

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Service Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 160
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
160.101	Amendment
160.105	Amendment
160.110	Amendment
160.111	Repealed
160.115	Amendment
160.116	Amendment
160.117	Amendment
160.125	Amendment
160.130	Amendment
160.135	Amendment
160.136	New Section
160.160	Amendment
160.165	Amendment
160.170	New Section
160.175	New Section
- 4) Statutory Authority: Implementing the Service Use Tax Act [35 ILCS 110] and authorized by Section 2505-100 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505/2505-100]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Part 160, Service Use Tax, to reflect new statutory developments, decisional law, and Department policies. This rulemaking also deletes outdated provisions in Part 160 and provides various technical changes.

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

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

Section 160.101(c) is relabeled as subsection (d) and paragraphs (1)-(6) are added to reflect the extension of the existing tax rates enacted by Public Act 102-0022 and to reflect the new tax rates enacted by Public Act 102-0700 on

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

gasohol, majority blended ethanol fuel, biodiesel, and biodiesel blends. A paragraph (6) is added to include the existing statutory language that identifies the items that are taxed at the rate of 1%, such as food for human consumption consumed off the premises where sold, prescription and nonprescription medicines, drugs, and medical appliances.

Section 160.105 is being amended to include additional statutory definitions.

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

Section 160.111 is being repealed because the Commercial Distribution Fee Sales Tax exemption contained in the Section terminated by the express terms of the exemption.

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

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

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

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

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

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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

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

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

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

Section 160.165 is being added to specify that the substance and provisions of 86 Ill. Adm. Code 150.803 and 150.804, which are not incompatible with the Service Use Tax Act or Part 160, will apply, as far as practicable, to the subject matter of Part 160.

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

- 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? No

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:
- Alexis K. Overstreet
Deputy General Counsel
Sales and Excise Taxes
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: Servicemen transferring tangible personal property incident to the sale of, regardless of size, are affected by the amendments.
- B) Reporting, bookkeeping or other procedures required for compliance: Simple accounting, computer, and bookkeeping skills are required. Servicemen must keep a record of all purchases and sales of tangible personal property. Based on the nature of a serviceman's business, the serviceman may satisfy its tax liability by paying Use Tax to its supplier or collecting Service Use Tax from its customers and remitting that tax to the Department along with a tax return for the relevant period.
- C) Types of professional skills necessary for compliance: Accounting, bookkeeping, and computer skills.
- 14) Small Business Impact Analysis: A serviceman that must collect tax from its customers and remit the tax to the Department along with a tax return for the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

relevant period must have simple accounting, bookkeeping, and computer skills to complete these tasks.

A) Types of businesses subject to the proposed rule:

- 22 Utilities
- 31-33 Manufacturing
- 42 Wholesale Trade

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

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

15) Regulatory Agenda on which this rulemaking was summarized: January 2024

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

Section 160.101 Nature of the Tax

- a) The Service Use Tax is a privilege tax imposed on the privilege of using, in this State, tangible personal property that is received anywhere as an incident to a purchase of service from a serviceman, as "serviceman" is defined in the Act. However, if the serviceman would not be taxable under the Service Occupation Tax Act [35 ILCS 115] despite all elements of the sale of service occurring in Illinois, then the tax imposed by the Service Use Tax Act does not apply to the use of such property in this State. [\[35 ILCS 110/3-55\]](#) Transfers of tangible personal property by de minimis servicemen who incur Use Tax as described in 86 Ill. Adm. Code 140.108 do not constitute sales of service under Section 2(g) of the Service Occupation Tax Act. As a result, customers of such de minimis servicemen do not incur Service Use Tax liability on such transfers.

- b) *On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. [35 ILCS 110/3] "Prepaid telephone calling arrangements"*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. [35 ILCS 110/3-27]

cb) Evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State. [35 ILCS 110/4]Any evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State.

de) Rate
Unless otherwise provided in this Section, the rate of tax is 6.25% of the serviceman's selling price of the tangible personal property transferred by the serviceman as an incident to a sale of service, but, in no event shall the selling price be less than the cost price of the property to the serviceman. See 86 Ill. Adm. Code 160.115 for more information on Service Use Tax computation.

1) Effective January 1, 1990, and prior to July 1, 2003, sales of gasohol are subject to tax, based upon 70% of the selling price of gasohol transferred as an incident to a sale of service. On and after July 1, 2003 and on or before July 1, 2017, tax shall be based upon 80% of the selling price of gasohol transferred as an incident to the sale of service. After July 1, 2017, and prior to January 1,

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

2024, tax shall be based upon 100% of the selling price of gasohol transferred as an incident to the sale of service. On and after January 1, 2024, and prior to January 1, 2029, tax shall be based upon 90% of the proceeds of the selling price of gasohol transferred as an incident to the sale of service. On and after January 1, 2029, tax shall be based upon 100% of the selling price of gasohol transferred as an incident to the sale of service. Effective July 1, 2003, if at any time, the tax under the Act on sales of gasohol as defined by the Use Tax Act, is imposed at the rate of 1.25%, then the tax imposed by the Act applies to 100% of the proceeds of sales of gasohol made during that time. [35 ILCS 110/3-10]

- 2) With respect to mid-range ethanol blends, as defined in Section 3-44.3 of the Use Tax Act, the tax imposed by the Act applies to 80% of the selling price of property transferred as an incident to the sale of service on or after January 1, 2024 and on or before December 31, 2028 and 100% of the selling price of property transferred as an incident to the sale of service after December 31, 2028. If, at any time, however, the tax under the Act on sales of mid-range ethanol blends is imposed at the rate of 1.25%, then the tax imposed by the Act applies to 100% of the selling price of mid-range ethanol blends transferred as an incident to the sale of service during that time. [35 ILCS 110/3-10]
- 3) With respect to majority blended ethanol fuel, as defined in the Use Tax Act, the tax imposed by the Act does not apply to the selling price of property transferred as an incident to the sale of service on or after July 1, 2003 and on or before December 31, 2028, but applies to 100% of the selling price thereafter. [35 ILCS 110/3-10]
- 4) With respect to biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with no less than 1% and no more than 10% biodiesel, the tax imposed by the Act applies to 80% of the selling price of property transferred as an incident to the sale of service on or after July 1, 2003 and on or before December 31, 2018 and 100% of the proceeds of the selling price after December 31, 2018 and before January 1, 2024. On and after January 1, 2024 and on or before December 31, 2030, the taxation of biodiesel, renewable diesel, as defined in Section 3-42.5 of the Use Tax Act, and biodiesel blends shall be as provided in Section 3-5.1 of the Use Tax Act. If, at any time, however, the tax under the Act on sales of

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

biodiesel blends, as defined in the Use Tax Act, with no less than 1% and no more than 10% biodiesel is imposed at the rate of 1.25%, then the tax imposed by the Act applies to 100% of the proceeds of sales of biodiesel blends with no less than 1% and no more than 10% biodiesel made during that time.

