equipment, trailers, sheds or structures in management, sales or other nonproduction, nonoperational activities including production or extraction scheduling, purchasing, receiving, accounting, fiscal management, communications equipment (e.g., radios and phones), security, marketing, product exhibition and promotion, personnel recruitment, selection or training;

4) the use of equipment to prevent or fight fires or other mining hazards, protective supplies such as face masks, gas masks, helmets, gloves, coveralls, goggles, or first aid equipment and supplies, rescue chambers, self-rescuers, protective mine shelters or tracking devices

(e.g., Global Positioning Systems or similar devices) even though such equipment and supplies may be required by law;

5) the use of equipment for general ventilation, heating, cooling, climate control or general illumination not specifically required for the exploration, mining, off highway hauling, processing, maintenance and reclamation operation;

6) the use of facilities for storing coal after extraction and processing;

7) the use of front-end loaders, cranes, equipment used to load coal onto trucks, railcars or barges for delivery to customers;

8) the use of concrete foundations and support structures for ventilation equipment used aboveground.

e) Sales to Lessors of Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

1) Prior to January 1, 2025, for~~For~~ the exemption to apply, the purchaser need not, himself, employ the equipment in coal exploration, mining, off highway hauling, processing, maintenance and reclamation. If the purchaser leases the equipment to a lessee who uses it primarily in a qualified manner, the sale to the purchaser-lessor will be eligible for the exemption. A supplier may exclude these sales from taxable gross receipts if the purchaser-lessor provides the supplier with a properly completed certificate and the information contained in the certificate would support an exemption if the sale were made directly to the lessee. Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it primarily in a way that would qualify for the exemption, the purchaser-lessor will become liable for the tax he or she previously did not pay.

2) On and after January 1, 2025, coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment that is subject to the tax on leases under the Act and that is purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the equipment will be used by the lessee primarily in an exempt

manner, it qualifies for the exemption. The lessee leasing such equipment must certify that the equipment will be so used. If the lessee subsequently uses the equipment in a nonexempt manner, the lessor is liable for the tax on the gross receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If lessee does not notify lessor of a nonexempt use, lessee is liable for the tax. ~~Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it primarily in a way that would qualify for the exemption, the purchaser-lessor will become liable for the tax he or she previously did not pay.~~

f) Purchaser Certification
Certificates must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily for coal exploration, mining, off highway hauling, processing, maintenance and reclamation. If a purchaser can claim either the exemption under this Section or the Manufacturing Machinery and Equipment exemption, the purchaser must specify on the certificate which exemption the purchaser is claiming. Sellers may accept blanket certificates, but have the responsibility to obtain and keep all certificates as part of their books and records. If a retailer accepts the certificate and the purchaser does not, in fact, use the equipment in a qualifying manner, the purchaser will be liable to the Department for the tax. Equipment that is initially used primarily in a qualifying manner and, having been so used for less than one-half of its useful life, is converted to nonqualified uses, will become subject to tax at the time of conversion. Replacement parts purchased initially for use in a qualifying manner and used in a nonqualifying use will become subject to tax at the time of use.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.351 Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

a) General. The exemption provided in this Section terminated on June 30, 2003, pursuant to P.A. 93-24. P.A. 98-456, effective August 16, 2013, reinstated the aggregate exemption retroactive to July 1, 2003. The

Department, however, will not approve any claims or refunds on or after August 16, 2013, for taxes due or paid during the period beginning July 1, 2003 through August 16, 2013. The exemption for aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment will terminate by operation of the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act on August 16, 2018. Pursuant to P.A. 100-0594, effective June 29, 2018, the exemption provided in this Section is extended until July 1, 2023. Pursuant to P.A. 102-0700, effective April 19, 2022, the exemption provided in this Section is extended until July 1, 2028. Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax Act does not apply to sales of aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment used primarily for the exploration and mining of mineral deposits and for the manufacture of resultant aggregate products. The exemption also applies to individual replacement parts for exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment. The exemption also applies to equipment and replacement parts purchased for lease if those items are used primarily in the activities noted in this subsection. The exemption does not apply to motor vehicles required to be registered pursuant to the Illinois Vehicle Code [625 ILCS 5]. This exemption applies only to equipment used primarily in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation. Use of the equipment in any other exploration, mining, off highway hauling, processing, maintenance and reclamation will not qualify for this exemption. Excluded from this exemption are motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Special mobile equipment other than motor vehicles may qualify for the exemption if it is used primarily in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation. This exemption does not include supplies (such as chemicals, rust inhibitors, and adhesives), coolants, lubricants, reclamation materials (such as seed, plants and limestone), items of personal apparel (such as gloves, shoes, hats, helmets, coveralls, masks, mask air filters, belts, harnesses or holsters) or fuel of any type.

b) Definitions

1) "Aggregate" means any mineral deposit or finished product, including but not limited to sand, gravel, stone, clay, industrial minerals, composites or other mineral solids, except coal.

2) "Aggregate Exploration" means the search for aggregate. Exploration includes, but is not limited to, geophysical exploration, excavating, dredging, and drilling to locate aggregate deposits.

3) "Kits" means commercially-packaged sets of parts that are ordered from a manufacturer, inventoried and sold by a retailer as a single item. An example would be a "tire assembly" comprised of the rim, tire, foam filling and valve stem.

4) "Maintenance" means keeping aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment in a state of repair and efficiency.

5) "Mining" means the extraction of aggregate from the earth by underground and surface mining and includes the extraction of aggregate by the mine owner or operator.

6) "Off Highway Hauling" means carrying or transporting and would include transport of overburden or waste material, including byproduct materials from the processing facility for disposal, transporting aggregates from the aggregate deposit to the processing facility by conveyors or unlicensed vehicles, and conveying aggregates from the beginning of the processing cycle through the last stage of aggregate production, which ends at the time the aggregate is ready for sale.

7) "Processing" means preparation activities performed directly on the aggregate that are necessary for converting aggregate into a finished product so that it is ready for sale or the reprocessing of aggregate fines to extract and recycle construction aggregates by the mine owner, operator, or third party contractor or successor. Processing includes, but is not limited to, sizing, crushing, drying and washing.

8) "Reclamation" means conditioning areas affected by mining operations. Examples of reclamation activities include, but are not limited to, backfilling, grading, seeding and planting.

9) "Replacement Parts" means parts that are used to replace parts of qualifying equipment that require periodic replacement. To be considered a replacement part, the part must be purchased for the purpose of being installed and must, in fact, become a physical component part of aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

10) "Used primarily" means that the equipment and replacement parts must be used more than 50% of the time in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation.

c) Exempt Activities. By way of illustration and not limitation, the following activities will be considered to constitute aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation:

1) Aggregate is produced in a surface mining operation that begins with locating the aggregate deposit to be mined, clearing of surface obstacles and overburden from the land above the aggregate deposit to be mined, continues with the removal of waste material and with the extraction of the aggregate, continues with the transportation from the aggregate deposit to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material, continues further with the processing of the aggregate, and ends with the stockpiling of the aggregate. By way of illustration and not limitation, the following equipment is exempt:

A) Geophysical surveying, excavating, dredging and drilling machinery and equipment used primarily to locate surface mine aggregate deposits (e.g., data logger transducer; photoionization detector; optical televiewer; acoustic televiewer; petrographic survey equipment; and inclinometer survey equipment).

B) Equipment used primarily to remove overburden and other waste materials from the deposit to be mined.

C) Equipment used primarily to drill and load holes for blasting material used to fracture aggregate for extraction; blasting agents used primarily for surface aggregate mine blasting, including, but not limited to, ammonium nitrate and fuel oil or ANFO; equipment used primarily to ignite blasting agents, including, but not limited to, high explosives, detonators, lead-in lines and blasting machines; and equipment used primarily to transport the blasting material.

D) Equipment used primarily to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use on exempt equipment (e.g., transformers, capacitors and other equipment used to reduce, increase, stabilize or otherwise control the amperage, voltage or frequency of the electric current and transmit the electrical current to aggregate surface mining and processing equipment).

E) Pumps, hoses, piping and discharge apparatus, used primarily in the movement or removal of water or to divert water from the active mine area.

F) Equipment used primarily to load the overburden, waste material or aggregate to be transported to the processing facility into off highway haulage trucks or onto a conveyor system.

G) Equipment used primarily to extract aggregate from the earth.

H) Unlicensed off highway haulage trucks or a conveyor system used primarily to transport overburden, waste material or aggregate to the processing facility.

I) Equipment used primarily to backfill, grade, seed, plant or otherwise reclaim previously mined land.

J) Crushing, screening and other equipment used primarily to beneficiate and size aggregate products.

K) Equipment used primarily in an aggregate wash plant to clean the aggregate prior to sale to customers.

L) Equipment used primarily to blend different grades of aggregate together so that the final product meets customer specifications.

M) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field (e.g., draglines and shovels that move and load overburden and shovels that load aggregate in the pit).

N) Computers and electrical control panels integral to and used primarily to operate exempt equipment used primarily in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation.

O) Remote audio visual equipment integral to and used primarily in connection with exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation.

P) Electrical generators used primarily to power exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

Q) Communication equipment integral to and used primarily in production and operation activities in connection with exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

2) Aggregate is produced in an underground mining operation that begins with locating the aggregate deposit to be mined, creating

access from the surface to the aggregate deposit to be mined, continues further with the installation of roof supports, continues with the removal of waste material and the extraction of aggregate, continues further with the transportation from the aggregate deposit to the processing facility, continues further with the processing of aggregate and disposal of waste material from the mine and processing facility, and ends with the stockpiling of aggregate. By way of illustration and not limitation, the following equipment is exempt:

A) Geophysical surveying, excavating, and drilling machinery and equipment used primarily to locate underground mine aggregate deposits (e.g., data logger transducer; photoionization detector; optical televiewer; acoustic televiewer; petrographic survey equipment; and inclinometer survey equipment).

B) Equipment used primarily to create access to the aggregate deposit (e.g., drills, equipment to deliver blasting agents, excavators, loaders and tunnel boring equipment) and equipment used primarily to load aggregate on to conveyor belts, trucks or other conveyances used primarily to transport aggregate from the deposit to the processing operation (e.g., loaders).

C) Equipment used primarily to drill and load holes for blasting material used to fracture aggregate for extraction; blasting agents (such as ammonium nitrate and fuel oil or ANFO) used for underground aggregate mine blasting; equipment used primarily to ignite blasting agents, including, but not limited to, high explosives, detonators, lead-in lines and blasting machines; and equipment used primarily to transport the blasting material.

D) Equipment, other than motor vehicles required to be registered pursuant to the Illinois Vehicle Code, used primarily to transport miners into and out of an underground mine (e.g., mantrips, utility vehicles, mobile equipment and scoops).

E) Conveyor belts, trucks or other conveyances primarily used to transport aggregate from the deposit to the processing operation.

F) The feeder and crusher used primarily to break large pieces of aggregate.

G) Equipment used primarily to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use on exempt equipment (e.g., transformers, capacitors and other equipment used to reduce, increase, stabilize or otherwise control the amperage, voltage or frequency of the electric current and transmit the electrical current to aggregate underground mining and processing equipment).

H) Pumps, hoses, piping and discharge apparatus, used primarily in the movement or removal of water or to divert water from the underground mine area.

I) Equipment used primarily to install roof bolts, roof bolt supports and side rib bolt supports, and scaling prior to roof bolting, to prevent mine collapse.

J) Roof bolts and plates, side rib bolts and plates, and epoxy resin cartridges used primarily to secure roof bolts and side rib bolts installed to prevent mine collapse.

K) Equipment used primarily to coat mine walls with inert material for loose rock safety.

L) Equipment installed as improvements to real estate for mining, such as elevators and rail, ventilating and illuminating systems, including the foundations for that equipment as long as those foundations are located within the underground mine.

M) Additions to exempt underground rail conveyors and ventilating and illumination systems due to the progression of mining.

N) Crushing, screening and other equipment used primarily to beneficiate and size aggregate products.

O) Machinery and equipment used primarily to convey aggregates from the beginning of the processing cycle through the last stage of aggregate production, which ends at the time the aggregate is ready for sale.

P) Equipment used primarily in an aggregate wash plant to clean the aggregate prior to sale to customers.

Q) Equipment used primarily to blend different grades of aggregate together so that the final product meets customer specifications.

R) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field (e.g., draglines and shovels that move and load overburden and shovels that move and load aggregate in the pit).

S) Computers and electrical control panels integral to and used primarily to operate exempt equipment used in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation.

T) Remote audiovisual equipment integral to and used primarily in connection with exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation.

U) Electrical generators used primarily to power exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

V) Communication equipment integral to and used primarily in production and operation activities in connection with exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment.

3) By way of illustration and not limitation, the following maintenance equipment is exempt:

A) Unlicensed maintenance and welding trucks used primarily for field repair of exempt equipment.

