



Illinois Department of Revenue

Legal Services Office
101 W. Jefferson St. MC 5-500
Springfield, IL 62702

SECOND NOTICE OF PROPOSED RULEMAKING

- 1) Agency: Illinois Department of Revenue
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: Retailers' Occupation Tax, 86 Ill. Adm. Code 130
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: May 16, 2025, Issue 20, 49 Ill. Reg. 6661
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period: See attached First Notice Changes.
- 5) Final Regulatory Flexibility Analysis:
 - A. Summary of the issues raised by affected small businesses during the First Notice Period: For a summary of all issues raised, see item 8 C. The primary issue raised by small businesses relates to the fact that the legislation does not include a credit for Use Tax paid prior to January 1, 2025 on items purchased for leasing purposes that are subject to Retailers' Occupation Tax on lease receipts received on and after January 1, 2025.
 - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: As further discussed in item 8 D, below, the Department is without statutory authority to grant such a credit.
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: See attached.
- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply with the Codification Scheme: All changes requested by the Administrative Code Division have been made.
- 8) Evaluation of the comments received by the agency from interested persons during the first notice period (but not including any questions raised by the Joint Committee in a preliminary review) including:

- A. Date of any public hearing held during the first notice period. Name of the person or group requesting a hearing: No public hearing requested.
- B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments:
 - i. Noah Finley, Illinois State Director, National Federation of Independent Businesses (NFIB), 600 S. 2nd St., Suite 403, Springfield, IL 62704
 - ii. Kyle L. Alexandre, Vice President, State Government Relations, Equipment Leasing & Finance Association (ELFA), 1625 Eye Street NW, Suite 850, Washington, DC 20006
 - iii. Nathan Russo, CMI, Manager – Tax Research, Vertex Inc., 2301 Renaissance Blvd, King of Prussia, PA 19406
 - iv. Eric Fader, Special Counsel, Duane Morris LLP, 190 South LaSalle Street, Suite 3700, Chicago, IL 60603-3433 -- this was an *ex parte* communication and documents are attached.
- C. A list of all specific criticisms and suggestions raised in the comments:
 - i. National Federation of Independent Businesses (NFIB) comments.
 - 1. NFIB recommends clarifying the last sentence of Section 130.102(a)(1) by replacing “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.” with “If the tangible personal property leased or rented has no value except as a result of the services rendered and the temporary transfer of the article is a necessary and actual part of the service rendered, the object of the transfer is incident to a sale of service.”
 - 2. NFIB recommends adding an example in Section 130.102(a)(4) to explain that Use Tax is only paid once

for equipment that is supplied to customers without additional charge incident to the purchase of space and/or an amusement.

3. NFIB objects to the fact that the legislation contains no provision for a credit for Use Tax paid on the purchase of items prior to January 1, 2025 that are subject to tax on lease/rental receipts received on and after January 1, 2025. NFIB states that this will have a negative impact on small businesses, that IDOR can use executive discretion to offer such a credit, and that not to provide such a credit imposes and inequitable double-tax and is against legislative intent.

ii. Equipment Leasing & Finance Association (ELFA) comments.

1. ELFA requests an exemption from tax on lease payments made under agreements executed prior to January 1, 2025 (grandfather existing contracts). ELFA also objects to the fact that the legislation contains no provision for a credit for Use Tax paid prior to January 1, 2025 for the purchase of items that are, on and after January 1, 2025, subject to tax on lease/rental receipts.
2. ELFA requests that the Department clarify that all leases entered into prior to January 1, 2025, will be allowed an upfront, immediate Use Tax credit per the existing "Form 8654" credit mechanism against tax on lease tax receipts now that these transactions are considered a "sale".

iii. Vertex Inc., requests guidance related to the imposition of Retailers' Occupation Tax on lease receipts from "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" as discussed in Section 130.102(c) of the proposed rule.

iv. Mr. Fader had a question regarding how replacement parts would be taxed when provided under a service contract purchased separately from but in connection with leased printers. In addition, Mr. Fader suggested that the Department consider adding an example to new Section 130.102(a)(2)

related to tax on leases of tangible personal property transferred incident to a sale of service.

