

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
150.110	Amendment
150.201	Amendment
150.305	Amendment
150.310	Amendment
150.325	Amendment
150.337	Repealed
150.525	Repealed
150.701	Amendment
150.705	Amendment
150.716	Repealed
150.801	Amendment
150.901	Amendment
150.905	Amendment
150.1305	Amendment
150.1310	Amendment
150.1401	Amendment
150.1405	Amendment
150.1420	Amendment
- 4) Statutory Authority: Implementing the Use Tax Act [35 ILCS 105] and authorized by Sections 2505-90 and 2505-795 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends several sections of Part 150, Use Tax, to reflect new statutory developments, decisional law, and Department policies. This rulemaking also deletes outdated provisions in Part 150 and provides various technical changes.

Section 150.110 is being amended to update the presumed average life expectancy of a motor vehicle from 50 months to 60 months and the rate of depreciation from 2% to 1.67% to reflect the federal reasonable allowance for depreciation. The service life for tangible personal property other than motor

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

vehicles is also tied to that allowed under federal law or as set out in a settlement agreement between the taxpayer and the IRS or the Department.

Section 150.201 is being amended to include and italicize statutory language as well as removing obsolete language in the definition of a retailer maintaining a place of business in this State that was removed by P.A. 101-0031.

Section 150.337 is being repealed as the exemption sunset June 30, 2016.

Sections 150.525 is being repealed as all audited cash registers are capable of calculating dual rates, and hand calculations are no longer necessary.

Section 150.716 is being repealed as P.A. 86-444 amended the vehicle code 625 ILCS 5/3-106 – removing “display certificate issuance” and deleting the requirement for a “trailer” to have display certificates.

Section 150.801 is being amended to add clarification to the language, correct pronoun usage, and provide reference to the Wayfair Nexus rule and the Leveling the Playing Field for Illinois Retail Act rules.

Other sections are being amended to update language, delete outdated references, make pronouns gender neutral, and make other technical changes.

- 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

<u>Section Number</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
150.701	Amendment	47 Ill. Reg. 12939; September 1, 2023

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 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:

Kimberly Rossini
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-2844
REV.GCO@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Persons making sales of tangible personal property at retail and for resale are 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:

44-45 Retail Trade
48-49 Transportation and Warehousing
 - B) Categories that the agency reasonably believes the rulemaking will impact, including:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- ii. regulatory requirements;
- iii. purchasing;
- viii. record keeping

15) Regulatory Agenda on which this rulemaking was summarized: July 2023

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

Section 150.110 How ~~to~~ Compute Depreciation

- a) For the purpose of determining the "reasonable allowance for depreciation" in the case of motor vehicles brought into the State before January 1, 2024, the Department will presume that the average life expectancy of a motor vehicle is 50 months and that the rate of depreciation that is therefore allowable is 2% of the selling price each month for such period of prior out-of-State use. A fraction of a month (including any period which is less than a month after the date of purchase) will be disregarded.

For motor vehicles brought into the State on or after January 1, 2024, for the purpose of determining the "reasonable allowance for depreciation", the Department will presume that the average life expectancy of a motor vehicle is 60 months and that the rate of depreciation that is therefore allowable is 1.67% of the selling price each month for such period of prior out-of-State use.

- b) For purposes of this Section~~In this connection~~, a "month" does not mean a calendar month, but means a period of one month from the date of purchase. A fraction of a month (including any period which is less than a month after the date of purchase) will be disregarded. For example, if the motor vehicle ~~was~~~~were~~ bought on the fifth day of one month, one month of depreciation will be considered to have accrued on the fifth day of the following month. In no case will depreciation be allowed for any period of time before the physical possession of the motor vehicle is delivered to the purchaser.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Example: A person purchases a car for \$15,000 on January 2 and does not bring the car into Illinois until March 1. The prior out-of-State use is only 1 month since partial months are disregarded. The taxable base will be reduced by \$251 (1.67% of \$15,000).

- c) Effective January 1, 1968, as to tangible personal property other than motor vehicles brought into the State before January 1, 2024, a "reasonable allowance for depreciation" is deemed by the Department to be the amount of depreciation determined by use of the straight line method of depreciation. For purposes of depreciation, the service life for tangible personal property other than motor vehicles brought into the State on or after January 1, 2024, shall be the useful life or recovery period allowed under federal law for like kind of property, or in the event of a settlement agreement, the useful life or recovery period agreed to in such settlement between the taxpayer and the Internal Revenue Service or the Department.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART B: DEFINITIONS

Section 150.201 General Definitions

"Act" means the Use Tax Act [35 ILCS 105]-

"Department" means the Department of Revenue.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

"Purchase at retail" means the acquisition of the ownership of or title to tangible personal property through a sale at retail.

"Purchaser" means anyone who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

For purposes of this Part, "remote retailer" has the same meaning as defined in 86 Ill. Adm. Code 131.105.

"Retailer" means and includes every person engaged in the business of selling tangible personal property for use and not for resale.

Effective October 1, 1974, a person who is the recipient of a grant or contract under Title VII of the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.] and serves meals to participants in the federal Nutrition Program for the Elderly in return for contributions established in amount by the individual participant pursuant to a schedule of suggested fees as provided for in the federal Act is not a retailer under the Act with respect to such transactions. [35 ILCS 105/2]

Nonprofit Sellers

A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) is a retailer with respect to such transactions, excepting only a person organized and operated exclusively for charitable, religious or educational purposes either (1), to the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person, or (2), to the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit. The selling of schoolbooks and school supplies by schools at retail to students is not "primarily for the purposes of" the school which does such selling. This definition does not apply to nor subject to taxation occasional dinners, social or similar activities of a person organized and operated exclusively for charitable, religious or educational purposes, whether or not such activities are open to the public.

Special Order Sales

A person who holds oneself out as being engaged (or who habitually engages) in selling tangible personal property at retail is a retailer under the Act with respect to such sales (and not primarily

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

in a service occupation) notwithstanding the fact that such person designs and produces such tangible personal property on special order for the purchaser and in such a way as to render the property of value only to such purchaser, if such tangible personal property so produced on special order serves substantially the same function as stock or standard items of tangible personal property that are sold at retail.

When Construction Contractor or Real Estate Developer is a Retailer

A construction contractor or real estate developer who, in the course of conducting such business, transfers tangible personal property to users or consumers in the finished form in which it was purchased, and which does not become real estate, under any provision of a construction contract or real estate sale or real estate sales agreement entered into with some other person arising out of or because of nontaxable business, is a retailer to the extent of the value of the tangible personal property so transferred. [35 ILCS 105/2] See also 86 Ill. Adm. Code 130.1940.

Isolated or Occasional Sales

The isolated or occasional sale of tangible personal property at retail by a person who does not hold oneself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail or a sale through a bulk vending machine does not make such person a retailer under the Act. [35 ILCS 105/2]

Leasing or Renting Motor Vehicles

A person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for the purchaser's use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under the Act to the extent of the value of the vehicle sold. For the purpose of this paragraph, "motor vehicle" has the meaning prescribed in Section 1-157 of the Illinois Vehicle Code [625 ILCS 5], as now or hereafter amended. (Nothing provided herein shall affect liability

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

incurred under the Act because of the use of such motor vehicles as a lessor.) [35 ILCS 105/1a]

"Retailer maintaining a place of business in this State", or any like term, means and includes any of the following retailers:

A retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State. However, the ownership of property that is located at the premises of a printer with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, or other place of business within this State. [35 ILCS 105/2(1)]

It does not matter that an agent may engage in business on the agent's own account in other transactions, nor that the agent may act as an agent for other persons in other transactions, nor that the agent is not an employee but is an independent contractor acting as an agent. The term "agent" is broader than the term "employee". "Agent" includes anyone acting under the principal's authority in an agency capacity.

Beginning July 1, 2011, a retailer having a contract with a person located in this State under which:

the retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

the retailer provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the retailer.

The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers in this State under all such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. [35 ILCS 105/2(1.2)]

Beginning January 1, 2015, a retailer having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer by providing to the potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons. Examples of mechanisms that allow the retailer to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers who are referred to the retailer by all persons in this State under such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. A retailer meeting the requirements of this paragraph shall be presumed to be maintaining a place of business in this State but may rebut this presumption by submitting proof that the referrals or other activities pursued within this State by such persons were not sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods. [35 ILCS 105/2(1.1)]

The following documentation is required in order to rebut this presumption:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Retailer Agreement. The retailer must have an agreement that prohibits persons operating under the agreement from engaging in any solicitation activities in Illinois that refer potential customers to the retailer, including, but not limited to, distributing flyers, coupons, newsletters, and other printed promotional materials or electronic equivalents, verbal soliciting, initiating telephone calls, and sending e-mails or text messages. If the person in Illinois with whom the retailer has an agreement is an organization or corporation, such as a club or nonprofit group, the agreement must provide that the organization will maintain on its website information alerting its members to the prohibition against each of the solicitation activities described in this paragraph. The agreement must be maintained in the retailer's records and shall be made available to the Department for inspection or audit.

Annual Certification. The person or persons operating under the agreement in Illinois shall certify by January 1 of each year, under penalty of perjury, that they have not engaged in any prohibited solicitation activities in Illinois at any time during the previous year. If the person in Illinois with whom the retailer has an agreement is an organization or corporation, the annual certification shall also include a statement from the organization or corporation, signed by an officer of the organization or corporation, certifying that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described in this paragraph. The certification should be made on forms prescribed by the Department, must be completed and provided to the retailer, must be maintained in the retailer's records, and shall be made available to the Department for inspection or audit. If the retailer accepts a properly and timely completed certification in good faith and the retailer does not know or have reason to know that the certification is false or fraudulent, that certification will be conclusive proof that the person that provided the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

certification was in compliance with the agreement for the year covered by the certification. If the retailer fails to obtain the certifications from all persons operating under the agreements and fails to make those records available upon the Department's request, the presumption that the retailer is maintaining a place of business in Illinois will not be rebutted.

Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois if:

the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or

the retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

Beginning January 1, 2020, neither the gross receipts from nor the number of separate transactions for sales of tangible personal property to purchasers in Illinois that a retailer makes through a marketplace facilitator and for which the retailer has received a certification from the marketplace facilitator pursuant to Section 2d of the Act shall be included for purposes of determining whether the retailer has met the thresholds of this paragraph. [35 ILCS 105/2(9)]

Beginning January 1, 2020, a marketplace facilitator who meets either of the following thresholds is considered the retailer for each sale of tangible personal property made through its marketplace:

the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois by the marketplace facilitator and by marketplace sellers selling through the marketplace are \$100,000 or more; or

the marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

transactions for the sale of tangible personal property to purchasers in Illinois. [35 ILCS 105/2(10) and 35 ILCS 105/2d]

For purposes of this definition, a retailer without physical presence in this State or a marketplace facilitator shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets either of the foregoing criteria for the preceding 12-month period. If the retailer or marketplace facilitator meets the threshold of either criteria for a 12-month period, it is considered a retailer maintaining a place of business in this State and is required to collect and remit use tax and file returns for one year.

At the end of that one-year period, the retailer or marketplace facilitator shall determine whether it met the threshold of either criteria during the preceding 12-month period. If the retailer or marketplace facilitator met either of the criteria for the preceding 12-month period, it is considered a retailer maintaining a place of business in this State and is required to collect and remit use tax and file returns for the subsequent year.

If, at the end of a one-year period, a retailer or marketplace facilitator that was required to collect and remit the use tax determines that it did not meet the threshold in either criteria during the preceding 12-month period, the retailer or marketplace facilitator shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets the threshold of either criteria for the preceding 12-month period. [35 ILCS 105/2(9) and 35 ILCS 105/2d]

NOTE: Beginning January 1, 2021, retailers without physical presence in this State and marketplace facilitators meeting either tax remittance threshold as set out in 86 Ill. Adm. Code 131.115(a) and 131.135(a), respectively, are liable for all applicable State and locally imposed retailers' occupation taxes administered by the Department of Revenue on all sales made to Illinois purchasers

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

and are no longer only mandatory Use Tax collectors. (See 86 Ill. Adm. Code 131.115 and 131.135).

"Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use, 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: 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 by-product 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 by-product of manufacturing.

"Sale at retail" includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act [35 ILCS 120], as incorporated by reference into Section 12 of the Act.

Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price are sales.

"Sale at retail" shall also be construed to include any Illinois florist's sales transaction in which the purchase order is received in Illinois by a florist and the sale is for use or consumption, but the Illinois florist has a florist in another state deliver the property to the purchaser or the purchaser's donee in such other state.

Nonreusable tangible personal property that is used by persons engaged in the business of operating a restaurant, cafeteria, or drive-in is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverages occurs. Examples of those items include, but are not limited to nonreusable, paper and plastic cups, plates, baskets, boxes,

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags, and wrapping or packaging materials that are transferred to customers as part of the sale of food or beverages in the ordinary course of business.

The purchase, employment and transfer of such tangible personal property as newsprint and ink for the primary purpose of conveying news (with or without other information) is not a purchase, use or sale of tangible personal property.

"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as provided in this definition, and services, but, prior to January 1, 2020 and beginning again on January 1, 2022, not including 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; 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 [625 ILCS 5] of like kind and character as that which is being sold that exceeds \$10,000. "Selling price" shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges which appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Act, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's tax liability under any local occupation tax administered by the Department, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's duty to collect, from the purchasers, the tax that is imposed under any local use tax administered by the Department. "Selling price" shall include charges that are added to prices by sellers on account of the seller's tax liability under the Cigarette Tax Act, on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Tax Act, and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit.

The phrase "like kind and character" shall be liberally construed (including but not limited to any form of motor vehicle for any form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement), while not including a kind of item which, if sold at retail by that retailer, would be exempt from retailers' occupation tax and use tax as an isolated sale.

"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes: 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 by-product of manufacturing. "Use" does not mean demonstration use or interim use of tangible personal property by a retailer before the retailer sells that tangible personal property. For watercraft or aircraft, if the period of demonstration use or interim use by the retailer exceeds 18 months, the retailer shall pay on the retailer's original cost price the tax imposed by the Act, and no credit for that tax is permitted if the watercraft or aircraft is subsequently sold by the retailer. "Use" does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property

which is sold in the regular course of business or

which the person incorporating such ingredient or constituent therein has undertaken at the time of purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing.

"Watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act [625 ILCS 45], a personal watercraft, or any boat equipped with an inboard motor. [35 ILCS 105/2]

~~"Department" means the Department of Revenue.~~

~~"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator, or other representative appointed by order of any court.~~

~~"Purchase at retail" means the acquisition of the ownership of, or title to, tangible personal property through a sale at retail.~~

~~"Purchaser" means anyone who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration.~~

~~"Retailer" means and includes every person engaged in the business of selling tangible personal property for use, and not for resale in any form. Effective October 1, 1974, a person who is the recipient of a grant or contract under Title VII of the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) and serves meals to participants in the Federal Nutrition Program for the Elderly in return for contributions established in amount by the individual participant pursuant to a schedule of suggested fees as provided for in the Federal Act is not a retailer under the Use Tax Act with respect to those transactions.~~

Nonprofit Sellers

~~A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests), shall be deemed to be a retailer with respect to those transactions, excepting only a person organized and operated exclusively for charitable, religious or educational~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~purposes to the extent of sales by that person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of that person, or to the extent of sales by that person of tangible personal property that is not sold or offered for sale by persons organized for profit.~~

~~Special Order Sales~~

~~A person who holds himself or herself out as being engaged (or who habitually engages) in selling tangible personal property at retail shall be deemed to be a retailer under this definition with respect to those sales (and not primarily in a service occupation), notwithstanding the fact that the person designs and produces that tangible personal property on special order for the purchaser and in such a way as to render the property of value only to that purchaser, if the tangible personal property so produced on special order serves substantially the same function as stock or standard items of tangible personal property that are sold at retail.~~

~~When Construction Contractor or Real Estate Developer is a Retailer~~

~~A construction contractor or real estate developer is a retailer under the Use Tax Act to the same extent to which he or she is a retailer under the Retailers' Occupation Tax Act, as described in 86 Ill. Adm. Code 130.1940.~~

~~"Retailer maintaining a place of business in this State", or any like term, shall mean and include:~~

~~Any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent or other representative is located here permanently or temporarily, or whether the retailer or subsidiary is licensed to do business in this State;~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~Beginning July 1, 2011, any retailer having a contract with a person located in this State under which:~~

~~the retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and~~

~~the retailer provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the retailer.~~

~~The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers in this State under all such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December (Section 2 of the Act, definition of "retailer maintaining a place of business in this State", subparagraph 4.2);~~

~~Beginning January 1, 2015, any retailer having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer by providing to the potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons. Examples of mechanisms that allow the retailer to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers who are referred to the retailer by all persons in this State under such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March,~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~June, September, and December. Although a retailer meeting the requirements set forth in Section 2 of the Act, definition of "retailer maintaining a place of business in this State", subparagraph 1.1, is presumed to be a retailer maintaining a place of business in Illinois, a retailer may rebut this presumption by maintaining in its records documentation that shows that persons with whom the retailer has agreements have not engaged in solicitation activities on behalf of the retailer in Illinois that are sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods. (Section 2 of the Act, definition of "retailer maintaining a place of business in this State", subparagraph 1.1) The following documentation is required in order to rebut this presumption:~~

~~Retailer Agreement. The retailer must have an agreement that prohibits persons operating under the agreement from engaging in any solicitation activities in Illinois that refer potential customers to the retailer, including, but not limited to, distributing flyers, coupons, newsletters and other printed promotional materials or electronic equivalents, verbal soliciting, initiating telephone calls, and sending e-mails or text messages. If the person in Illinois with whom the retailer has an agreement is an organization or corporation, such as a club or nonprofit group, the agreement must provide that the organization will maintain on its website information alerting its members to the prohibition against each of the solicitation activities described in this paragraph. The agreement must be maintained in the retailer's records and shall be made available to the Department for inspection or audit.~~

~~Annual Certification. The person or persons operating under the agreement in Illinois shall certify by January 1 of each year, under penalty of perjury, that they have not engaged in any prohibited solicitation activities in Illinois at any time during the previous year. If the person in Illinois with whom the retailer has an agreement is an organization or corporation, the annual certification shall also include a~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~statement from the organization or corporation, signed by an officer of the organization or corporation, certifying that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described in this paragraph. The certification should be made on forms prescribed by the Department, must be completed and provided to the retailer, must be maintained in the retailer's records, and shall be made available to the Department for inspection or audit. If the retailer accepts a properly and timely completed certification in good faith and the retailer does not know or have reason to know that the certification is false or fraudulent, that certification will be conclusive proof that the person that provided the certification was in compliance with the agreement for the year covered by the certification. If the retailer fails to obtain the certifications from all persons operating under the agreements and fails to make those records available upon the Department's request, the presumption that the retailer is maintaining a place of business in Illinois will not be rebutted.~~

~~Beginning October 1, 2018, any retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois if:~~

~~The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more, or~~

~~The retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.~~

~~Beginning January 1, 2020, a marketplace facilitator who meets either of the following thresholds is considered the retailer for each sale of tangible personal property made through its marketplace:~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more, or~~

~~The marketplace facilitator enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.~~

~~For purposes of this definition, a retailer without physical presence in this State or a marketplace facilitator shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets either of the foregoing criteria for the preceding 12-month period. If the retailer or marketplace facilitator meets either of the criteria for a 12-month period, it is considered a retailer maintaining a place of business in Illinois and is required to collect and remit the Use Tax and file returns for one year.~~

~~At the end of that one-year period, the retailer or marketplace facilitator shall determine whether it met either of the criteria during the preceding 12-month period. If the retailer or marketplace facilitator met either of the criteria for the preceding 12-month period, it is considered a retailer maintaining a place of business in Illinois and is required to collect and remit Use Tax and file returns for the subsequent year.~~

~~If, at the end of a one-year period, a retailer or marketplace facilitator that was required to collect and remit the Use Tax determines that it did not meet either of the criteria during the preceding 12-month period, the retailer or marketplace facilitator shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets either of the criteria for the preceding 12-month period. [35 ILCS 105/2(9) and 2(10)]~~

NOTE: Beginning January 1, 2021, retailers without physical presence in this State and marketplace facilitators meeting either

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~tax remittance threshold as set out in 86 Ill. Adm. Code 131.115(a) and 131.135(a), respectively, are liable for all applicable State and locally imposed retailer's occupation taxes administered by the Department of Revenue on all sales made to Illinois purchasers and are no longer only mandatory Use Tax collectors. (See 86 Ill. Adm. Code 131.115 and 131.135).~~

~~For purposes of this Part, "remote retailer" has the same meaning as defined in 86 Ill. Adm. Code 131.105.~~

~~For the purposes of this definition, "advertisement" means a written, verbal, pictorial, or graphic announcement of goods or services for sale, employing leased or purchased space or time in print or electronic media, which is intended to communicate that information to the general public. Online advertising generated as a result of generic algorithmic functions that is anonymous and passive in nature (the advertisement is not directed to a specific person or intended to incite a person or persons to purchase tangible personal property from a specific retailer or retailers), such as ads tied to Internet search engines, banner ads, click-through ads, Cost Per Action ads, links to retailers' websites, and similar online advertising services, are advertisements and not solicitations.~~

~~For the purposes of this definition, "solicitation" means a direct or indirect communication to a specific person or persons, including emails or text messages, done in a manner that is intended and calculated to incite a person or persons to purchase tangible personal property from a specific retailer or retailers. Solicitation does not mean or include advertising.~~

~~EXAMPLE 1: Corporation X is physically located in Illinois and maintains a website. Corporation X enters into agreements with one or more hiking gear and accessories retailers under which Corporation X maintains click-through advertisements or links to each retailer's website on Corporation X's website www.corporationx.com and Corporation X's webpage at www.socialnetwork.com/corporationx in return for commissions based upon the retailers' completed sales made to customers who click-through the ads or links on Corporation~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~X's website and webpage. Corporation X also posts reviews at www.corporationx.com of the products sold through the click-through ads and links on its website and webpage. However, Corporation X does not engage in any solicitation activities in Illinois that refer potential customers to the retailer or retailers who have click-through ads or links on its website or webpage. Therefore, the retailer may successfully rebut the presumption that the retailer is maintaining a place of business in Illinois if all other qualifications in this definition are met.~~

~~EXAMPLE 2: Assume the same facts as Example 1, except that an individual representative of Corporation X or any other individual acting on behalf of Corporation X, including, but not limited to, an employee or independent contractor of Corporation X, engages in solicitation activities, such as soliciting customers in person, soliciting customers on the telephone, handing out flyers that are solicitations, or sending emails that are solicitations, while physically present in Illinois that refer potential Illinois customers to a retailer who has a link or other promotional code on Corporation X's website or webpage pursuant to Corporation X's agreement with that retailer. Therefore, the rebuttable presumption that the retailer is maintaining a place of business in Illinois applies to Corporation X's agreement if all other criteria are met, and the retailer will be required to collect tax.~~

~~*Soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this State.*~~

~~*Pursuant to a contract with a broadcaster or publisher located in this State, soliciting orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this State and only secondarily to bordering jurisdictions;*~~

~~*Soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or*~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~marketing activities occurring in this State or benefits from the location in this State of authorized installation, servicing, or repair facilities;~~

~~Being owned or controlled by the same interests which own or control any retailer engaging in business in the same or similar line of business in this State;~~

~~Having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this Section;~~

~~Pursuant to a contract with a cable television operator located in this State, soliciting orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this State; or~~

~~Engaging in activities in Illinois, which activities in the state in which the retail business engaging in such activities is located would constitute maintaining a place of business in that state. (Section 2 of the Use Tax Act) For the purpose of determining the state of domicile, the Department will look to the place at which the selling activity takes place.~~