B) Lathes, drill presses, air compressors and welders used primarily to build, modify or rework exempt repair parts or equipment.

C) Mobile and overhead cranes and manlifts used primarily in connection with exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation.

D) Equipment used primarily for dust suppression.

E) Equipment and machinery used primarily to clean areas around off-highway conveying and processing machinery and equipment.

4) By way of illustration and not limitation, the following aggregate exploration equipment is exempt unless registered pursuant to the Illinois Vehicle Code:

A) Drill rigs used primarily to drill exploration core holes.

B) Water trucks used primarily in the drilling process.

C) Winch and casing trucks used primarily in the drilling process.

D) Field maintenance trucks used primarily to make repairs on exempt field equipment.

E) Air compressors used primarily in connection with exempt aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation.

d) Nonexempt Activities
By way of illustration and not limitation, the following activities will not be considered to constitute aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation:

1) The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate except for underground mine structures. Material, such as lumber, steel, concrete, rock and other building materials, will not qualify for the exemption except when used in underground mine structures, such as roof supports to prevent mine collapse;

2) the use of equipment in research and development for new uses of aggregate;

3) the use of equipment, trailers, sheds or structures in management, sales or other nonproduction, nonoperational activities including production of extraction scheduling, purchasing, receiving, accounting, fiscal management, communications equipment (e.g., radios and phones), security, marketing, product exhibition and promotion, and personnel recruitment, selection or training;

4) the use of equipment to prevent or fight fires or other mining hazards and protective supplies such as face masks, gas masks, helmets, gloves, coveralls, goggles, or first aid equipment and supplies, rescue chambers, self-rescuers, protective mine shelters or tracking devices (e.g., Global Positioning Systems or similar devices) even though such equipment and supplies may be required by law;

5) the use of equipment for general ventilation, heating, cooling, climate control or general illumination not specifically required for the exploration, mining, off highway hauling, processing, maintenance and reclamation operation;

6) the use of facilities for storing aggregate after extraction and processing;

7) the use of front-end loaders, cranes, conveyors and equipment used primarily to load aggregate onto trucks, railcars or barges for delivery to customers;

8) the use of concrete foundations and support structures for ventilation equipment used aboveground.

e) Sales to Lessors of Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

1) Prior to January 1, 2025, for ~~For~~ the exemption to apply, the purchaser need not, himself or herself, employ the equipment in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation. If the purchaser leases the equipment to a lessee who uses it primarily in a qualified manner, the sale to the purchaser-lessor will be eligible for the exemption. A supplier may exclude those sales from taxable gross receipts if the purchaser-lessor provides the supplier with a properly completed certificate and the information contained in the certificate would support an exemption if the sale were made directly to the lessee. Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it primarily in a way that would qualify for the exemption, the purchaser-lessor will become liable for the tax that he or she previously did not pay. The tax will be assessed upon the fair market value of the equipment at the time of conversion.

2) On and after January 1, 2025, aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment that is subject to the tax on leases under the Act and that is purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the equipment will be used by the lessee primarily in an exempt manner, it qualifies for the exemption. The lessee leasing such equipment must certify that the equipment will be so used. If the lessee subsequently uses the equipment in a nonexempt manner, the lessor is liable for the tax on the gross

receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If the lessee does not notify lessor of a nonexempt use, the lessee is liable for the tax. ~~Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it primarily in a way that would qualify for the exemption, the purchaser-lessor will become liable for the tax that he or she previously did not pay. The tax will be assessed upon the fair market value of the equipment at the time of conversion.~~

f) Purchaser Certification

Certificates must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily for aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation. If a purchaser can claim either the exemption under this Section or the Manufacturing Machinery and Equipment exemption, the purchaser must specify on the certificate which exemption the purchaser is claiming. Manufacturer's Purchase Credit can only be earned on purchases of qualifying Manufacturing Machinery and Equipment (see 86 Ill. Adm. Code 130.330 and 130.331). Purchasers claiming the exemption under this Section cannot earn Manufacturer's Purchase Credit. Sellers may accept blanket certificates, but have the responsibility to obtain and keep all certificates as part of their books and records. If a retailer accepts the certificate and the purchaser does not, in fact, use the equipment in a qualifying manner, the purchaser will be liable to the Department for the tax. Equipment that is initially used primarily in a qualifying manner and, having been so used for less than one-half of its useful life, is converted to nonqualified uses, will become subject to tax at the time of conversion. Replacement parts purchased initially for use in a qualifying manner and used in a nonqualifying use will become subject to tax at the time of use.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

SUBPART D: GROSS RECEIPTS

Section 130.454 Determination of "Selling Price" or "Amount of Sale" when Certain Motor Vehicles are Sold for Lease

a) *The provisions of this* Section*, which provides only for an alternative meaning of "selling price" with respect to the sale of certain motor vehicles incident to the contemporaneous lease of those motor vehicles, are not changed by the tax on leases implemented* under Article 75 of Public Act 103-592.

b) Alternative selling price for certain leased motor vehicles. Notwithstanding any law to the contrary, for certain motor vehicles described in this subsection sold on or after January 1, 2015, for the purpose of contemporaneously leasing the motor vehicle, the "selling price" or "amount of sale" will be determined based on *the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease. Also included in the selling price is any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear.* For this Section to apply to the determination of the "selling price" or "amount of sale", the motor vehicle must:

1) be sold for the purpose of leasing the vehicle for a defined period that is longer than one year; and

2) be a motor vehicle, as defined in Section 1-146 of the Vehicle Code [625 ILCS 5/1-146], that is either:

A) a motor vehicle of the first division [625 ILCS 5/1-217]; or

B) a motor vehicle of the second division [625 ILCS 5/1-217] that:

i) 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;

ii) is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers; or

iii) has a gross vehicle weight rating of 8,000 pounds or less.

c) Lessor assumes the liability for reporting and paying tax for lease receipts not calculated at the time of sale. *For sales that occur in Illinois, with respect to any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, the lessor who purchased the motor vehicle does not incur the tax imposed by the Use Tax Act on those amounts, and the retailer who makes the retail sale of the motor vehicle to the lessor is not required to collect the tax imposed by the Use Tax Act or to pay the tax imposed by* the *Act on those amounts.*

1) *The lessor who purchased the motor vehicle*, however, *assumes the liability for reporting and paying the tax on those amounts directly to the Department in the same form (*State *and local retailers' occupation taxes, if applicable) in which the retailer would have reported and paid such tax if the retailer had accounted for the tax to the Department.*

2) *For amounts received by the lessor from the lessee that are not calculated at the time the lease is executed, the lessor must file the return and pay the tax to the Department by the due date otherwise required by* the *Act for returns other than transaction returns.*

3) *If the retailer is entitled under* the *Act to a discount for collecting and remitting the tax imposed under* the *Act to the Department with respect to the sale of the motor vehicle to the lessor, then the right to the discount provided in* the *Act shall be transferred to the lessor with respect to the tax paid by the lessor for any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed; provided that the discount is only allowed if the return is timely filed and for amounts timely paid.*

d) No trade-in credit. *The "selling price" of a motor vehicle that is sold on or after January 1, 2015 for the purpose of leasing for a defined period of longer than one year shall not be reduced by the value of or credit given for traded-in tangible personal property owned by the lessor, nor shall it be reduced by the value of or credit given for traded-in tangible personal property owned by the*

lessee, regardless of whether the trade-in value thereof is assigned by the lessee to the lessor.

e) Sale occurs at time of delivery. *In the case of a motor vehicle that is sold for the purpose of leasing for a defined period of longer than one year, the sale occurs at the time of the delivery of the vehicle, regardless of the due date of any lease payments.*

f) No credit for Use Tax paid on purchase when vehicle sold at end of lease. *A lessor who incurs a Retailers' Occupation Tax liability on the sale of a motor vehicle coming off lease may not take a credit against that liability for the Use Tax the lessor paid upon the purchase of the motor vehicle (or for any tax the lessor paid with respect to any amount received by the lessor from the lessee for the leased vehicle that was not calculated at the time the lease was executed) if the selling price of the motor vehicle at the time of purchase was calculated using the definition of "selling price" as defined in this* Section.

g) Electronic filing and payment mandate. *Notwithstanding any other provision of* the *Act to the contrary, lessors shall file all returns and make all payments required under this* Section *to the Department by electronic means in the manner and form as required by the Department.*

h) *This* Section *does not apply to leases of motor vehicles for which, at the time the lease is entered into, the term of the lease is not a defined period, including leases with a defined initial period with the option to continue the lease on a month-to-month or other basis beyond the initial defined period.* [35 ILCS 120/1]

i) Calculation of tax. The Retailers' Occupation Tax is imposed on the "selling price" which, under this Section, is defined as the *consideration received by the lessor pursuant to the lease contract*. Therefore, if the retailer and lessor choose to include in the lease contract a reimbursement for the tax they owe, the reimbursement becomes part of the statutory "selling price" that is subject to tax, since it is consideration received under the lease contract. The tax owed equals the amount of the lease contract multiplied by the tax rate. Therefore, the only way to both pay the correct amount of tax and collect reimbursement from the lessee for the tax owed by retailer (Retailers'

Occupation Tax) and lessor (Use Tax), is to use an algorithm when constructing the lease contract. See Illustration E.

(Source: Added at 49 Ill. Reg. _____, effective _____)

Section 130.455 Motor Vehicle Leasing and Trade-In Allowances

a) Definitions

"Advance Trade Credit" means a trade-in credit earned as the result of the trade-in of a vehicle on the future purchase of a vehicle where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

"Dealer" means any person engaged in the business of selling vehicles at retail.

"Dealer Credit" means an advance trade credit maintained on the books of the dealer where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

"Lease" means a true lease of a vehicle for a term of more than one year.

"Lessee" means any person that acquires possession of a vehicle pursuant to a lease.

"Lessor" means any person engaged in the business of leasing vehicles to other persons.

"Purchaser" means any person, whether an individual consumer or a lessor, that purchases a vehicle from a dealer.

b) Valuation of Traded-in Vehicles

1) Except as provided in subsection (h), the ~~The~~ selling price of a vehicle does not include *the value of or credit given* for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. *The value of* a traded-in vehicle is the amount of value assigned to the vehicle without regard for

outstanding debt owed on the traded-in vehicle by any party. [35 ILCS 120/1]~~(Section 1 of the Act)~~

2) The amount of *credit given* for a traded-in vehicle is the value assigned to the vehicle, reduced by any cash payments received by the purchaser or title holder of the traded-in vehicle. The reduction of the value by offsetting cash payments results in the actual *credit given* for the traded-in vehicle. Where cash payment is made to the purchaser or the title holder of the traded-in vehicle, the trade-in credit is equal to the actual *credit given* for the vehicle. [35 ILCS 120/1]~~(Section 1 of the Act)~~

Example:

	Value of Trade-In	Credit Given	Trade-In Credit
Trade-In Vehicle	$20,000		$20,000
With $3,000 Lien	$20,000		$20,000
With $2,000 Cash Back to Purchaser	$20,000	$18,000	$18,000

3) Notwithstanding subsections (b)(1) and (b)(2), *beginning January 1, 2020 and until January 1, 2022, "selling price" includes the portion of the value of, or credit given for, traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds $10,000.* [35 ILCS 120/1]~~(Section 1 of the Act)~~ The full value of any trade-in may still be used to reduce the price of an item purchased; however, beginning January 1, 2020 and until January 1, 2022, the trade-in

credit taken on the return for the trade in of a first division motor vehicle is limited to $10,000.

EXAMPLE

	Value of Traded-In First Division Motor Vehicle	Credit Given	Trade-In Credit
Trade-In Vehicle	$20,000	$20,000	$10,000
With $3,000 Lien	$20,000	$20,000	$10,000
With $2,000 Cash Back to Purchaser	$20,000	$18,000	$10,000

c) Use of Trade-in Credits

1) Except as provided in subsection (c)(2), a ~~A~~ dealer may reduce its gross receipts by the *value of or credit given* [35 ILCS 120/1] for a traded-in motor vehicle when: ~~(Section 1 of the Act)~~

EXAMPLE 1

An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;

EXAMPLE 2

A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease;

EXAMPLE 3

A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party when the prospective lessee or third party assigns the vehicle to the dealer and provides written authorization for the trade to the dealer, for the benefit of the lessor or other purchaser. The written authorization provided by the prospective lessee or third party should be specific to the immediate transaction, identifying the vehicle to be purchased by the lessor or other purchaser. A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; or

EXAMPLE 4

A motor vehicle is traded-in as described in EXAMPLE 2 or EXAMPLE 3, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:

the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle; and

title is issued directly to the lessor making the trade of the motor vehicle and not to the dealer so that the dealer remains outside the chain of title.

