

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
130.801	Amendment
130.805	Amendment
130.810	Amendment
130.820	Amendment
130.825	Amendment
- 4) Statutory Authority: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Sections 2505-25 and 2505-795 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].
- 5) A Complete Description of the Subjects and Issues Involved: Section 130.801 is being amended to specify the timeframe for a taxpayer to respond to a second Information Document Request. This section is also being amended to provide that failing to take reasonable steps to safeguard books and records against the elements shall be considered a failure to produce books and records.

Section 130.805 is being amended to update the minimum requirements for recordkeeping that are expected to be retained by a retailer, and to update language consistent with modern technology for recordkeeping.

Section 130.810 is being amended to be more understandable in outlining what is required for documenting deductions.

Sections 130.820 and 130.825 are being amended to provide technical changes and to update language consistent with modern technology for recordkeeping.
- 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

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
130.120	Amendment	48 Ill. Reg. 6748; May 10, 2024
130.320	Amendment	48 Ill. Reg. 6748; May 10, 2024
130.1958	New Section	48 Ill. Reg. 8276; June 7, 2024
130.1959	New Section	48 Ill. Reg. 8276; June 7, 2024
130.306	Amendment	48 Ill. Reg.13979 ; September 20, 2024
130.1415	Amendment	48 Ill. Reg.13979 ; September 20, 2024
130.1955	Amendment	48 Ill. Reg.13979 ; September 20, 2024
130.1970	Amendment	48 Ill. Reg.13979 ; September 20, 2024
130.2100	Amendment	48 Ill. Reg.13979 ; September 20, 2024
130.2110	Amendment	48 Ill. Reg.13979 ; September 20, 2024

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

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

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

(217) 782-2844
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- 13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Persons making sales of tangible personal property at retail and for resale are affected.
- B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and computer skills.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- C) Types of professional skills necessary for compliance: Basic accounting and computer skills.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
- 42 Wholesale Trade
44-45 Retail Trade
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
- ii. regulatory requirements;
iii. 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 130.801 Books and Records – General Requirements

- a) *Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales and purchases of tangible personal property, including all sales and purchase invoices, purchase orders, merchandise records and requisitions, inventory records prepared as of December 31 of each year or otherwise annually, as has been the custom in the specific trade [35 ILCS 120/7], credit memos, debit memos, bills of lading, shipping records, and all other records pertaining to any and all purchases and sales of goods whether or not the retailer believes them to be taxable under the Act; and the retailer shall also keep summaries, recapitulations, totals, journal entries, ledger accounts, accounts receivable records, accounts payable records, statements, tax returns with all schedules or pertinent working papers used in connection with the preparation of such returns, and other documents listing, summarizing or pertaining to such sales, purchases, inventory changes, shipments, or other transactions. For a description of what records constitute the minimum required, including the use of machine-sensible records and electronic data interchange, see Section 130.805 of this Part.*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- b) Retailers must maintain complete books and records covering receipts from all sales and distinguishing taxable from nontaxable receipts.
- c) The books and records must clearly indicate and explain all the information, ~~(deductions as well as gross receipts.)~~ required for tax returns.
- d) If a taxpayer retains records required to be retained under this Section in both machine-sensible and hard-copy formats, the taxpayer shall, upon request, make the records available to the Department in machine-sensible format in accordance with Section 130.805(b)(5).
- e) *The books and records and other papers and documents which are required by ~~the~~ Act to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. [35 ILCS 120/7]*
- f) The books and records must be kept within Illinois except in instances where a business has several branches, with the head office being located outside Illinois, and where all books and records have been regularly kept outside the State at such head office. Under such circumstances, upon written permission from the Department, books and records may be kept outside Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers, and documents available at some point within Illinois for the purpose of the inspection and audit as the Department may deem necessary.
- g) Request for Books and Records and Documentation During an Audit
 - 1) At the initiation of an audit, the Department will notify the taxpayer of the books and records that the taxpayer will be required to produce ~~for the Department~~ to enable the Department to conduct the audit. During the course of the audit, the Department will provide the taxpayer with information document requests (Form EDA-70 or EDA-70C, "Information Document Request") for books and records the Department is requesting the taxpayer to produce for review. The taxpayer will be provided 30 days, or the number of days agreed to by the taxpayer and the Department, to respond to

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

an Information Document Request. If the taxpayer and the Department cannot agree on a date to respond to a request, the taxpayer shall have 30 days to respond. If the taxpayer does not provide the Department with the books and records requested in the Information Document Request, the Department will issue a second Information Document Request for the books and records. The taxpayer shall have 15 days to respond to the second Information Document Request. If the taxpayer again fails to provide the Department with the books and records requested, the Department is authorized to issue a written demand document request for the books and records pursuant to subsection (i)(3).