~~It does not matter that an agent may engage in business on his or her own account in other transactions, nor that the agent may act as agent for other persons in other transactions, nor that the agent is not an employee but is an independent contractor acting as agent. The term "agent" is broader than the term "employee". "Agent" includes anyone acting under the principal's authority in an agency capacity.~~

~~"Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use, 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; 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~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~or by product 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 by product of manufacturing. "Sale at retail" includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act [35 ILCS 120], as incorporated by reference into Section 12 of the Use Tax Act [35 ILCS 105]. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price are sales.~~

~~"Selling price" means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property other than as provided in this definition, and services, but, prior to January 1, 2020 and beginning again on January 1, 2022, not including the value of or credit given for traded in tangible personal property when the item that is traded in is of like kind and character as that which is being sold; 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 [625 ILCS 5], of like kind and character as that which is being sold that exceeds \$10,000. "Selling price" shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. "Selling price" does not include interest or finance charges that appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's tax liability under any local occupation tax administered by the Department, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit on account of the seller's duty to collect from the purchasers, the tax that is imposed under any local use tax administered by the Department. "Selling price" shall include charges that are added to prices by sellers on account of the seller's liability under the Cigarette Tax Act on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette Use Tax Act and on account of the seller's~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit. The phrase "like kind and character" shall be liberally construed (including but not limited to any form of motor vehicle for any form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement), while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale.~~

~~"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of the property in any form as tangible personal property in the regular course of business to the extent that the property is not first subjected to a use for which it was purchased, and does not include the use of that property by its owner for demonstration purposes; 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 by-product of manufacturing. "Use" does not mean the interim use of tangible personal property by a retailer before he or she sells such tangible personal property and does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property:-~~

~~that is sold in the regular course of business; or~~

~~that the person incorporating the ingredient or constituent therein has undertaken at the time of purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois; 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 by-product of manufacturing.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART C: KINDS OF USES AND USERS NOT TAXED

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Section 150.305 Effect of Limitation that Purchase Must be at Retail ~~from~~ From a Retailer to be Taxable

- a) The limitation in the Act to the effect that the tangible personal property must be purchased at retail from a retailer excludes, from the ~~use tax~~ Use Tax, the use of tangible personal property produced by the user ~~himself~~ or acquired by the user by way of a gift or in some manner other than by means of a purchase.
- b) However, although the user is not taxable on the value of the finished product which ~~the user~~he produces ~~himself~~, such user is taxable on the purchase price of the tangible personal property that ~~the user~~he purchases and incorporates into such finished product which ~~the user~~he uses in this State, such purchase being a purchase at retail or a purchase for use.
- c) Although the donee in a gift situation is not a taxable user, the donor who purchases the property and gives it away makes a taxable use of the property when making such gift. For example, if a cellular phone company gives cellular phones to its customers as part of a sales promotion, it owes ~~use tax~~ Use Tax on its cost price of the phones that are given away. In this situation, the ~~cellular company~~, as donor, is considered to have used items by giving them away.
- d) The limitation that the purchase must be made at retail from a retailer for the Use Tax ~~Act~~ to apply also excludes, from the tax, the use of tangible personal property purchased from an isolated or occasional seller who is not engaged in the business of selling such tangible personal property. The exclusions discussed in this paragraph are necessary to make the Use Tax ~~Act~~ complementary to the Retailers' Occupation Tax ~~Act~~.
- e) The Use Tax ~~Act~~ does not apply to the rental payments made by a lessee to a lessor. However, except as is noted in Section 150.306 of this Part, the lessor is legally the user of the property and is taxable on the purchase price thereof.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Section 150.310_ Exemptions to Avoid Multi-State Taxation

- a) To prevent actual or likely multistate taxation, the tax imposed by the Act does not apply to the use of tangible personal property in this State under the following circumstances: ~~To prevent actual or likely multi-state taxation, the tax shall not apply to the use of tangible personal property in this State under the following circumstances:~~
- 1) the use, in this State, of tangible personal property acquired outside this State by a nonresident individual and brought into this State by the individual for that individual's own use while temporarily within this State or while passing through this State; this includes stopping for fuel, energy, food, or overnight lodging in this State [35 ILCS 105/3-55(a)]; ~~The use, in this State, of tangible personal property acquired outside this State by a nonresident individual and brought into this State by that individual for own use while temporarily within this State or while passing through this State;~~
 - 2) the use, in this State, by owners, lessors, 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 so used by the interstate carriers for hire, and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce [35 ILCS 105/3-55(c)] (See also 86 Ill. Adm. Code 130.340 for more information concerning this exemption as the same principles apply for use tax purposes). ~~the use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce; or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, as long as so used by the interstate carriers for hire. When tangible personal property 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 Use Tax to the retailer, the lessor (by the last day of the month following the calendar month in which the~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~property reverts to the use of the lessor) shall file a return with the Department and pay the tax upon the fair market value of the property on the date of the reversion. For more details concerning this exemption, see 86 Ill. Adm. Code 130.340 of the Retailers' Occupation Tax regulations; the same principles apply for Use Tax purposes;~~

- 3) ~~the use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another statestate in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other statestate; for this purpose, "state" includes the District of Columbia [35 ILCS 105/3-55(d)];~~
- 4) ~~the temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State [35 ILCS 105/3-55(e)];the temporary storage, in this State, of tangible personal property acquired outside this State that, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State;~~
- 5) ~~the temporary storage in this State of building materials and fixtures that are acquired either in this State or outside this State by an Illinois registered combination retailer and construction contractor, and that the purchaser thereafter uses outside this State by incorporating that property into real estate located outside this State [35 ILCS 105/3-55(f)];the temporary storage in this State of building materials and fixtures acquired either in this State or outside this~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~State by an Illinois registered combination retailer and construction contractor, and that the purchaser thereafter uses outside this State by incorporating the property into real estate located outside this State;~~

- 6) the use, in this State, of a vehicle for which a drive-away decal has been issued under the provisions of 86 Ill. Adm. Code 130.605(b)(1). However, beginning July 1, 2008, if the purchaser of a motor vehicle claims the exemption provided in Section 130.605(b)(1) and the motor vehicle is then used in this State for more than 30 days in a calendar year, the purchaser is liable for use tax on the purchase price of that motor vehicle, subject to credit for tax properly due and paid to any other state as provided in subsection (a)(3). [35 ILCS 105/3-55(h) and (h-1)] The assessment of tax under this subsection (a)(6) by the Department is limited to the period for which it may issue a notice of tax liability under the Use Tax Act.

~~beginning on January 1, 2002 and through June 30, 2016, the use of tangible personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside this State for use or consumption thereafter solely outside this State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. [35 ILCS 105/3-55(j)]~~

- A) ~~"Centralized purchasing" means the procurement of tangible personal property by persons who purchase tangible personal property solely for use or consumption outside Illinois, who take delivery of that tangible personal property in Illinois and who temporarily store that tangible personal property in Illinois prior to transporting it outside the State for use or consumption solely outside Illinois.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- i) ~~For example, a business that maintains offices in several states and maintains storage facilities in Illinois purchases office equipment from an Illinois retailer, takes delivery of those items in Illinois and then stores them at its Illinois warehouse until they are shipped to its offices outside Illinois for use there can qualify for the exemption.~~
- ii) ~~For example, a lessor that purchases an item from an Illinois retailer specifically to fulfill its obligations under an existing lease with a lessee located outside Illinois, takes delivery of that item in Illinois and then stores that item at an Illinois warehouse until it is shipped to its lessee's out-of-State location can qualify for the exemption so long as the item is used solely outside Illinois.~~
- iii) ~~However, a lessor who purchases an item that is not dedicated to an existing lease with an out-of-State lessee, takes delivery of that item in Illinois and then places it in an Illinois rental inventory cannot qualify for the exemption even if the item is subsequently leased to an out-of-State lessee. This is true because, in Illinois, lessors are deemed to be the users of items purchased for rental inventories and placing an item in a rental inventory does not constitute storage.~~
- B) ~~"Good standing" means the taxpayer has no final liability that the taxpayer is failing to pay. For purposes of this Section, final liability includes a notice of tax liability that has become final, an admitted liability, or a math error.~~
- C) ~~Persons who wish to take advantage of this expanded temporary storage exemption must apply in writing to the Department to obtain an Expanded Temporary Storage Permit. Expanded Temporary Storage Permits cannot be assigned or transferred except when the holder of the permit~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~is purchasing from an unregistered de minimis serviceman providing services as described in 86 Ill. Adm. Code 140.108. Other than this, only the person to whom the Expanded Temporary Storage Permit was issued by the Department may use that permit as described in this Section.~~

- D) ~~Persons holding a valid Expanded Temporary Storage Permit may claim the expanded temporary storage exemption by providing their Illinois suppliers with a certification that the tangible personal property received in Illinois will be temporarily stored in Illinois for the purpose of being subsequently transported outside this State for use or consumption thereafter solely outside this State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. The certification must identify the seller, the purchaser, and the property, and include the purchaser's Expanded Temporary Storage Permit number and signature.~~
- i) ~~If all of an Expanded Temporary Storage Permit holder's purchases qualify for the expanded temporary storage exemption, the Expanded Temporary Storage Permit holder may provide his or her supplier a blanket certificate of expanded temporary storage.~~
- ii) ~~If an Expanded Temporary Storage Permit holder knows that a certain percentage of all his or her purchases from a given seller will qualify for the expanded temporary storage exemption, he or she may provide a blanket certificate of expanded temporary storage stating that a designated percentage of purchases qualify for the expanded temporary storage exemption.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- E) ~~In the event that tangible personal property for which the expanded temporary storage exemption has been claimed is taken out of storage and not transported outside this State for use or consumption, but is instead used or consumed in Illinois, the purchaser shall pay the tax that would have been due, in the same form that the retailer would have paid the tax (i.e., Retailers' Occupation Tax and local Retailers' Occupation Tax, if applicable), at the rate applicable at the location of the retailer from which the tangible personal property was purchased. For example, if tangible personal property purchased from a retailer in Naperville is temporarily stored in Illinois, then, instead of being transported outside the State for use or consumption, is removed from inventory and used in Illinois, tax will be due at the retailer's rate applicable in Naperville. The permit holder must pay the tax directly to the Department on forms prescribed by the Department, not later than the twentieth day of the month following the month in which the property was removed from inventory.~~
- F) ~~In the event that tangible personal property for which the expanded temporary storage exemption has been claimed is temporarily stored in Illinois and transported outside this State for use or consumption, but subsequently returned to Illinois and used here, the purchaser shall pay the tax that would have been due, in the same form that the retailer would have paid the tax (i.e., Retailers' Occupation Tax and local Retailers' Occupation Tax, if applicable), at the rate applicable at the location of the retailer from which the tangible personal property was purchased. For example, if tangible personal property purchased from a retailer in Naperville is temporarily stored in Illinois and transported outside this State for use or consumption, but subsequently returned to Illinois and used here, tax will be due at the retailer's rate applicable in Naperville. Depreciation will be allowed as provided in Section 150.105(a). Also, credit shall be given for tax paid in another state in respect to the sale, purchase or use of the property, to the extent of the amount~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~of the tax properly due and paid in the other state, as provided in subsection (a)(3).~~

- ~~G) Permit holders who assume the liability for the Retailers' Occupation Tax and any applicable local Retailers' Occupation Tax are subject to the same rights, remedies, privileges, immunities, powers and duties, and are subject to the same conditions, restrictions, limitations, penalties, and definitions of terms and employ the same modes of procedures as are prescribed for retailers under the Retailers' Occupation Tax Act. For example, if a permit holder fails to timely file the proper return or make the proper payment of tax, that permit holder is not entitled to the 1.75% vendor discount applicable to the sales reported on that return and is subject to penalties and interest under the Uniform Penalty and Interest Act [35 ILCS 735].~~

- 7) Beginning July 1, 2007, the following exemptions described in subsections (a)(7)(A), (B), or (C) apply with respect to certain aircraft, as defined in Section 3 of the Illinois Aeronautics Act [620 ILCS 5]. [35 ILCS 105/3-55(h-2)(1-3)]

- A) If the aircraft is purchased in this State, no tax is imposed if all of the following conditions are met:
- i) the aircraft leaves this State within 15 days after the later of either the issuance of the final billing for the purchase of the aircraft or the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection as required by 14 CFR 91.407;
 - ii) the aircraft is not based or registered in this State after the purchase of the aircraft; and
 - iii) the purchaser provides the Department with a signed and dated certification, on a form prescribed by the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Department, certifying that the requirements of this subsection (a)(7)(A) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require. [35 ILCS 105/3-55(h-2)(1)(A-C)]

- B) If the aircraft is temporarily located in this State for the purpose of a prepurchase evaluation, no tax is imposed if all of the following conditions are met:
- i) the aircraft is not based or registered in this State after the prepurchase evaluation; and
 - ii) the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(7)(B) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require. [35 ILCS 105/3-55(h-2)(2)(A-B)]
- C) If the aircraft is temporarily located in this State for the purpose of a post-sale customization, no tax is imposed if all of the following conditions are met:
- i) the aircraft leaves this State within 15 days after the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection, as required by 14 CFR 91.407;

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- ii) *the aircraft is not based or registered in this State either before or after the post-sale customization; and*
- iii) *the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(7)(C) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require. [35 ILCS 105/3-55(h-2)(3)(A-C)]*

D) *The exemption provided under subsections (a)(7)(B) and (C) does not apply to tax incurred on any service transactions performed on the aircraft.*

E) *For purposes of this subsection (a)(7):*

"Based in this State" means hangared, stored, or otherwise used, excluding post-sale customizations as defined in this subsection (a)(7)(E), for 10 or more days in each 12-month period immediately following the date of the sale of the aircraft.