2) A dealer may not reduce its gross receipts by the *value of or credit given* [35 ILCS 120/1] for a traded-in motor vehicle where: ~~(Section 1 of the Act)~~

A) The dealer is the owner (meaning the dealer holds either title or certificate of origin) of the traded-in motor vehicle;

B) The trade-in vehicle was disposed of in a sales transaction predating the trade but was not identified by contract or written agreement as an advance trade-in vehicle as required in subsection (d); ~~or~~

C) The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor, as described in EXAMPLE 3 of subsection (c)(1), would not be entitled to the isolated or occasional sale exemption if the vehicle or vehicles were sold by that party, rather than traded; or.

D) The vehicle being purchased is sold to a lessor using the alternative definition of "selling price" as defined in Section 1 of the Act as amended by Public Act 98-628. See subsection (h).

d) Advance Trade-Ins

A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.

1) In order to apply the trade-in credit to reduce the taxable selling price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.

2) Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* [35 ILCS 120/1](Section 1 of the Act) for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit to reduce the taxable selling price of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased.

3) Documentation evidencing an advance trade-in transaction must include the following: the contract establishing the *value of or credit given* [35 ILCS 120/1]~~(Section 1 of the Act)~~ for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded-in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade.

4) Advance trade-in credit is not allowed in cases where the vehicle being purchased is sold to a lessor using the alternative definition of "selling price" as defined in Section 1 of the Act as amended by Public Act 98-628. See subsection (h).

e) Deferred Trade-Ins

No trade-in credit may be used in a transaction where the sales or use tax return does not reflect that a trade was offered at the time of the sales transaction. The appropriate sales or use tax return cannot be amended to reflect the *value of or credit given* [35 ILCS 120/1]~~(Section 1 of the Act)~~ for a vehicle offered for trade subsequent to the completion of the sales transaction.

f) Multiple and Split Trade-in Transactions

1) Multiple Trade-In Transactions

A purchaser may utilize a trade-in credit when trading in more than one vehicle to a dealer on the purchase of a single new or used vehicle. The dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and sale are recorded as a single transaction.

EXAMPLE (trade-in of multiple first division motor vehicles on or after January 1, 2020 and until January 1, 2022)

A motor vehicle retailer sells a new car for $60,000 on July 1, 2021 and allows $50,000 for the trade-in of 2 vehicles on the transaction: $30,000 for the trade-in of one first division motor vehicle and $20,000 for the trade-in of another first division motor vehicle. The credit that the retailer may take on the return for the traded-in first division motor vehicles is $20,000 ($10,000 for each vehicle).

EXAMPLE (trade-in of multiple first division motor vehicles on or after January 1, 2022)

A motor vehicle retailer sells a new car for $60,000 on July 1, 2022 and allows $50,000 for the trade-in of 2 vehicles on the transaction: $30,000 for the trade-in of one first division motor vehicle and $20,000 for the trade-in of another first division motor vehicle. The credit that the retailer may take on the return for the traded-in first division motor vehicles is $50,000.

2) Split Trade-In Transactions
A purchaser may utilize a trade-in credit when trading in a single vehicle to a dealer on the purchase of more than one new vehicle. The dealer may split the amount of the trade-in credit from the traded-in vehicle, and apply it toward the purchase price of one or more new vehicles so long as the trade-in and purchases are recorded as a single transaction. The amount of trade-in credit to be applied to each new vehicle will be determined by the dealer and purchaser.

EXAMPLE (split trade-in of first division motor vehicle on or after January 1, 2020 and until January 1, 2022)

A motor vehicle retailer sells 2 new cars to the same purchaser on December 31, 2021, each for $7,000, and allows $12,000 for the trade-in of one first division motor vehicle. The aggregate credit that the retailer may take on both returns for the traded-in first division motor vehicle is $10,000. The retailer may split the credit and apply it to each return (e.g., $5,000 to each return or $7,000 to one return and $3,000 to the other), but the credit may not exceed $10,000 in the aggregate for both returns.

3) Combined Transactions
A multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time.

4) A purchaser may not utilize a trade-in credit for multiple or split trade-in transactions in cases where the vehicle or vehicles being purchased are sold to a lessor using the alternative definition of "selling price" as defined in Section 1 of the Act as amended by Public Act 98-628. See subsection (h).

g) Documentation of Trade-in Credits
Documentation and records evidencing a trade-in credit utilized for a particular transaction must be retained by the dealer and the purchaser and shall be made available to the Department for inspection or audit. With the exception of advance trade-in transactions, when a vehicle is offered for trade by a person other than the purchaser for the benefit of the purchaser, the owner of the vehicle must give written authorization that the vehicle is being offered for trade for the benefit of the purchaser. The written authorization must be specific to the transaction and must identify the vehicle for which the owner's vehicle is being traded.

h) No Trade-in Credit allowed if the vehicle being purchased is sold to a lessor using the alternative definition of "selling price" under Public Act 98-628. Notwithstanding any other provision of this Section to the contrary, *the "selling price" of a motor vehicle that is sold on or after January 1, 2015 for the purpose of leasing for a defined period of longer than one year shall not be reduced by the value of or credit given for traded-in tangible personal property owned by the lessor, nor shall it be reduced by the value of or credit given for traded-in tangible personal property owned by the lessee, regardless of whether the trade-in value thereof is assigned by the lessee to the lessor.* That is, if the motor vehicle being purchased is sold to a lessor to be simultaneously leased for a defined period of longer than one year and the Retailers' Occupation Tax or Use Tax required to be paid on the transaction is based on the amount due under the lease contract in accordance with the definition of "selling price" in Section 1 of the Act as

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amended by Public Act 98-628, then no trade-in credit is allowed when calculating tax on that transaction. See Section 130.454. [35 ILCS 120/1]

(Source: Amended at 49 Ill. Reg. _____, effective _____)

SUBPART S: SPECIFIC APPLICATIONS

Section 130.1934 Community Water Supply

a) Tangible Personal Property Used in the Construction and Maintenance of a Community Water Supply – In General
Beginning January 1, 2008, tangible personal property used in the construction or maintenance of a community water supply, as defined under Section 3.145 of the Environmental Protection Act, that is operated by a not-for-profit corporation that holds a valid water supply permit issued under Title IV of the Environmental Protection Act is exempt from the tax imposed by the Retailers' Occupation Tax Act. [35 ILCS 120/2-5(39)]

b) Definitions

"Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents. (Section 3.145 of the Environmental Protection Act [415 ILCS 5/3.145])

"Construction" means building, construction, reconstruction, alteration, replacement, extension, rehabilitation, betterment, development, embellishment, remodeling, remediation, renovation or improvement of a community water supply, and adding to or subtracting from any building, structure, plant, works or facility, or any part thereof.

"Maintenance" means routine, recurring and usual work for the preservation, protection and keeping of any community water supply for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered or repaired.

"Not-for-profit corporation" means a corporation subject to the General Not For Profit Corporation Act of 1986 [805 ILCS 105/101.01].

"Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. [415 ILCS 5/3.365]

c) Tangible Personal Property Used in the Construction and Maintenance of a Community Water Supply – Tangible Personal Property Qualifying for the Exemption

1) Tangible personal property purchased and used in the construction or maintenance of structures and physical plant owned by a community water supply that is physically incorporated into the structures and physical plant qualifies for the exemption. For example, gross receipts from sales of:

A) storage tanks, well structures, intakes and cribs, pumps, filters, pipes, treatment facilities and plants, and appurtenances, used for the purpose of furnishing water, can qualify for the exemption;

B) common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the exemption;

C) plumbing systems and components of those systems such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the exemption;

D) heating systems and components of those systems such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators can qualify for the exemption;

E) electrical systems and components of those systems such as wiring, outlets and light fixtures that are physically incorporated into the real estate can qualify for the exemption;

F) central air conditioning systems, ventilation systems and components of those systems that are physically incorporated into the real estate can qualify for the exemption;

G) built-in cabinets physically incorporated into the real estate can qualify for the exemption;

H) built-in appliances such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate can qualify for the exemption; and

I) floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips") can qualify for the exemption.

2) Tangible personal property purchased and owned by a community water supply that is not physically incorporated into the structures and physical plant owned by a community water supply but is used in the construction and maintenance of a community water supply qualifies for the exemption. For example, gross receipts from sales of:

A) tools, machinery and other similar items that are used to construct or maintain the community water supply qualify for the exemption;

B) backhoes, trenchers, bulldozers and other similar equipment used to construct or maintain the community water supply qualify for the exemption; and

C) trucks and motor vehicles used by field personnel to construct or maintain the community water qualify for the exemption.

3) Tangible personal property purchased and owned by a community water supply that is not used in the construction and maintenance of a community water supply or that is not physically incorporated into the structures and physical plant owned by a community water supply does not qualify for the exemption. For example, gross receipts from sales of:

A) motor vehicles used by managers and office personnel do not qualify for the exemption;

B) plants and landscaping materials do not qualify for the exemption;

C) concrete, cement, asphalt and outdoor lighting used in the construction or maintenance of parking facilities do not qualify for the exemption;

D) free-standing appliances such as stoves, oven, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers that may be connected to and operate from a building's electrical or plumbing system but that are not physically incorporated into the real estate do not qualify for the exemption; and

E) floor coverings such as rugs that do not qualify under (c)(1)(I) or that are attached to the structure or physical plant using only two-sided tape do not qualify for the exemption.

4) Tangible personal property purchased and owned by a community water supply used in the operation of a community public water supply does not qualify for the exemption. For example, gross receipts from sales of:

A) fuel used to operate the community water supply, trucks, vehicles, backhoes, trenchers, bulldozers and equipment

owned by the community water supply does not qualify for the exemption;

B) office supplies, cleaning supplies and office equipment do not qualify for the exemption;

C) cell phones, communication devices and personal digital assistants do not qualify for the exemption; and

D) chemicals or minerals such as chlorine, lime or charcoal do not qualify for the exemption.

d) Tangible Personal Property Purchased by Lessors for Lease to Community Water Supply Entities

1) Prior to January 1, 2025, tangible ~~Tangible~~ personal property that qualifies under this Section that is purchased by a lessor and leased to a community water supply does not qualify for the community water supply exemption. The exemption does not extend to lessors. Lessors of tangible personal property under true leases are deemed to be the users of that property. Consequently, lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on their cost price of the items. See 86 Ill. Adm. Code 130.220 (Sales to Lessors of Tangible Personal Property) and 86 Ill. Adm. Code 130.2010 (Persons Who Rent or Lease the Use of Tangible Personal Property to Others).

2) On and after January 1, 2025, motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State that are purchased by a lessor and leased to a community water supply do not qualify for the community water supply exemption. Lessors of such items are deemed to be the users of that property. The exemption does not extend to such lessors. Consequently, such lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on their cost price of the items. See 86 Ill. Adm. Code 130.220 (Sales to Lessors of Tangible Personal Property) and 86

Ill. Adm. Code 130.2010 (Persons Who Rent or Lease the Use of Tangible Personal Property to Others).

3) On and after January 1, 2025, the exemption does, however, extend to lessors who are subject to tax on leases of tangible personal property under the Act. Other than as provided in subsection (d)(2), lessors of such tangible personal property used in the construction or maintenance of a community water supply that is purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the tangible personal property will be used by the lessee primarily in an exempt manner it qualifies for the exemption. The lessee leasing such tangible personal property must certify that the tangible personal property will be so used. If the lessee subsequently uses the tangible personal property in a nonexempt manner, the lessor is liable for the tax on the gross receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If the lessee does not notify lessor of a nonexempt use, the lessee is liable for the tax.

e) Certificates of Eligibility for Sales Tax Exemption

1) To document the exemption, the retailer must obtain from the purchaser a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation that operates the community water supply. The Certificate of Eligibility for Sales Tax Exemption must be obtained by the retailer at the time of sale. If the retailer obtains the necessary certifications from the community water supply, the retailer shall be relieved of any tax liability relating to the sale in the event the tangible personal property purchased by the community water supply from the retailer is not used by the community water supply in the construction or maintenance of the community water supply identified in the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation.

2) The Certificate of Eligibility for Sales Tax Exemption must contain all of the following:

A) the name of the not-for-profit corporation operating the community water supply;

B) the location or address of the community water supply;

C) a statement that the community water supply identified in the Certificate meets all the requirements of Section 2-5(39) of the Retailers' Occupation Tax Act;

D) a statement that the not-for-profit corporation is in good standing and has not been dissolved; in addition, a foreign not-for-profit corporation shall also state that it has obtained a certificate of authority to conduct affairs in this State and the certificate has not been withdrawn;

E) a description of the tangible personal property being purchased;

F) a statement that the tangible personal property is either:

i) being purchased and used in the construction or maintenance of structures and physical plant owned by a community water supply and physically incorporated into the structures and physical plant; or

ii) being purchased for use in the construction or maintenance of a community water supply by a community water supply;

G) the signature of the chief executive officer of the not-for-profit corporation operating the community water supply or the chief executive officer's duly authorized designee.

f) Contractors

1) This exemption extends to and includes qualifying tangible personal property identified in subsection (c)(1) used in the construction or maintenance of a community water supply purchased by a contractor

who transfers the tangible personal property in fulfillment of a construction contract with a not-for-profit corporation that operates a community water supply. This community water supply exemption does not extend to contractors purchasing tangible personal property identified in subsection (c)(2). To document the exemption, the contractor should certify to the retailer that the qualifying tangible personal property will be used in the construction or maintenance of a community water supply and provide the retailer with a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation that operates the community water supply.