- 5) With respect to biodiesel as defined in Section 3-41 of the Use Tax Act, and biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with more than 10% but no more than 99% biodiesel, the tax imposed by the Act does not apply to the proceeds of the selling price of property transferred as an incident to the sale of service on or after July 1, 2003 and on or before December 31, 2023. On and after January 1, 2024 and on or before December 31, 2030, the taxation of biodiesel, renewable diesel, and biodiesel blends shall be as provided in Section 3-5.1 of the Use Tax Act.
- 6) The tax shall be imposed at the rate of 1% on food prepared for immediate consumption and transferred incident to a sale of service subject to this Act or the Service Occupation Tax Act by an entity licensed under the Hospital Licensing Act, the Nursing Home Care Act, the Assisted Living and Shared Housing Act, the ID/DD Community Care Act, the MC/DD Act, the Specialized Mental Health Rehabilitation Act of 2013, or the Child Care Act of 1969, or an entity that holds a permit issued pursuant to the Life Care Facilities Act. The tax shall also be imposed at the rate of 1% on food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, and food that has been prepared for immediate consumption and is not otherwise included in this paragraph) and prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, blood sugar testing materials, syringes, and needles used by human diabetics. [35 ILCS 110/3-10] See 86 Ill. Adm. Code 130.310 for the definitions of “food for consumption that is to be consumed off the premises where sold”, “candy”, “soft

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

drinks”, and “prescription and non-prescription medicines and drugs”.

- 2) ~~On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. (Section 3 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 3-27 of the Act)~~

- ed) If the property that is purchased from a serviceman as an incident to a sale of service is acquired outside Illinois and used outside Illinois before being brought to Illinois for use here and is nevertheless taxable under the Service Use Tax Act, the tax base on which the tax is computed shall be reduced by an amount which represents a reasonable allowance for depreciation for the period of such prior out-of-State use. [35 ILCS 110/3-10] A "reasonable allowance for depreciation" is deemed ~~by the Department~~ to be the amount of depreciation as provided in 86 Ill. Adm. Code 150.110~~determined by use of the straight line method of depreciation.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- fe)** The date of the purchase of service is deemed to be the date of the delivery, to the user, of the tangible personal property which the serviceman transfers as an incident to a sale of service.
- gf)** The Service Use Tax Act complements the Service Occupation Tax Act. That is why the Service Use Tax is restricted to cases in which the property is purchased from a serviceman as an incident to a sale of service.
- hg)** If a serviceman incurring Service Occupation Tax Liability is required or authorized to collect the Service Use Tax (see Section 160.115 for further information), the purchaser must pay the tax to the serviceman. The Department will presume that a serviceman is required or authorized to collect the Service Use Tax if the serviceman bills tax to the service customer. Stated conversely, if an invoice from a serviceman does not show the tax, the Department will presume that the serviceman is either registered and has included the Service Use Tax in the selling price of the tangible personal property transferred or is a de minimis serviceman incurring a Use Tax liability, in which case there is no collection obligation on the part of the purchaser. This presumption will be overcome only where the Department has evidence that the serviceman and/or the service customer were both aware that the proper tax due was the Service Use Tax and that no action was taken to remit the Service Use Tax by either party to the Transaction. A serviceman need not remit that part of any Service Use Tax collected by the serviceman to the extent that the serviceman is required to pay and does pay Service Occupation Tax to the Department on the serviceman's sales of service involving the transfer by the serviceman of the same property, provided, however, that the amount paid to the Department is equal to or exceeds the amount collected from the service customer.

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

Section 160.105 Definitions

For definitions of terms other than "Use", "Purchased from a Serviceman", "Purchaser", "Sale of Service", "Selling Price", and "Serviceman maintaining a place of business in this State", see Section 140.201 of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140.201).

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

"Act" means the Service Use Tax Act [35 ILCS 110].

~~*"Purchased from a serviceman" means the acquisition of the ownership of, or title to, tangible personal property through a sale of service. "Purchased from a serviceman" means the acquisition of the ownership of, or title to, tangible personal property through a sale of service.*~~

~~*"Purchaser" means any person who, through a sale of service, acquires the ownership of, or title to, any tangible personal property. "Purchaser" means any person who, through a sale of service, acquires the ownership of, or title to, any tangible personal property.*~~

~~*"Sale of service" means any transaction except:*~~

~~*a retail sale of tangible personal property taxable under the Retailers' Occupation Tax Act or under the Use Tax Act;*~~

~~*a sale of tangible personal property for the purpose of resale made in compliance with Section 2c of the Retailers' Occupation Tax Act;*~~

~~*except as hereinafter provided, a sale or transfer of tangible personal property as an incident to the rendering of service for or by any governmental body, or for or by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older that has an active exemption identification number issued by the Department. A limited liability company may qualify under this exception only if the limited liability company is organized and operated exclusively for educational purposes;*~~

~~*a sale or transfer of tangible personal property as an incident to the rendering of service for owners, lessors, or shippers of tangible personal property which is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce so long as so used by interstate carriers for hire, and equipment operated by a telecommunications provider, licensed as a common carrier by the*~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce;

a sale or transfer of machinery and equipment used primarily in the process of the manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease. (See Section 160.110(h));

the repairing, reconditioning or remodeling, for a common carrier by rail, of tangible personal property which belongs to such carrier for hire, and as to which such carrier receives the physical possession of the repaired, reconditioned or remodeled item of tangible personal property in Illinois, and which such carrier transports, or shares with another common carrier in the transportation of such property, out of Illinois on a standard uniform bill of lading showing the person who repaired, reconditioned or remodeled the property to a destination outside Illinois, for use outside Illinois;

a sale or transfer of tangible personal property which is produced by the seller thereof on special order in such a way as to have made the applicable tax the Service Occupation Tax or the Service Use Tax, rather than the Retailers' Occupation Tax or the Use Tax, for an interstate carrier by rail which receives the physical possession of such property in Illinois, and which transports such property, or shares with another common carrier in the transportation of such property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of such property to a destination outside Illinois, for use outside Illinois;

at the election of any serviceman not required to be otherwise registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, made for each fiscal year sales of service in which the aggregate annual cost price of tangible personal property transferred as an incident to the sales of service is less than 35%, or 75% in the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production, of the aggregate annual total gross receipts from all sales of service. The purchase of such tangible personal property by the serviceman shall be

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act. However, if a primary serviceman who has made the election described in this paragraph subcontracts service work to a secondary serviceman who has also made the election described in this paragraph, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on the secondary serviceman's cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman;

tangible personal property transferred incident to the completion of a maintenance agreement; and

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).

"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits and service, and shall be determined without any deduction on account of the serviceman's 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 duty to collect, from the purchaser, the tax that is imposed by this Act."Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits and service, and shall be determined without any deduction on account of the serviceman's 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 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 duty to collect, from the purchaser, the tax that is imposed by the Act. For purposes of calculating the serviceman's tax base, the selling price shall not be less than the cost price to the serviceman of the tangible personal property transferred to the service customer.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

"Serviceman maintaining a place of business in this State", or any like term, means and includes any serviceman:

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 serviceman or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such serviceman or subsidiary is licensed to do business in this State;

having a contract with a person located in this State under which the person, for a commission or other consideration based on the sale of service by the serviceman, directly or indirectly refers potential customers to the serviceman by providing to the potential customers a promotional code or other mechanism that allows the serviceman to track purchases referred by such persons. Examples of mechanisms that allow the serviceman 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 service by the serviceman to customers who are referred to the serviceman 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 serviceman 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;

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

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

the serviceman sells the same or substantially similar line of services 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;

the serviceman provides a commission or other consideration to the person located in this State based upon the sale of services by the serviceman; and

the cumulative gross receipts from sales of service by the serviceman 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;

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 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;

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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;

engaging in activities in Illinois, which activities in the state in which the supply business engaging in such activities is located would constitute maintaining a place of business in that state; or

beginning October 1, 2018, making sales of service to purchasers in Illinois from outside of Illinois if:

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

the serviceman enters into 200 or more separate transactions for sales of service to purchasers in Illinois.; and

beginning January 1, 2020, a marketplace facilitator, as defined in Section 2d of the Act.