"Post-sale customization" means any improvement, maintenance, or repair that is performed on an aircraft following a transfer of ownership of the aircraft.

"Prepurchase evaluation" means an examination of an aircraft to provide a potential purchaser with information relevant to the potential purchase.

"Registered in this State" means an aircraft registered with the Department of Transportation, Aeronautics Division, or titled or registered with the Federal Aviation Administration to an address located in this State.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

F) *If tax becomes due under this subsection (a)(7) because of the purchaser's use of the aircraft in this State, the purchaser shall file a return with the Department and pay the tax on the fair market value of the aircraft. This return and payment of the tax must be made no later than 30 days after the aircraft is used in a taxable manner in this State. The tax is based on the fair market value of the aircraft on the date that it is first used in a taxable manner in this State. [35 ILCS 105/3-55(h-2)]*

~~the use, in this State, of a vehicle for which a drive-away decal has been issued under the provisions of 86 Ill. Adm. Code 130.605(b)(1). However, beginning July 1, 2008, if the purchaser of a motor vehicle claims the exemption provided in Section 130.605(b)(1) and the motor vehicle is then used in this State for more than 30 days in a calendar year, the purchaser is liable for Use Tax on the purchase price of that motor vehicle, subject to credit for tax properly due and paid to any other state as provided in subsection (a)(3). The assessment of tax under this subsection (a)(7) by the Department is limited to the period for which it may issue a notice of tax liability under the Use Tax Act.~~

8) *The use or purchase of tangible personal property by a common carrier by rail or motor that receives the physical possession of the property in Illinois, and that transports the property, or shares with another common carrier in the transportation of the property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of the property to a destination outside Illinois, for use outside Illinois. [35 ILCS 105/3-55(g)] beginning July 1, 2007, the use, in this State, of an aircraft described in subsection (a)(8)(A), (B) or (C), as defined in Section 3 of the Illinois Aeronautics Act.*

A) ~~*If the aircraft is purchased in this State, all of the following three conditions must be met:*~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- i) ~~the aircraft leaves this State within 15 days after the later of either the issuance of the final billing for the purchase of the aircraft or the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection as required by 14 CFR 91.407;~~
 - ii) ~~the aircraft is not based or registered in this State after the purchase of the aircraft; and~~
 - iii) ~~the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(8)(A) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require.~~
- B) ~~If the aircraft is temporarily located in this State for the purpose of a prepurchase evaluation, all of the following conditions must be met:~~
- i) ~~the aircraft is not based or registered in this State after the prepurchase evaluation; and~~
 - ii) ~~the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(8)(B) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- ~~G) If the aircraft is temporarily located in this State for the purpose of a post-sale customization, all of the following conditions must be met:~~
- ~~i) the aircraft leaves this State within 15 days after the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection, as required by 14 CFR 91.407;~~
 - ~~ii) the aircraft is not based or registered in this State either before or after the post-sale customization; and~~
 - ~~iii) the purchaser provides the Department with a signed and dated certification, on a form prescribed by the Department, certifying that the requirements of this subsection (a)(8)(C) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require. [35 ILCS 105/3-55(h-2)]~~
- ~~D) The exemption provided under subsections (a)(8)(B) and (C) does not apply to tax incurred on any service transactions performed on the aircraft.~~
- ~~E) For purposes of subsection (a)(8):~~
- ~~"Based in this State" means hangared, stored, or otherwise used, excluding post-sale customizations as defined in this subsection (a)(8)(E), for 10 or more days in each 12-month period immediately following the date of the sale of the aircraft.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~"Post-sale customization" means any improvement, maintenance, or repair that is performed on an aircraft following a transfer of ownership of the aircraft.~~

~~"Prepurchase evaluation" means an examination of an aircraft to provide a potential purchaser with information relevant to the potential purchase.~~

~~"Registered in this State" means an aircraft registered with the Department of Transportation, Aeronautics Division, or titled or registered with the Federal Aviation Administration to an address located in this State.~~

F) ~~If tax becomes due under this subsection (a)(8) because of the purchaser's use of the aircraft in this State, the purchaser shall file a return with the Department and pay the tax on the fair market value of the aircraft. This return and payment of the tax must be made no later than 30 days after the aircraft is used in a taxable manner in this State. The tax is based on the fair market value of the aircraft on the date that it is first used in a taxable manner in this State. [35 ILCS 105/3-55(h-2)]~~

- b) Since exemptions described in subsections (a)(1), (3) and (4) do not exist as far as the Retailers' Occupation Tax Act is concerned, and since it would therefore serve no purpose to say that the exemptions exist for use tax~~Use Tax~~ purposes insofar as the seller is merely collecting use tax~~Use Tax~~ to reimburse the seller himself or herself for retailers' occupation tax~~Retailers' Occupation Tax~~ on the same transaction, the Department believes that the legislative intention in these references to the acquisition of tangible personal property outside this State was to make the references apply to cases in which the only tax liability that could be involved is use tax~~Use Tax~~ liability.
- c) Therefore, exemptions described in subsections (a)(1), (3) and (4) would not apply except when the tangible personal property is acquired outside Illinois by the purchaser in such a way that there is no retailers' occupation

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~tax~~Retailers' Occupation Tax liability on the part of the seller in the same transaction.

- d) For information as to when sellers do or do not incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability when shipping the tangible personal property from outside Illinois, see 86 Ill. Adm. Code Part 131-130.610~~of the Retailers' Occupation Tax regulations~~.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

**Section 150.325 Charitable, Religious, Educational, and Senior Citizens
Recreational Organizations as Buyers**

- a) The use tax shall not apply to the use of tangible *personal property purchased by a governmental body, corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or by 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.* The tax shall not apply to any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes, nor to any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers and employees and which is organized and operated primarily for the recreation of persons 55 years of age or older, when using tangible personal property purchased at retail. *A limited liability company may qualify for the exemption under this paragraph only if the limited liability company is organized and operated exclusively for educational purposes.* [35 ILCS 105/3-5(4)]
- b) *On and after July 1, 1987,* On and after July 1, 1987, none of the entities noted in subsection (a) ~~hereinabove~~ shall be entitled to *make tax-free purchases at retail unless it has an active exemption identification number issued by the Department*~~make tax-free purchases at retail unless such entities have an active exemption identification number issued by the Department.~~ [35 ILCS 105/3-5(4)] *(Section 3-5(4) of the Act.)*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 150.337 Food, Drugs, Medicines and Medical Appliances When Purchased for Use by a Person Receiving Medical Assistance under the Illinois Public Aid Code (Repealed)

~~Beginning January 1, 2001 the Use Tax shall not apply to the use of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, when purchased by a serviceman for use by a person receiving medical assistance under Article 5 of the Illinois Public Aid Code who resides in a licensed long-term care facility, as defined in the Nursing Home Care Act. (Section 3-5 of the Act)~~

(Source: Repealed at 48 Ill. Reg. _____, effective _____)

SUBPART D: COLLECTION OF THE USE TAX FROM USERS BY RETAILERS

Section 150.525 Methods for Calculating Tax on Sales of Items Subject to Differing Tax Rates (Repealed)

- a) ~~The tax on a transaction involving the sale of several items which are subject to two different tax rates may be determined for the purpose of stating the tax total to the customer by use of either of the following methods if the retailer uses a cash register which cannot calculate dual tax rates:~~
- 1) ~~Method No. 1~~
- A) ~~Develop a Delta table by subtracting the tax determined by the applicable low rate bracket schedule from the tax determined by the applicable high rate bracket schedule, i.e., subtracting the tax on a 3% chart from a 5% chart which provides the differential or "Delta" between the two charts for the amount of the sale. The Delta table reflects the difference between the two rates.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- B) ~~The customer's order is segregated so that all items taxable at the high rate (non-food and non-drug items) are rung up on the cash register and a subtotal is taken. Then items taxable at the lower rate (food and drug items) are rung up and a second subtotal is taken which is cumulative, including the first subtotal. The tax is then charged by applying the Delta amount from the Delta table to only the first subtotal and the applicable low rate tax to the second or cumulative subtotal.~~
- C) ~~Exempt items such as newspapers, bottle deposits and food stamp purchases are then rung up and a total is taken.~~
- 2) Method No. 2
 - A) ~~Program the cash register with the tax rate which is equal to the difference between high rate and low rate of tax and by use of departmental or tax keys on the register apply that rate to any item subject to the rate of tax as each item is rung up. A subtotal is then taken on which the register automatically calculates the programmed rate of tax.~~
 - B) ~~The checker then manually adds the appropriate low rate of tax from the bracket schedule to the untaxed subtotal. The checker would then ring up items which are not subject to any tax, such as newspapers, bottle deposits and food stamp purchases and ring up a total.~~
 - C) ~~This method does not require segregation of low and high rate items.~~
- b) ~~For the purpose of filing returns, retailers will be permitted to use the following method to determine the amount of food and drug sales and non-food and drug sales to allocate tax collected to each type of sale which is taxed at different rates when the exact total taxable receipts and exact total tax collected are known. The following four formulas will~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~provide a retailer with the amount of food sales; non-food sales may be determined by subtracting food sales from total taxable sales.~~

1) ~~When the high rate of tax is 5% and the low rate is 3%, to determine food sales, multiply (2.5 x total taxable sales) – (50 x tax collected)~~

2) ~~When the high rate of tax is 6% and the low rate is 4%, to determine food sales, multiply (3 x total taxable sales) – (50 x tax collected)~~

3) ~~When the high rate of tax is 5¼% and the low rate is 3¼%, to determine food sales, multiply (2.625 x total taxable sales) – (50 x tax collected)~~

4) ~~When the high rate of tax is 5½% and the low rate is 3½%, to determine food sales, multiply (2.5625 x sales) – (50 x tax collected)~~

5) For rates other than those stated, perform the following four steps:

A)
$$\frac{\text{Tax Collected}}{(\text{High Rate of Tax} - \text{Low Rate of Tax})}$$

B)
$$\frac{\text{Total Sales}}{(\text{High Rate of Tax} - \text{Low Rate of Tax})} \times \text{Smaller Rate}$$

C) ~~Non-Food Sales = a – b~~

D) ~~Food Sales = Total Sales – Non-Food Sales~~

c) ~~The use of these methods require exact sales and tax figures for taxable sales. The Department reserves the right to audit and correct, if necessary, tax collection figures and taxable sales figures.~~

d) ~~EXAMPLE: A retailer selling foods and non-foods in a jurisdiction where the respective rates are 4% and 6% would determine the proper amount of tax as follows:~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Assume gross sales of food and non-food items of	\$163.00
deduct food stamps	-20.00
bottle deposits	-3.00
	\$140.00 net taxable
	sales
	7.40 tax collected at 6% and
\$140 x 3 = \$420	
\$7.40 x 50 = \$370	
\$420 - \$370 = \$50	
\$140.00 net taxable sales	
-50.00 food sales	
\$90.00 non-food sales	
\$50 x 4% = \$2.00 tax on food sales	
\$90 x 6% = \$5.40 tax on non-food sales	

(Source: Repealed at 48 Ill. Reg. _____, effective _____)

SUBPART F: SPECIAL INFORMATION FOR TAXABLE USERS

Section 150.701 When and Where to File a Return

- a) Purchases by Persons not Registered to File Returns
 - 1) Purchases from Retailers in Illinois. If a purchaser who is not registered as a retailer under the Retailers' Occupation Tax Act purchases the tangible personal property other than a motor vehicle, aircraft, watercraft, trailer, or cigarettes at retail from a retailer in Illinois, but does not pay the use tax to such retailer, the purchaser shall pay the use tax directly to the Department. Except as provided in subsection (a)(3)(b) of this Section, such remittance to the Department shall be made by the last day of the month following the month in which the purchaser makes any payment on the selling price of the tangible personal property and shall be accompanied by a return on

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

a form prescribed by the Department which shall be made on a return form that the Department will provide on request.