2) If the retailer obtains the necessary certifications from the contractor, the retailer shall be relieved of any tax liability relating to the sale in the event the tangible personal property purchased by the contractor from the retailer is not used by the contractor in the construction or maintenance of the community water supply identified in the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation. If it is subsequently determined that the tangible personal property was not used by the contractor in the construction or maintenance of a community water supply, the contractor shall be liable for Use Tax on the purchase of the tangible personal property for which an exemption was claimed under this Section. The contractor shall be liable for Use Tax on tangible personal property physically incorporated into a community water supply when the tangible personal property or the community water supply does not qualify for the exemption provided by this Section.

g) Sunset

The exemption for tangible personal property used in the construction or maintenance of a community water supply contained in Section 2-5(39) of the Retailers' Occupation Tax Act and this Section is not subject to the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.1946 Tangible Personal Property Used or Consumed in Graphic Arts Production within Enterprise Zones Located in a County of more than 4,000 Persons and less than 45,000 Persons

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

a) Section 1d of the Retailers' Occupation Tax Act provides an exemption for *tangible personal property to be used or consumed in the process of graphic arts production if used or consumed at a facility that is certified by the Department of Commerce and Economic Opportunity (DCEO) and located in a county of more than 4,000 persons and less than 45,000 persons*. [35 ILCS 120/1d]

b) To qualify for the exemption, a business must meet the following requirements contained in Section 1d and 1f of the Retailers' Occupation Tax Act:

1) *be located in an enterprise zone established pursuant to the Illinois Enterprise Zone Act*;

2) *use or consume the tangible personal property at a facility located in a county of more than 4,000 but less than 45,000 persons;*

3) *make investments:*

A) *which cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or*

B) *which cause the retention of a minimum of 2,000 full-time jobs in Illinois; or*

C) *of a minimum of $40,000,000 and retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption; and*

4) *be certified by DCEO as complying with the requirements specified in* this subsection (b). [35 ILCS 120/1d and 1f]

c) Businesses seeking certificates of eligibility must make application to the DCEO on application forms provided by DCEO. [35 ILCS 120/1f] The Illinois Department of Revenue does not certify businesses as eligible for this exemption.

d) To qualify for the exemption, the tangible personal property must be used or consumed within the enterprise zone in the process of graphic arts production. Sales of tangible personal property used or consumed in activities that do not constitute graphic arts production remain subject to the tax. *For purposes of this* Section*, "graphic arts production" means the production of tangible personal property for wholesale or retail sale or lease by means of printing, including ink jet printing, by one or more of the processes 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 U.S. Office of Management and Budget, 1997 edition. Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or audiobooks. Persons engaged primarily in the business of printing or publishing newspapers or magazines that qualify as newsprint and ink, by one or more of the processes described in Groups 511110 through 511199 of subsector 511 of the North American Industry Classification System are deemed to be engaged in graphic arts production.* [35 ILCS 120/2-30]

e) *The exemption includes repair and replacement parts for machinery and equipment used primarily in the process of graphic arts production.* [35 ILCS 120/1d] The exemption also includes equipment, manufacturing fuels, material and supplies for the maintenance, repair or operation of such graphic arts machinery or equipment.

f) Examples of items that qualify for the exemption are:

1) machinery and equipment that would otherwise qualify under the graphic arts machinery and equipment exemption because of being used in the activities described in Section 130.330(g)(3) and for repair and replacement parts for the machinery and equipment;

2) printing plates, film, fountain solution, blanket wash, and ink additives used in the activities set out at Section 130.330(g)(3);

3) materials and prep supplies, such as mylar, masking sheets, developer, hardener, fixer, replenishers, and tape used or consumed in the activities set out at Section 130.330(g)(3);

4) machinery and equipment and hand tools used to maintain, repair or operate machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g);

5) materials and supplies, such as lubricants, coolants, adhesives, solvents or cleaning compounds used to maintain, repair or operate machinery or equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g);

6) any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to retailers' occupation tax or use tax liability when sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g);

7) protective clothing and safety equipment, such as ear plugs, safety shoes, gloves, coveralls, aprons, goggles, safety glasses, face masks and air filter masks used when maintaining, repairing or operating machinery and equipment that qualifies for the graphic arts machinery and equipment exemption as set out in Section 130.330(g).

g) The tangible personal property must be used primarily in graphic arts production. Therefore, tangible personal property that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the tangible personal property is used over 50 percent in an exempt manner in order to claim the exemption.

h) The exemption does not extend to tangible personal property that is not used or consumed in the graphic arts production process itself. This is true even though the item is used in an activity that is essential to graphic arts production. The exemption does not extend, for example, to:

1) tangible personal property used or consumed in general production plant maintenance activities or in the maintenance of machinery and equipment that would not qualify for the graphic arts production exemption;

2) tangible personal property used to store, convey, handle, or transport materials prior to their entrance into the production cycle;

3) tangible personal property used to store, convey, handle, or transport finished articles after completion of the production cycle;

4) tangible personal property used to transport work-in-process or finished articles between production plants;

5) machinery and equipment used to gather information, photograph, transmit data, edit text, prepare drafts or copy, or perform other data-related functions prior to final composition, typesetting, engraving, or other preparation of the image carrier;

6) xerographic or photocopying machines;

7) word processing, text editing machinery or computerized equipment unless it is an integral part of a final graphic arts operation such as a computer-controlled typesetting machine or equivalent that is used primarily in graphic arts production;

8) computers used to store data and generate text, maps, graphs, or other print-out formats unless the product is an image carrier to be used to repetitively transfer images by printing. For example, a computer that generates an image that may later be reproduced by a graphic arts process would not qualify while a computer-controlled engraving system that produces printing cylinders and computer-controlled digital typesetting equipment would qualify;

9) tangible personal property used or consumed in managerial, sales or other nonproduction, nonoperational activities, such as disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management,

general communications, plant security, product exhibition and promotion, or personnel recruitment, selection or training;

10) tangible personal property used or consumed as general production plant safety equipment; or

11) tangible personal property and fuel used or consumed in general production plant ventilation, heating, cooling, climate control, or illumination, not required by a graphic arts production process.

i) This exemption from the Retailers' Occupation Tax is available to all retailers registered to collect or remit Illinois tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones.

j) Leases.

1) Prior to January 1, 2025, if ~~If~~ the purchaser of the machinery or equipment leases the machinery and equipment to a certified business that uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A retailer may exclude these sales from taxable gross receipts provided that the purchaser-lessor provides to the retailer a properly completed exemption certificate and the information contained in the certificate would support an exemption if the sale were made directly to the certified business. Should a purchaser-lessor subsequently lease the machinery or equipment to a business who does not use it in an exempt manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax from which he or she was previously exempted.

2) On and after January 1, 2025, machinery or equipment that is subject to the tax on leases under the Act and that is purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the machinery or equipment will be used by the lessee primarily in an exempt manner, it qualifies for the exemption. The lessee leasing such machinery or equipment must certify that the machinery or equipment will be so used. If the lessee subsequently uses the machinery or equipment in a nonexempt manner, the lessor is liable

for the tax on the gross receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If the lessee does not notify lessor of a nonexempt use, the lessee is liable for the tax.

k) Documentation of Exemption

1) When a certified business (or the lessor to a certified business) initially purchases qualifying items from an Illinois registered retailer, the retailer must be provided with:

A) a copy of the current certificate of eligibility issued by DCEO; and

B) a written statement signed by the certified business (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in a graphic arts production process at a location in an enterprise zone established under the authority of the Illinois Enterprise Zone Act.

2) So long as a copy of a current certificate of eligibility and a statement of exemption are maintained by a retailer, the certified business (or its lessor) may claim the exemption on subsequent purchases from that retailer by indicating on the face of purchase orders that the transaction is exempt by referencing the certificate of eligibility and statement of exemption. This procedure on subsequent purchases is authorized only so long as the certificate of eligibility remains current. That is, the exemption can be claimed only as to purchases made during the effective period of the certificate of eligibility specified by DCEO on the face of the certificate of eligibility.

3) If a certified business (or its lessor) purchases tangible personal property that is to be used in the process of graphic arts production, the certified business (or its lessor) must certify that fact to the retailer in writing in order to relieve the retailer of the duty of collecting and remitting tax. However, the purchaser who certifies that the item is being purchased for a qualifying use within an enterprise zone by a

qualified business will be held liable for the tax by the Department if it is found that the item was not so used.

l) An item that initially is used primarily in a qualifying manner but that is converted to a nonexempt use or is moved to a nonqualifying location will become subject to tax at the time of its conversion, based on the fair market value of the item at the time of conversion.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.1947 Tangible Personal Property Used or Consumed in the Process of Manufacturing and Assembly within Enterprise Zones or by High Impact Businesses

a) Section 1d of the Retailers' Occupation Tax Act provides an exemption for *tangible personal property to be used or consumed within an enterprise zone established pursuant to the Illinois Enterprise Zone Act or to be used or consumed by any High Impact Business, in the process of the manufacturing or assembly of tangible personal property for wholesale or retail sale or lease if used or consumed by a business certified by the Department of Commerce and Economic Opportunity* (DCEO). [35 ILCS 120/1d]

b) Tangible Personal Property Used or Consumed in the Process of Manufacturing or Assembling within an Enterprise Zone
To qualify for the exemption, a business located in an enterprise zone must meet the following requirements contained in Section 1f of the Retailers' Occupation Tax Act:

1) *be located in an Enterprise Zone established pursuant to the Illinois Enterprise Zone Act*;

2) *make investments:*

A) *which cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or*

B) *which make investments that cause the retention of a minimum of 2,000 full-time jobs in Illinois; or*

C) *of a minimum of $40,000,000 and retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption; and*

3) *be certified by DCEO as complying with the requirements specified* in this subsection (b). [35 ILCS 120/1f]

c) Tangible Personal Property Used or Consumed in the Process of Manufacturing or Assembling by a High Impact Business
To qualify for the exemption as a High Impact Business, the business must not be located within an enterprise zone at the time of its designation and must meet the following requirements contained in Section 5.5(a)(3)(A) of the Illinois Enterprise Zone Act [20 ILCS 655]:

1) the business intends to make a minimum investment of:

A) $12,000,000 which will be placed in service in qualified property and intends to create 500 full-time equivalent jobs at a designated location in Illinois; or

B) *$30,000,000 which will be placed in service in qualified property and intends to retain 1,500 full-time jobs at a designated location in Illinois;*

2) *the business certifies in writing that the investments would not be placed in service in qualified property and the job creation or job retention would not occur without the tax credits and exemptions set forth in Section 5.5(b) of the Illinois Enterprise Zone Act. The terms "placed in service" and "qualified property" have the same meanings as described in Section 201(h) of the Illinois Income Tax Act* [20 ILCS 655/5.5(a)(3)(A)];

3) is certified by DCEO as complying with the requirements specified in this subsection (c); and

4) for purposes of this subsection (c):

A) the exemption is not authorized until the minimum investments set forth in subsection (c)(1) *have been placed in*

service in qualified properties and the minimum full-time equivalent jobs or full-time retained jobs set forth in subsection (c)(1) *have been created or retained* [20 ILCS 655/5.5(b)];

B) *the terms "placed in service" and "qualified property" have the same meanings as described in Section 201 (h) of the Illinois Income Tax Act* [20 ILCS 655].

d) Businesses seeking certificates of eligibility must *make application to the* DCEO on application forms provided by DCEO. [35 ILCS 120/1f] The Illinois Department of Revenue does not certify business enterprises as eligible for this exemption.

e) Once a business is certified to qualify for the exemption, the tangible personal property must be used or consumed within the enterprise zone or at the certified location of the High Impact Business in the process of manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. Sales of tangible personal property used or consumed in activities that do not constitute manufacturing or assembling remain subject to the tax. For purposes of this Section, "manufacturing" and "assembling" shall have the same meaning ascribed to those terms in Section 130.330(b)(1) through (9).

f) *The exemption includes repair and replacement parts for machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. The exemption also includes equipment, manufacturing fuels, material and supplies for the maintenance, repair or operation of the manufacturing or assembling machinery or equipment.* [35 ILCS 120/1d]

g) Examples of items that qualify for the exemption are:

1) machinery and equipment that would otherwise qualify under the manufacturing machinery and equipment exemption because it is used in the activities set forth in Section 130.330(c)(3), and repair and replacement parts for that machinery and equipment;

2) hand tools used in the activities set forth in Section 130.330(c)(3);

3) materials and supplies, such as abrasives, acids, polishing compounds or lubricants used or consumed in the activities set forth in Section 130.330(c)(3);

4) machinery and equipment and hand tools used to maintain, repair or operate machinery and equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330;

5) materials and supplies, such as lubricants, coolants, adhesives, solvents or cleaning compounds used to maintain, repair or operate machinery or equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330;

6) any fuel, such as coal, diesel oil, gasoline, natural gas, artificial gas or steam that would be subject to retailers' occupation tax or use tax liability when sold at retail is exempt from those taxes when sold for use as fuel for machinery and equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330; and

7) protective clothing and safety equipment such as gloves, coveralls, aprons, goggles, safety glasses, face masks and air filter masks used when maintaining, repairing or operating machinery and equipment that qualifies for the manufacturing machinery and equipment exemption set forth in Section 130.330.

h) The tangible personal property must be used primarily in manufacturing or assembling. Therefore, tangible personal property that is used primarily in an exempt process and partially in a nonexempt manner would qualify for exemption. However, the purchaser must be able to establish through adequate records that the tangible personal property is used over 50 percent in an exempt manner in order to claim the exemption.

i) *The exemption provided in this Section for tangible personal property to be used or consumed in the process of manufacturing or assembly of tangible personal property for wholesale or retail sale or lease, and the repair and replacement parts for that machinery and equipment, does not apply to such*

property used or consumed in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. The provisions set forth in this subsection implementing Public Act 98-0583 *are declaratory of existing law as to the meaning and scope of this exemption*. [35 ILCS 120/1d]

j) The exemption provided under Section 1d of the Retailers' Occupation Tax Act and this Section does not extend to tangible personal property that is not used or consumed in the manufacturing or assembling process itself. This is true even though the item is used in an activity that is essential to manufacturing or assembling. For example, the exemption does not extend to:

1) tangible personal property used or consumed in general production plant maintenance activities or in the maintenance of machinery and equipment that would not qualify for the manufacturing machinery and equipment exemption;

2) tangible personal property used or consumed in research and development of new products, production techniques, or production machinery;

3) tangible personal property used to store, convey, handle, or transport materials, parts or subassemblies prior to their entrance into the production cycle;

4) tangible personal property used to store, convey, handle, or transport finished articles after completion of the production cycle;

5) tangible personal property used to transport work-in-process or finished articles between production plants;

6) tangible personal property used or consumed in managerial, sales or other nonproduction, nonoperational activities, such as disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management,

general communications, plant security, product exhibition and promotion, or personnel recruitment, selection or training;

7) tangible personal property used or consumed as general production plant safety equipment;

8) tangible personal property and fuel used or consumed in general production plant ventilation, heating, cooling, climate control, or illumination, not required by a manufacturing or assembling process;

9) tangible personal property used or consumed in the preparation of food and beverages by a retailer for retail sale, such as restaurants, vending machines, and food service establishments;

10) fuel used or consumed in the operation of any machinery or equipment that would not qualify for exemption under the manufacturing machinery and equipment exemption set out in Section 130.330;

11) building materials that become physically incorporated into foundations or housings for machinery and equipment; the building materials may qualify for exemption under the provisions of Section 130.1951 if all requirements set out in that Section are met; and

12) building materials dedicated to general construction purposes at a production plant; the building materials may qualify for exemption under the provisions of Section 130.1951 if all the requirements of that Section are met.

k) This exemption from Illinois Retailers' Occupation Tax is available to all retailers registered to collect or remit Illinois tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones.

l) The tangible personal property resulting from the process of manufacturing or assembling must be for wholesale or retail sale or lease. For purposes of this Section, see Section 130.330(a)(6) and (7) for requirements relating to sale or lease of the tangible personal property produced in the process of manufacturing or assembling.

m) If a certified business (or its lessor) purchases tangible personal property that is to be used in the process of manufacturing and assembly, then the certified business (or its lessor) must certify that fact to the retailer in writing in order to relieve the retailer of the duty of collecting and remitting tax. However, the purchaser who certifies that the item is being purchased for a qualifying use within an enterprise zone by a certified business will be held liable for the tax by the Department if it is found that the item was not so used.

n) Documentation of Exemption

1) When a certified business (or the lessor to a certified business) initially purchases qualifying items from an Illinois registered retailer, the retailer must be provided with:

A) a copy of the current certificate of eligibility issued by DCEO; and

B) a written certification signed by the certified business (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in a manufacturing or assembling process at a location in an enterprise zone established pursuant to the Illinois Enterprise Zone Act or by a High Impact Business.

2) If a copy of a certified business' current certificate of eligibility and certification are maintained by a retailer, the certified business (or its lessor) may claim the exemption on subsequent purchases from that retailer by indicating on the face of purchase orders that the transaction is exempt by making reference to the certificate of eligibility and certification. This procedure on subsequent purchases is authorized as long as the certificate of eligibility remains valid. The exemption can only be claimed for purchases made during the effective period of the certificate of eligibility specified by DCEO on the face of the certificate of eligibility.

3) The retailer must receive a certificate of eligibility and the purchaser's written certificate to relieve the retailer of the duty of collecting and remitting tax on a sale.

4) An item that initially is used primarily in a qualifying manner at a qualifying location but that is converted to a nonexempt use or is moved to a nonqualified location will become subject to tax at the time of its conversion based on the lesser of the purchase price or fair market value of the item at the time of conversion.

5) On and after January 1, 2025, qualifying items that are subject to the tax on leases under the Act and that are purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the qualifying items will be used by the lessee primarily in an exempt manner, they qualify for the exemption. The lessee leasing such items must certify that the items will be so used. If the lessee subsequently uses the items in a nonexempt manner, the lessor is liable for the tax on the gross receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If the lessee does not notify lessor of a nonexempt use, the lessee is liable for the tax.

o) Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption provided in Section 2-45 of the Act and Section 130.330 includes production related tangible personal property. See 130.330(h) to determine if any of the items identified in subsection (j) qualify as production related tangible personal property under the manufacturing and assembling machinery and equipment exemption.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.1948 Tangible Personal Property Used or Consumed in the Operation of Pollution Control Facilities Located within Enterprise Zones

a) The Retailers' Occupation Tax Act provides an exemption for *tangible personal property used or consumed in the operation of pollution control facilities, as defined in Section 1a of the Retailers' Occupation Tax Act, located within an enterprise zone established pursuant to the Illinois Enterprise Zone Act* [35 ILCS 120/1e]. The exemption contained in Section 1e of the Retailers' Occupation Tax Act applies to tangible personal property used or consumed in the operation of pollution control facilities located

within an enterprise zone; the exemption does not apply to pollution control facilities that were exempt under Section 1a of the Retailers' Occupation Tax Act until July 1, 2003.

b) The exemption only applies to a business that meets the following requirements contained in Section 1f of the Retailers' Occupation Tax Act:

1) *is located in an enterprise zone established pursuant to the Illinois Enterprise Zone Act*;

2) *makes investments that:*

A) *cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or*

B) *cause the retention of a minimum of 2,000 full-time jobs in Illinois; or*

C) *total a minimum of $40,000,000 and retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption; and*

3) is *certified by the Department of Commerce and Economic Opportunity* (DCEO) *as complying with the requirements specified in this subsection (b)*. [35 ILCS 120/1f]

c) The phrase *"pollution control facilities" means any system, method, construction, device, or appliance appurtenant thereto, sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "air pollution" or "water pollution" is defined in the Environmental Protection Act [415 ILCS 5]or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant that, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to human, plant or animal life, or to property*. [35 ILCS 120/1a]

d) If a business enterprise is certified by DCEO, all tangible personal property used or consumed by that enterprise in the operation of pollution control facilities within an enterprise zone is exempt from tax. In order to qualify, the

item must be used exclusively in the enterprise zone and the pollution control facility must be located in the enterprise zone. By way of illustration, this exemption includes:

1) fuel used in operating pollution control facilities;

2) chemicals used in the operation of pollution control facilities;

3) catalysts used in the operation of pollution control facilities;

4) equipment used to test, monitor or otherwise ascertain the suitability of a fuel, chemical or catalyst for use in the operation of pollution control facilities;

5) equipment used to monitor or otherwise ascertain the effectiveness of pollution control facilities;

6) lubricants and coolants used in the operation of pollution control facilities;

7) protective clothing and safety equipment used in the operation of pollution control facilities;

8) equipment used to transport fuel, chemicals, catalysts, lubricants, coolants or other operational supplies from a stock pile located in the enterprise zone to a pollution control facility located in the same enterprise zone;

9) equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to another pollution control facility within the same enterprise zone for further filtering, treatment or modification; and

10) equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to a disposal site in the same enterprise zone.

e) No item used primarily in any activity other than the operation of pollution control facilities within an enterprise zone can qualify for this exemption. No

item used or consumed outside the enterprise zone can qualify for the exemption. No item used or consumed in the operation of pollution control facilities that are located outside the enterprise zone can qualify for the exemption. By way of illustration, the exemption does not extend to:

1) equipment used to transport fuel, chemicals, catalysts or any other tangible personal property from a point outside the enterprise zone to a pollution control facility inside the enterprise zone;

2) equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to any location outside the enterprise zone;

3) testing equipment used at a location outside an enterprise zone to monitor or otherwise ascertain the effectiveness of pollution control facilities located in an enterprise zone; or

4) testing equipment used at a location in an enterprise zone to monitor or otherwise ascertain the effectiveness of pollution control facilities located outside the enterprise zone.

f) This exemption from Illinois Retailers' Occupation Tax is available to all retailers registered to collect or remit Illinois sales tax. It is not restricted to retailers located in the enterprise zone.

g) Prior to January 1, 2025 for~~For~~ this exemption to apply, the purchaser need not itself employ the tangible personal property in the operation of pollution control facilities. If the purchaser leases the items to a certified business that uses the items in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A retailer may deduct the sales from taxable gross receipts provided the purchaser-lessor provides to the retailer a properly completed exemption certificate and the information contained in the certificate would support the exemption if the sale were made directly to the certified business. Should a purchaser-lessor lease the items to a lessee that is not a certified business or to a certified business that does not use those items in the operation of pollution control facilities within an enterprise zone, the purchaser-lessor will become liable for the tax from which it was previously exempted. On and after January 1, 2025, tangible personal property used or consumed in the operation of pollution control

facilities that is subject to the tax on leases under the Act and that is purchased for lease may be purchased tax-free for resale. See Section 130.210(e). If the property will be used by the lessee primarily in an exempt manner, it qualifies for the exemption. The lessee leasing such property must certify that the property will be so used. If the lessee subsequently uses the property in a nonexempt manner, the lessor is liable for the tax on the gross receipts from any lease payment received thereafter if notified by the lessee of the nonexempt use. If the lessee does not notify lessor of a nonexempt use, the lessee is liable for the tax.

h) Documentation of Exemption

1) When a certified business (or the lessor of a certified business) initially purchases qualifying items from an Illinois registered retailer, the retailer must be provided with:

A) a copy of the current certificate of eligibility issued by DCEO; and

B) a written statement of exemption signed by the certified business (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in the operation of pollution control facilities at a specified location in a named enterprise zone established under the authority of the Illinois Enterprise Zone Act.

2) If a copy of a certified business' current certificate of eligibility and statement of exemption are maintained by a retailer, the certified business (or its lessor) may claim the exemption on subsequent purchases from that retailer by indicating on the face of purchase orders that the transaction is exempt by referencing the certificate of eligibility and statement of exemption. This procedure on subsequent purchases is authorized only so long as the certificate of eligibility remains current. That is, the exemption can be claimed only as to purchases made during the effective period of the certificate of eligibility specified by DCEO on the face of the certificate of eligibility.

3) If a certified business (or its lessor) purchases tangible personal property that could reasonably be used in the operation of pollution

control facilities, the certified business (or its lessor) should certify to the retailer in writing in order to relieve the retailer of the duty of collecting and remitting tax on the sale. However, the purchaser who certifies that the item is being purchased for a qualifying use in an enterprise zone by a certified business will be held liable for the tax by the Department if it is found that the item was not so used.

i) An item that is used primarily in a qualifying manner at a qualifying location but that is converted to a nonexempt use or is moved to a nonexempt location will become subject to tax at the time of its conversion based on the fair market value of the item at the time of conversion to the nonexempt use.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.1957 Tangible Personal Property Used in the Construction or Operation of Data Centers

a) Effective January 1, 2020, *qualified tangible personal property used in the construction or operation of a data center that has been granted a certificate of exemption by the Department of Commerce and Economic Opportunity ("DCEO"), whether that tangible personal property is purchased by the owner, operator, or tenant, of the data center or by a contractor or subcontractor of the owner, operator, or tenant is exempt from Retailers' Occupation Tax.* (Section 2-5(44) of the Act) To receive the exemption, the data center must obtain a certificate of exemption from DCEO pursuant to Section 605-1025 of the Department of Commerce and Economic Opportunity Law (DCEO Law) [20 ILCS 605].

b) For purposes of this Section:

1) "Data center" means a building or a series of buildings rehabilitated or constructed to house working servers in one physical location or multiple sites within the State of Illinois. (Section 2-5 (44) of the Act).