~~"Serviceman maintaining a place of business in this State", or any like term, means and includes any serviceman 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 serviceman or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such serviceman or subsidiary is licensed to do business in this State; 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,~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~financing, debt collection, telecommunication, or 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 that would, in the state in which the service business engaging in these activities is located, constitute maintaining a place of business in that state [35 ILCS 110/2]. For the purpose of determining the state of location, the Department will look to the place at which the selling activity takes place.~~

~~"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, but does not include the sale or use for demonstration by the person of that property in any form as tangible personal property in the regular course of business. "Use" does not mean the interim use of tangible personal property nor the physical incorporation of tangible personal property, as an ingredient or constituent, into other tangible personal property, (a) which is sold in the regular course of business or (b) which the person incorporating such ingredient or constituent therein has undertaken at the time of such purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois. [35 ILCS 110/2]"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, but does not include the sale or use for demonstration by him or her of that property in any form as tangible personal property in the regular course of business. "Use" does not mean the interim use of tangible personal property nor the physical incorporation of tangible personal property, 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 has undertaken at the time of purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois.~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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

Section 160.110 Kinds of Uses And Users Not Taxed

- a) To prevent actual or likely multistate taxation, the tax ~~does~~*shall* not apply to the use of tangible personal property in this State under the following circumstances:
- 1) ~~the~~*The* use, in this State, of property acquired outside this State by a nonresident individual and brought into this State by ~~the~~*such* individual for ~~that individual's~~*his or her* own use while temporarily within this State or while passing through this State;
 - 2) ~~the~~ use, in this State, of property ~~that~~*which* is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase or use of ~~that~~*such* property, to the extent of the amount of ~~the~~*such* tax properly due and paid in ~~the~~*such* other state;
 - 3) ~~the~~ temporary storage, in this State, of property ~~that~~*which* is acquired outside this State and ~~that after which, 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 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; ~~(Section 3-45 of the Act)~~
 - 4) ~~the use, in this State, of property that is acquired outside this State and that is moved into this State for use as rolling stock moving in interstate commerce; and~~
 - 5) ~~the use, in this State, of fuel acquired outside this State and brought into this State in the fuel supply tanks of locomotives engaged in freight hauling and passenger service for interstate commerce. [35 ILCS 110/3-45]~~
- b) Since the exemptions in subsections (a)(1) ~~through (5), (2) and (3),~~ immediately above, do not exist as far as the Service Occupation Tax is

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

concerned, and since it would therefore serve no purpose to say that the exemptions exist for Service Use Tax purposes insofar as the serviceman is merely collecting Service Use Tax to reimburse himself for Service Occupation Tax on the same property, 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 Service Use Tax liability. Therefore, the exemptions in subsections (a)(1) ~~through (5), (2) and (3)~~ above would not apply except when the tangible personal property is acquired outside Illinois by the purchaser in such a way that there is no Service Occupation Tax liability on the part of the serviceman in the same transaction.

- c) The Service Use Tax *does not apply to the use, in this State, of property which is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who ~~has shall have~~ used the property outside this State for at least 3 months before bringing the property to this State.* ~~[35 ILCS 110/3-60](Section 3-60 of the Act)~~
- d) *Where a business that is not operated in Illinois, but ~~is operated which does operate~~ in another state, is moved to Illinois or opens up an office, plant or other business facility in Illinois, ~~that such~~ business shall not be taxed on its use, in Illinois, of used property ~~that the which such~~ business bought outside Illinois and used outside Illinois in the operation of ~~the such~~ business for at least 3 months before moving such used property to Illinois for use ~~in this State here.~~* ~~[35 ILCS 110/3-60](Section 3-60 of the Act)~~
- e) The Service Use Tax will not apply to the following entities as long as such entities have an active exemption identification number issued by the Department. "Sale of service" does not include:
 - 1) a sale or transfer of tangible personal property as an incident to the rendering of service for or by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, in accordance with the provisions of 86 Ill. Adm. Code 130.2005, which is effective as if fully set forth in this subsection (e)(1). 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;

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) a sale or transfer of tangible personal property as an incident to the rendering of service for or by 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, in accordance with the provisions of 86 Ill. Adm. Code 130.2005, which is effective as if fully set forth in this subsection (e)(2); and
 - 3) a sale or transfer of tangible personal property as an incident to the rendering of service for or by any governmental body, in accordance with the provisions of 86 Ill. Adm. Code 130.2055 and 130.2080, which are effective as if fully set forth in this subsection (e)(3). [35 ILCS 110/2(3)]
- f) The Service Use Tax does not apply to the use of game or game birds purchased at a "game breeding and hunting preserve area" as that term is used in the Wildlife Code (520 ILCS 5/3.27). [35 ILCS 110/3-5(19)]
~~Beginning July 1, 1999, the Service Use Tax does not apply to the use, in this State, of game or game birds purchased incident to a sale of service at:~~
- 1) ~~a game breeding and hunting preserve area licensed by the Department of Natural Resources (see Section 3.27 of the Wildlife Code [520 ILCS 5/3.27]),~~
 - 2) ~~an exotic game hunting area licensed by the Department of Natural Resources (see Section 3.34 of the Wildlife Code [520 ILCS 5/3.34]), or~~
 - 3) ~~a hunting enclosure approved through rules adopted by the Department of Natural Resources. (Section 3-5 of the Act)~~
- g) ~~Beginning July 1, 1999, the Service Use Tax does not apply to the use, in this State, of fuel acquired outside of this State and brought into this State in the fuel supply tanks of locomotives engaged in freight hauling and passenger service for interstate commerce. (Section 3-5 of the Act)~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- g~~h~~) Since transfers of tangible personal property by de minimis servicemen who incur Use Tax as described in 86 Ill. Adm. Code 140.108 do not constitute sales of service under Section 2(g) of the Service Occupation Tax Act, customers of such de minimis servicemen do not incur Service Use Tax liability on such transfers.
- i) ~~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 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 [35 ILCS 110/3-5].~~
- h) The Service Use Tax does not apply to a sale or transfer of machinery and equipment used primarily in the process of the manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease, whether such sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether such sale or lease is made apart from or as an incident to the seller's engaging in a service occupation and the applicable tax is a Service Use Tax or Service Occupation Tax, rather than Use Tax or Retailers' Occupation Tax, and includes production related tangible personal property, as defined in Section 3-50 of the Use Tax Act, purchased on or after July 1, 2019; but does not include machinery and equipment used in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains.
- 1) The exemption in subsection (h) also includes machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. On and after July 1, 2017, the exemption also includes graphic arts machinery and equipment, as defined in 35 ILCS 110/3-5(5).

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) For the purposes of the exemption in subsection (h), each of these terms shall have the following meanings:
- A) "manufacturing process" shall mean the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. In relation to a recognized integrated business composed of a series of operations which collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process shall be deemed to commence with the first operation or stage of production in the series, and shall not be deemed to end until the completion of the final product in the last operation or stage of production in the series; and further, for purposes this exemption, photoprocessing is deemed to be a manufacturing process of tangible personal property for wholesale or retail sale;
- B) "assembling process" shall mean the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling which results in a material of a different form, use or name;
- C) "machinery" shall mean major mechanical machines or major components of such machines contributing to a manufacturing or assembling process; and
- D) "equipment" shall include any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembly process; including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; or

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

any subunit or assembly comprising a component of any machinery or auxiliary, adjunct or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns and molds; or any parts which require periodic replacement in the course of normal operation; but shall not include hand tools. Equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease.