- 2) Taxable Moment for Purchases Made Out-of-State from Retailers. If a purchaser who is not registered as a retailer under the Retailers' Occupation Tax Act purchases tangible personal property other than a motor vehicle, aircraft, watercraft, trailer, or cigarettes out-of-State at retail from a retailer, but does not pay the use tax to such retailer, the liability for the tax imposed by the Act arises on the date such tangible personal property is brought into this State. [35 ILCS 105/10] The purchaser shall pay the use tax directly to the Department. Except as provided in subsection (a)(3) of this Section, such remittance to the Department shall be made within 30 days after the tangible personal property purchased out-of-State is brought into Illinois and shall be accompanied by a return on a form prescribed by the Department.
- 3) However, except as to motor vehicles and aircraft, and except as to cigarettes as defined in the Cigarette Use Tax Act, if the purchaser's annual use tax liability does not exceed \$600, the purchaser may file the return on an annual basis on or before April 15th of the year following the year use tax liability was incurred. Individual purchasers with an annual use tax liability that does not exceed \$600 may, in lieu of the filing and payment requirements in this Section, file and pay in compliance with Section 502.1 of the Illinois Income Tax Act.
- 4) When tangible personal property, other than motor vehicles and trailers, 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 the 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. (See Section 130.340(f)(5) and 130.340(g)(5)). However, in determining the fair market value at the time of reversion, the fair market value of such property shall not exceed the original

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

purchase price of the property that was paid by the lessor at the time of purchase. Such return shall be filed on a form prescribed by the Department and shall contain such information as the Department may reasonably require. Such return and payment from the purchaser shall be submitted to the Department sooner than the last day of the month after the month in which the purchase is made. [35 ILCS 105/10] This provision applies equally to owners, lessors, or shippers who purchase tangible personal property, other than motor vehicles and trailers, that is utilized by interstate carriers for hire as rolling stock. For the treatment of an item purchased by a lessor for use as rolling stock other than in a situation where the item is under a lease for one year or longer, executed or in effect at the time of purchase to an interstate carrier for hire, see 86 Ill. Adm. Code 130.340.

- 5) If cigarettes, as defined in the Cigarette Use Tax Act, are purchased from a retailer for use in this State by a purchaser who did not pay the tax imposed by the Act to the retailer, and a purchaser who does not file returns with the Department as a retailer under Section 9 of the Act, such purchaser must, within 30 days after acquiring the cigarettes, file a return with the Department and pay the tax upon that portion of the selling price so paid by the purchaser for the cigarettes. When cigarettes, as defined in the Cigarette Use Tax Act, are purchased out-of-state from a retailer for use in this State by a purchaser who did not pay the tax imposed by the Act to the retailer, and a purchaser who does not file returns with the Department as a retailer under Section 9 of the Act, the liability for the tax imposed by the Act arises on the date such cigarettes are brought into this State. The purchaser shall, within 30 days after such cigarettes are brought into this State, file with the Department, upon a form to be prescribed and supplied by the Department, a return for the cigarettes purchased. [35 ILCS 105/10]

- b) A user who is liable to pay ~~use tax~~Use Tax directly to the Department only occasionally and not on a frequently recurring basis, and who is not required to file returns with the Department as a retailer under Section 9 of the Use Tax Act, or under the Retailers' Occupation Tax Act, or as a

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

registrant with the Department under the Service Occupation Tax Act [35 ILCS 115] or the Service Use Tax Act [35 ILCS 110], need not register with the Department. However, if such a user has a frequently recurring direct ~~use tax~~Use Tax liability to pay to the Department, such user is required to register with the Department on forms prescribed by the Department and to obtain and display a certificate of registration from the Department. *In that event, all of the provisions of Section 9 of the Act concerning the filing of regular monthly, quarterly or annual tax returns and all of the provisions of Section 2a of the "Retailers' Occupation Tax Act" concerning the requirements for registrants to post bond or other security with the Department, as the provisions of such sections now exist or may hereafter be amended, shall apply to such users. [35 ILCS 105/10]*~~In that event, such registered user must file regular periodic tax returns, just as other registrants with the Department are required to do. However, if the purchaser's annual Use Tax liability does not exceed \$600, the purchaser may file the return on an annual basis on or before April 15 of the year following the year Use Tax liability was incurred.~~

- c) In general, the provisions of Subpart E of the Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130) (including the authorization, under some circumstances, for quarterly tax returns and annual tax returns, but not the requirement of an annual information return) shall apply to returns of registered users under the ~~Use Tax~~Use Tax Act.
- d) Also, registered users under the ~~Use Tax~~Use Tax Act are subject to the provisions of the Retailers' Occupation Tax Regulations.
- e) ~~When tangible personal property, other than motor vehicles or trailers, 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 Use Tax 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. See 35 ILCS 105/10 and Section 130.340(f)(5) and 130.340(g)(5). This provision applies equally to owners, lessors or shippers who purchase tangible personal property, other than motor vehicles or trailers, that is utilized by interstate carriers for hire as rolling stock. For the treatment of~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~items purchased by lessors for use as rolling stock other than in situations where the item is under a lease for one year or longer, executed or in effect at the time of purchase to an interstate carrier for hire, see 86 Ill. Adm. Code 130.340.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 150.705 Use Tax on Items that are Titled or Registered in Illinois

- a) Motor vehicles, as used in this Regulation, include passenger cars, trucks, busses, motorcycles, and any kind of vehicle which is required to be titled under the Illinois Vehicle Code [625 ILCS ~~5/1/Ch. 1~~].
- b) Implement of husbandry means:
Every vehicle designed and adapted exclusively for agricultural, horticultural, or livestock raising operations, including farm wagons, wagon trailers or like vehicles used in connection therewith, or for lifting or carrying an implement of husbandry provided that no farm wagon, wagon trailer or like vehicle having ~~a capacity of more than 400 bushels or a gross weight of more than 36,000 pounds, shall be included hereunder.~~
[625 ILCS 5/1-130]
- c) Special mobile equipment means:
Every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ~~street sweepers, ditch~~Ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ~~ditchersditches, levellingleveling~~ graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached. [625 ILCS 5/1-191]
- d) *For purposes of this Section, "watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Safety Act [625 ILCS 45/3-2], a personal watercraft, or any boat equipped with an inboard motor. [35 ILCS 105/10] For purposes of this Section, "watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act [625 ILCS 45/3-2], a personal watercraft, or any boat equipped with an inboard motor.

- e) Where the purchaser is paying use tax~~the Use Tax~~ directly to the Department with respect to a motor vehicle, watercraft, or aircraft, or with respect to an implement of husbandry or special mobile equipment as to which an optional certificate of title will be applied for to the Illinois Secretary of State, such payment shall be made separately from any other use tax~~Use Tax~~ liability, or any retailers' occupation tax liability, Retailers' Occupation Tax or other liability. The return and tax remittance or proof of exemption from the tax that is imposed by the Act may be transmitted to the Department by way of the State agency with which, or State officer with whom, the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.
- f) With each return, the purchaser shall remit the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, the purchaser must title or register the tangible personal property that is involved (if titling or registration is required) in support of such purchaser's application for an Illinois certificate or other evidence of title or registration to such tangible personal property. When a purchaser pays a tax imposed by the Act directly to the Department, the Department (upon request therefor from such purchaser) shall issue an appropriate receipt to such purchaser showing that the purchaser has paid such tax to the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer. [35 ILCS 105/10] On receipt of the tax, the Department will provide the user with a receipt if demanded by the user, but not otherwise, unless the tax payment relates to a motor vehicle (including a house trailer for which

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~a display certificate is required), watercraft or aircraft, in which case the Department will try to see that the user receives a receipt even if no request therefor is made.~~ The same comments apply to an implement of husbandry or special mobile equipment for which an optional title is being sought.

- g) ~~However, the user is urged not to fail to request a receipt from the Department when paying the Use Tax with respect to the selling price of a motor vehicle, watercraft or aircraft, or with respect to an implement of husbandry or special mobile equipment for which an optional title is being sought, either to the Department or to a retailer. The Such receipt or certificate of exemption~~ will be needed in securing an Illinois title to the watercraft from the Department of Natural Resources; or to the motor vehicle, implement of husbandry or special mobile equipment for which an optional title is being sought from the Illinois Secretary of State; or a certificate of registration for the aircraft from the Illinois Department of Transportation, Division of Aeronautics.
- h) When a purchaser pays the tax directly to the Department on a motor vehicle, watercraft, or aircraft, or on an implement of husbandry or special mobile equipment for which the purchaser is seeking an optional title, so that the tax is being paid on a transaction by transaction basis, the purchaser should also send the Department a copy of the ~~bill of sale~~ Bill of Sale or ~~dealer's invoice~~ Dealer's Invoice relating to such property for examination.
- i) *In addition, ~~beginning January 1, 2001~~ beginning January 1, 2001, with respect to motor vehicles, aircraft, watercraft, and trailers (and implements of husbandry or special mobile equipment for which the purchaser intends to apply for an optional title) ~~(and implements of husbandry or special mobile equipment for which the purchaser intends to apply for an optional title)~~, a purchaser of such tangible personal property for use in this State, who purchases such tangible personal property from an out-of-state retailer, shall file, with the Department, not later than 30 days after such tangible personal property is brought into this State for use, upon a form prescribed and supplied by the Department, a return for each such item of tangible personal property purchased, except that if, in the same transaction.*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) *a purchaser of motor vehicles, aircraft, watercraft, or trailers who is a retailer of motor vehicles, aircraft, watercraft, or trailers purchases more than one motor vehicle, aircraft, watercraft, or trailer for the purpose of resale; or*
- 2) *a purchaser of motor vehicles, aircraft, watercraft, or trailers purchases more than one motor vehicle, aircraft, watercraft, or trailer for use as qualifying rolling stock (see 86 Ill. Adm. Code 130.340) as provided in Section 3-55 of ~~the Act~~the Act,*

then the purchaser may report the purchase of all motor vehicles, aircraft, watercraft, or trailers involved in that transaction to the Department on a single return prescribed by the Department. [35 ILCS 105/10] For purposes of the exception in subsection (i)(2) above, purchasers may only report multiple purchases of items of like kind and character on a single return. For example, purchasers may report the purchase of 15 motor vehicles on a single return. However, purchasers may not report the purchase of 10 trailers and 5 motor vehicles on a single return. Such a purchase requires one return for the trailers and a second return for the motor vehicles.

- j) For information concerning the procedure to be followed in accounting for the tax when the purchaser buys a motor vehicle, watercraft, or aircraft (or an implement of husbandry or special mobile equipment for which the purchaser is going to apply for an optional title) at retail in Illinois and pays the tax to the retailer rather than directly to the Department, see 86 Ill. Adm. Code 130.540. Section 130.540 of the Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130).