2) Qualified Tangible Personal Property

A) "Qualified Tangible Personal Property" means:

i) *electrical systems and equipment; climate control and chilling equipment and systems; mechanical systems and equipment; monitoring and secure systems; emergency generators; hardware; computers; servers; data storage devices; network connectivity equipment; racks; cabinets; telecommunications cabling infrastructure; raised floor systems; peripheral components or systems; software; mechanical, electrical, or plumbing systems; battery systems; cooling systems and towers; temperature control systems; other cabling; and other data center infrastructure equipment and systems necessary to operate qualified tangible personal property, including fixtures; and*

ii) component parts of any of the property listed in subsection (b)(2)(A)(i), including installation, maintenance, repair, refurbishment, and replacement of qualified tangible personal property to generate, transform, transmit, distribute, or manage electricity necessary to operate qualified tangible personal property; and all other tangible personal property that is essential to the operations of a computer data center.

B) *The term "qualified tangible personal property" also includes building materials physically incorporated into the qualifying data center.* (Section 2-5(44) of the Act)

3) "Qualifying Illinois data center" for purposes of applying, for a certificate of exemption, means a new or existing data center that meets the requirements of Section 605-1025 of the DCEO Law.

c) Each owner, operator, or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant, must provide an active certificate of exemption before it can make tax exempt purchases of qualified tangible personal property.

d) *Data centers that would have qualified for a certificate of exemption prior to January 1, 2020, had P.A. 101-31 been in effect, may apply for and obtain an exemption for subsequent purchases of computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the original investment that would have qualified.* (Section 2-5(44) of the Act)

e) To document the exemption allowed under this Section, the retailer must obtain from the owner, operator, or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant, a copy of the certificate of exemption issued by DCEO.

1) In addition, the retailer must obtain a certification that contains:

A) the name and description of the purchaser (i.e., owner, operator, contractor, subcontractor, or tenant);

B) a statement that the tangible personal property is being purchased for use in the construction or operation of a data center located in Illinois;

C) the location or address of the data center;

D) a description of the tangible personal property being purchased;

E) the purchaser's signature and date of purchase.

2) The use of blanket certificates of exemption will be permitted.

f) Tangible Personal Property Used in the Rehabilitation, Construction and Operation of a Data Center – Tangible Personal Property Qualifying for the Exemption

1) Tangible personal property purchased and used in the rehabilitation and construction of a building or series of buildings that house working servers, and that is physically incorporated into the building or series of buildings, qualifies for the exemption. For example, gross receipts from sales of the following items qualify for the exemption:

A) common building materials, such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal;

B) plumbing systems and components of those systems, such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes;

C) heating systems and components of those systems, such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators;

D) electrical systems and components of those systems, such as wiring, outlets and light fixtures that are physically incorporated into the real estate;

E) central air conditioning systems, ventilation systems and components of those systems that are physically incorporated into the real estate;

F) built-in cabinets physically incorporated into the real estate;

G) built-in appliances, such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate; and;

H) floor coverings, such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips").

2) Tangible personal property purchased and used in the rehabilitation and construction of a building or series of buildings that house working servers and that is not physically incorporated into the building or series of buildings qualifies for the exemption. For example, gross receipts from sales of tools, machinery and other similar items that are used to rehabilitate and construct the data center qualify for the exemption.

3) Tangible personal property purchased and used in the operation of a data center qualifies for the exemption. An example of this tangible personal property is the equipment used to provide data or cloud services. The exemption does not extend to tangible personal property used by personnel in the day-to-day operations of the business. For example, gross receipts from the sales of the following do not qualify for the exemption:

   A) office supplies, cleaning supplies and office equipment; and

   B) cell phones and personal communication devices.

4) Tangible personal property used in the installation, maintenance, repair, refurbishment and replacement of qualified tangible personal property to generate, transform, transmit, distribute or manage electricity necessary to operate qualified tangible personal property is exempt. Except as provided in this subsection (f)(4) and subsection (h)(3), the exemption does not include tangible personal property used to maintain, repair, refurbish or replace qualified tangible personal property or to install that tangible personal property.

5) Tangible personal property purchased that is not used in the construction or operation of a data center does not qualify for the exemption. For example, gross receipts from sales of the following items do not qualify for the exemption:

   A) motor vehicles used by managers and office personnel;

   B) indoor and outdoor plants and landscaping materials;

   C) concrete, cement, asphalt and outdoor lighting used in the construction or maintenance of parking facilities;

   D) free-standing appliances, such as stoves, oven, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers, that may be connected to

and operate from a building's electrical or plumbing system but that are not physically incorporated into the real estate;

E) floor coverings, such as rugs, that do not qualify under subsection (f)(1)(H) or that are attached to the structure or physical plant using only two-sided tape; and

F) fuel used in the of operation of a data center, except that fuel used in emergency back-up generators to supply uninterrupted power to the data center servers and equipment qualifies for the exemption.

g) If the retailer obtains the documents identified in subsection (e) from the owner, operator or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant of a data center, the retailer shall be relieved of any tax liability relating to the sale in the event the tangible personal property purchased by the owner, operator, tenant, contractor or subcontractor from the retailer is not used by the owner, operator, tenant, contractor or subcontractor in the construction or operation of a data center identified in the exemption certificate issued by DCEO. If it is subsequently determined that the tangible personal property was not used in the construction or operation of a qualifying data center, the owner, operator, tenant, contractor or subcontractor shall be liable for Use Tax on the purchase of the tangible personal property for which an exemption was claimed under this Section.

h) Tangible Personal Property Leased to Owners, Operators, Contractors, Subcontractors and Tenants of Data Centers

1) Prior to January 1, 2025, except ~~Except~~ as provided in subsection ~~subsections~~ (h)(2) ~~and (h)(3)~~, ~~and~~ tangible personal property that is purchased by a lessor and leased to an owner, operator or tenant, or a contractor or subcontractor of the owner, operator or tenant, of a data center, does not qualify for the data center exemption. The exemption does not extend to lessors. Lessors of tangible personal property under true leases are deemed to be the users of that property. Consequently, lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on

their cost price for the items. (See Section 130.220 (Sales to Lessors of Tangible Personal Property) and Section 130.2010 (Persons Who Rent or Lease the Use of Tangible Personal Property to Others).)

2) Prior to January 1, 2025, tangible~~Tangible~~ personal property that is purchased by an owner, operator or tenant, or a contractor or subcontractor of the owner, operator or tenant, of a data center, as a lessor, and leased to an owner, operator or tenant of a data center, will qualify for the data center exemption.

EXAMPLE: The owner of a data center purchases servers from its supplier and leases the servers to a tenant of the data center for use in the data center. The servers meet the definition of "qualified tangible personal property" and the owner may purchase the servers using the data center exemption.

3) In the case of data centers that were in existence prior to January 1, 2020 and have obtained an exemption certificate, computer equipment or enabling software leased to upgrade, supplement or replace existing computer equipment or enabling software purchased or leased, that would have qualified as qualified tangible personal property when purchased or leased, is exempt. (See subsection (d).) In the case of data centers that were in existence prior to January 1, 2020, the lessor of the computer equipment or enabling software that is leased to the owner, operator or tenant of the data center after January 1, 2020 may claim the exemption for the first lease of computer equipment or enabling software after January 1, 2020 to upgrade, supplement or replace existing computer equipment or enabling software.

4) On and after January 1, 2025, lessors who are subject to the tax on leases of tangible personal property under the Act and who make purchases of tangible personal property for lease may make such purchases tax-free for resale. [35 ILCS 120/2c] On and after January 1, 2025, the exemption under this Section extends to the gross receipts from the lease of qualifying property used in the construction or operation of a data center to an owner, operator, or tenant of the

data center or to a contractor or subcontractor of the owner, operator, or tenant.

i) An item that initially qualifies for the data center exemption that is converted to a nonexempt use or is moved to a nonqualified location will become subject to tax at the time of its conversion based on the lesser of the purchase price or fair market value of the item at the time of conversion.

j) The exemption, for tangible personal property used in the construction or operation of a data center, in Section 2-5(44) of the Retailers' Occupation Tax Act and this Section is not subject to the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.2010 Persons Who Rent or Lease the Use of Tangible Personal Property to Others

a) Persons Who Rent or Lease the Use of Tangible Personal Property to Others – When Liable For Retailers' Occupation Tax – Conditional Sales
If persons who are engaged in the business of selling tangible personal property to purchasers for use or consumption purport to rent or lease the use of any such property to a nominal lessee or bailee, but in fact sell such tangible personal property to the nominal lessee or bailee for use or consumption, such persons are liable for payment of the Retailers' Occupation Tax. This is the case, for example, when the transaction involves a lease with a dollar or other nominal option to purchase. Such a transaction is considered to be a conditional sale from the outset, and all of the receipts from the transaction are subject to Retailers' Occupation Tax. The retailer, however, may collect, for each tax return period, only the tax applicable to that part of the selling price actually received during such tax return period. [35 ILCS 105/9]

b) Persons Who Rent or Lease the Use of Tangible Personal Property to Others – When Not Liable For Retailers' Occupation Tax – True Leases Prior to January 1, 2025
Prior to January 1, 2025, persons~~Persons~~ who, under bona fide agreements, rent or lease the use of automobiles under lease terms of more than one

year, furniture, bus tires, costumes, towels, linens or other tangible personal property to others are, to this extent, not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Retailers' Occupation Tax Act and are not required to remit Retailers' Occupation Tax measured by their gross receipts from such transactions. However, such lessors (not being resellers) are users of the property and are subject to the Use Tax when purchasing tangible personal property which they rent or lease to others (see Sections 150.201 and 150.305(e) of the Use Tax (86 Ill. Adm. Code 150) and Section 130.220 of this Part). Except as provided in Sections 130.2011 and 130.2012 of this Part, such lessors incur Use Tax even if the tangible personal property is leased to an exempt entity that has been issued an exemption identification number under Section 130.2007 of this Part. On and after January 1, 2025, except for lessors of motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State, such lessors are subject to Retailers' Occupation Tax on such lease or rental transactions. See Sections 130.102 and 130.2013. On and after January 1, 2025, the provisions of this subsection (b) continue to apply to lessors of motor vehicles (other than rentors of automobiles under lease terms of one year or less – see subsection (c)), watercraft, aircraft, and semitrailers as defined in Section 1-187 of the Illinois Vehicle Code that are required to be registered with an agency of this State.

c) Rentors of automobiles under lease terms of one year or less incur neither Use Tax liability on the cost price of the vehicle(s), nor Retailers' Occupation Tax liability on rental receipts. Persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less incur liability under the Automobile Renting Occupation and Use Tax Act [35 ILCS 155]. The Automobile Renting Occupation Tax rules are found at 86 Ill. Adm. Code 180.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.2011 Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals – Obsolete beginning January 1, 2025

a) Effective January 1, 1996 through December 31, 2000, and on and after August 2, 2001, sales of computers and communications equipment utilized for any hospital purpose that are sold to persons who lease those items to exempt hospitals are not subject to Retailers' Occupation Tax. [35 ILCS 120/2-5(36)] As noted in this subsection, the exemption is not available during the period January 1, 2001 through August 1, 2001 because it expired under the provisions of Section 2-70 of the Retailers' Occupation Tax Act [35 ILCS 120/2-70] and was not reinstated until August 2, 2001. The exemption is otherwise available, provided that:

1) the computers and communications equipment described above must all be purchased for lease to a tax exempt hospital under a lease that has been executed or is in effect at the time of purchase;

2) the lease must be for a period of one year or longer; and

3) the lease must be to a hospital that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act (see Section 130.2007 of this Part).

b) Effective January 1, 1996 through December 31, 2000, and on and after August 2, 2001, sales of equipment, other than that specified in subsection (a), used in the diagnosis, analysis, or treatment of hospital patients that is sold to persons who lease that equipment to exempt hospitals is not subject to Retailers' Occupation Tax. [35 ILCS 120/2-5(36)] As noted in this subsection, the exemption is not available during the period January 1, 2001 through August 1, 2001 because it expired under the provisions of Section 2-70 of the Retailers' Occupation Tax Act [35 ILCS 120/2-70] and was not reinstated until August 2, 2001. The exemption is otherwise available, provided that:

1) the equipment described above must all be purchased for lease to a tax exempt hospital under a lease that has been executed or is in effect at the time of purchase;

2) the lease must be for a period of one year or longer; and

3) the lease must be to a hospital that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act (see Section 130.2007 of this Part).

c) The retailer must retain the certification described below in the retailers' books and records to properly document the exemption described in this Section.