- 3) The purchaser of such machinery and equipment who has an active resale registration number shall furnish such number to the seller at the time of purchase. The purchaser of such machinery and equipment and tools without an active resale registration number shall prepare a certificate of exemption stating facts establishing the exemption, which certificate shall be available to the Department for inspection or audit. The Department shall prescribe the form of the certificate. [35 ILCS 110/2]
- 4) For more information on the Manufacturing, Machinery, and Equipment Exemption, see 86 Ill. Adm. Code 130.330.
- i) The Service Use Tax does not apply to farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used primarily for production agriculture or State or federal agricultural programs, including individual replacement parts for the machinery and equipment, including machinery and equipment purchased for lease, and including implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code, farm machinery and agricultural chemical and fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code, but excluding other motor vehicles required to be registered under the Illinois Vehicle Code. Farm machinery and equipment shall include the following:
 - 1) horticultural polyhouses or hoop houses used for propagating, growing, or overwintering plants shall be considered farm machinery and equipment;

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) agricultural chemical tender tanks and dry boxes including units sold separately from a motor vehicle required to be licensed and units sold mounted on a motor vehicle required to be licensed if the selling price of the tender is separately stated;
- 3) precision farming equipment that is installed or purchased to be installed on farm machinery and equipment including, but not limited to, tractors, harvesters, sprayers, planters, seeders, or spreaders. Precision farming equipment includes, but is not limited to, soil testing sensors, computers, monitors, software, global positioning and mapping systems, and other such equipment;
- 4) computers, sensors, software, and related equipment used primarily in the computer-assisted operation of production agriculture facilities, equipment, and activities such as, but not limited to, the collection, monitoring, and correlation of animal and crop data for the purpose of formulating animal diets and agricultural chemicals; and
- 5) beginning on January 1, 2024, farm machinery and equipment also includes electrical power generation equipment used primarily for production agriculture. [35 ILCS 110/3-5(7)]
- j) The Service Use Tax does not apply to semen used for artificial insemination of livestock for direct agricultural production. [35 ILCS 3-5(13)]
- k) The Service Use Tax does not apply to horses, or interests in horses, registered with and meeting the requirements of any of the Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, as appropriate, used for purposes of breeding or racing for prizes. [35 ILCS 110/3-5(14)]
- l) The Service Use Tax does not apply to computers and communications equipment utilized for any hospital purpose and equipment used in the diagnosis, analysis, or treatment of hospital patients purchased by a lessor who leases the equipment, under a lease of one year or longer executed or in effect at the time the lessor would otherwise be subject to the tax imposed by the Act, to a hospital that has been issued an active

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act. [35 ILCS 110/3-5(24)]

- m) The Service Use Tax does not apply to personal property purchased by a lessor who leases the property, under a lease of one year or longer executed or in effect at the time the lessor would otherwise be subject to the tax imposed by the Act, to a governmental body that has been issued an active tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act. [35 ILCS 110/3-5(25)]
- n) The Service Use Tax does not apply to tangible personal property used in the construction or maintenance of a community water supply, as defined under Section 3.145 of the Environmental Protection Act, that is operated by a not-for-profit corporation that holds a valid water supply permit issued under Title IV of the Environmental Protection Act. [35 ILCS 110/3-5(26)]
- o) Beginning January 1, 2010 and continuing through December 31, 2029, materials, parts, equipment, components, and furnishings incorporated into or upon an aircraft as part of the modification, refurbishment, completion, replacement, repair, or maintenance of the aircraft. The exemption includes consumable supplies used in the modification, refurbishment, completion, replacement, repair, and maintenance of aircraft. However, until January 1, 2024, the exemption excludes any materials, parts, equipment, components, and consumable supplies used in the modification, replacement, repair, and maintenance of aircraft engines or power plants, whether such engines or power plants are installed or uninstalled upon any such aircraft. "Consumable supplies" include, but are not limited to, adhesive, tape, sandpaper, general purpose lubricants, cleaning solution, latex gloves, and protective films.
- 1) Beginning January 1, 2010 and continuing through December 31, 2023, the exemption applies only to the use of qualifying tangible personal property transferred incident to the modification, refurbishment, completion, replacement, repair, or maintenance of aircraft by persons who hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration, have a Class IV Rating, and conduct operations in accordance with Part 145 of the Federal Aviation Regulations. The exemption does not include aircraft operated by a commercial air carrier providing scheduled passenger air service

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

pursuant to authority issued under Part 121 or Part 129 of the Federal Aviation Regulations.

2) From January 1, 2024 through December 31, 2029, the exemption applies only to the use of qualifying tangible personal property by:

A) persons who modify, refurbish, complete, repair, replace, or maintain aircraft and who

i) hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration,

ii) have a Class IV Rating, and

iii) conduct operations in accordance with Part 145 of the Federal Aviation Regulations; and

B) persons who engage in the modification, replacement, repair, and maintenance of aircraft engines or power plants without regard to whether or not those persons meet the qualifications of subsection (o)(2)(A).

3) The exemption applies continuously from January 1, 2010 through December 31, 2024; however, no claim for credit or refund is allowed for taxes paid as a result of the disallowance of this exemption on or after January 1, 2015 and prior to February 5, 2020, the effective date of Public Act 101-629. [35 ILCS 110/3-5(27)]

p) Tangible personal property purchased by a public-facilities corporation, as described in Section 11-65-10 of the Illinois Municipal Code, for purposes of constructing or furnishing a municipal convention hall, but only if the legal title to the municipal convention hall is transferred to the municipality without any further consideration by or on behalf of the municipality at the time of the completion of the municipal convention hall or upon the retirement or redemption of any bonds or other debt instruments issued by the public-facilities corporation in connection with the development of the municipal convention hall. This exemption includes existing public-

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

facilities corporations as provided in Section 11-65-25 of the Illinois Municipal Code. [35 ILCS 110/3-5(28)]

- q) Beginning January 1, 2017 and through December 31, 2026, menstrual pads, tampons, and menstrual cups. [35 ILCS 10/3-5(29)]
- r) The Service Use Tax does not apply to tangible personal property transferred to a purchaser who is exempt from the tax imposed by the Act by operation of federal law. [35 ILCS 110/3-5(30)]
- s) The Service Use Tax does not apply to qualified tangible personal property used in the construction or operation of a data center that has been granted a certificate of exemption by the Department of Commerce and Economic Opportunity, whether that tangible personal property is purchased by the owner, operator, or tenant of the data center or by a contractor or subcontractor of the owner, operator, or tenant. Data centers that would have qualified for a certificate of exemption prior to January 1, 2020, had P.A. 101-31 been in effect, may apply for and obtain an exemption for subsequent purchases of computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the original investment that would have qualified. For the purposes of this subsection:
 - 1) "Data center" means a building or a series of buildings rehabilitated or constructed to house working servers in one physical location or multiple sites within the State of Illinois.
 - 2) "Qualified tangible personal property" means:
 - A) Electrical systems and equipment; climate control and chilling equipment and systems; mechanical systems and equipment; monitoring and secure systems; emergency generators; hardware; computers; servers; data storage devices; network connectivity equipment; racks; cabinets; telecommunications cabling infrastructure; raised floor systems; peripheral components or systems; software; mechanical, electrical, or plumbing systems; battery systems; cooling systems and towers; temperature control systems; other cabling; and other data center infrastructure

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

equipment and systems necessary to operate qualified tangible personal property, including fixtures; and component parts of any of the foregoing, including installation, maintenance, repair, refurbishment, and replacement of qualified tangible personal property to generate, transform, transmit, distribute, or manage electricity necessary to operate qualified tangible personal property; and all other tangible personal property that is essential to the operations of a computer data center.