- 2) *It shall be presumed that all sales of tangible personal property are subject to tax under the Act until the contrary is established. The burden of proving that a transaction is not taxable shall be upon the person who would be required to remit the tax to the Department if the transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax, the Department is authorized to notify the taxpayer in writing to produce such evidence (Form EDA-11-B or EDA-11-BC, "Notice of Demand for Documentary Evidence"), and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection and audit, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable. [35 ILCS 120/7] In the course of any audit or investigation by the Department with reference to a given taxpayer, if the taxpayer fails to produce the documentary evidence needed to support the taxpayer's claim to exemption from tax within the 60 days or the time allotted, the taxpayer's claim to exemption will be denied and the transactions will be conclusively presumed to be taxable~~taxpayer is subject to the penalty in subsection (i).~~*

EXAMPLE: The auditor requests all the resale certificates and

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

exemption certificates for all tax-exempt sales. The auditor has issued an Information Document Request pursuant to subsection (g)(1). The retailer has failed to provide the documentary evidence required to support the exemptions. The Department issued a written request (Form EDA-11-B or Form EDA-11-BC, "Notice of Demand for Documentary Evidence") pursuant to subsection (g)(2) and provided the taxpayer 60 days to produce the documentation. If the retailer has not provided all of the certificates after the 60 days has elapsed, the matter will be closed and, the transactions will be conclusively presumed to be taxable, ~~and the retailer is subject to the penalty in subsection (i).~~ Records penalty cannot be applied solely based on the lack of records associated with the Form EDA-11-B or EDA-11-BC, Notice of Demand for Documentary Evidence.

- h) All books and records kept by a medical cannabis dispensing organization under the Compassionate Use of Medical Cannabis Program Act or kept by a dispensing organization pursuant to rules adopted by the Illinois Department of Financial and Professional Regulation to implement the Compassionate Use of Medical Cannabis Program Act and the Cannabis Regulation and Tax Act shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.
- i) *Any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 7 of the Act and this Part, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by Section 7 of the Act and this Part. The penalties imposed under Section 7 of the Act and this subsection (i) shall not apply if the taxpayer shows that ~~it~~ he or she acted with ordinary business care and prudence. [35 ILCS 120/7]*
- 1) The Act imposes two requirements on retailers: retailers must maintain books and records (see subsection (a)) and they must produce the books and records for inspection and examination by the Department upon request (see subsection (e)). A retailer may

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

be subject to the penalty in this subsection (i) if it maintains books and records but fails or refuses to produce the records upon request of the Department. A retailer also may be subject to the penalty in this subsection (i) if it does not maintain books and records and therefore cannot produce the books and records to the Department upon request. In the latter case, the retailer may be subject to either a penalty for the failure to maintain books and records or the failure to produce books and records; the Department cannot impose two penalties in this case.

- 2) If a person fails to produce books and records for examination or inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (i). Taxpayers must take reasonable steps to safeguard books and records from the elements and nature to protect the integrity of the records. Producing books and records that are illegible or unsafe for Department employees to handle shall be considered a failure to produce books and records and shall result in penalties being assessed in this subsection (i).
- 3) Except as otherwise provided by subsection (i)(8)(A), if a request has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a written demand document request in writing (Form EDA-11-A or EDA-11-AC, "Notice of Demand for Books and Records").
 - A) The Notice of Demand for Books and Records shall contain:
 - i) the name of the person receiving the request;
 - ii) the name of the business;
 - iii) the date of the request or requests;
 - iv) the books and records requested;

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- v) the books and records that the person failed to produce;
 - vi) the number of days the person has to produce the books and records; and
 - vii) the name of the Department agent or employee.
- B) The Department agent or employee shall sign and date the form and provide a copy of the form to the person either in person or by mail. The person shall have 30 days from the date of the Notice of Demand for Books and Records to produce the books and records the person has failed to produce. The Department is authorized to extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department shall issue a notice of penalty pursuant to this subsection (i).