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 150.716 Display Certificates for House Trailers (Repealed)

- a) ~~In addition to being required to obtain a certificate of title to a house trailer under the Illinois Vehicle Code, the owner of the house trailer is also required to obtain a display certificate from the Secretary of State.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- b) ~~The display certificate of title shall be prominently displayed in such a manner that it is clearly visible and easily read from the outside of the house trailer to which it pertains. If the house trailer has one window or more, the display certificate of title shall be attached to the inside of that window which is located on the front of the house trailer (the end at which the house trailer would normally be hitched to another vehicle for moving purposes) and nearest to the left side of the house trailer; if there is no window at the front of the house trailer, then the display certificate of title shall be attached to the inside of that window on the left side of the house trailer which is nearest to the front of the house trailer; in the event that there also is no window on the left side of the house trailer, the display certificate of title shall be attached to the inside of the window on the rear of the house trailer which is nearest to the left side of the house trailer; if there also is no window on the rear of the house trailer, then the display certificate of title shall be attached to the inside of that window on the right side of the house trailer which is located nearest to the rear of the house trailer. In the event that there is no window in the house trailer then the display certificate of title shall be attached to the rear end of the house trailer in such a manner that it shall be clearly visible and easily read.~~

(Source: Repealed at 48 Ill. Reg. _____, effective _____)

SUBPART G: REGISTRATION OF OUT-OF-STATE RETAILERS

Section 150.801 When Out-of-State Retailers Must Register and Collect Use Tax

- a) A retailer who is registered under the Retailers' Occupation Tax Act need not obtain a separate Certificate of Registration under the Use Tax Act. However, a retailer maintaining a place of business in this State, if not registered under the Retailers' Occupation Tax Act, must apply to the Department for a Certificate of Registration to collect use tax on an application form furnished by the Department. Each such retailer shall list with the Department the names and addresses of all the retailer'shis agents operating in this State and the location of any and all of the retailer'shis distribution houses, offices, or other places of business in this State.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- b) For a definition of "retailer maintaining a place of business in this State", see Section 150.201(+) of this Part.
- c) Every retailer maintaining a place of business in this State must act as a use tax~~Use Tax~~ collector for this State. Examples of cases in which a retailer will be required to collect and remit use tax~~the Use Tax~~ though not incurring any retailers' occupation tax ~~Retailers' Occupation Tax~~ liability with respect to the transaction are as follows~~these~~:
- 1) Retailers who have Illinois retail outlets subject to the Retailers' Occupation Tax Act are required to collect and remit use tax; as such, when the retailer ships tangible personal property to a purchaser in Illinois from inventory located outside Illinois via interstate mail that has no connection with the Illinois retail outlets, the retailer must still collect and remit use tax even though such completely interstate mail transactions are not subject to retailers' occupation tax. Retailers who have Illinois retail outlets which are subject to the Retailers' Occupation Tax Act are required to collect and remit the Use Tax, as such, when shipping tangible personal property to the purchasers in Illinois from outside Illinois, in interstate mail transactions which have no connection with such Illinois outlets, even though such completely interstate mail transactions would not be subject to the Retailers' Occupation Tax.
 - 2) Out-of-State retailers, who have any kind of place of business in Illinois or any kind of order-soliciting or order-taking representative either stationed in Illinois or coming into Illinois from time to time, must collect and remit use tax~~the Use Tax, as such~~, from Illinois purchasers for use even though the seller is not required to pay retailers' occupation tax~~Retailers' Occupation Tax~~ when the seller~~he~~ does nothing in Illinois except to solicit orders.
- d) For rules regarding out-of-State retailers without a physical presence in this State prior to January 1, 2021, see Section 150.803, Wayfair Nexus – Nexus without Physical Presence – Provisions Controlling from October 1, 2018, through December 31, 2020. For more information on tax remittance obligations based on economic nexus without physical presence on and after January 1, 2021, see the administrative rules

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

implementing the Leveling the Playing Field for Illinois Retail Act at 86 Ill. Adm. Code Part 131.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 150.901 When and Where to File

- a) Every retailer required or authorized to collect use tax~~the Use Tax~~ must file a return each month by the twentieth day of the month covering the preceding calendar month, except when the retailer is authorized to file tax returns on a quarterly or annual basis as hereinafter provided. The Department has combined the retailers' use tax~~Use Tax~~ return form with the retailers' occupation tax~~Retailers' Occupation Tax~~ return form.
- b) *On and after January 1, 2018, (except for returns required to be filed prior to January 1, 2023, for motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State), with respect to retailers whose annual gross receipts average \$20,000 or more, all returns required to be filed pursuant to the Act~~Act~~ shall be filed electronically. On and after January 1, 2023, with respect to retailers whose annual gross receipts average \$20,000 or more, all returns required to be filed pursuant to the Act, including, but not limited to, returns for motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State, shall be filed electronically. Retailers who demonstrate that they do not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement. [35 ILCS 105/9]*
- c) Where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended beyond the close of the period for which the return is filed, the retailer, in collecting the tax (except as to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State), 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] ~~Where the tangible personal property is sold under a conditional sales contract or under any other form of sale wherein the payment of the principal sum or~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~a part thereof is extended beyond the close of the return period for which the return is filed, the retailer, in collecting the tax, may collect, for each return period, only the tax applicable to that part of the selling price actually received during such return period.~~

- d) In its regular monthly, quarterly, or annual return, each retailer shall also include the total amount of ~~use tax~~~~Use Tax~~ due upon the purchase price of tangible personal property (other than a motor vehicle, watercraft, or aircraft on which the tax is to be paid separately from the regular monthly, quarterly, or annual return) purchased by it at retail from a retailer, but as to which such tax was not collected by the vendor from the retailer filing such return, and such retailer shall remit the amount of such tax to the Department when filing such return.
- e) If the retailer files its ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ returns on the gross sales basis, rather than on the gross receipts basis, the retailer will be required to report the ~~use tax~~~~Use Tax~~ information that is included in the retailer's returns on the basis of gross sales (or on the basis of gross purchases in the case of reporting purchases for the retailer's use).
- f) ~~*If the retailer's average monthly tax liability to the Department does not exceed \$200, the Department may authorize the retailer's returns to be filed on a quarter annual basis, with the return for January, February, and March of a given year being due by April 20 of such year; with the return for April, May and June of a given year being due by July 20 of such year; with the return for July, August and September of a given year being due by October 20 of such year, and with the return for October, November and December of a given year being due by January 20 of the following year. If the retailer's average monthly tax liability to the Department does not exceed \$200, the Department may authorize the retailer's returns to be filed on a quarter annual basis, with the return for January, February and March of a given year being due by April 20 of such year; with the return for April, May and June of a given year being due by July 20 of such year; with the return for July, August and September of a given year being due by October 20 of such year, and with the return for October, November and December of a given year being due by January 20 of the following year.*~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- g) *If the retailer's average monthly tax liability to the Department does not exceed \$50, the Department may authorize the retailer's returns to be filed on an annual basis, with the return for a given year being due by January 20 of the following year.* ~~If the retailer's average monthly tax liability to the Department does not exceed \$50, the Department may authorize the retailer's returns to be filed on an annual basis, with the return for a given year being due by January 20 of the following year.~~
- h) *Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.* ~~Such quarter annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.~~
- i) *Notwithstanding any other provision in the Act concerning the time within which a retailer may file its return, in the case of any retailer who ceases to engage in a kind of business which makes the retailer responsible for filing returns under the Act, such retailer shall file a final return under the Act with the Department not more than one month after discontinuing such business.* ~~[35 ILCS 105/9] Notwithstanding any other provision in this Regulation concerning the time within which a retailer may file its return, in the case of any retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this Regulation, such retailer shall file a final return under this Regulation with the Department not more than one month after discontinuing such business.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART H: RETAILERS' RETURNS

Section 150.905 Deduction for Collecting Tax

The retailer, in remitting the ~~use tax~~Use Tax which he has collected from the purchaser, may deduct 1.75% thereof or \$5.00 per calendar year, whichever is greater, as an allowance for the retailer's cost *incurred in collecting the tax, keeping records, preparing and filing returns, remitting the tax and supplying data to the Department on request. In the case of retailers who report and pay the tax on a transaction-by-transaction basis, as provided in Section 9 of the Act, such discount shall be taken with each such tax*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

remittance instead of when such retailer files such periodic return. The discount allowed under this Section is allowed only for returns that are filed in the manner required by the Act. [35 ILCS 105/9]~~of collecting such tax. In the case of retailers who report and pay the tax on a transaction by transaction basis, such discount shall be taken with each such tax remittance instead of when such retailer files his periodic return.~~ This allowance is available when the tax is remitted with a return that is filed when due under the Act, but is not available in any case in which the tax is paid late (with or without a return, and whether formally assessed by the Department or not). The Department may disallow the discount for retailers whose certificate of registration is revoked at the time the return is filed, but only if the Department's decision to revoke the certificate of registration has become final. [35 ILCS 105/9] Also, this discount for collecting the tax is not allowable when the use tax~~Use Tax~~ is remitted directly to the Department by a user.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART L: BOOKS AND RECORDS

Section 150.1305 Retailers' Books and Records

- a) Every retailer required or authorized to collect taxes under the Act and every person using in this State tangible personal property purchased at retail from a retailer shall keep such records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in such form as the Department shall require. For purposes of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation. If a retailer is required or authorized to collect the Use Tax, his records must show that he collects such tax in accordance with the brackets prescribed in Subpart D of this Part and that he states such tax separately to the purchaser from the selling price of the tangible personal property which he is selling, unless the Department finds that it is not possible, under the facts of the case, for the retailer to collect the tax from the purchaser as a separate item from the selling price.
- b) For the purpose of administering and enforcing the provisions hereof, the Department, or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~concerning any matters covered herein and may examine any books, papers, records, documents or memoranda of any retailer or purchaser bearing upon the sales or purchases of tangible personal property, the privilege of using which is taxed under the Act, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of the facts, and may take testimony and require proof for its information. The retailer can prove compliance with the requirement of stating the Use Tax as a separate item from the selling price by showing the tax separately on invoices or sales tickets that are issued to his customers, by having the tax shown separately from prices on a copy of the cash register tape, or, in a proper case as explained hereinafter, by publicly posting an appropriate sign. The sign procedure described subsequently in this Regulation may not be relied on to prove collection of the tax by the retailer from his customers as a separate item in types of transactions in which such retailer does issue invoices or sales tickets to customers. For this purpose, a credit card is not construed to come within the terms "invoices" or "sales tickets" as used in this Regulation.~~

- c) Any person who fails to keep books and records or fails to produce books and records for examination, as required by this Section, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by this Section. The penalties imposed under this Section shall not apply if the taxpayer shows that the taxpayer acted with ordinary business care and prudence. [35 ILCS 105/11] (See also 86 Ill. Adm. Code 130.801).
- d) If a retailer is required or authorized to collect use tax, the retailer's records must show that the retailer collects such tax in accordance with the brackets prescribed in TABLE A of this Part and that the retailer states such tax separately to the purchaser from the selling price of the tangible personal property which the retailer is selling, unless the Department finds that it is not possible, under the facts of the case, for the retailer to collect the tax from the purchaser as a separate item from the selling price.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- e) The retailer can prove compliance with the requirement of stating the use tax as a separate item from the selling price by showing the tax separately on invoices or sales tickets that are issued to the retailer's customers, by having the tax shown separately from prices on a copy of the cash register tape, or, in a proper case as explained hereinafter, by publicly posting an appropriate sign. The sign procedure described subsequently in this Regulation may not be relied upon to prove collection of the tax by the retailer from the retailer's customers as a separate item in types of transactions in which such retailer does issue invoices or sales tickets to customers. For this purpose, a credit card receipt is not construed to come within the terms of "invoices" or "sales tickets" as used in this Regulation.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 150.1310 Use of Signs to Prove Collection of Tax as a Separate Item