B) The term "qualified tangible personal property" also includes building materials physically incorporated into the qualifying data center.

3) To document the exemption allowed under this subsection, the retailer must obtain from the purchaser a copy of the certificate of eligibility issued by the Department of Commerce and Economic Opportunity, the agency responsible for granting certificates of exemption to qualified data centers pursuant to Section 605-1025 of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois (20 ILCS 605/605-1025). [35 ILCS 110/3-5(31)]

t) Beginning July 1, 2022, breast pumps, breast pump collection and storage supplies, and breast pump kits. As used in this subsection (u):

1) Breast pump" means an electrically controlled or manually controlled pump device designed or marketed to be used to express milk from a human breast during lactation, including the pump device and any battery, AC adapter, or other power supply unit that is used to power the pump device and is packaged and sold with the pump device at the time of sale.

2) "Breast pump collection and storage supplies" means items of tangible personal property designed or marketed to be used in conjunction with a breast pump to collect milk expressed from a human breast and to store collected milk until it is ready for consumption.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 3) "Breast pump collection and storage supplies" includes, but is not limited to: breast shields and breast shield connectors; breast pump tubes and tubing adapters; breast pump valves and membranes; backflow protectors and backflow protector adaptors; bottles and bottle caps specific to the operation of the breast pump; and breast milk storage bags.
- 4) "Breast pump collection and storage supplies" does not include: bottles and bottle caps not specific to the operation of the breast pump; breast pump travel bags and other similar carrying accessories, including ice packs, labels, and other similar products; breast pump cleaning supplies; nursing bras, bra pads, breast shells, and other similar products; and creams, ointments, and other similar products that relieve breastfeeding-related symptoms or conditions of the breasts or nipples, unless sold as part of a breast pump kit that is pre-packaged by the breast pump manufacturer or distributor.
- 5) "Breast pump kit" means a kit that: contains no more than a breast pump, breast pump collection and storage supplies, a rechargeable battery for operating the breast pump, a breastmilk cooler, bottle stands, ice packs, and a breast pump carrying case; and is pre-packaged as a breast pump kit by the breast pump manufacturer or distributor. [35 ILCS 110/3-5(32)]
- u) Tangible personal property sold by or on behalf of the State Treasurer pursuant to the Revised Uniform Unclaimed Property Act. [35 ILCS 110/3-5(33)]
- v) If the serviceman would not be taxable under the Service Occupation Tax Act despite all elements of his sale of service occurring in Illinois, then the tax imposed by the Act does not apply to the use in this State of the property transferred as a necessary incident to the sale of service. [35 ILCS 110/3-55]

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

Section 160.111 Commercial Distribution Fee Sales Tax Exemption (Repealed)

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- a) ~~Qualifications for exemption through June 30, 2004. Beginning on July 1, 2003 through June 30, 2004, sales of certain motor vehicles are not subject to the tax imposed under this Part if they meet all of the following tests:~~
- ~~1) The motor vehicle qualifies as a second division motor vehicle under Section 1-146 of the Illinois Vehicle Code. First division motor vehicles, such as those motor vehicles that are designed for the carrying of not more than 10 persons, do not qualify for the exemption (See 625 ILCS 5/1-146.);~~
 - ~~2) The motor vehicle has a gross vehicle weight in excess of 8,000 pounds; and~~
 - ~~3) The motor vehicle is subject to the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code. [35 ILCS 110/2] The motor vehicle must be registered and remain registered in such a manner whereby it is subject to payment of the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code [625 ILCS 5/3-815.1] and such fee is actually paid for any period in which the fee is in effect.~~
- b) ~~Qualifications for exemption beginning July 1, 2004. Beginning on July 1, 2004 through June 30, 2005, sales of certain motor vehicles are not subject to the tax imposed under this Part if they meet all of the following tests:~~
- ~~1) The motor vehicle is a second division motor vehicle. First division motor vehicles, such as those motor vehicles that are designed for the carrying of not more than 10 persons, do not qualify for the exemption (See 625 ILCS 5/1-146.);~~
 - ~~2) The motor vehicle must have a gross vehicle weight rating in excess of 8,000 pounds. For purposes of this Section, Gross Vehicle Weight Rating means the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single vehicle (See 625 ILCS 5/1-124.5.);~~
 - ~~3) The motor vehicle is subject to the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code. [35~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~ILCS 110/2] The motor vehicle must be registered and remain registered in such a manner whereby it is subject to payment of the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code [625 ILCS 5/3-815.1] and such fee is actually paid for any period in which the fee is in effect; and~~

- 4) ~~The motor vehicle is used primarily for commercial purposes. [35 ILCS 110/2] For purposes of this Section, a motor vehicle used for commercial purposes means any motor vehicle used to transport persons or property in the furtherance of any commercial or industrial enterprise, whether for hire or not for hire.~~

~~COMMERCIAL PURPOSE EXAMPLE: A motor vehicle that is used for transportation to work, school, or recreational activities would not be used for commercial purposes.~~

- e) ~~Documentation of exemption. To properly document the exemption, the seller must obtain a written certificate from the purchaser stating the following:~~
- 1) ~~the name, address, and telephone number of purchaser;~~
 - 2) ~~the description and Vehicle Identification Number of the motor vehicle or motor vehicles being purchased;~~
 - 3) ~~the name and address of seller;~~
 - 4) ~~the date of purchase;~~
 - 5) ~~a statement that the motor vehicle will be used primarily for commercial purposes and will be registered under Section 3-815(a) or 3-818(a) of the Illinois Vehicle Code or in such other manner whereby the registration of that motor vehicle will require the payment of the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code and that such vehicle will remain validly registered in such a manner for subsequent registration years;~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- ~~6) the commercial purpose for which the vehicle will be used along with the purchaser's Illinois Business Tax (IBT) number or other business registration number; and~~
- ~~7) the signature of purchaser.~~
- d) ~~Liability for tax. If a purchaser claims the exemption provided in this Section and the vehicle is not considered subject to the Commercial Distribution Fee as described in subsection (a)(3) or (b)(3) of this Section or otherwise does not qualify for this exemption, the purchaser will be liable for the tax based upon the purchase price of that vehicle and any applicable penalties and interest from the date of purchase.~~
- e) ~~Repair and replacement parts. The exemption provided in this Section may not be claimed for any repair part, replacement part, or other item attached or incorporated into the motor vehicle after the purchase of the motor vehicle. Such items may qualify for exemption from sales tax if the motor vehicle or trailer is used in a manner that qualifies for the rolling stock exemption. See 86 Ill. Adm. Code 130.340.~~
- f) ~~Trailers. For purposes of this Section, a trailer that is subject to the Commercial Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code will qualify as a second division motor vehicle under subsection (a)(1) or (b)(1) of this Section. The term "trailer" includes a trailer as defined in Section 1-209 of the Illinois Vehicle Code, a semitrailer as defined in Section 1-187 of the Illinois Vehicle Code, and a pole trailer as defined in Section 1-161 of the Illinois Vehicle Code.~~