4) Any person receiving a notice of penalty may:

A) within ~~60~~20 days after the date on the notice of penalty, protest and request ~~an administrative~~ hearing in writing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act, and then issue its final administrative decision in the matter to that person. ~~The Department shall postpone the hearing until completion of the inspection or audit.~~ In the absence of a protest and request for a hearing within ~~60~~20 days, the Department's decision shall become final without any further determination being made or notice given; ~~or,~~

B) if penalties and interest exceed \$15,000, file a petition with the Independent Tax Tribunal within 60 days, or 30 days for cases involving the International Fuel Tax Agreement, after the date on the notice of penalty. For procedural information for the Independent Tax Tribunal, see 86 Ill. Adm. Code 5000, Subpart D.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 5) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: In April, an authorized agent of the Department inspects a retailer and requests all purchase invoices for tangible personal property purchased in March. The purchase invoices are not provided by the retailer and the Department issues a notice of penalty in the amount of \$1,000. The agent returns in May and requests to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the purchase invoices for March.

- 6) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period.

EXAMPLE: An auditor makes multiple requests for books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The auditor fills out a Notice of Demand for Books and Records, provides a copy to the person, and provides 30 days for the person to produce the books and records. After the 30-day period expires, the retailer does not produce the books and records. The Department issues a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.

- 7) *The penalties imposed under this subsection (i) shall not apply if the taxpayer shows that ~~it~~~~he~~~~or~~~~she~~ acted with ordinary business care and prudence. [35 ILCS 120/7]* When determining whether a taxpayer has acted with ordinary business care and prudence, the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Department will consider the size of the business, the amount of gross receipts, the volume of sales, the nature of the business, the type and number of items sold by the business, the types of books and records requested, and whether the books and records constitute the minimum records required by Section 130.805. (In other words, would a taxpayer that exercised ordinary business care and prudence be able to produce the books and records requested by the Department?) "Ordinary care has been defined to be that degree of care which is exercised by ordinarily prudent persons under same or similar circumstances." *Swenson v. City of Rockford*, 9 Ill.2d 122, 127 (1956).

- 8) Requests for Books and Records at the Beginning and During Scheduled Audits
 - A) When the Department determines it will audit a taxpayer's books and records, it shall notify the taxpayer of the audit and schedule a time to commence the audit that is satisfactory to the Department and the taxpayer. In no event can this time be later than 6 months after the date of the notice, unless the Department agrees to extend the 6-month period. If the taxpayer refuses to schedule the commencement of the audit within 6 months after the date of the notice, the taxpayer is subject to a penalty for refusal to produce books and records for every month subject to the audit. After the 6-month period has expired, the Department may issue a notice of penalty to the taxpayer pursuant to this subsection (i). The Department is not required to provide the taxpayer with a document request or allow additional time to schedule an audit of the person's books and records.
 - B) During the course of an audit, the auditor may issue multiple requests for specific books and records. Prior to issuing the first notice of penalty during an audit, the auditor shall complete a Notice of Demand for Books and Records in accordance with subsection (i) that identifies all books and records that have not been provided pursuant to all earlier requests for the production of documents.

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

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Section 130.805 Minimum Requirements for Recordkeeping ~~What Records Constitute Minimum Requirement~~