D. The agency's evaluation of each of the specific criticisms and suggestions:

i. Evaluation of NFIB comments.

1. The sentence in question provides guidance related to the sentence immediately before it. Because this is a Retailers' Occupation Tax rule, the objective is to address what is subject to Retailers' Occupation Tax not what is subject to Service Occupation Tax.
2. Added an example of a bowling alley, where bowling balls are provided to customers at no additional charge and Use Tax is paid upon their purchase by the bowling alley but bowling shoes are rented for an additional charge and are purchased tax-free for resale but rental charges are subject to Retailers' Occupation Tax.
3. The Department's authority to adopt rules implementing the lease tax legislation derives from the statute. Without authority for a credit provision in the statute, the Department is without authority to allow such a credit. When the General Assembly intends to authorize a credit for Use Tax paid, it includes a credit provision in the statutes. See, for example, the "One-Time Transitional Use Tax Credit" authorized under the Rental Purchase Agreement Occupation and Use Tax Act (35 ILCS 180/30). With respect to the assertion of double taxation, prior to January 1, 2025, Illinois did not tax gross receipts from the lease of tangible personal property as described in this letter. To the extent lessees reimbursed lessors for the lessor's Use Tax liability, this was not a result of tax law, but private contractual agreements. Under the Retailers' Occupation Tax Act as amended by Article 75 of Public Act 103-592, with certain exceptions, lessors are subject to tax on the gross receipts received on or after January 1, 2025 from existing or new leases of tangible personal property. The fact that a lessor of tangible personal property was

subject to tax under the Use Tax Act on its purchase of that property, prior to January 1, 2025, does not exempt or exclude the lessor from Retailers' Occupation Tax on lease receipts received on or after January 1, 2025, on the taxable lease of the property. The incidence of tax prior to January 1, 2025, was on a different transaction than the incidence of tax beginning January 1, 2025. As the First District Illinois Appellate Court stated in *New Heights Recovery & Power, LLC v. Bower*, "A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law." *New Heights Recovery & Power, LLC v. Bower*, 347 Ill. App. 3d 89, 96 (2004). "Our supreme court has held there is no vested right in the mere continuation of a law and the legislature has an ongoing right to amend a statute." *Id.*

ii. Evaluation of ELFA comments.

1. With respect to the request for an exemption from tax on lease payments made under agreements executed prior to January 1, 2025 (grandfather existing contracts), IDOR is without authority to provide an exemption that is not granted under the lease tax legislation. With respect to the request for a credit against Use Tax paid on purchases of items to lease prior to January 1, 2025, see IDOR's evaluation of NFIB's similar comment at (D)(i)(3), above.
2. With respect to a credit for Use Tax paid, Fiscal Year Bulletin 86-54, issued in State fiscal year 1986, set forth the policy that is now codified in rules at 86 Ill. Adm. Code 130.2013(h). This provision authorizes a credit against Retailers' Occupation Tax owed on the sale of an item coming off lease for Use Tax and any local Retailers' Occupation Tax reimbursements that the lessor paid to a supplier registered to collect Illinois tax when he purchased the item for lease, but not to exceed the amount of Retailers' Occupation Tax incurred by the lessor/retailer when he sells the item. That provision is limited, however, by its terms to "sales

of items coming off lease”. The credit does not extend to Retailers’ Occupation Tax owed for gross receipts from the lease or rental of an item. This fact, combined with the explicit absence of a Use Tax credit in the lease tax legislation discussed in item 1 above, prevents the Department from allowing a credit other than as provided under 86 Ill. Adm. Code 130.2013(h).

