

ILLINOIS REGISTER

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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED REPEALER

- 1) Heading of the Part: County Water Commission Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 630
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
630.101	Repeal
630.105	Repeal
630.110	Repeal
630.115	Repeal
630.120	Repeal
630.125	Repeal
630.130	Repeal
630.135	Repeal
- 4) Statutory Authority: Implementing Section 4(b) of the Water Commission Act of 1985 [70 ILCS 3720] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking repeals Part 630, County Water Commission Retailers' Occupation Tax. Public Act 96-1389, effective June 29, 2010, terminated this tax on June 1, 2016.
- 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 repealer contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 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:

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
  - B) Reporting, bookkeeping or other procedures required for compliance: None
  - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: None
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2023

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

**Section 630.101 Nature and Rate of the County Water Commission Retailers' Occupation Tax**

- a) **Authority to Impose Tax**  
The Board of Commissioners of a County Water Commission is authorized to impose a County Water Commission Retailers' Occupation Tax upon all persons engaged in the business of selling tangible personal property at retail in the territory of the Commission as defined in Section 2 of the Water Commission Act of 1985 (Ill. Rev. Stat. 1989, ch. 111 $\frac{2}{3}$ , par. 252), at a rate of  $\frac{1}{4}$ % of the gross receipts from such sales made in the course of such business within the territory. Presently, the County Water Commission Retailers' Occupation Tax is only imposed by the DuPage Water Commission and no other Commission has the authority.

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- b) **Passing on the Tax**  
The legal incidence of the County Water Commission Retailers' Occupation Tax is on the seller. Nevertheless, the General Assembly has authorized persons subject to this tax to reimburse themselves for their seller's County Water Commission Retailers' Occupation Tax liability by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with the State tax which sellers are required to collect under the Use Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 439 et seq.) and the additional charge authorized under the provisions of the Non-Home Rule Municipal Retailers' Occupation Tax, the Home Rule Municipal Retailers' Occupation Tax, the Home Rule County Retailers' Occupation Tax and the Regional Transportation Authority Retailers' Occupation Tax pursuant to such bracket schedules as the Department of Revenue (Department) may prescribe (See 86 Ill. Adm. Code 150.Table A).
- c) **Exclusion from Gross Receipts**  
Any amount added to the selling price of tangible personal property by the seller because of a County Water Commission Retailers' Occupation Tax or because of the Retailers' Occupation Tax, Use Tax, Non-Home Rule Municipal Retailers' Occupation Tax, Home Rule Municipal Retailers' Occupation Tax, Home Rule County Retailers' Occupation Tax and the Regional Transportation Authority Retailers' Occupation Tax and collected from the purchaser, shall not be regarded as a part of the seller's gross receipts that are subject to such County Water Commission Retailers' Occupation Tax.
- d) **Ordinance Imposing Tax**  
*Any ordinance imposing a County Water Commission Retailers' Occupation Tax or effecting a change in the rate thereof shall be effective on the first day of the calendar month next following the publication of such ordinance in a newspaper of general circulation in the territory and the filing of a certified copy of such ordinance with the State Department of Revenue, whereupon the Department of Revenue shall proceed to administer and enforce Section 4 of the County Water Commission Act of 1985 (Ill. Rev. Stat. 1989, ch. 111½, par. 254) on behalf of the County Water Commission as of the effective date of the ordinance.*

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

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**Section 630.105 Exemptions from the County Water Commission Retailers' Occupation Tax**

- a) Exemptions Similar to the Retailers' Occupation Tax  
The County Water Commission Retailers' Occupation Tax contains the same exemptions as found in the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 440 et seq.).

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

**Section 630.110 Registration and Returns**

- a) Separate Registration not Required  
A retailer's registration under the Illinois Retailers' Occupation Tax Act is sufficient for the County Water Commission Retailers' Occupation Tax. No special registration for County Water Commission Retailers' Occupation Tax is required.
- b) Requirements as to Returns
  - 1) Every retailer must file a return each month if the retailer is engaged in the business of selling tangible personal property at retail in the territory of the Commission and such County Water Commission Retailers' Occupation Tax was in effect that month: Provided that if the retailer is permitted to file his Illinois Retailers' Occupation Tax returns quarterly, his County Water Commission Retailers' Occupation Tax returns shall also be filed quarterly; and provided that if the retailer is permitted to file his Illinois Retailers' Occupation Tax returns annually, his County Water Commission Retailers' Occupation Tax returns shall also be filed annually. However, the information required for the County Water Commission Retailers' Occupation Tax may be furnished on the retailers' Illinois Retailers' Occupation Tax return form in the additional space that is provided on that form for reporting County Water Commission Retailers' Occupation Tax information.
  - 2) If the retailer files his Illinois Retailers' Occupation Tax returns on the gross receipts basis, he must report County Water Commission Retailers' Occupation Tax information in his returns on the same

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basis. If the retailer files his Illinois Retailers' Occupation Tax returns on the gross sales basis, he must report County Water Commission Retailers' Occupation Tax information in his returns on the gross sales basis.