- a) In General. A taxpayer shall maintain all records that are necessary to ~~determine a determination of~~ the correct tax liability under the Retailers' Occupation Tax Act ("Act") [35 ILCS 120]. All required records must be made available ~~upon~~ request by the Department. Where a taxpayer's business consists ~~exclusively~~ of the sale of tangible personal property at retail, the following records will be deemed by the Department to constitute a minimum for the purposes of the Act:
- 1) Cash register tapes, point-of-sale system printouts, and other data used to prepare returns, whether monthly, quarterly, or yearly depending on the taxpayer's filing status. The monthly, quarterly, or yearly records shall have the capability to detail each transaction with sufficient "transaction-level records." For purposes of this Section, "transaction-level records" means, at a minimum, the date of the transaction, invoice or transaction number, description of the items sold, the selling price, and the amount of tax or proper exempt status. ~~Cash register tapes and other data which will provide a daily record of the gross amount of sales.~~
 - 2) A record of the amount of merchandise purchased. To fulfill this requirement, copies of all vendors' invoices and taxpayers' copies of purchase orders must be retained serially and in sequence as to date.
 - 3) A true and complete inventory of the value of stock on hand taken at least once each year.
 - 4) Bank statements for all accounts associated with the business.
 - 5) Federal income tax returns, including all schedules, and all working papers used to prepare the federal income tax returns, including all Form 1099-Ks.
 - 6) Sales tax returns, including all schedules and working papers used to prepare the sales tax returns.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 7) Monthly statements supporting all Form 1099-Ks received (e.g., from marketplace facilitators, payment processors).
 - 8) Log of all cash disbursements to vendors, employees, and others.
 - 9) Documentation for exempt and other non-taxable receipts including, but not limited to, such documentation as the name of the exempt entity, Illinois Account ID number, resale certificate, or records relating to sales in interstate commerce. See 86 Ill. Adm. Code 130.120, 130.1405, and 130.2081(c).
 - 10) For sales requiring delivery, information detailing the purchaser's name, street address, city, state, and ZIP code for each sales transaction, and if shipped to an address other than the purchaser's, the name, street address, city, state, and ZIP code where delivery is made.
 - 11) Records required to be kept pursuant to a prior audit.
 - 12) The Department reserves the right to request any records necessary to complete verification, keeping in mind changes in technology and the retailer's specific business.
- b) Records prepared by Automated Data Processing Systems ("ADP"). When an ADP tax accounting system is used to maintain all or part of a taxpayer's accounting or financial records, such ADP system must include a method of producing legible and readable records which will provide the necessary information for verifying tax liability. If a taxpayer retains records required to be retained under Section 130.801 of this Part, in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Department in machine-sensible format upon request of the Department in accordance with subsection (b)(5) of this Section. ADP accounting systems encompass all types of data processing systems including, but not limited to, mainframe computer systems, stand-alone, or networked microcomputer systems, Database Management Systems ("DBMS"), and systems using Electronic Data Interchange ("EDI") technology.
- 1) Definitions

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- A) "Database Management System" or "DBMS" means a software system that creates, controls, relates, retrieves, and provides accessibility to data stored in a database.
 - B) "Electronic Data Interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.
 - C) "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records include, but are not limited to, data created by point-of-sale ("POS") systems or accounting software, Excel documents, and searchable portable document format ("PDF"). Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as ~~microfilm, microfiche or~~ storage-only imaging systems.
 - D) "Storage-only imaging systems" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper, including but not limited to, static PDFs or joint photographic experts group ("JPEG"). It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard-copy or as an optical image.
 - E) "Hard-copy" means any documents, records, reports, or other data printed on paper.
 - F) "Point-of-sale ("POS") systems" means a system of computer hardware, software, or both that manages customer purchases, accepts payment, and provides receipts. A POS is also how a retailer and a customer record a transaction.
- 2) Recordkeeping Requirements - Machine-Sensible Records
- A) General Requirements

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- i) Machine-sensible records used to establish tax compliance shall be retained by the taxpayer. The retained records shall provide sufficient information to establish matters required to be shown by a taxpayer in any tax or information returns. The machine-sensible records shall contain sufficient "transaction-level records" as defined in subsection (a)(1) ~~detail information~~ so that the details and the source documents underlying the machine-sensible records can be identified and made available to the Department upon request.
- ii) The retained records should reconcile to the books and to the tax return by establishing the relationship (e.g., the audit trail) between the total of the amounts in the retained records to the totals in the books and to the tax return.
- iii) The retained records must be capable of being processed. For purposes of this Section, "capable of being processed" means to be able to retrieve, manipulate, print hard-copy, or produce other output. This term does not encompass any requirement that the program or system that created the computer data be available to process the data unless the process is essential to a tax-related computation.
- iv) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.
- v) All records required to be retained under this Section shall be preserved unless the Department has provided in writing that the records are no longer required as explained in Section 130.825 of this Part.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

B) Electronic Data Interchange ("EDI")

- i) Where a taxpayer uses EDI~~electronic data interchange~~ processes and technology, the level of record detail, in combination with other records related to the transaction, ~~must satisfy shall meet the~~ minimum "transaction-level records" requirement as detailed in subsection (a)(1)~~must be equivalent to the level of detail contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Taxpayer may use codes~~Codes may be used to identify some or all of the data elements, as long as provided that the taxpayer provides a method ~~that~~which allows the Department to interpret the coded information.
- ii) The taxpayer may capture the information necessary to satisfy subsection (b)(2)(B)(i) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established.