- a) The tax imposed by the Act shall when collected be stated as a distinct item separate and apart from the selling price of the tangible personal property. However, where it is not possible to state the sales tax separately in situations such as sales from vending machines or sales of liquor by the drink the Department may by rule exempt such sales from this requirement so long as purchasers are notified by a sign that the tax is included in the selling price. [35 ILCS 105/3a] If the retailer who is entitled to use the posted sign procedure wishes to comply with the requirement in question without raising his prices, ~~the retailer~~ he may do this by publicly displaying a sign stating that all tangible personal property for which a given charge is made is being sold for a specified amount, with the ~~use tax~~ Use Tax and home rule or other local ~~retailer's occupation tax~~ Retailers' Occupation Tax being a specified amount based on the applicable tax collection schedule that is set out in ~~TABLE A~~ Subpart D of this Part, and with the total equaling the entire charge which the seller makes for such tangible personal property.
- b) Another acceptable form of sign (assuming a 6.25% ~~use tax~~ Use Tax and 1% local ~~retailers' occupation tax~~ Retailers' Occupation Tax rate to be applicable) may read:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~charges~~Charges from 08 cents to 22 cents, inclusive, represent 1 cent ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance is the price of the merchandise being sold; charges from 23 cents to 36 cents, inclusive, represent 2 cents ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance is the price of the merchandise being sold; charges from 37 cents to 51 cents, inclusive, represent 3 cents ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance is the price of the merchandise being sold; charges from 52 cents to 66 cents, inclusive, represent 4 cents ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance is the price of the merchandise being sold; charges from 67 cents to 81 cents, inclusive, represent 5 cents ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance is the price of the merchandise being sold; charges from 82 cents to 96 cents, inclusive, represent 6 cents ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance is the price of the merchandise being sold; charges from 97 cents to \$1.10, inclusive, represent 7 cents ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance is the price of the merchandise being sold; each additional charge of 13 or 14 cents, depending upon rounding, or any part thereof shall represent 1 cent ~~use tax~~Use Tax and local ~~retailers' occupation tax~~Retailers' Occupation Tax, and the balance shall represent the price of the merchandise being sold.

- c) In the case of the first 2 types of signs referred to hereinabove, appropriate adjustments would have to be made if the rate of the local ~~retailers' occupation tax~~Retailers' Occupation Tax is not 1%.
- d) The requirements in question will be met if the sign (when the sign procedure is authorized under the terms of this Section) states that the selling price of the tangible personal property includes the ~~use tax~~Use Tax and home rule or other local ~~retailers' occupation tax~~Retailers' Occupation Tax or some equivalent expression. The sign need not mention the local ~~retailers' occupation tax~~Retailers' Occupation Tax if the retailer is located in an area in which no local ~~retailers' occupation tax~~Retailers' Occupation Tax is in effect.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- e) If a sign is relied on to lay the basis for saying that the use tax Use Tax is being stated separately to the purchaser from the selling price of the property, the sign should be dated to indicate for what period it was in effect and should be retained by the seller among the seller's his books and records in the event of a subsequent audit by the Department. Except in the case of fraud or the willful failure to file returns, the maximum period for keeping records for use tax Use Tax purposes is 3 1/2 years.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART M: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section 150.1401 Claims for Credit – Limitations – Procedure

- a) When Purchasers May File Claims
If it shall appear that an amount of tax or penalty or interest has been paid in error under the Act to the Department by a purchaser, as distinguished from the retailer, whether such amount be paid through a mistake of fact or an error of law, such purchaser may file a claim for credit or refund with the Department in accordance with Sections 6, 6a, 6b, 6c, and 6d of the Retailers' Occupation Tax Act. [35 ILCS 105/19]~~If it shall appear that an amount of tax or penalty or interest has been paid in error under the Use Tax Act to the Department by a purchaser, as distinguished from the retailer, whether the amount be paid through a mistake of fact or an error of law, the purchaser may file a claim for credit with the Department.~~
- b) When Retailers May File Claims – Unjust Enrichment Prohibited
- 1) If it shall appear that an amount of tax or penalty or interest has been paid in error to the Department under the Act by a retailer who is required or authorized to collect and remit the use tax, whether such amount be paid through a mistake of fact or error of law, such retailer may file a claim for credit or refund with the Department in accordance with Sections 6, 6a, 6b, 6c, and 6d of the Retailers' Occupation Tax Act, provided that no credit or refund shall be allowed for any amount paid by any such retailer unless it shall appear that the retailer bore the burden of such amount and did not shift the burden of the amount to anyone else (as in the case of a

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~duplicated tax payment which the retailer made to the Department and did not collect from anyone else), or unless it shall appear that the retailer or the retailer's legal representative has unconditionally repaid such amount to the retailer's vendee. If it shall appear that an amount of tax or penalty or interest has been paid in error to the Department under the Use Tax Act by a retailer who is required or authorized to collect and remit the Use Tax, whether the amount be paid through a mistake of fact or an error of law, the retailer may file a claim for credit with the Department, provided that no credit shall be allowed for any amount paid by any such retailer unless it shall appear that the retailer bore the burden of the amount and did not shift the burden to anyone else (as in the case of a duplicated tax payment which the retailer made to the Department and did not collect from anyone else), or unless it shall appear that the retailer or its legal representative has unconditionally repaid the amount to its vendee:~~

- A) ~~who bore the burden and has not shifted such burden directly or indirectly in any manner whatsoever; who bore the burden and has not shifted the burden directly or indirectly in any manner whatsoever;~~
- B) ~~who, if the retailer has shifted such burden, has repaid unconditionally such amount to the retailer's vendee; and who, if the retailer has shifted the burden, has repaid unconditionally the amount to its own vendee; and~~
- C) ~~who is not entitled to receive any reimbursement from any other source than from the retailer's vendor, nor to be relieved of such burden in any other manner whatsoever. [35 ILCS 105/19] who is not entitled to receive any reimbursement from any other source than from its vendor, nor to be relieved of the burden in any other manner whatsoever.~~

- 2) ~~If it shall appear that an amount of tax has been paid in error under the Act by the purchaser to a retailer, who retained such tax as reimbursement for the retailer's tax liability on the same sale under~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

the Retailers' Occupation Tax Act, and who remitted the amount involved to the Department under the Retailers' Occupation Tax Act, whether such amount be paid through a mistake of fact or an error of law, the procedure for recovering such tax shall be that prescribed in Section 6, 6a, 6b, 6c, and 6d of the Retailers' Occupation Tax Act. [35 ILCS 105/19] If it shall appear that an amount of tax has been paid in error under the Use Tax Act by the purchaser to a retailer, who retained the tax as reimbursement for its tax liability on the same sale under the Retailers' Occupation Tax Act, and who remitted the amount involved to the Department under the Retailers' Occupation Tax Act, whether the amount be paid through a mistake of fact or an error of law, the procedure for recovering the tax shall be that prescribed in Sections 6, 6a, 6b and 6c of the Retailers' Occupation Tax Act.

- 3) The retailer will be considered to have satisfied the unconditional repayment requirement where it provides its purchaser with an instrument upon which the purchaser can make a demand upon the retailer/claimant for payment of the tax recovered if the claim is allowed. The retailer's provision of unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error would satisfy this requirement. The purpose of requiring the retailer to make an unconditional repayment to its purchasers is to prevent unjust enrichment on the part of the retailer. Therefore, in order to establish that it was not unjustly enriched, the retailer filing a claim for credit must be able to demonstrate that it gave unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error to the retailer.

- c) Time Limit ~~on~~On ~~the~~The Filing ~~of~~Of Claims
As to any claim for credit or refund filed with the Department on and after January 1 but on or before June 30 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or interest under the Act) more than 3 years prior to such January 1 shall be credited or refunded, and as to any such claim filed on and after July 1 but on or before December 31 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or interest under the Act) more than 3

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~years prior to such July 1 shall be credited or refunded. [35 ILCS 105/21] Except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of the Retailers' Occupation Tax Act, such claim may be filed at any time prior to the expiration of the period agreed upon. [35 ILCS 120/6] No claim shall be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment or order of court. [35 ILCS 105/21] (See also 86 Ill. Adm. Code 130.1501(a)(4)(A)-(E) for examples). As to any claim for credit filed with the Department on and after January 1 but on or before June 30 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Use Tax Act) more than 3 years prior to January 1 shall be credited, and as to any claim filed on and after July 1 but on or before December 31 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Use Tax Act) more than 3 years prior to July 1 shall be credited or refunded, except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of this Act, such claim may be filed at any time prior to the expiration of the period agreed upon. [35 ILCS 120/4] No claim shall be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment, order or decree of court.~~

- d) Beginning June 25, 2021, for any period included in a claim for credit or refund for which the statute of limitations for issuing a notice of tax liability under ~~the Act~~this Act will expire less than 6 months after the date a taxpayer files the claim for credit or refund, the statute of limitations ~~for~~issuing a notice of tax liability is automatically extended for 6 months from the date it would have otherwise expired. [35 ILCS 105/21].
- e) Procedure ~~for~~For Filing ~~of~~Of Claims

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Claims for credit shall be prepared and filed upon forms provided by the Department and available at www.tax.illinois.gov. The claim shall be signed by the claimant (or by the claimant's legal representative if the claimant shall have died or become a person under legal disability), or by a duly authorized agent of the claimant or the claimant's legal representative. [35 ILCS 105/19] Where the claimant is a corporation, the claim filed on behalf of the corporation shall be signed by the president, vice-president, secretary, or treasurer or by the properly accredited agent of the corporation.
- 2) A claim for credit or refund shall be considered to have been filed with the Department on the date upon which it is received by the Department. A claim for credit shall be considered to have been filed with the Department on the date upon which it is received by the Department.
- 3) Upon receipt of any claim for credit or refund filed under the Act, any officer or employee of the Department, authorized in writing by the Director of Revenue to acknowledge receipt of the claims on behalf of the Department, shall execute on behalf of the Department, and shall deliver or mail to the claimant or the claimant's duly authorized agent, a written receipt, acknowledging that the claim has been filed with the Department, describing the claim in sufficient detail to identify it and stating the date upon which the claim was received by the Department. Upon receipt of any claim for credit filed under the Act, any officer or employee of the Department, authorized in writing by the Director of Revenue to acknowledge receipt of the claims on behalf of the Department, shall execute on behalf of the Department, and shall deliver or mail to the claimant or its duly authorized agent, a written receipt, acknowledging that the claim has been filed with the Department, describing the claim in sufficient detail to identify it and stating the date upon which the claim was received by the Department.
- 4) Such written receipt shall be prima facie evidence that the Department received the claim described in such receipt and shall be prima facie evidence of the date when such claim was received

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~*by the Department. The written receipt shall be prima facie evidence that the Department received the claim described in the receipt and shall be prima facie evidence of the date when the claim was received by the Department.*~~

- 5) ~~*In the absence of a written receipt, the records of the Department as to when the claim was received by the Department, or as to whether or not the claim was received at all by the Department, shall be deemed to be prima facie correct upon these questions in the event of any dispute between the claimant (or the claimant's legal representative) and the Department concerning these questions. [35 ILCS 105/19] In the absence of a written receipt, the records of the Department as to when the claim was received by the Department, or as to whether or not the claim was received at all by the Department, shall be deemed to be prima facie correct upon these questions in the event of any dispute between the claimant (or its legal representative) and the Department concerning these questions. (See Section 19 of the Act.)*~~

f) Procedure After Filing ~~of~~ Claims

- 1) ~~*As soon as practicable after a claim for credit or refund is filed, the Department shall examine each claim and determine the amount of credit or refund to which the claimant or the claimant's legal representative, in the event that the claimant shall have died or become a person under legal disability, is entitled and shall, by its Notice of Tentative Determination of Claim, notify the claimant or the claimant's representative of such determination, which shall be prima facie correct. [35 ILCS 105/20] The Department will examine each claim for credit as soon as practicable after the claim is filed and will notify the claimant (or its legal representative, if the claim is filed by the legal representative, or if the claimant has died or become incompetent and the legal representative has notified the Department of his appointment and qualification as the legal representative, or if the Department, on its own motion, has substituted the legal representative in the proceeding for the deceased or incompetent claimant) of its Tentative Determination of*~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~the amount of credit, if any, to which the claimant or its legal representative is entitled.~~