- 3) Retailers required to make payment on the 7<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup> and last day of the month during which liability is incurred as provided in Section 3 of the Retailers' Occupation Tax Act, are not required to make such quarter-monthly payments of County Water Commission Retailers' Occupation Tax.

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

#### **Section 630.115 Claims to Recover Erroneously Paid Tax**

- a) Incorporation by Reference  
The provisions of Subpart O of the Retailers' Occupation Tax (86 Ill. Adm. Code 130.Subpart O) shall apply to the extent specified in Section 630.125 of this Part.
- b) Claims for Multiple Taxes  
If a claimant files a claim for refund on a transaction which was subject to State and local taxes administered by the Department, the claim need not be filed separately for each type of tax. A single claim for the total of all applicable taxes will suffice. The claim will be audited, heard, or otherwise processed as a single claim whenever possible. A single credit memorandum will be issued which may be used by the claimant or his authorized assignee to pay State or local tax liability.

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

#### **Section 630.120 Jurisdictional Questions**

The substance and provisions of 86 Ill. Adm. Code 270.115 of the Home Rule Municipal Retailers' Occupation Tax Regulations which are not incompatible with the County Water Commission Retailers' Occupation Tax Law, shall apply to this Part. References to a "home rule municipality" or "municipality" in Section 270.115 mean "county water commission" for purposes of this Section. References to the Home Rule Municipal Retailers' Occupation Tax in Section 270.115 mean County Water Commission Retailers' Occupation Tax for purposes of this Part.

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- a) When used in this Part, "Home County" means any county in which the municipalities thereof have in the aggregate, within their corporate limits, more than 50% of the population of that county.
- b) When used in this Part, "County Water Commission" means any water commission constituted pursuant to Division 135 of the Illinois Municipal Code [65 ILCS 5] or established by operation of law under Public Act 83-1123, as amended, that includes municipalities within a Home County, when the Home County is contiguous to a county that has a population in excess of 1,000,000 inhabitants.
- c) When used in this Part, the "Territory" of a County Water Commission includes:
  - 1) all of the territory of the Home County of that County Water Commission except that territory located within the corporate limits of excluded units as defined in Section 2 of the Water Commission Act of 1985 [70 ILCS 3720/2]; and
  - 2) all of the territory located outside that Home County but included within the corporate limits of an included unit as defined in Section 2 of the Water Commission Act of 1985 [70 ILCS 3720/2].

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

**Section 630.125 Incorporation of Retailers' Occupation Tax Regulations by Reference**

To avoid needless repetition, the substance and provisions of all Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130), (whether characterized as Rules, Articles, Parts, Sections, or by some other designation), which are now in effect or which may hereafter be amended or promulgated, except Subpart A as it pertains to rate, Subpart E as it pertains to the deduction for collecting tax, Subpart O as it pertains to use of a credit memorandum to discharge any State or Municipal Tax liability, are incorporated herein by reference and made a part hereof.

**Section 630.130 Penalties, Interest and Procedures**

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All penalties (both civil and criminal), provisions concerning interest and procedures (such as the making of assessments, the venue and mode of conducting hearings, subpoenas, matters pertaining to judicial review and other procedural subjects), together with statutes of limitation, are the same under Section 4(b) of the Water Commission Act of 1985 as under the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1987, ch. 120, pars. 440 et seq.).

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

#### **Section 630.135 Effective Date**

- a) When a given County Water Commission Retailers' Occupation Tax goes into effect, it applies to sales made in the course of the seller's engaging in the business of selling tangible personal property at retail within the taxing territory on or after the effective date of the ordinance imposing such tax. For this purpose, the date of the sale is deemed to be the date of the delivery of the property. If delivery occurs after the effective date, in a transaction in which receipts were received before the effective date and tax was paid on such receipts when received by the seller in accordance with Section 130.430 of the Retailers' Occupation Tax Regulations, no County Water Commission Retailers' Occupation Tax will be due because of the delivery of the property occurring after the effective date.
- b) Furthermore, in the case of sales of building materials to real estate improvement construction contractors for use in performing construction contracts for third persons, if such property is delivered to the contractor after the effective date of a rate increase but will be used in performing a binding construction contract which was entered into before the effective date of the increase and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, the applicable tax rate will be the rate which was in effect before the effective date of the rate increase. Before a supplier may deliver materials to a construction contractor after the effective date of a tax rate increase at the rate which was in effect prior thereto, the purchasing contractor must give such supplier a written, signed certification stating that specifically described materials are being purchased for use in performing a binding contract which was entered into before the effective date of the rate increase (specifying such date) and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, identifying the construction contract work in question by its date and by naming the

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contractor's construction work involved, and by giving the location of the job site where the construction contract is being performed or is to be performed.

- c) This same Part applies when determining the effective date of an increase in the rate of a Municipal Retailers' Occupation Tax.

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