EXAMPLE: ~~A~~~~For example, a~~ taxpayer using EDI~~electronic data interchange~~ technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. ~~Neither~~~~Since neither~~ the EDI transaction nor the accounts payable system captures information from the invoice pertaining to the product description ~~or the~~~~and~~ vendor name (i.e., they contain only codes for that information). Therefore, as such the taxpayer must also ~~retain~~~~retains~~ other records, such as its vendor master file and product code description lists.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

and ~~makemakes~~ them available to the Department. ~~If the taxpayer does this, in this example,~~ the taxpayer need not retain its EDI transaction for tax purposes.

- C) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing accounting system are similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this Section.

3) Recordkeeping Requirements - ADP Systems Documentation

- A) Upon the request of the Department, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the authenticity and integrity of the records.
- B) The taxpayer shall be capable of demonstrating:
 - i) the functions being performed as they relate to the flow of data through the system;
 - ii) the internal controls used to ensure accurate and reliable processing; and
 - iii) the internal controls used to prevent the unauthorized addition, alteration, or deletion of retained records.
- C) The following specific documentation is required for machine-sensible records pursuant to this Section:
 - i) record formats and layouts;
 - ii) field definitions, ~~(including the meaning of all "codes" used to represent information);~~
 - iii) file descriptions (e.g., data set name); and

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- iv) detailed charts of accounts and account descriptions.
 - D) Any changes to the items specified in subsections (b)(3)(B) and (C) above, together with their effective dates, shall be documented and made available to the Department upon request.
- 4) Machine-Sensible Records Maintenance Requirements
- A) The establishment of records management practices is solely at the discretion of the taxpayer, who ultimately bears the burden of producing records capable of being processed at the time of an examination by the Department. The Department recommends but does not require that taxpayers refer to the National Archives and Record Administration's ("NARA") standards for guidance on the maintenance and storage of electronic records.
 - B) In establishing records management practices, taxpayers should consider the following to maintain the integrity of the records; for example, the labeling of records, the security of the storage environment, the creation of back-up copies and their storage location, and the use of periodic testing ~~to confirm the continued integrity of the records.~~
 - C) The NARA standards may be found at 36 CFR 1234, July 1, 1995 edition.
 - D) The taxpayer's computer hardware or software shall accommodate the processing of or the extraction and conversion of retained machine-sensible records.
- 5) Access to Machine-Sensible Records. The manner in which the Department is provided access to machine-sensible records as required in subsection (b) of this Section and Section 130.801(d) of this Part may be satisfied through a variety of means that shall, after consultation with the taxpayer, take into account thea taxpayer's individualfacts and circumstances ~~through consultation~~

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

~~with the taxpayer.~~ Such access will be provided in one or more of the following manners:

- A) A taxpayer may provide the Department copies of the machine-sensible records for use on the Department's equipment;
- B) The taxpayer may arrange to provide the Department with the hardware, software, and personnel resources necessary to access and process the machine-sensible records;
- C) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access and process the machine-sensible records;
- D) The taxpayer may convert machine-sensible records to a standard electronic record format specified by the Department ~~on a magnetic medium that is agreed to by the Department. This may include conversion to a different medium (e.g., from mainframe files to microcomputer diskette).~~ These records may be processed on the Department's equipment or at the taxpayer's location; or
- E) The taxpayer and the Department may agree on other means of providing access to the machine-sensible records.

6) Taxpayer Responsibility and Discretionary Authority

- A) Taxpayers are responsible for determining~~In discharging their responsibilities under the Act, taxpayers are empowered to determine~~ which of their machine-sensible records must be retained and which records may be discarded. These determinations require a consideration of all the facts and circumstances, including whether duplicated or redundant records exist.
- B) In general, taxpayers should retain the machine-sensible records that are the most direct evidence of the transactions, and have discretion to discard duplicated records and redundant information. In exercising this discretion, the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

taxpayer should generally retain those records that best facilitate the retrieval and processing of the data during an audit. For example, departmental records stored in departmental data files that are duplicated in a central system could be discarded provided that all required information in the departmental records is contained in the central system and the requirements of this Section are met. Similarly, daily or weekly data files could be discarded provided that appropriate monthly, quarterly, or annual data files with the ability to access appropriate transaction-level records are available.