- 2) *If such claimant, or the legal representative of a deceased claimant or a claimant who is under legal disability shall, within 60 days after the Department's Notice of Tentative Determination of Claim, file a protest and request a hearing, the Department shall give notice to such claimant, or the legal representative of a deceased claimant, or a claimant who is under legal disability of the time and place fixed for such hearing, and shall hold a hearing in conformity with the provisions of the Act. On or after July 1, 2013, protests concerning matters that are subject to the jurisdiction of the Illinois Independent Tax Tribunal shall be filed with the Tax Tribunal in accordance with the Illinois Independent Tax Tribunal Act of 2012, and hearings concerning those matters shall be held before the Tribunal in accordance with that Act. The Department shall issue its Final Determination of the amount, if any, found to be due as a result of a hearing before the Department or the Tribunal, to such claimant, or the legal representative of a deceased claimant or a claimant who is a person under legal disability. If the claimant, or the legal representative of a deceased or incompetent taxpayer, shall, within 60 days after the Department's Notice of Tentative Determination of Claim, file a protest and request a hearing, the Department shall give notice to the claimant, or to the legal representative of a deceased or incompetent taxpayer, of the time and place fixed for the hearing, and shall hold a hearing in conformity with the provisions of the Act, and shall issue its Final Determination of the amount of credit, if any, found to be due as a result of the hearing, to the claimant, or to the legal representative of a deceased or incompetent taxpayer.*

- 3) *If a protest to the Department's Notice of Tentative Determination of Claim is not filed within 60 days and a request for hearing is not made as provided in subsection (f)(2), the Notice shall become and operate as a Final Determination. [35 ILCS 105/20] If a protest to the Department's Notice of Tentative Determination of Claim is not filed within 60 days and a request for a hearing is not made as*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~provided in subsection (e)(2), the Notice shall become and operate as a Final Determination. (See Section 20 of the Act.)~~

- g) Use of Credit Memoranda to Satisfy Prior Rights of Department
- 1) If, following the above procedure, a credit is found to be due, a credit memorandum for the amount shall be issued in the name of the claimant. If there is an established unpaid assessment or an admitted unpaid liability under the Use Tax Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act, or the Service Use Tax Act, or under a local Retailers' Occupation Tax or Service Occupation Tax administered by the Department against the claimant, or unpaid penalty, or unpaid interest, the amount of the credit shall be credited against the tax or penalty or interest due. If the credit is in an amount less than that of the unpaid liability, it shall be applied to the extent it reduces such liability.~~pr~~~~o~~~~te~~.
 - 2) If the amount of the credit exceeds that of the unpaid liability, after crediting an amount sufficient to liquidate or cancel out the unpaid liability, a new credit memorandum shall be issued for an amount representing the difference between that of the original credit found to be due and that of the liability liquidated or paid, and the new credit memorandum shall be delivered to the person entitled to receive delivery thereof, provided that no proceeding is pending against the claimant to establish an unpaid liability under the ~~Use Tax Act or under~~, the Retailers' Occupation Tax Act, the Service Occupation Tax Act, ~~or~~ the Service Use Tax Act, or under a local ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ or ~~service occupation tax~~~~Service Occupation Tax~~ administered by the Department.
 - 3) If proceedings are pending to determine whether or not any tax or penalty or interest is due under the Act or under the Retailers' Occupation Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, or any local occupation or use tax administered by the Department, from such person, the Department may withhold issuance of the credit or refund pending the final disposition of such

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

proceedings and may apply such credit or refund against any amount found to be due to the Department as a result of such proceedings. The balance, if any, of the credit or refund shall be issued to the person entitled thereto. [35 ILCS 105/22] If a proceeding to establish an unpaid liability is pending, the credit memorandum shall be held by the Department until the proceeding is concluded; and if the proceeding results in the issuance of an assessment which becomes final, the credit shall be applied by the Department, to the extent which may be necessary, in liquidation of the assessment, or any interest that may accrue, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of the liability), shall be issued in the form of a new credit memorandum and delivered to the person entitled to receive delivery.

- 4) If a taxpayer is notified that due to overpayments, a verified credit balance is available, the taxpayer may file a claim for credit.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 150.1405 Disposition of Credit Memoranda by Holders Thereof

a) Assignment ~~of~~ Credit Memoranda

- 1) Credit memoranda issued under the Act ~~hereunder~~ may be assigned or transferred only after a request for that purpose is filed with the Department upon forms prescribed and furnished by it, and subject to the following conditions:
- A) that the assignment is made to a person who is subject to the ~~Use Tax Act~~, or to the Retailers' Occupation Tax Act, ~~or to the Service Occupation Tax Act, or to the Service Use Tax Act~~;
- B) that there is no proceeding pending to establish an unpaid liability against the assignor pursuant to notice given of the Department's proposal to assess an amount against the assignor ~~him~~ either under the ~~Use Tax Act~~, the Retailers'

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Occupation Tax Act, the Service Occupation Tax Act, ~~or~~ the Service Use Tax Act, or any under a local retailers' occupation tax~~Retailers' Occupation Tax~~ or service occupation tax~~Service Occupation Tax~~ administered by the Department; and

- C) that there is no established assessment or admitted tax liability or interest or penalty unpaid by the assignor, either under the Act, the Retailers' Occupation Tax Act, ~~the Use Tax Act~~, the Service Occupation Tax Act, the Service Use Tax Act, or any under a local retailers' occupation tax~~Retailers' Occupation Tax~~ or service occupation tax~~Service Occupation Tax~~ administered by the Department: Provided, that if the amount of the credit memorandum must first be applied, in whole or in part, against an established unpaid assessment which has been issued to the claimant-assignor, or in total or partial liquidation of an unpaid admitted tax liability, or unpaid penalty, or unpaid interest, of the claimant-assignor, notice to this effect shall be given the claimant-assignor by the Department.
- 2) If any balance is due such claimant-assignor, after application of the credit memorandum in the manner and to the purposes aforesaid, such balance may be assigned upon receipt by the Department of instructions to that effect.
- 3) If there are no unpaid established assessments, ~~or~~ unpaid admitted tax liabilities, ~~or~~ unpaid penalties, or unpaid amounts of interest due from the claimant-assignor, and if there are no pending proceedings as herein outlined against the claimant-assignor, and if the contemplated assignee is a person who is subject to the Use Tax Act, ~~or~~ the Retailers' Occupation Tax Act, ~~or~~ the Service Occupation Tax Act, or the Service Use Tax Act, the request for leave to assign shall be approved.
- 4) The original credit memorandum shall be canceled, and a new credit memorandum shall be issued to the assignee in the amount shown on the canceled memorandum.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 5) However, before a credit memorandum is issued to the assignee, the amount of such credit shall be applied, to the extent that may be necessary, in liquidation of any established or admitted unpaid liability due from the assignee under the ~~Use Tax Act~~, the Retailers' Occupation Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, or ~~any~~under a local retailers' occupation tax or service occupation tax ~~Retailers' Occupation Tax or Service Occupation Tax~~ administered by the Department, and a credit memorandum for the balance of the credit, if any, shall then be issued to the assignee: Provided that there is no proceeding pending against the assignee to establish an unpaid liability against the assignee ~~him~~ under any of said Acts.

- 6) If a proceeding to establish such an unpaid liability is pending, the credit memorandum shall be held by the Department until such proceeding is concluded; and if such proceeding results in the issuance of an assessment which becomes final under the Act, the credit shall be applied by the Department, to the extent which may be necessary, in liquidation of such assessment, and any interest that may accrue thereon, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of such liability), shall be issued in the form of a new credit memorandum and delivered to the assignor for transmittal to the assignee.

- b) Submission of Credit Memoranda ~~with~~With Tax Returns
 - 1) Credit memoranda, in the hands either of the original claimant or of the claimant's ~~his~~ assignee, may be submitted to the Department, along with use tax~~Use Tax~~ returns, in payment of any tax liability or penalty or interest due under the ~~Use Tax Act~~, the Retailers' Occupation Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, or ~~any~~under a local retailers' occupation tax or service occupation tax ~~Retailers' Occupation Tax or Service Occupation Tax~~ administered by the Department, incurred by the holder of such credit memoranda.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) If, after applying any such credit memorandum against the amount of liability shown to be due by the tax return with which the credit memorandum is submitted, there is a balance of the credit memorandum in favor of the taxpayer, the Department will cancel the credit memorandum which the taxpayer submits with the taxpayer's return and will issue and deliver to such taxpayer a new credit memorandum for such balance. This process will be followed until the credit, to which such taxpayer is entitled, is exhausted.
- 3) However, any new credit memorandum, which is issued for a balance of credit due the taxpayer after applying the amount of a credit memorandum to the payment of current taxes, is subject to the prior rights of the Department to the same extent that such prior rights take precedence when a credit memorandum is first issued (see subsection (a) of this Section) or when leave to assign a credit memorandum is requested (see Section 150.1405(a) of this Part).

- e) Verified Credits and Offsets
~~If a taxpayer is entitled to a verified credit due to overpayment of taxes, the taxpayer may file a claim for credit as described above, in which case interest would be paid upon the amount of credit approved, or the taxpayer may elect to apply the verified credit balance directly to any outstanding liabilities or current payments due. The Department may also apply verified credit amounts to unpaid liabilities, penalties, account balances, if any, of the taxes administered by the Department.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 150.1420 Verified Credit

- a) Verified credit. A verified credit is a specific type of credit arising under Section 3 of the Retailers' Occupation Tax Act, which states:

If any payment provided for in this Section exceeds the taxpayer's liabilities under this Act, the Useuse Tax Act, the Service Occupation Tax Act and the Service Use Tax Act, as shown on an original monthly return, the Department shall, if requested by the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

taxpayer, issue to the taxpayer a credit memorandum no later than 30 days after the date of payment. The credit evidenced by such credit memorandum may be assigned by the taxpayer to a similar taxpayer under this Act, the Use Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations to be prescribed by the Department. If no such request is made, the taxpayer may credit such excess payment against tax liability subsequently to be remitted to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act or the Service Use Tax Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determined that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's 2.1% and 1.75% vendor's discount shall be reduced by 2.1% or 1.75% of the difference between the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on such difference. [35 ILCS 120/3]

- b) Verified credit – explanation – no interest paid. A verified credit is an amount of tax overpaid in a prior period that may be rolled over and applied to subsequent tax liabilities without the need to comply with the formalities involved in submitting a claim for credit. Since the taxpayer has the immediate use of the verified credit to apply against its liability without the need to file a claim for credit and prove the overpayment, interest is not paid on verified credits. (See ~~also~~, 86 Ill. Adm. Code 700.230(a)(2)). Verified credits appear on a Taxpayer Statement listing a taxpayer's unpaid balance, available credits or returns not filed.
- c) Verified credit – How used. A verified credit may be used by a taxpayer in only 3 ways:
 - 1) It can be used to offset liability of the taxpayer that arises under this Act, the Retailers' Occupation Tax Act, the Service Occupation Tax Act, or the Service Use Tax Act subsequent to the origination of the verified credit;
 - 2) It can be converted to a credit memorandum no later than 30 days after the date of overpayment, by making a request to the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Department using forms prescribed by the Department and available at www.tax.illinois.gov. See 35 ILCS 120/6a, for information required to be included. Interest is not paid on verified credits that are converted to credit memoranda in accordance with this subsection (c)(2); and

- 3) It can be converted to a credit memorandum at any time, starting 30 days after the date of over payment, by making a request to the Department using forms prescribed by the Department and available at www.tax.illinois.gov, and without regard to the limitations on claims for refund. See ~~also~~ 86 Ill. Adm. Code ~~150.1401~~[150.140](#), for information on limitations and procedures. Interest is not paid on verified credits that are converted to credit memoranda in accordance with this subsection (c)(3).

- d) A verified credit that is converted to a credit memorandum under this subsection (d) may be assigned to another taxpayer in the same manner as other credit memoranda issued to taxpayers by the Department. See 86 Ill. Adm. Code 150.1405.

(Source: Amended at 48 Ill. Reg. _____, effective _____)