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

Section 160.115 Collection Of The Service Use Tax By Servicemen

- a) Servicemen who incur and remit Service Occupation Tax to the Department; or servicemen who come within the definition of a "Serviceman maintaining a place of business in this State" (as set out in Section 160.105(f) of this Part and in Section 2 of the Service Use Tax Act) and who have a Service Use Tax collection obligation; or other servicemen who are authorized to voluntarily collect the Service Use Tax, shall collect the tax from users at the time of purchase. The Service Use Tax shall be based on the selling price of the tangible personal property

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

transferred incident to the sale of service if stated separately on the invoice from the serviceman. If not stated separately, then the tax will be imposed on 50% of the entire billing from the serviceman. However, the Service Use Tax which is collected by a de minimis serviceman who incurs Service Occupation Tax on the serviceman's cost price of tangible personal property transferred incident to service, as provided at 86 Ill. Adm. Code 140.109, shall be based upon the serviceman's cost price of tangible personal property transferred incident to the serviceman's sales of service. For purposes of this Part, "cost price" is defined as provided in 86 Ill. Adm. Code 140.201. When a serviceman contracts to design, develop and produce special order machinery or equipment, the tax imposed by the Act shall be based on the serviceman's cost price of the tangible personal property transferred incident to the completion of the contract. [35 ILCS 110/3d]

- b) Although not required unless requested by the service customer, the Service Use Tax may be separately stated as a distinct item on the service bill. [35 ILCS 110/3a] ~~(Section 3a of the Act).~~
- c) If the serviceman collects the Service Use Tax as a separate item, he shall use the tax collection brackets prescribed in the Use Tax rules (86 Ill. Adm. Code 150.Table A) with respect to the 6.25% rate when it is impracticable to collect exactly 6.25% of the selling or cost price.
- d) Every serviceman maintaining a place of business in this State and making sales of service involving the incidental transfer of property for use in this State (whether those sales are made within or without this State) shall, when collecting the tax as provided in Section 3-40 of the Act from the purchaser, give to the purchaser (if demanded by the purchaser) a receipt for the tax in the manner and form prescribed by the Department. The receipt shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt may refer. [35 ILCS 110/5]
- e) If a serviceman collects Service Use Tax measured by receipts or selling prices that are not subject to Service Use Tax, or if a serviceman, in collecting Service Use Tax measured by receipts or selling prices that are subject to tax under the Act, collects more from the purchaser than the required amount of the Service Use Tax on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the serviceman. If, however, that amount is not refunded to the purchaser for

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

any reason, the serviceman is liable to pay that amount to the Department. [35 ILCS 110/3-40]

- f) Any serviceman required to collect the tax imposed by the Act shall be liable to the Department for the tax, whether or not the tax has been collected by the serviceman, except when the serviceman is relieved of the duty of remitting the tax to the Department by virtue of having paid a tax imposed by the Service Occupation Tax Act upon the serviceman's sale of service involving the incidental transfer by the serviceman of the same property. To the extent that a serviceman required to collect the tax imposed by the Act has actually collected that tax, the tax is held in trust for the benefit of the Department. [35 ILCS 110/8]

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

Section 160.116 Persons Who Lease Tangible Personal Property to Exempt Hospitals

- a) Effective January 1, 1996, through December 31, 2000, and on and after August 2, 2001, computers and communications equipment utilized for any hospital purpose and equipment used in the diagnosis, analysis, or treatment of hospital patients that are transferred incident to the sale of service to persons who lease those items to exempt hospitals are not subject to Service Use Tax providing:
- 1) the computers and communications equipment described above must be leased to a ~~tax-exempt tax-exempt~~ hospital under a lease that has been executed or is in effect at the time of purchase;
 - 2) the lease must be for a period of one year or longer; and
 - 3) the lease must be to a hospital that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act (see 86 Ill. Adm. Code 130.2007).
- b) ~~Effective January 1, 1996, equipment, other than that specified in subsection (a), used in the diagnosis, analysis, or treatment of hospital patients that is transferred incident to the sale of service to persons who~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~lease that equipment to exempt hospitals is not subject to Service Use Tax providing:~~

- ~~1) the equipment described above must all be purchased for lease to a tax exempt hospital under a lease that has been executed or is in effect at the time of purchase;~~
- ~~2) the lease must be for a period of one year or longer; and~~
- ~~3) the lease must be to a hospital that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act (see 86 Ill. Adm. Code 130.2007).~~

be) The service customer must provide the ~~certification described below to the serviceman~~ a certification that contains the following information:-

- ~~1) When this exemption may be properly claimed for computer or other communications equipment, the service customer must give the serviceman a certification stating that the computer or other communications equipment is for lease to a tax exempt hospital under a lease for a period of one year or longer executed or in effect at the time of the purchase.~~
- ~~2) When this exemption may be properly claimed for equipment used in the diagnosis, analysis, or treatment of hospital patients, the service customer must give the serviceman a certification stating that the equipment is for lease to a tax exempt hospital under a lease for a period of one year or longer executed or in effect at the time of the purchase, and that the equipment is for use in the diagnosis, analysis, or treatment of hospital patients.~~
- ~~3) The certification described in subsections (c)(1) and (c)(2) of this Section must also contain all of the following:~~
 - 1A) ~~the~~The serviceman's name and address;
 - 2B) ~~the~~The service customer's name and address;
 - 3C) ~~a~~A description of the tangible personal property;

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 4D) ~~the~~The service customer's signature and date of signing;
- 5E) ~~the~~The name and address of the hospital and its tax exemption identification number issued by the Department; ~~and~~
- 6F) ~~the~~The date the lease was executed and the lease period; ~~and-~~
- 7) a statement that the computer or other communications equipment or equipment used in the diagnosis, analysis, or treatment of hospital patients is for lease to a tax-exempt hospital under a lease for a period of one year or longer executed or in effect at the time of the purchase.

cd) For purposes of this Section, "hospital patients" means persons who seek any form of medical care including, but not limited to, medical treatment, testing, diagnosis, or therapy at a hospital or at another location under the control and supervision of a hospital. For example, persons who are sent by doctors for X-rays or other tests at qualifying hospitals, even though those persons are not admitted to those hospitals, are considered hospital patients.

de) If the equipment is leased in a manner that does not qualify for this exemption or is used in any other nonexempt manner, the lessor shall be liable for the tax imposed under the Act or the Use Tax Act, as the case may be, based on the fair market value of the property at the time the nonqualifying use occurs. ~~If the computers or other equipment is used in a manner that does not qualify for the exemption or is used in any other non-exempt manner, the lessor is liable for the appropriate tax imposed under the Service Use Tax Act. In that event, the amount of Service Use Tax liability incurred is based on the fair market value of the computers or other equipment at the time the non-qualifying use occurred.~~

e) No lessor shall collect or attempt to collect an amount (however designated) that purports to reimburse that lessor for the tax imposed by the Act or the Use Tax Act, as the case may be, if the tax has not been paid by the lessor. If a lessor improperly collects any such amount from the lessee, the lessee shall have a legal right to claim a refund of that amount from the lessor. If, however, that amount is not refunded to the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

lessee for any reason, the lessor is liable to pay that amount to the Department. [35 ILCS 110/3-5(15) and 3-5(24)]

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

Section 160.117 Persons Who Lease Tangible Personal Property to Governmental Bodies