- C) In conjunction with meeting the requirements of this Section, a taxpayer may create files solely for the use of the Department. For example, if a database management system is used, it is consistent with this Section for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of the Section. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.
- D) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this Section.

- c) Alternative Storage Media. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this Section to ~~microfilm, microfiche or other~~ storage-only imaging systems, such as static PDFs or JPEGs, and may discard the original hard-copy documents, provided the conditions of this Section are met. These records are not a substitute for machine-sensible records (~~e.g., magnetic tapes, magnetic cartridges or magnetic disks~~) described in subsection (b) of this Section. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

memoranda. ~~Storage-only Microfilm, microfiche and other storage-only~~ imaging systems shall meet the following requirements:

- 1) Documentation establishing the procedures for converting the hard-copy documents to ~~microfilm, microfiche or other~~ storage-only imaging systems must be maintained and made available ~~upon~~ request. Such documentation shall, at a minimum, contain sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.
- 2) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the periods they are required to be retained under the Retailers' Occupation Tax Act [35 ILCS 120].
- 3) All data stored on ~~microfilm, microfiche or other~~ storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.
- 4) ~~Storage-only Microfiche, microfilm or other storage-only~~ imaging systems records must be indexed, cross-referenced, and labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and must be systematically filed to permit the immediate location of any particular record. A posting reference must be on each document and a control log or catalog of such documents must be maintained.
- 5) Upon request of the Department, a taxpayer must provide facilities and equipment, in good working order, for reading, locating, and reproducing any documents maintained on ~~microfilm, microfiche or other~~ storage-only imaging systems.
- 6) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

is defined as the quality of a group of letters or numerals being recognized as words or complete numbers.

- 7) There must be no substantial evidence that the ~~microfilm, microfiche or other~~ storage-only imaging systems lack authenticity or integrity.
- d) Effect on Hard-Copy Recordkeeping Requirements
- 1) Except as otherwise provided, the provisions of this Section do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium provided in subsection (c).
 - 2) If hard-copy records are not produced or received or required to be produced or received in the ordinary course of transacting business (i.e., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.
 - 3) Unless hard-copy records are required to be provided or received, hard-copy records generated at the time of a transaction need not be retained if all the details relating to the transaction are subsequently received by the taxpayer in an EDI transaction and are retained by the taxpayer in accordance with this Section.
 - 4) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this Section. Such details include, but may not be limited to, those listed in subsection (b)(2)(B).
 - 5) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.
 - 6) Nothing in this Section shall prevent the Department from requesting hard-copy printouts of retained machine-sensible records. These requests may be made either at the time of an

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

examination or in conjunction with the testing described in Section 130.825 of this Part.

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

Section 130.810 Records Required to Support Deductions

- a) Where the nature of a business is such that charge and time sales are made, or where the nature of the business is such that a portion of its sales are for resale; ~~are~~ are within the protection of the Commerce Clause of the Constitution of the United States; ~~or~~ consist of services; ~~or~~ are made to any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes; ~~or~~ are made ~~on or after March 21, 1963,~~ to a governmental body; ~~or~~ are exempt from the retailers' occupation tax ~~Retailers' Occupation Tax~~ on some other ground, then such records as will clearly indicate the information required in filing returns must be kept.
- b) To support deductions made on the tax return form, as authorized under the Retailers' Occupation Tax Act ("Act"), on account of receipts from isolated or occasional sales of tangible personal property; ~~on account of receipts~~ from sales of tangible personal property for resale; ~~on account of receipts~~ from sales of tangible personal property made within the protection of the Commerce Clause of the Constitution of the United States; ~~on account of receipts received by the seller~~ from sales made to any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes; ~~on account of receipts received by the seller~~ from sales made ~~on or after March 21, 1963,~~ to any governmental body; ~~or~~ on any other ground, entries in any books, records, or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show:
- 1) the name and address of the taxpayer's customer in each such transaction;
 - 2) the character of every such transaction (e.g., whether it is a sale for resale, a sale made within the protection of the Commerce Clause of the Constitution of the United States, an isolated or occasional sale, etc.);

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 3) the date of every such transaction;
 - 4) the amount of receipts realized from every such transaction; and
 - 5) such other information as may be necessary to establish the nontaxable character of such transaction under the Act.
- c) Except in the case of a sale to a purchaser who will always resell and deliver the property to ~~its~~ customers outside Illinois, ~~any seller~~ anyone claiming ~~to have that he has~~ made a nontaxable sale for resale in some form as tangible personal property shall also keep a Certificate of Resale from the purchaser that contains the information required under Section 130.1405 of this Part. The failure to obtain and keep a Certificate of Resale shall create a presumption that the sale was not a sale for resale. The seller may, however, present other documentary evidence to overcome this presumption (~~See~~ Section 86 Ill. Adm. Code 130.1405(d) ~~of this Part~~).

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

Section 130.820 Preservation of Books During Pendency of Assessment Proceedings

~~If a notice of tax liability~~ However, if a Notice of Tax Liability has been issued, and if the questions raised ~~by such notice~~ thereby have not been completely disposed of, books and records reflecting receipts received during the period covered by such notice of tax liability ~~Notice of Tax Liability~~ must be preserved until the termination of all proceedings before the Department or any other legal proceeding is concluded ~~and before any court upon review~~.

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

Section 130.825 Department Authorization to Destroy Records Sooner than Than Would Otherwise be Permissible

- a) In all cases, the Department may, in writing, authorize the destruction of books and records and other papers prior to the expiration of the periods of time during which the taxpayer, ~~except for such written authorization from the Department,~~ is required to keep ~~its~~ books and records. The

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Department may authorize destruction of records if the records are preserved in ~~amicrofilm, microfiche, other~~ storage-only imaging systems or an electronic data processing system and meet the conditions as prescribed in Section 130.805.

b) Record Retention Limitation Agreements

- 1) The Department may, at the request of the taxpayer, enter into a record retention limitation agreement with a taxpayer. Such ~~anwhich~~ agreement may modify or waive any of the specific requirements of Section 130.805. A taxpayer's request for such an agreement must specify which records ~~(if any.)~~ the taxpayer proposes not to retain and provide the reasons for not retaining such records as well as proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of Section 130.805 that are not modified, waived, or superseded by a duly approved record retention limitation agreement.
- 2) The Department may revoke or modify a record retention limitation agreement or any provision thereof.
- 3) The record retention limitation agreement shall specifically identify which of the taxpayer's records the Department has determined are not necessary for retention and ~~which the taxpayer~~ may be discarded-discard. The agreement shall also clearly state each authorized variance, if any, from the normal provisions of Section 130.805. The agreement shall also document other understandings reached with the Department, which may include, but not be limited to:
 - A) the conversion of files created on an obsolete computer system;
 - B) restoration of lost or damaged files and the actions to be taken; and
 - C) use of taxpayer computer resources.
- 4) The Department shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

to be taken. The Department's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility under the [Retailers' Occupation Tax Act \[35 ILCS 120\]](#) to keep adequate and complete records necessary to a determination of tax liability.

- 5) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the effective date of the agreement. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with Section 130.805 until a new agreement is entered into with the Department.
- 6) Unless otherwise specified, an agreement shall not apply to any subsidiary or other entity that, subsequent to the effective date of a record retention limitation agreement, is acquired by the taxpayer. All machine-sensible records produced by the acquired subsidiary shall be retained pursuant to Section 130.805 and any record retention limitation agreement that may have been in effect for the acquired subsidiary ("pre-acquisition agreement"). The provisions of the pre-acquisition agreement shall continue to apply to the acquired subsidiary until revoked or modified by the Department or a new agreement applying to the acquired subsidiary is entered into.
- 7) To evaluate the propriety of a record retention limitation agreement, the Department may conduct an evaluation of the taxpayer's record retention practices. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems, including systems using electronic data interchange technology.
 - A) The Department shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with Section 130.805.
 - B) The evaluation of a taxpayer's record retention practices under this Section is not directly related to the determination

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

of tax reporting accuracy for a particular period or return. An evaluation made under this Section is not an "audit".

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