1) When this exemption may be properly claimed on the purchase of computer or other communications equipment, the purchaser must give the seller a certification stating that the computer or other communications equipment is being purchased for lease to a tax exempt hospital under a lease for a period of one year or longer executed or in effect at the time of the purchase.

2) When this exemption may be properly claimed on the purchase of equipment used in the diagnosis, analysis, or treatment of hospital patients, the purchaser must give the seller a certification stating that the equipment is being purchased for lease to a tax exempt hospital under a lease for a period of one year or longer executed or in effect at the time of the purchase, and that the equipment is for use in the diagnosis, analysis, or treatment of hospital patients.

3) The certification described in subsections (c)(1) and (c)(2) of this Section must also contain all of the following:

A) The seller's name and address;

B) The purchaser's name and address;

C) A description of the tangible personal property being purchased;

D) The purchaser's signature and date of signing;

E) The name and address of the hospital and its tax exemption identification number issued by the Department; and

F) The date the lease was executed and the lease period.

d) For purposes of this Section, "hospital patients" means persons who seek any form of medical care including, but not limited to, medical treatment, testing, diagnosis, or therapy at a hospital or at another location under the control and supervision of a hospital. For example, persons who are sent by doctors for X-rays or other tests at qualifying hospitals, even though those persons are not admitted to those hospitals, are considered hospital patients.

e) On and after January 1, 2025, the exemption under this Section is rendered obsolete by the changes made in Article 75 of Public Act 103-592 extending the Retailers' Occupation Tax to the taxation of leases. On and after January 1, 2025, purchases for lease of the items described in this Section are tax-free purchases for resale. See Section 130.210(e). On and after January 1, 2025, the lease of the items described in this Section to a hospital that has an active sales tax exemption identification number in furtherance of the hospital's purpose is exempt. [35 ILCS 120/2-5(11)]

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.2012 Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies – Obsolete beginning January 1, 2025

a) Effective January 1, 1996 through December 31, 2000, and on and after August 2, 2001, sales of tangible personal property to a lessor who leases that property to a governmental body are not subject to Retailers' Occupation Tax. [35 ILCS 120/2-5(37)] As noted in this subsection, the exemption is not available during the period January 1, 2001 through August 1, 2001 because it expired under the provisions of Section 2-70 of the Retailers' Occupation Tax Act [35 ILCS 120/2-70] and was not reinstated until August 2, 2001. The exemption is otherwise available, provided that:

1) the tangible personal property must be purchased for lease to a governmental body under a lease that has been executed or is in effect at the time of purchase;

2) the lease must be for a period of one year or longer; and

3) the lease must be to a governmental body that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act (see Section 130.2007 of this Part).

b) When this exemption may be properly claimed, the purchaser must give the seller a certification stating that the property is being purchased for lease to a governmental body, under a lease of one year or longer executed or in effect at the time of the purchase and containing all of the following:

1) The seller's name and address;

2) The purchaser's name and address;

3) A description of the tangible personal property being purchased;

4) The purchaser's signature and date of signing;

5) The name of the governmental body and its tax exemption identification number issued by the Department; and

6) The date the lease was executed and the lease period.

c) On and after January 1, 2025, the exemption under this Section is rendered obsolete by the changes made in Article 75 of Public Act 103-592 extending the Retailers' Occupation Tax to the taxation of leases. On and after January 1, 2025, purchases for lease of the items described in this Section are tax-free purchases for resale. See Section 130.210(e). On and after January 1, 2025, the lease of the items described in this Section to a governmental body that has an active sales tax exemption identification number in furtherance of the governmental body's purpose is exempt. [35 ILCS 120/2-5(11)]

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.2013 Persons in the Business of Both Renting and Selling Tangible Personal Property – Tax Liabilities, Credit

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

a) Purchases of Tangible Personal Property for Rental

1) Purchases of Tangible Personal Property for Rental - Applicable on and after the January 1, 2025 Changes to Tax on Leases by Public Act 103-592

A) *On and after January 1, 2025, a sale to a lessor of tangible personal property who is subject to the tax on leases implemented by* Public Act 103-592 *for the purpose of leasing that property, shall be made tax-free on the ground of being a sale for resale, provided the other provisions of* Section 2c of the Act *are met.* [35 ILCS 120/2c]

B) *A tax is imposed upon persons engaged in the business of selling at retail, which, on and after January 1, 2025, includes leasing, tangible personal property.* [35 ILCS 120/2] *In the case of leases, except as otherwise provided in* the *Act, the lessor must remit, for each tax return period, only the tax applicable to that part of the selling price actually received during such tax return period.* [35 ILCS 120/3]

C) *The inclusion of leases in the tax imposed under* the *Act by* Public Act 103-592 *does not, however, extend to motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. The taxation of these items shall continue in effect as prior to the effective date of the changes made by* Public Act 103-592 *(i.e., dealers owe retailers' occupation tax, lessors owe use tax, and lessees are not subject to retailers' occupation or use tax).* For the treatment of rentors of automobiles under a lease term of one year or less, see 86 Ill. Adm. Code 180.101.

2) Purchases of Tangible Personal Property for Rental –Prior to the January 1, 2025

A) Use Tax is due whenever tangible personal property is purchased for use. For Illinois sales tax purposes, lessors of

tangible personal property under true leases are deemed to be the users of that property. Consequently, lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on their cost price of the items they purchase for rental purposes. (See Section 130.2010 of this Part.) The only exception is the rentor of an automobile under a lease term of one year or less. (See 86 Ill. Adm. Code 180.101.) (Further references in this Section to "Use Tax" due on a purchase includes the Use Tax and all applicable local occupation tax reimbursement obligations due on that purchase.)

B) Persons who sell tangible personal property to lessors who will rent or lease that property incur Illinois and local Retailers' Occupation Tax liabilities on their gross receipts from such sales. Consequently, when a lessor purchases tangible personal property for rental purposes, he should pay his Use Tax liability to his supplier. If the lessor does not pay the Use Tax to his supplier, he must self-assess and pay it directly to the Department. Persons who are lessors and whose only selling activity consists of selling items that come off lease and are no longer needed for rental purposes cannot purchase for resale.

C) If an item is placed in a rental inventory, it has been purchased for rental purposes and Use Tax is due. "Rental inventory" means that the owner, in order to state his intended use of the property as rental property, has recorded the property in his books and records as rental property in accordance with generally accepted accounting principles. Depreciation of property used for rental purposes demonstrates an intent to include that property in rental inventory.

D) The provisions of this subsection (a)(2) continue to apply on and after January 1, 2025 to motor vehicles (other than automobiles under lease terms of one year or less – see subsection (c) of Section 130.2010), watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle

Code, that are required to be registered with an agency of this State, for which the tax on lease receipts under the provisions of Article 75 of Public Act 103-592 does not apply.

b) Purchases of Tangible Personal Property for Resale
If a retailer purchases tangible personal property for resale, no tax is due on that transaction so long as all of the requirements of Section 130.1405 of this Part are satisfied. If an item is purchased for resale and placed in a sales inventory immediately after it is purchased, the Department will determine that it has been purchased for resale for so long as it remains in the sales inventory. "Sales inventory" means that the owner, in order to demonstrate his intention to resell the property, has recorded the property in his books and records as being for sale in accordance with generally accepted accounting principles. The provisions of this subsection (b) apply to items purchased on or after January 1, 2025 exclusively for lease if those items will be subject to the tax on lease receipts under the provisions of Article 75 of Public Act 103-592.

c) Purchases of Tangible Personal Property by Persons Who Both Rent It and Sell It to Others but Who Do Not Maintain Separate Rental and Sales Inventories

1) Provisions Applicable on and after January 1, 2025

Some persons function as combination lessors/retailers and do not maintain separate rental and sales inventories. These persons purchase tangible personal property to rent to others and also purchase tangible personal property to sell to others without making such property available for rental. On and after January 1, 2025, except for motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State, such persons are authorized to purchase both the rental and sales inventories tax-free for resale and pay Retailers' Occupation Tax on the gross receipts from sales, including rental, of the inventory.

2) Provisions Applicable Prior to January 1, 2025

Some persons function as combination lessors/retailers and do not maintain separate rental and sales inventories. These persons purchase tangible personal property to rent to others and also purchase tangible personal property to sell to others without making such property available for rental. The question of whether the combination lessor/retailer, who does not maintain separate sales and rental inventories, incurs a Use Tax liability when purchasing items for his combined inventory depends on whether he is primarily engaged in the business of renting or is primarily engaged in the business of selling. In order to make that determination, the Department will look to this lessor/retailer's gross receipts.

A~~1~~) If the gross receipts from Illinois locations are primarily from rentals, the combination lessor/retailer who does not maintain separate rental and sales inventories is primarily a lessor who incurs a Use Tax liability on items purchased for rental purposes and a Retailers' Occupation Tax liability on all items sold at retail. This combination lessor/retailer can give suppliers certificates of resale, but only for items that will be resold without being rented. If the lessor/retailer knows, at the time of purchase, that a percentage of the items being purchased will be resold without being rented, he may give his supplier a certificate of resale specifying the percentage of items that will be resold without being rented and pay tax only on those items that will be rented before they are sold. The combination lessor/retailer who does not maintain separate rental and sales inventories and who is primarily a lessor incurs a Use Tax liability on all items that are rented before they are sold.

B~~2~~) If the gross receipts from Illinois locations are primarily from sales, including sales of items coming off lease and sales of items encumbered by leases, the combination lessor/retailer who does not maintain separate inventories is primarily a retailer. This combination lessor/retailer can purchase his entire inventory tax-free by providing certificates of resale to his suppliers. He may use items for rental purposes without incurring a Use Tax liability if the items are used in

demonstrations to potential buyers or are put to some other interim use. (See 86 Ill. Adm. Code 150.306.)

C) The provisions of this subsection (c)(2) continue to apply on and after January 1, 2025 to motor vehicles (other than automobiles under lease terms of one year or less – see subsection (c) of Section 130.2010), watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State, for which the tax on lease receipts under the provisions of Article 75 of Public Act 103-592 does not apply.

d) Persons Who Have Not Paid Tax on Tangible Personal Property that They Have Purchased for Rental Purposes – Paying Taxes Owed – Applicable Prior to January 1, 2025

Persons who have not paid Use Tax on items of tangible personal property that they purchased prior to January 1, 2025 and have used for rental purposes must check their records to find out when they made the purchases on which they still owe Use Tax. If, for example, items that were purchased tax-free under the percentage certificate of resale described in subsection (c)(2)(A) ~~(c)(1)~~ were rented before they were resold, Use Tax ~~tax~~ is due on those items. A return for each liability period for which taxes are owed must be completed and filed with the Department. If a return was filed for a period for which additional tax is due, then an amended return for that period must be completed and filed with the Department. Returns must include taxable amounts that were not reported for the periods in question and must include applicable penalty and interest.

e) Sales of Items Coming Off Lease That Are No Longer Needed in a Rental Inventory

1) On and after January 1, 2025, a lessor's sale of tangible personal property coming off lease that is no longer needed for the lessor's rental inventory is subject to Retailers' Occupation Tax regardless of whether the seller is strictly a lessor or is also engaged in the business of selling like-kind property other than leasing it. This is true because, on and after January 1, 2025, except for motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois

Vehicle Code, that are required to be registered with an agency of this State, a person who is engaged in the business of leasing or renting tangible personal property is a retailer of these items under the Act and, therefore, cannot make an isolated or occasional sale of like-kind tangible personal property that is no longer needed for the rental inventory. [35 ILCS 120/2]

2) Prior to January 1, 2025, the~~The~~ question of whether a lessor's sale of tangible personal property coming off lease that is no longer needed for the lessor's rental inventory is subject to Retailers' Occupation Tax liability depends on whether the seller is strictly a lessor, or whether the seller is otherwise engaged in the business of selling like-kind property.

A~~1~~) Prior to January 1, 2025, except as provided in subsection (e)(3), a~~A~~ person who is strictly a lessor and whose only sales are of items no longer needed for his rental inventory does not incur Retailers' Occupation Tax liability on those sales.

For example, prior to January 1, 2025, a lessor of computer equipment who does not maintain a sales inventory of computer equipment and who does not otherwise hold himself out as being in the business of selling like-kind property, incurs no Retailers' Occupation Tax liability on sales of computer equipment that he no longer wants in his rental inventory. This would be true even though the lessor advertised such sales and was required to make a considerable number of such sales over time. As long as all of the sales are of equipment no longer needed for the lessor's rental inventory, they constitute non-taxable isolated or occasional sales. (See Section 130.110 of this Part.)