- iii. Evaluation of Vertex Inc. comments. Section 130.103(b) is being revised to refer to “the kinds of items that are required to be titled with an agency of this State but that are not required to be registered” in an effort to draw a brighter line between titled property that is subject to the lease tax provision and titled property not subject to those provisions. That is, if the item is the *kind of* item that, if used on the roads, would be authorized to be used on the roads and required to be registered for such use with an agency of this State, then, even if not registered because it will only be used off-road, Retailers’ Occupation Tax is not imposed on lease receipts from that item. This is distinguished from the kinds of titled items that are prohibited from being registered for use on the roads, such as ATVs and off-road motorcycles. The usage of “kind of” also parallels the usage of “kind of tangible personal property” in Section 3 of the Retailers’ Occupation Tax related to transaction returns for registered property.
- iv. Evaluation of Mr. Fader’s comments. First Notice Changes are being proposed to add to Section 130.102(j) the following sentence: “In addition, if the repair or replacement parts are provided by the lessor as part of an optional service contract separate and distinct from the lease or rental agreement for the tangible personal property to which they will be attached, tax on the transfer of the repair or replacement parts incident to the separate service contract is determined under the Service Occupation Tax Act.” Examples regarding sales of service involving transfers of property by lease, if added, will be added to Service Occupation Tax rules.
- E. A statement that the agency has considered all comments received during the first notice period: The Department has reviewed and considered all comments received during the first notice period.

- 9) An analysis of the expected effects of the proposed rulemaking, including:
- A. Impact on the public: This rulemaking amends Part 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 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. The public will be impacted in that lessees of most tangible personal property are now subject to Use Tax as lessees of the tangible personal property and lessors of motor vehicles who purchase the motor vehicles for long-term leases are now assessed Use Tax measured by the amount due under the lease contract rather than the amount the lessor pays the seller for the motor vehicle.
 - B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: The Department has made corresponding changes to tax returns to reflect these statutory changes.
 - C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any methods not utilized: Persons engaged in the business of leasing or renting most tangible personal property in Illinois are subject to Retailers' Occupation Tax on the gross receipts from those transactions on and after January 1, 2025, including small businesses. Persons selling motor vehicles for long-term lease are subject to Retailers' Occupation Tax based on the amount due under the lease contract. Affected taxpayers are already subject to these requirements, and no additional skills are required to comply. The Department is currently administering the tax as required by the statute, and therefore, the methods described in 5 ILCS 100/30 are not legal or feasible in meeting the requirements of the Retailers' Occupation Tax Act. The Department published the proposed rulemaking in the Illinois Register and on the Department's website.
- 10) A justification and rationale for the proposed rulemaking, including:
- A. Any changes in statutory language requiring the proposed rulemaking:

Public Acts 103-592 and 98-628 enacted the statutory language that is being incorporated into Part 130.

- B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: None
- C. Relationship to any relevant federal rules, regulations, or funding requirements: None
- D. Court orders or rulings which are related to the rulemaking: None
- E. A complete explanation of any other reasons for the proposed rulemaking: No other reasons exist.

- 11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No.

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

Samuel J. Moore
Legal Services Office
Illinois Department of Revenue
101 W. Jefferson
Springfield, Illinois 62702
REV.GCO@illinois.gov

Phone: (217) 782-7055



Illinois Department of Revenue

Legal Services Office Room 5-500
101 W. Jefferson St.
Springfield, IL 62702

FIRST NOTICE CHANGES

Agency: Illinois Department of Revenue

Rulemaking: Retailers' Occupation Tax (86 Ill. Adm. Code 130; 49 Ill. Reg. 6661)

Changes:

1. Delete line 268
2. Immediately below line 505, insert the following:
 - "4) On and after January 1, 2025, a retailer maintaining a place of business in this State that makes retail sales of tangible personal property to Illinois customers from a location or locations outside of Illinois is engaged in the occupation of selling at retail in Illinois. [35 ILCS 120/2(b-2)] For the definition of "retailer maintaining a place of business in this State", see 86 Ill. Adm. Code 150.201. Such retailer is liable for all applicable State and local retailers' occupation taxes administered by the Illinois Department of Revenue on all retail sales to Illinois customers from locations outside of Illinois. To determine whether a retail sale to an Illinois customer is made from a location outside of Illinois, see 86 Ill. Adm. Code 270.115.
 - A) A retailer making sales into Illinois shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it has met the definition of "retailer maintaining a place of business in this State" as set out in 86 Ill. Adm. Code 150.201 for the preceding 12-month period. If the retailer meets any of the criteria in the definition of "retailer maintaining a place of business in this State" for a 12-month period, it is a retailer engaged in the occupation of selling at retail in Illinois and is required to remit the Retailers' Occupation Tax and all retailers' occupation taxes imposed by local taxing jurisdictions in Illinois, provided the local taxes are administered by the Department, and to file all applicable returns for one year. A retailer maintaining a place of business in this State shall

begin collecting taxes for sales beginning on the first day of the quarter immediately following the end of the 12-month lookback period. Taxes so collected shall be remitted to the Department no later than the 20th day of the calendar month following the month in which they were collected or as otherwise provided in accordance with Section 3 of the ROTA.

- B) At the end of that one-year period, during which the retailer maintaining a place of business in this State was remitting taxes, the retailer shall determine whether it met the definition of "retailer maintaining a place of business in this State" as set out in 86 Ill. Adm. Code 150.201 for the preceding 12-month period. If the retailer met any of the criteria in the definition of "retailer maintaining a place of business in this State" for the preceding 12-month period, it is a retailer engaged in the occupation of selling at retail in Illinois and is required to remit all applicable State and local retailers' occupation taxes and file returns for the subsequent year.
- C) If, at the end of the one-year collection period described in subsection (a)(4)(B), the retailer determines that its activities in Illinois did not meet any of the criteria listed in the definition of "retailer maintaining a place of business in this State" as set out in 86 Ill. Adm. Code 150.201 during that year, it must discontinue remitting State and local retailers' occupation taxes. If a retailer is no longer required to remit State and local retailers' occupation taxes, it must notify the Department. However, it may alternatively notify the Department that it wishes to change its registration status to voluntarily collect and remit Use Tax as a courtesy to its Illinois purchasers, since those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. (See 86 Ill. Adm. Code 150.805 for additional information.) All notifications made under this subsection (a)(4)(C) shall be made electronically as required by the Department.
- D) If a retailer is no longer required to remit State and local retailers' occupation taxes, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin remitting State and local retailers' occupation taxes. For each quarter ending on the last day of March, June, September, and December, any retailer making sales into Illinois must examine its activities in Illinois for the immediately preceding 12-month period to determine whether it met the definition of "retailer maintaining a place of business in this State" as set out in 86 Ill. Adm. Code 150.201. If it met any of the criteria in the definition of "retailer maintaining a place of business in this State" for the preceding 12-month period, it must remit State and local retailers' occupation taxes for the following 12-month period. At the end of that 12-month period, it must examine its activities in Illinois, to determine whether it met the definition of "retailer maintaining a

place of business in this State" as set out in 86 Ill. Adm. Code 150.201, to determine if it must continue to remit tax."

3. Immediately blow line 779, insert the following:

"C) Space/Amusement Example. If a bowling alley charges a fee for bowling, provides bowling balls for no charge as part of the amusement, and charges a rental fee for bowling shoes, tax applies as follows. The true object of the transaction is bowling and not the transfer of bowling balls or bowling shoes. Since no charge is made for customers' use of the bowling balls, upon purchasing the bowling balls the bowling alley will pay a one-time Use Tax for the bowling balls to its supplier, if registered to collect Use Tax, or directly to the Department, if not. Since the bowling alley charges a rental fee for the bowling shoes, the bowling alley will purchase the bowling shoes tax-free for resale and remit Retailers' Occupation Tax on the gross receipts received from each rental of the bowling shoes."

4. In line 944, immediately after the period, insert "In addition, if the repair or replacement parts are provided by the lessor as part of an optional service contract separate and distinct from the lease or rental agreement for the tangible personal property to which they will be attached, tax on the transfer of the repair or replacement parts incident to the separate service contract is determined under the Service Occupation Tax Act."

5. In line 966, replace "rental of items" with "rental of the kinds of items".

6. Replace line 6814 with "Governmental Bodies"

7. Replace lines 6853 through 6860 with the following:

c) On and after January 1, 2025, the exemption under this Section is rendered obsolete with respect to the purchase for lease of tangible personal property that is subject to the tax on leases as a result of the changes made in Article 75 of Public Act 103-592 which extends the Retailers' Occupation Tax to the taxation of leases. On and after January 1, 2025, purchases for lease of these items are tax-free purchases for resale. See Section 130.210(e). On and after January 1, 2025, the lease of these items 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)] The exemption under this Section continues in effect , however, for the purchase for lease 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.