- a) Effective January 1, 1996, through December 31, 2000, and on and after August 2, 2001, tangible personal property transferred incident to a sale of service to a lessor who leases that property to a governmental body is not subject to Service Use Tax provided that:
- 1) the property must be leased to a governmental body under a lease that has been executed or is in effect at the time of purchase;
 - 2) the lease must be for a period of one year or longer; and
 - 3) the lease must be to a governmental body that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act (see 86 Ill. Adm. Code 130.2007).
- b) When this exemption may be properly claimed, the service customer must give the serviceman a certification that contains the following information: stating that the property is for lease to a governmental body, under a lease of one year or longer executed or in effect at the time of the purchase, and containing all of the following:
- 1) theThe serviceman's name and address;
 - 2) theThe service customer's name and address;
 - 3) aA description of the tangible personal property being purchased;
 - 4) theThe service customer's signature and date of signing;
 - 5) theThe name of the governmental body and its tax exemption identification number issued by the Department; and

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 6) ~~the~~The date the lease was executed and the lease period, and.
- 7) a statement that the property is for a lease to a governmental body under a lease for a period of one year or longer executed or in effect at the time of the purchase.
- c) If the property is leased in a manner that does not qualify for this exemption or is used in any other nonexempt manner, the lessor shall be liable for the tax imposed under the Act or the Use Tax Act, as the case may be, based on the fair market value of the property at the time the nonqualifying use occurs.~~If the property is used in a manner that does not qualify for the exemption or is used in any other non-exempt manner, the lessor is liable for the appropriate tax imposed under the Service Use Tax Act. In that event, the amount of Service Use Tax liability incurred is based on the fair market value of the property at the time the non-qualifying use occurred.~~
- d) No lessor shall collect or attempt to collect an amount (however designated) that purports to reimburse that lessor for the tax imposed by the Act or the Use Tax Act, as the case may be, if the tax has not been paid by the lessor. If a lessor improperly collects any such amount from the lessee, the lessee shall have a legal right to claim a refund of that amount from the lessor. If, however, that amount is not refunded to the lessee for any reason, the lessor is liable to pay that amount to the Department. [35 ILCS 110/3-5(16) and 3-5(25)]

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

Section 160.125 Special Information For Users

- a) Purchasers incurring Service Use Tax liability that is not paid to a serviceman authorized or required to collect the tax (see Section 160.101(g) of this Part) shall pay the Service Use Tax directly to the Department. Such remittance to the Department shall be made by the last day of the month following the month in which the user makes any payment to the serviceman and shall be accompanied by a return which shall be made on a return form that the Department will provide on request. On receipt of the tax, the Department will provide the user with a receipt if demanded by the user, but not otherwise. [35 ILCS 110/10].

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- b) In general, the provisions of Subpart D of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140) (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 Service Use Tax Act.
- c) Also, registered users under the Service Use Tax Act are subject to the provisions of Subpart F of the Service Occupation Tax Regulations.
- d) If the user who must remit the Service Use Tax to the Department is registered either under the Retailers' Occupation Tax Act [35 ILCS 120], the Use Tax Act [35 ILCS 105], the Service Occupation Tax Act [35 ILCS 115], and the Service Use Tax Act [35 ILCS 110], the user shall report the Service Use Tax information in the space provided for that purpose on the return which the user files under any such registration.
- e) Since transfers of tangible personal property by de minimis servicemen who incur Use Tax as described in 86 Ill. Adm. Code 140.108 do not constitute sale of service under Section 2(g) of the Service Occupation Tax Act, customers of such de minimis servicemen do not incur Service Use Tax liability on such transfers.

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

Section 160.130 Registration Of Servicemen

- a) *A serviceman maintaining a place of business in this State, if required to register under the Retailers' Occupation Tax Act, or under the Use Tax Act, or under the Service Occupation Tax Act, need not obtain an additional Certificate of Registration under this Act, but shall be deemed to be sufficiently registered by virtue of the serviceman being registered under the Retailers' Occupation Tax Act, or under the Use Tax Act, or under the Service Occupation Tax Act. [35 ILCS 110/6]* ~~A serviceman who is registered under the Retailers' Occupation Tax Act, Use Tax Act or Service Occupation Tax Act need not obtain a separate Certificate of Registration under the Service Use Tax Act.~~ However, any out-of-State serviceman maintaining a place of business in this State, if not required to register ~~registered~~ under the Retailers' Occupation Tax Act, the Use Tax Act or the Service Occupation Tax Act, must apply to the Department for a Certificate of Registration on an application form furnished by the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Department. ~~Each such serviceman shall list with the Department the names and addresses of all his agents operating in this State and the location of any and all of his distribution or sales houses, offices or other places of business in this State. In general, the provisions of Subpart F of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140) shall apply to such registration under the Service Use Tax Act.~~

- 1) Each such application shall be signed and verified and shall state:
 - A) the name and social security number of the applicant;
 - B) the address of the applicant's principal place of business;
 - C) the address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which he engages in the business of selling tangible personal property at retail in this State;
 - D) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under this Act;
 - E) in the case of a publicly traded corporation, the name and title of the Chief Financial Officer, Chief Operating Officer, and any other officer or employee with responsibility for preparing tax returns under the Act, and, in the case of all other corporations, the name, title, and social security number of each corporate officer;
 - F) in the case of a limited liability company, the name, social security number, and FEIN number of each manager and member; and
 - G) such other information as the Department may reasonably require on form furnished by the Department.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) The application shall contain an acceptance of responsibility signed by the person or persons who will be responsible for filing returns and payment of the taxes due under the Act. [35 ILCS 120/2a]
- 3) In general, the provisions of Subpart G of the Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130) shall apply to such registration under the Service Use Tax Act.
- b) For a definition of "Serviceman maintaining a place of business in this State", see Section 160.105 of this Part.
- c) Every out-of-State serviceman maintaining a place of business in this State must register and collect Service Use Tax from service customers, unless such serviceman is authorized to pay Use Tax as provided in 86 Ill. Adm. Code 140.108.
- d) The Department may, in its discretion, upon application, authorize the collection of the Service Use Tax by any serviceman not maintaining a place of business within this State within the meaning of the Service Use Tax Act and Section 160.105 of this Part. Such serviceman shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such serviceman to collect the tax upon all tangible personal property sold, to the serviceman's knowledge, as an incident to a sale of service for use within this State, in the same manner and subject to the same requirements, as a serviceman maintaining a place of business within this State. [35 ILCS 110/7]
- e) No Certificate of Registration shall be issued to any person who is in default to the State of Illinois for moneys due hereunder. [35 ILCS 110/6]
- f) The Department has the power, after notice and an opportunity for a hearing, to revoke a certificate of registration issued by the Department if the holder of the certificate of registration fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the Act or any other tax or fee Act administered by the Department.
- g) The Department may refuse to issue, reissue, or renew a certificate of registration if a person who is named as the owner, a partner, a corporate officer, or, in the case of a limited liability company, a manager or

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

member, of the applicant on the application for the certificate of registration is or has been named as the owner, a partner, a corporate officer, or in the case of a limited liability company, a manager or member, on the application for the certificate of registration of a person that is in default for moneys due under the Act or any other tax or fee Act administered by the Department. For purposes of this subsection, "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. [20 ILCS 2505/2505/380]

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

Section 160.135 Serviceman's Return

- a) Every serviceman required or authorized to collect the Service Use Tax must file a return each month by the twentieth day of the month covering the preceding calendar month except when the serviceman is authorized to file tax returns on a quarterly or annual basis as hereinafter provided. The Department has combined the Service Use Tax return form, the Service Occupation Tax return form and the Use Tax return with the Retailers' Occupation Tax return form. On and after January 1, 2018, with respect to servicemen whose annual gross receipts average \$20,000 or more, all returns required to be filed pursuant to the Act shall be filed electronically. Servicemen 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. Beginning on October 1, 2002, a taxpayer who has a tax liability in the amount set forth in subsection (b) of Section 2505-210 of the Department of Revenue Law shall make all payments required by rules of the Department by electronic funds transfer. [35 ILCS 110/9]
- b) Where the sale of service is made 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 return period for which the return is filed, the serviceman, 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.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- c) In the serviceman'shis regular return, each serviceman shall also include the total amount of Service Use Tax due upon the selling price or cost price of tangible personal property transferred by him as an incident to a sale of service. Such serviceman shall remit the amount of such tax to the Department when filing such return.
- d) In general, the provisions of Subpart D of the Service Occupation Tax (86 Ill. Adm. Code 140) (including the provisions pertaining to quarterly and annual tax returns, but not the provisions pertaining to annual information returns) shall apply to returns of servicemen under the Service Use Tax Act.
- e) The serviceman who collects the Service Use Tax from ahis purchaser and who remits, as Service Use Tax, the amount so collected is allowed to deduct the 1.75% collection allowance or \$5 per calendar year, whichever is greater, in the same manner as ~~the serviceman~~ is allowed ~~to do~~ under ~~86 Ill. Adm. Code 150.905, Subpart D of the Service Occupation Tax. (86 Ill. Adm. Code 150, Subpart D)~~ The discount under this subsection is not allowed for the 1.25% portion of taxes paid on aviation fuel that is subject to the revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133. The discount allowed under this subsection is allowed only for returns that are filed in the manner required by the Act. [35 ILCS 110/9] Where a purchaser from a serviceman, however, does not pay the Service Use Tax to the serviceman, but pays it to the Department, that purchaser is not allowed to deduct any amount as a collection allowance.

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

Section 160.136 Books and Records

- a) Every serviceman required or authorized to collect taxes under the Act and every user who is subject to the tax imposed by the Act 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 Part, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation. For the purpose of administering and enforcing the provisions of the Act, the Department, or any officer or employee of the Department designated, in writing, by the Director of the Department, may hold investigations and

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

hearings concerning any matters covered by the Act and not otherwise delegated to the Illinois Independent Tax Tribunal and may examine any relevant books, papers, records, documents or memoranda of any serviceman or any taxable purchaser for use hereunder, and may require the attendance of the person or any officer or employee of the person, or of any person having knowledge of the facts, and may take testimony and require proof for its information.

- b) Any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 11 of the Act and this subsection, is liable to pay to the Department 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 Section 11 of the Act and this subsection. 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 110/11]
- c) The provisions of Subpart G of the rules promulgated under the Retailers' Occupation Tax (86 Ill. Adm. Code 130) shall apply to returns of servicemen under the Service Use Tax Act.

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

Section 160.160 Refunds

In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from the Aviation Fuel Sales Tax Refund Fund or from such appropriation as may be available for that purpose, as appropriate. If it appears unlikely that the amount available would permit everyone having a claim allowed during the period covered by such appropriation or from the Aviation Fuel Sales Tax Refund Fund, as appropriate, to elect to receive a cash refund, the Department will make such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum). Money from the Aviation Fuel Sales Tax Refund Fund may only be used to make cash refunds for claims of overpayment of tax on aviation fuel paid into the Aviation Fuel Sales Tax Refund Fund.~~In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~appropriation to elect to receive a cash refund, the Department will make such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum).~~ The two most likely situations where this would be the case are the situation in which the claimant has discontinued business and the situation in which the claimant will have a small volume of liability to the Department in the foreseeable future, but receives a large credit memorandum which it therefore might take the claimant a long time to liquidate by using it to pay current taxes. In these instances, the claimant probably would have to sell the credit memorandum at a loss in order to realize anything from it within any reasonable period of time.

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

Section 160.165 Interest

- a) ~~*Interest paid by the Department to taxpayers and interest charged to taxpayers by the Department shall be at the rate set forth in Section 3-2 of the Uniform Penalty and Interest Act. [35 ILCS 735/3-2] See 86 Ill. Adm. Code 700, Uniform Penalty and Interest Act. Any credit or refund that is allowed under the Act shall bear interest at the rate of 1% per month or fraction thereof from the date when the erroneous payment for which the credit or refund is being allowed was made to the Department until the credit memorandum is issued or the refund is paid until January 1, 1994. Interest shall not be paid on claims filed after the effective date of the Uniform Penalty and Interest Act and 86 Ill. Adm. Code 700 except such interest which is paid in accordance with the Act. (Section 3-9 of the Uniform Penalty and Interest Act) [35 ILCS 735/3-9]*~~

~~EXAMPLE: A taxpayer files a claim for credit with the Department on January 15, 1994 for an overpayment of Service Use Tax. The overpayment occurred in October 1992 when the taxpayer, an out-of-state registered serviceman, made a sale of service to an Illinois service customer, collected Service Use Tax on 50% of the total bill to the service customer and remitted the tax to the Department. The sale of service involved the repair of a piece of graphic arts machinery and equipment. The serviceman determined that the repair should have been made tax-free, refunded the tax to the service customer and filed a claim for credit with the Department. The credit memorandum is issued on June 15, 1994. Interest shall be paid at the rate of 1% per month for the period from October 1992 through December 31, 1993; and at the semiannually adjusted interest rate imposed pursuant to the Uniform Penalty and~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~Interest Act from January 1, 1994 until June 15, 1994, the date on which the credit memorandum was issued by the Department.~~

- b) No interest will be allowed if the overpayment is found by the Department to have been made deliberately for the purpose of drawing interest, or if the overpayment is ascertained not to have been bona fide for some other reason.
- c) When a claim that is allowed is paid by means of a credit memorandum instead of by means of a cash refund, the claim will be considered to have been paid when the credit memorandum is issued by the Department to the claimant, and no interest will be allowed or paid by the Department for any period subsequent to that, even if the claimant does not use or assign the credit memorandum immediately after it is issued.

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

Section 160.170 Applicability of Regulations By Reference

To avoid needless repetition, the substance and provisions of 86 Ill. Adm. Code 150.803 and 150.804 which are not incompatible with the Service Use Tax Act or this Part, shall apply, as far as practicable, to the subject matter of this Part.

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

Section 160.175 Applicability of Retailers' Occupation Tax Act and Uniform Penalty and Interest Act

All of the provisions of Sections 1d, 1e, 1f, 1i, 1j, 1j.1, 1k, 1m, 1n, 1o, 2-6, 2-12, 2-54, 2a, 2b, 2c, 3 (except as to the disposition by the Department of the money collected under the Act), 4 (except that the time limitation provisions shall run from the date when gross receipts are received), 5 (except that the time limitation provisions on the issuance of notices of tax liability shall run from the date when the tax is due rather than from the date when gross receipts are received and except that in the case of a failure to file a return required by the Act, no notice of tax liability shall be issued on and after July 1 and January 1 covering tax due with that return during any month or period more than 6 years before that July 1 or January 1, respectively), 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5j, 5k, 5l, 5n, 6d, 7, 8, 9, 10, 11 and 12 of the Retailers' Occupation Tax Act which are not inconsistent with the Act, and Section 3-7 of the Uniform Penalty and Interest Act [35

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

ILCS 735], shall apply, as far as practicable, to the subject matter of the Act to the same extent as if such provisions were included in the Act. [35 ILCS 110/12]

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