B~~2~~) However, the rule is different if the lessor is otherwise engaged in the business of selling like-kind property at retail. A lessor of tangible personal property who sells like-kind property apart from his sale of items no longer needed for his rental inventory incurs Retailers' Occupation Tax liability on all retail sales of that property, including sales of items no longer needed for his

rental inventory. This is true because a person who is engaged in the business of selling tangible personal property cannot make an isolated or occasional sale of like-kind tangible personal property.

~~A)~~ For example, a lessor of computer equipment who also maintains a sales inventory of computer equipment incurs Retailers' Occupation Tax liability whenever he makes retail sales of computer equipment, including sales of computer equipment no longer needed in his rental inventory. The result would be the same even if the lessor/seller did not maintain a separate sales inventory, as such, but offered computer equipment for sale apart from items coming off lease that are no longer needed for his rental inventory. This would be the case where the lessor advertised or otherwise held himself out as a supplier of computer equipment apart from the items coming off lease and no longer needed for his rental inventory. In this situation, the lessor/seller would incur a Retailers' Occupation Tax liability on all his sales of computer equipment for use or consumption and must collect the complementary Use Tax from his customers.

3) ~~The rule is also different with respect to the sale of used motor vehicles by leasing and rental companies.~~ A person who is engaged in the business of leasing or renting motor vehicles to others and who sells a motor vehicle that is no longer needed in his rental inventory to a user or consumer incurs a Retailers' Occupation Tax liability on that sale. See Section 130.111 of this Part and 35 ILCS 120/1c. In this context, a "motor vehicle" means a passenger car defined in Section 1-157 of the Illinois Vehicle Code as *a motor vehicle of the First Division including a multipurpose passenger vehicle that is designed for carrying not more than 10 persons*. [625 ILCS 5/1-157] Vehicles not considered "passenger vehicles" as defined in Section 1-157 of the Illinois Vehicle Code (for example, trucks) are subject to the provisions of subsection (e)(2) ~~subsections (e)(1)-(2)~~ of this Section, including for periods on and after January 1, 2025.

f) Transfers of Tangible Personal Property from a Sales Inventory to a Rental Inventory and Vice Versa by Persons Who Both Rent and Sell that Tangible Personal Property to Others – Applicable Prior to January 1, 2025

1) Prior to January 1, 2025, if ~~If~~ an item is moved from a sales inventory to a rental inventory, Use Tax is due based on the cost price of that item. In this situation, the Use Tax must be self-assessed and paid on a return filed for the month in which the item was moved to the rental inventory.

2) If an item is moved from a rental inventory to a sales inventory, Retailers' Occupation Tax is due on the gross receipts from sale when the item is sold to a user or consumer. In this situation, the lessor/seller would collect the complementary Use Tax from the purchaser. However, a credit, as provided in subsection (h), may be available for Use Tax and local Retailers' Occupation Tax reimbursements paid to an Illinois supplier when the item was purchased prior to January 1, 2025 for the rental inventory.

3) The provisions of this subsection (f) continue to apply on and after January 1, 2025 to motor vehicles (other than automobiles under lease terms of one year or less – see subsection (c) of Section 130.2010), watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State, for which the tax on lease receipts under the provisions of Article 75 of Public Act 103-592 does not apply.

g) Receipts from the Rental of Tangible Personal Property

Prior to January 1, 20025, receipts~~Receipts~~ from the rental of tangible personal property under a true lease are not subject to Retailers' Occupation Tax liability. On and after January 1, 2025, receipts from the rental of tangible personal property, except for motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State, under a true lease are subject to Retailers' Occupation Tax liability. (See Sections 130.102 and ~~Section~~ 130.2010.) Receipts ~~However, receipts~~ from the rental of automobiles under lease terms of one year or less are subject to automobile renting occupation tax liability. (See 86 Ill. Adm. Code 180.)

h) Persons Who Sell Tangible Personal Property After Using It for Rental Purposes

1) As is set out in subsection (e)~~(1)~~:

A) Prior to January 1, 2025, a~~A~~ lessor whose only sales are sales of items coming off lease that are no longer needed for his rental inventory incurs no Retailers' Occupation Tax liability on those sales. On and after January 1, 2025, such lessor incurs Retailers' Occupation Tax on those sales (other than sales of motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State, for which the tax on lease receipts under the provisions of Article 75 of Public Act 103-592 does not apply).

B) Lessors who are otherwise engaged in the business of selling like-kind property incur Retailers' Occupation Tax liability on all their sales, including sales of items coming off lease that are no longer needed for their rental inventories.

C) Lessors and rentors of automobiles incur Retailers' Occupation Tax liability when they make retail sales of passenger cars coming off lease that are no longer needed for their rental inventories. See Section 130.111 of this Part and 35 ILCS 120/1c.

2) Except as provided in subsection (h)(6), a~~A~~ lessor who incurs a Retailers' Occupation Tax liability on the sale of an item coming off lease can take a credit against that liability for any Use Tax and any local Retailers' Occupation Tax reimbursements that he paid to a supplier registered to collect Illinois tax when he purchased that particular item. However, this credit cannot exceed the amount of State and local retailers' occupation tax~~Retailers' Occupation Tax~~ incurred by the lessor/retailer when he sells the item.

3) If a lessor filed a return and paid the tax directly to the Department, the lessor must file a claim to recover it. (See Subpart O.) However, this claim cannot exceed the amount of State and local retailers' occupation tax~~Retailers' Occupation Tax~~ incurred by the lessor/retailer when he sells the item.

4) Except as provided in subsection (h)(6), the~~The~~ credit is available to all lessors who are required to pay Retailers' Occupation Tax when selling an item after having used that item for rental purposes, including lessors of motor vehicles. The credit is available to all lessors (and rentors) of motor vehicles who incur Retailers' Occupation Tax liability on sales so long as Use Tax was paid to an Illinois retailer when the lessor (or rentor) purchased the particular motor vehicle being sold. If the lessor (or rentor) did not pay Use Tax to an Illinois dealer when he purchased the motor vehicle being sold but, instead, filed a return and paid the tax directly to the Department, the credit is not available and it must not be taken. (If the lessor filed a return and paid the tax directly to the Department, the lessor must file a claim to recover it. See Subpart O.)

5) There is no credit available for taxes paid by a rentor under the Automobile Renting Occupation and Use Tax Act [35 ILCS 155] or for taxes paid under the Retailers' Occupation Tax Act on lease receipts pursuant to Public Act 103-592.

6) No credit allowed for motor vehicles sold by a lessor who originally purchased the vehicles for leasing purposes using the alternative definition of "selling price" under Section 1 of the Act as amended by Public Act 98-628. On and after January 1, 2015, notwithstanding any other provision of this subsection (h) to the contrary, *a lessor who incurs a Retailers' Occupation Tax liability on the sale of a motor vehicle coming off lease may not take a credit against that liability for the Use Tax or any local Retailers' Occupation Tax reimbursements the lessor paid upon the purchase of the motor vehicle (or for any tax the lessor paid with respect to any amount received by the lessor from the lessee for the leased vehicle that was not calculated at the time the lease was executed) if the selling price of the motor vehicle at the time of purchase was calculated using the definition of "selling price" as*

defined in Public Act 98-628 [35 ILCS 120/1]. That is, if, when the lessor purchased the motor vehicle, the selling price was measured by the amount of the lease contract rather than the consideration paid to the retailer for the vehicle, then the lessor is not allowed to take the credit under this subsection (h).

i) Documentation to Support the Credit

When the credit described at subsection (h) is claimed, the lessor/seller must retain documentation demonstrating that Use Tax was paid to a supplier registered to collect Illinois tax when he purchased the item being sold and in what amount. A paid receipt from the supplier for the item on which the credit is being claimed showing the amount of Use Tax paid as a separate item is sufficient to document the credit for all items other than motor vehicles.

For motor vehicles, the credit is to be documented by a copy of the transaction reporting return filed by the Illinois dealer from whom the lessor purchased the motor vehicle. That transaction reporting return will show the amount of Use Tax that the lessor paid to the Illinois dealer. If the lessor paid Use Tax to the Department by filing a Use Tax transaction return when the vehicle was purchased, the credit is not available and must not be taken. (In this situation, the lessor would have to file a Claim for Credit to recover the Use Tax. See Subpart O of this Part.)

AGENCY NOTE: Nothing in this Section may be construed to abrogate or modify any requirements otherwise imposed upon sellers of motor vehicles by Illinois law. For example, motor vehicle leasing and rental companies that sell motor vehicles must comply with all applicable requirements of the Illinois Vehicle Code [625 ILCS 5], including the dealer licensing provisions set forth in Chapter 5 of that Act. Motor vehicle leasing and rental companies must comply with Section 4(f) of the Illinois Vehicle Franchise Act [815 ILCS 710/4(f)]. Also, motor vehicle leasing and rental companies must abide by the advertising requirements of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505], as well as the Illinois Motor Vehicle Advertising rules (14 Ill. Adm. Code 475).

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 130.ILLUSTRATION E: Tax Reimbursement Calculation Worksheet

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

P.A. 98-628: Public Act 98-628 (effective January 1, 2015) amended the Retailers' Occupation Tax Act and the Use Tax Act to provide for an alternate method of determining the selling price ("alternate selling price") subject to sales and use taxes for certain motor vehicles that are leased at the time of sale. This alternate selling price must be used when a qualifying motor vehicle is sold for the purpose of being contemporaneously leased under a fixed-term lease contract for a period of more than one year. See 86 Ill. Adm. Code 130.454 and Informational Bulletin FY 2015-03 "Leased Motor Vehicle Changes and New Reporting Requirements" for more information on which motor vehicles and which leases are subject to the alternate selling price. The alternate selling price for these leased motor vehicles is the consideration received by the lessor (i.e. leasing company) pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease.

TAX REIMBURSEMENT: In these transactions, the person selling the motor vehicle, (e.g., a motor vehicle dealership) owes Retailers' Occupation Tax. The person purchasing the motor vehicle (i.e., the leasing company) owes Use Tax. It is customary, however, for vehicle lease contracts to require lessees (i.e., "lease customers") to reimburse any sales taxes owed. If this reimbursement of tax is included in the lease contract, then, under the statute, it becomes part of the selling price subject to tax. In addition, if the lease contract includes finance charges on the tax reimbursement, these finance charges also become part of the selling price subject to tax. It is important to remember that, in these transactions, the tax is based on **the amount due under the lease contract**. **So, whatever amounts are included in the lease contract become part of the "selling price" on which tax must be calculated.**

CALCULATING TAX WHEN INCLUDED IN LEASE CONTRACT: If the lease contract includes a reimbursement of tax and also includes finance charges on that reimbursement, retailers will have to compute the total amount due under the lease in a way that ensures the proper amount of tax is paid. Regardless of how the lease payment amounts are arrived at to recover tax, the retailer is required to remit tax based on the full amount due under the lease contract, including any increase resulting from a reimbursement of tax and finance charges on that reimbursement. One way to compute this mathematically is to use the example below. Whether the retailer uses this method or uses another method to compute tax owed, the retailer must always be sure to remit tax on the total consideration received by the lessor pursuant to the lease contract, however the payments were computed.

Tax Reimbursement Calculation Worksheet

Example:

A lease contract for the sale of a qualifying motor vehicle reflects the following terms:
An amount due at signing of $5,000.
Before calculating the reimbursement of tax, the dealer determines that the lease customer will owe a payment of $700 each month for the next 36 months (*i.e.*, $25,200).
The lease contract requires the lease customer to reimburse the tax owed by the dealer and leasing company.
The combined tax rate is 7.25% (state and local taxes).

1. Enter 1.00 .....1.00
2. Enter the combined state and local tax rate as a decimal 0.0725
3. Subtract line 2 from line 1 .....0.9275
4. Divide line 1 by line 3 and round the total to 4 decimal places 1.0782
5. Enter the total taxable amount of the lease $30,200
6. Multiply line 5 by the percentage on line 4 .....$32,562
7. Multiply line 6 by the tax rate decimal on line 2 .....$2,361

The amount on line 7 is the sales tax due if the lessor is not charging interest or a finance charge on the amount of the sales tax reimbursement it charges the lessee. If the lessor chooses to charge interest or a finance charge on the sales tax reimbursement, continue with line 8.

8. Enter the total amount of the interest or finance charge the dealer will charge on the amount on line 7* $225
9. Enter the amount from line 5.....$30,200
10. Add lines 8 and 9 .....$30,425
11. Enter the amount from line 4.....1.0782
12. Multiply line 10 by line 11.....$32,804
13. Multiply line 12 by the tax rate decimal on line 2 .....$ 2,378

The amount on line 13 of the above worksheet is the sales tax due when interest or a finance charge is imposed on sales tax reimbursement the lessor charges to the lessee.
* (For example, the interest on a tax reimbursement of $2,361 at 6% interest for 36 months would equal $225).

(Source: Added at 49 Ill. Reg. _____, effective _____)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS