

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>
130.305	Amendment
130.1415	Amendment
130.1955	Amendment
130.1970	Amendment
130.2100	Amendment
130.2110	Amendment
- 4) Statutory Authority: Implementing the 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 130.305 is being amended to reflect changes made by P.A. 103-0009, effective June 7, 2023, exempting electrical power generation equipment used primarily for production agriculture, as well as incorporating Department Compliance Alerts, 07-03 and 16-02, relating to ATVs and tractors. Additionally, Section 130.305 is being amended to reorganize the rule and make it more understandable.

Section 130.1415 is being amended to make technical changes and provide an updated resale number for farm related items.

Section 130.1955 is being amended to reflect decisional law changes regarding farm chemicals and updated information from Department policies.

Sections 130.1970, 130.2100, and 130.2110 are being amended to delete outdated terms and provisions as well as being reformatted for readability.
- 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

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- 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

- 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
Kimberly.Rossini2@Illinois.gov
(217) 524-4821

- 13) Initial Regulatory Flexibility Analysis:

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

- 14) Small Business Impact Analysis:

- A) Types of businesses subject to the proposed rule:

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- 11 Agriculture, Forestry, Fishing and Hunting
- 42 Wholesale Trade
- 44-45 Retail Trade

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

- iii. purchasing;
- vi. equipment and material needs
- 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:

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 130
RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section	
130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles, Aircraft, or Watercraft by Leasing or Rental Business
130.115	Habitual Sales
130.120	Nontaxable Transactions

SUBPART B: SALE AT RETAIL

Section	
130.201	The Test of a Sale at Retail
130.205	Sales for Transfer Incident to Service
130.210	Sales of Tangible Personal Property to Purchasers for Resale
130.215	Illustrations of Sales for Use or Consumption Versus Sales for Resale
130.220	Sales to Lessors of Tangible Personal Property
130.225	Drop Shipments

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section	
130.305	Farm Machinery and Equipment
130.310	Food, Soft Drinks and Candy
130.311	Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products
130.315	Fuel Sold for Use in Vessels on Rivers Bordering Illinois
130.320	Gasohol, Majority Blended Ethanol, Biodiesel Blends, and 100% Biodiesel
130.321	Fuel Used by Air Common Carriers in Flights Engaged in Foreign Trade or Engaged in Trade Between the United States and any of its Possessions
130.325	Graphic Arts Machinery and Equipment Exemption
130.330	Manufacturing Machinery and Equipment
130.331	Manufacturer's Purchase Credit

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- 130.332 Automatic Vending Machines
- 130.333 Sustainable Aviation Fuel Purchase Credit
- 130.335 Pollution Control Facilities and Low Sulfur Dioxide Emission Coal-Fueled Devices
- 130.340 Rolling Stock
- 130.341 Commercial Distribution Fee Sales Tax Exemption
- 130.345 Oil Field Exploration, Drilling and Production Equipment
- 130.350 Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
- 130.351 Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

SUBPART D: GROSS RECEIPTS

Section

- 130.401 Meaning of Gross Receipts
- 130.405 How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser
- 130.410 Cost of Doing Business Not Deductible
- 130.415 Transportation and Delivery Charges
- 130.420 Finance or Interest Charges – Penalties – Discounts
- 130.425 Traded-In Property
- 130.430 Deposit or Prepayment on Purchase Price
- 130.435 State and Local Taxes Other Than Retailers' Occupation Tax
- 130.440 Penalties
- 130.445 Federal Taxes
- 130.450 Installation, Alteration and Special Service Charges
- 130.455 Motor Vehicle Leasing and Trade-In Allowances

SUBPART E: RETURNS

Section

- 130.501 Monthly Tax Returns – When Due – Contents
- 130.502 Quarterly Tax Returns
- 130.505 Returns and How to Prepare
- 130.510 Annual Tax Returns
- 130.515 First Return
- 130.520 Final Returns When Business is Discontinued
- 130.525 Who May Sign Returns
- 130.530 Returns Covering More Than One Location Under Same Registration --
Separate Returns for Separately Registered Locations

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- 130.535 Payment of the Tax, Including Quarter Monthly Payments in Certain Instances
- 130.540 Returns on a Transaction by Transaction Basis
- 130.545 Registrants Must File a Return for Every Return Period
- 130.550 Filing of Returns for Retailers by Suppliers Under Certain Circumstances
- 130.551 Prepayment of Retailers' Occupation Tax on Motor Fuel
- 130.552 Alcoholic Liquor Reporting
- 130.555 Vending Machine Information Returns
- 130.560 Verification of Returns

SUBPART F: INTERSTATE COMMERCE

- Section
- 130.601 Preliminary Comments (Repealed)
- 130.605 Sales of Property Originating in Illinois; Questions of Interstate Commerce
- 130.610 Sales of Property Originating in Other States (Repealed)

SUBPART G: CERTIFICATE OF REGISTRATION

- Section
- 130.701 General Information on Obtaining a Certificate of Registration
- 130.705 Procedure in Disputed Cases Involving Certificates of Registration
- 130.710 Procedure When Security Must be Forfeited
- 130.715 Sub-Certificates of Registration
- 130.720 Separate Registrations for Different Places of Business of Same Taxpayer
 - Under Some Circumstances
- 130.725 Display
- 130.730 Replacement of Certificate
- 130.735 Certificate Not Transferable
- 130.740 Certificate Required For Mobile Vending Units
- 130.745 Revocation of Certificate

SUBPART H: BOOKS AND RECORDS

- Section
- 130.801 Books and Records - General Requirements
- 130.805 What Records Constitute Minimum Requirement
- 130.810 Records Required to Support Deductions
- 130.815 Preservation and Retention of Records
- 130.820 Preservation of Books During Pendency of Assessment Proceedings

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

SUBPART I: PENALTIES AND INTEREST

Section
130.901 Civil Penalties
130.905 Interest
130.910 Criminal Penalties
130.915 Criminal Investigations

SUBPART J: BINDING OPINIONS

Section
130.1001 When Opinions from the Department are Binding

SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

Section
130.1101 Definition of Federal Area
130.1105 When Deliveries on Federal Areas Are Taxable
130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries
Outside Federal Areas

SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section
130.1201 General Information
130.1205 Due Date that Falls on Saturday, Sunday or a Holiday

SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

Section
130.1301 When Lessee of Premises Must File Return for Leased Department
130.1305 When Lessor of Premises Should File Return for Business Operated on
Leased Premises
130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART N: SALES FOR RESALE

Section

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- 130.1401 Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale
- 130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale
- 130.1410 Requirements for Certificates of Resale (Repealed)
- 130.1415 Resale Number – When Required and How Obtained
- 130.1420 Blanket Certificate of Resale (Repealed)

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section

- 130.1501 Claims for Credit – Limitations – Procedure
- 130.1505 Disposition of Credit Memoranda by Holders Thereof
- 130.1510 Refunds
- 130.1515 Interest
- 130.1520 Verified Credit

SUBPART P: PROCEDURE TO BE FOLLOWED UPON SELLING OUT OR DISCONTINUING BUSINESS

Section

- 130.1601 When Returns are Required After a Business is Discontinued
- 130.1605 When Returns Are Not Required After Discontinuation of a Business
- 130.1610 Cross Reference to Bulk Sales Regulation

SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section

- 130.1701 Bulk Sales: Notices of Sales of Business Assets

SUBPART R: POWER OF ATTORNEY

Section

- 130.1801 When Powers of Attorney May be Given
- 130.1805 Filing of Power of Attorney With Department
- 130.1810 Filing of Papers by Agent Under Power of Attorney

SUBPART S: SPECIFIC APPLICATIONS

Section

- 130.1901 Addition Agents to Plating Baths

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- 130.1905 Agricultural Producers
- 130.1910 Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps
and Like Articles
- 130.1915 Auctioneers and Agents
- 130.1920 Barbers and Beauty Shop Operators
- 130.1925 Blacksmiths
- 130.1930 Chiropodists, Osteopaths, and Chiropractors
- 130.1934 Community Water Supply
- 130.1935 Computer Software
- 130.1940 Construction Contractors and Real Estate Developers
- 130.1945 Co-operative Associations
- 130.1946 Tangible Personal Property Used or Consumed in Graphic Arts Production
within Enterprise Zones Located in a County of more than 4,000 Persons and
less than 45,000 Persons
- 130.1947 Tangible Personal Property Used or Consumed in the Process of
Manufacturing and Assembly within Enterprise Zones or by High Impact
Businesses
- 130.1948 Tangible Personal Property Used or Consumed in the Operation of
Pollution Control Facilities Located within Enterprise Zones
- 130.1949 Sales of Building Materials Incorporated into the South Suburban Airport
- 130.1950 Sales of Building Materials Incorporated into the Illiana Expressway
- 130.1951 Sales of Building Materials Incorporated into Real Estate within Enterprise
Zones
- 130.1952 Sales of Building Materials to a High Impact Business
- 130.1953 Sales of Building Materials to be Incorporated into a Redevelopment
Project Area within an Intermodal Terminal Facility Area
- 130.1954 Sales of Building Materials Incorporated into Real Estate within River
Edge Redevelopment Zones
- 130.1955 Farm Chemicals
- 130.1956 Dentists
- 130.1957 Tangible Personal Property Used in the Construction or Operation of Data
Centers
- 130.1960 Finance Companies and Other Lending Agencies – Installment Contracts
– Bad Debts
- 130.1965 Florists and Nurserymen
- 130.1970 Hatcheries
- 130.1971 Sellers of Pets and the Like
- 130.1975 Operators of Games of Chance and Their Suppliers
- 130.1980 Optometrists and Opticians
- 130.1985 Pawnbrokers
- 130.1990 Peddlers, Hawkers, and Itinerant Vendors

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- 130.1995 Personalizing Tangible Personal Property
- 130.2000 Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers
- 130.2004 Sales to Nonprofit Arts or Cultural Organizations
- 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Persons
- 130.2006 Sales by Teacher-Sponsored Student Organizations
- 130.2007 Exemption Identification Numbers
- 130.2008 Sales by Nonprofit Service Enterprises
- 130.2009 Personal Property Purchased Through Certain Fundraising Events for the Benefit of Certain Schools
- 130.2010 Persons Who Rent or Lease the Use of Tangible Personal Property to Others
- 130.2011 Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals
- 130.2012 Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies
- 130.2013 Persons in the Business of Both Renting and Selling Tangible Personal Property – Tax Liabilities, Credit
- 130.2015 Persons Who Repair or Otherwise Service Tangible Personal Property
- 130.2020 Physicians and Surgeons
- 130.2025 Picture-Framers
- 130.2030 Public Amusement Places
- 130.2035 Registered Pharmacists and Druggists
- 130.2040 Retailers of Clothing
- 130.2045 Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
- 130.2050 Sales and Gifts By Employers to Employees
- 130.2055 Sales by Governmental Bodies
- 130.2060 Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
- 130.2065 Sales of Automobiles for Use In Demonstration (Repealed)
- 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products
- 130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders
- 130.2076 Sales to Purchasers Performing Contracts with Governmental Bodies
- 130.2080 Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
- 130.2081 Tax-Free Purchases By Exempt Entities, Their Employees and Representatives, and Documenting Sales to Exempt Entities, Their Employees and Representatives

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- 130.2085 Sales to or by Banks, Savings and Loan Associations and Credit Unions
- 130.2090 Sales to Railroad Companies
- 130.2095 Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
- 130.2100 Sellers of ~~Feed~~Feeds and Breeding Livestock
- 130.2101 Sellers of Floor Coverings
- 130.2105 Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings, and Their Suppliers; Transfers of Data Downloaded Electronically
- 130.2110 Sellers of Seeds and Fertilizer
- 130.2115 Sellers of Machinery, Tools and Special Order Items
- 130.2120 Suppliers of Persons Engaged in Service Occupations and Professions
- 130.2125 Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives
- 130.2130 Undertakers and Funeral Directors
- 130.2135 Vending Machines
- 130.2140 Vendors of Curtains, Slip Covers and Other Similar Items Made to Order
- 130.2145 Vendors of Meals
- 130.2150 Vendors of Memorial Stones and Monuments
- 130.2155 Tax Liability of Sign Vendors
- 130.2156 Vendors of Steam
- 130.2160 Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
- 130.2165 Veterinarians
- 130.2170 Warehousemen

SUBPART T: DIRECT PAYMENT PROGRAM

Section

- 130.2500 Direct Payment Program
 - 130.2505 Qualifying Transactions, Non-transferability of Permit
 - 130.2510 Permit Holder's Payment of Tax
 - 130.2515 Application for Permit
 - 130.2520 Qualification Process and Requirements
 - 130.2525 Application Review
 - 130.2530 Recordkeeping Requirements
 - 130.2535 Revocation and Withdrawal
-
- 130.ILLUSTRATION A Examples of Tax Exemption Cards
 - 130.ILLUSTRATION B Example of a Notice of Revocation of Certificate of Registration
 - 130.ILLUSTRATION C Food Flow Chart

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130.ILLUSTRATION D Example of a Notice of Expiration of Certificate of
Registration

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].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill.

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Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26, 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621, effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a

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maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg. 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008; amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill. Reg. 15781, effective October 27, 2009; amended at 33 Ill. Reg. 16711, effective November 20, 2009; amended at 34 Ill. Reg. 9405, effective June 23, 2010; amended at 34 Ill. Reg. 12935, effective August 19, 2010; amended at 35 Ill. Reg. 2169, effective January 24, 2011; amended at 36 Ill. Reg. 6662, effective April 12, 2012; amended at 38 Ill. Reg. 12909, effective June 9, 2014; amended at 38 Ill. Reg. 17060, effective July 25, 2014; amended at 38 Ill. Reg. 17421, effective July 31, 2014; amended at 38 Ill. Reg. 17756, effective August 6, 2014; amended at 38 Ill. Reg. 19998, effective October 1, 2014; amended at 39 Ill. Reg. 1793, effective January 12, 2015; amended at 39 Ill. Reg. 12597, effective August 26, 2015; amended at 39 Ill. Reg. 14616, effective October 22, 2015; amended at 40 Ill. Reg. 6130, effective April 1, 2016; amended at 40 Ill. Reg. 13448, effective September 9, 2016; amended at 41 Ill. Reg. 10721, effective August 1, 2017; amended at 42 Ill. Reg. 2850, effective January 26, 2018; amended at 43 Ill. Reg. 4201, effective March 20, 2019; amended at 43 Ill. Reg. 5069, effective April 17, 2019; amended at 43 Ill. Reg. 8865, effective July 30, 2019; emergency amendment at 43 Ill. Reg. 9841, effective August 21, 2019, for a maximum of 150 days; emergency amendment at 44 Ill. Reg. 552, effective December 27, 2019, for a maximum of 150 days; emergency expired May 24, 2020; emergency amendment at 44 Ill. Reg. 2055, effective January 13, 2020, for a maximum of 180 days; amended at 44 Ill. Reg. 5392, effective March 16, 2020; amended at 44 Ill. Reg. 10981, effective June 10, 2020; amended at 44 Ill. Reg. 13975, effective August 11, 2020; amended at 45 Ill. Reg. 352, effective December 21, 2020; amended at 45 Ill. Reg. 7248, effective June 3, 2021; amended at 45 Ill. Reg. 14464, effective November 2, 2021; amended at 45 Ill. Reg. 16058, effective December 3, 2021; amended at 46 Ill. Reg. 6745, effective April 12, 2022; amended at 46 Ill. Reg. 7785, effective April 26, 2022; amended at 46 Ill. Reg. 10905, effective June 7, 2022; amended at 46 Ill. Reg. 15336, effective August 23, 2022; amended at 46 Ill. Reg. 18120, effective October 25, 2022; amended at 46 Ill. Reg. 18827, effective November 1, 2022; amended at 47 Ill. Reg. 1426, effective January 17, 2023; amended at 47 Ill. Reg. 2116, effective January 24, 2023; amended at 47 Ill. Reg. 5751, effective April 4, 2023; amended at 47 Ill. Reg. 6068, effective April 12, 2023; amended at 47 Ill. Reg. 6309, effective April 18, 2023; amended at 47 Ill. Reg. 19135, effective December 6, 2023; amended at 47 Ill. Reg. 19349, effective December 12, 2023; amended at 48 Ill. Reg. 1870, effective January 18, 2024; amended at 48 Ill. Reg. 2856, effective February 8, 2024; amended at 48 Ill. Reg. 10646, effective July 2, 2024; amended at 48 Ill. Reg. _____, effective _____.

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SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section 130.305 Farm Machinery and Equipment

- a) ~~General:~~ Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax Act ("Act") does not apply to sales of machinery and equipment, both new and used, and including machinery and equipment that manufactured on special order, used, or leased for use primarily in production agriculture or for use in State or ~~federal~~ Federal agricultural programs, including any individual replacement part for such machinery and equipment.- A purchaser must certify to the use of the equipment to obtain the exemption. For purposes of this Section, "primary use" or "primarily" means more than 50% of the time.
- b) Production agriculture. "Production agriculture" means the raising of or the propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. "Production agriculture" also means animal husbandry, floriculture, aquaculture, horticulture, viticulture, and apiculture. [35 ILCS 120/2-35]
- 1) Animal husbandry means the raising and propagation of livestock to produce offspring, meat, fiber, milk, eggs, or other products.
 - 2) Floriculture means the business of producing flowers, Christmas trees or other decorative trees, plants, shrubs, or sod, including the operation of greenhouses.
 - 3) Aquaculture or aqua farming means the controlled breeding, hatching, propagation or raising of aquatic life, such as fish, mollusks, crustaceans, algae, and other aquatic plants and invertebrates. See 17 Ill. Adm. Code 870.5.
 - 4) Horticulture means the business of producing vegetables, vegetable plants, or nursery stock, including the operation of nurseries and orchards.
 - 5) Viticulture means the business of growing grapes or operating vineyards.

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- 6) Apiculture means the business of maintaining bees and hives for the production of beeswax, honey, or other edible bee products, crop pollination services, and the sale of bees to other beekeepers.
- 7) Production agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide, or fertilizer, and harvesting or drying of crops. Specialized food production operations that produce plants under controlled environments in growing media other than soil, also qualify as production agriculture.
- 8) Production agriculture, with respect to animals, is limited to the raising of or the propagation of livestock and husbandry of animals. To qualify as the propagation of livestock and husbandry of animals, the animals must be raised for resale or retail sale.
- 9) Production agriculture does not include the following:
 - A) Activities such as the clearing of land, mowing of fence rows or ditches, and creating ponds or drainage facilities.
 - B) Operations involved in the storing of crops and produce or in the transporting of crops and produce to storage or to sale.
 - C) The processing of crops into food or other products. However, see Section 130.330(b), Manufacturing Machinery and Equipment regarding any processing exemption.
 - D) The raising of wild animals, game birds, and house pets. AGENCY NOTE: The purchase of game birds may qualify for an exemption under the Retailers' Occupation Tax Act [35 ILCS 120/2-5(32)].
 - E) The transport, slaughter, and processing of animals or animal food products. However, see Section 130.330, Manufacturing Machinery and Equipment regarding any slaughtering or processing exemption.

Production Agriculture is the raising of or the propagation of: Livestock, crops for sale for human consumption; crops for livestock consumption;

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~~and production seed stock grown for the propagation of feed grains and the husbandry of animals or, for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also includes animal husbandry, floriculture, aquaculture, horticulture and viticulture. (Section 2-35 of the Act)~~

- ~~e) Horticulture means the business of producing vegetables, vegetable plants, nursery stock, including the operation of nurseries and orchards, but not the sale of plants by retail outlets which do not grow the plant stock.~~
- ~~d) Floriculture means the business of producing flowers, Christmas trees or other decorative trees, plants, shrubs, sod, including such operations as greenhouses but not the sale of plants by retail outlets which do not grow plant stock.~~
- ~~e) Viticulture means the business of growing grapes or operating vineyards.~~
- ~~f) Production Agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide or fertilizer, harvesting and drying of crops. Specialized food production operations which produce plants under controlled environments in growing media other than soil, qualify as production agriculture. Activities such as the clearing of land, mowing of fence rows, creation of ponds or drainage facilities are not included, nor are the operations involved in the storing or transporting of crops and produce. The processing of crops into food or other products is not production agriculture. With respect to the raising of or propagation of livestock and husbandry of animals, the animals must be domestic farm animals raised for profit. The raising of wild animals, game birds and house pets would not be considered to be production agriculture.~~
- ~~g) The transport, slaughter and processing of animals or animal food products are not considered to be production agriculture.~~
- c) Farm machinery and equipment. The exemption applies only to items of farm machinery and equipment, both new and used, 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

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~~*purchased for lease, and including implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code [625 ILCS 5], 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. [35 ILCS 120/2-5(2)]*~~ farm machinery and equipment, either new or used, certified by the purchaser to be used primarily for production agriculture or State or Federal agricultural programs, and including machinery and equipment purchased for lease. Included in this exemption are implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code, fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code. Excluded from this exemption are other motor vehicles required to be registered pursuant to the Illinois Vehicle Code.

- 1) Registered vehicles other than motor vehicles may qualify for the exemption if they are used primarily in production agriculture rather than in transportation or other nonexempt activities.
 - A) ~~Examples of this include:~~ implements of husbandry used primarily to supply and apply farm chemicals; ~~trailers and nurse tanks and their trailers~~ used primarily to supply spreaders in the fields; ~~and~~ aircraft used primarily to apply farm chemicals; ~~and combine header carts/trailers used to transport combine grain-heads.~~
 - B) ~~The above registered vehicles in subsection (A) and all-terrain~~All-terrain vehicles ("ATVs") ~~that are not required to be registered under the Illinois Vehicle Code~~ may qualify if they are used primarily in production agriculture activities.

~~such as pulling sprayers while they apply chemicals to fields or collecting and mapping soil samples.~~
 - C) The use of ~~the registered vehicles described in subsection (A) above and~~ ATVs ~~that are not required to be registered under the Illinois Vehicle Code~~ for farm transportation or recreation purposes does not constitute production agriculture.

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D) When the registered vehicles described in subsection (A) above and ATVs that are not required to be registered under the Illinois Vehicle Code are used in both production agriculture and ~~non-qualifying~~nonqualifying activities, the primary use of each vehicle will determine if it qualifyesthey qualify for exemption.

2) Qualifying uses include:

A) collecting and mapping soil samples;

B) mapping fields;

C) pulling sprayers while they apply farm chemicals to fields;

D) transporting seeds to fields;

E) cleaning livestock waste;

F) hauling and properly disposing of dead livestock, including any digging and burying; and

G) hauling injured or ill livestock or livestock necessities, such as medication, feed, and water.

3) Non-qualifying uses include:

A) mowing;

B) scouting crops;

C) checking fences;

D) mapping tile lines;

E) herding livestock;

F) checking livestock;

G) hauling debris;

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- H) traveling to inaccessible areas;
 - I) transporting items such as seed, feed, chemicals, or straw to be stored prior to its use in production agriculture; and
 - J) transporting tools, persons, or equipment to repair fences or to mow fence rows or ditches.
- 4) *Beginning January 1, 2024, farm machinery and equipment also includes electrical power generation equipment used primarily for production agriculture. [35 ILCS 120/2-5(2)]*
- A) Electrical power generation equipment used to generate electricity for specialty heating or lighting equipment specifically required by the production process (e.g., ultra-violet lights or special heaters for incubation) would qualify for the exemption.
 - B) Electrical power generation equipment used to generate electricity for general heating, lighting, or ventilation equipment would not qualify for the exemption.
- 5) The law exempts only the purchase and use of farm machinery and equipment used in production agriculture or State or ~~federal~~Federal agricultural programs. No other type or kind of tangible personal property will qualify for the exemption.
- 6) Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or ~~federal~~Federal agricultural programs.
- A) Farm machinery would include tractors, combines, balers, irrigation equipment, and cattle and poultry feeders, but not improvements to real estate such as fences, barns, roads, grain bins, silos, and confinement buildings.
 - B) A rotary mower ~~that~~which would not qualify for exemption if used to mow ditches or fence rows, would qualify for exemption if primarily used to mow crops or ground cover

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grown on acreage in State or ~~federal~~Federal agricultural programs.

C) Certain machines qualify for the exemption if purchased by farmers directly from retailers, even though they are installed as realty improvements. Such machines include, but are not limited to, augers, grain dryers (e.g., heaters and fans), automated livestock feeder bunks (but not ordinary building materials), automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), ~~and~~ water pumps serving production areas, ~~and~~ specialty heating or lighting equipment specifically required by the production process, (i.e., ultraviolet lights, and special heaters for incubation).

D) General heating, lighting, and ventilation equipment does not qualify as farm machinery or equipment.

E) A person, (such as a plumbing contractor,) who contracts to provide and install an exempt machine or equipment permanently into real estate must obtain an exemption certificate from the person purchasing the machine. The contractor must furnish certification to the seller, attaching the certificate of the purchaser in order to claim the exemption.

Fj) A tractor or other machinery ~~that~~which qualifies for the exemption may include options or accessories ~~that~~which are not farm equipment. Except for precision farming equipment, these items must be installed and sold both as an integral part of the qualifying machine and in a single transaction. *Agricultural chemical tender tanks and dry boxes shall include 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.* ~~[35 ILCS 120/2-5(2)](Section 2-5 of the Act)~~

7k) Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture.

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- A) Equipment does not include ordinary building materials to be permanently affixed to real estate. However, certain items of equipment can qualify for the exemption even though they are installed as realty improvements. Such items of equipment include, but are not limited to, farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities, and flooring used in conjunction with waste disposal machinery. *Horticulture polyhouses or hoop houses used for propagating, growing, or overwintering plants shall be considered farm machinery and equipment. [35 ILCS 120/2-5(2)]*~~Horticultural polyhouses or hoop houses used for propagating, growing, or overwintering plants are considered farm machinery and equipment.~~
- B) Wheeled, wire-mesh tables and wheeled, non-motorized, multiple-tray carts used primarily in floricultural or horticultural growing operations, such as those described in *Mid-American Growers v. Department of Revenue*, 143 Ill.App.3d 600 (*3d Dist. 1986*), are considered farm machinery and equipment.
- C) *Farm machinery and equipment shall include 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. [35 ILCS 120/2-5(2)]*~~Equipment shall include 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.~~
- i) *Precision farming equipment includes, but is not limited to, soil testing sensors, computers, monitors, software, global positioning and mapping systems ("GPS"), and other such equipment. [35 ILCS 120/2-5(2)]*~~Precision farming equipment includes, but is not limited to, soil testing sensors, yield monitors, computers, monitors, software, global positioning and mapping systems, guidance systems, modems, and data communications equipment.~~ It shall also include necessary mounting hardware, wiring, and antennas.

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- ii) Farm machinery and equipment also includes 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. [35 ILCS 120/2-5(2)]~~Farm machinery and equipment also includes 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.~~

- iii) The use of computers to record and process land information about soil types and slope as well as pesticide, herbicide, and fertilizer application also constitutes precision farming.

- iv) When a computer is used for both precision farming and nonqualifying purposes, the primary use of the computer will determine if it qualifies for the exemption.

EXAMPLE 1~~Example~~: Precision farming and computer assisted operation of production agriculture facilities includes the collection of crop and soil data, the processing of that data, and the use of that data or its products in production agriculture. Thus, machinery and equipment such as soil sensors, moisture sensors, and yield monitors would collect data on a particular field. This information would be precisely correlated to a specific location by use of satellite GPS ~~systems~~ linked to a computer. These devices would typically be mounted on a tractor or combine. These devices could also be hand-held~~hand held~~ or mounted on other types of vehicles even though those vehicles, such as pick-up trucks, do not qualify for the exemption. The data collected

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from the farm field would then be transferred to a base station computer electronically ~~by modem, or via magnetic media or CD-ROM disk~~. The data would be processed by the base station computer and integrated into or overlaid on digital maps of the farm field. The farmer could use the information to make decisions about what types of crops to plant and the type, formula, and application rate of fertilizer, pesticide, or other agricultural chemical to apply to the field. The processed and integrated data would then be available for use by the farmer in planting or could be transferred to a fertilizer dealer who applies farm chemicals. The fertilizer dealer would use the information about the farmer's field and the digital map to determine the type and formula of chemical to be applied to the farmer's field and the rate of application. That information would be transferred to the computer in the fertilizer spreader. With the aid of ~~a~~ GPS ~~system~~ linked to the computer in the fertilizer spreader, the fertilizer dealer would be able to precisely apply the necessary chemicals and vary the application rate to meet crop needs across the field. All of the sensors, computers, software, and accessories described above would qualify for the exemption.

EXAMPLE 2: A livestock farmer ~~using would use~~ microchips and sensors to identify specific animals and determine individual growth information for animals qualify as precision farming. This information would be used by computers to determine the optimum ~~feed or diet~~ feed/diet for the animal and could then be used to dispense the proper type and amount of feed to the animal.

EXAMPLE 3: In confinement buildings, precision farming would include temperature and moisture sensors ~~may be~~ linked through computers to control heating, ventilation, and lighting for livestock as well as regulating the automatic stock feeders and waterers.

EXAMPLE 4: Precision farming equipment would include the microchips, sensors, computers, and computer-controlled ~~computer-controlled~~ feeding equipment and environmental controls. The use of computers to record and

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process crop and livestock management information gathered through the use of these types of sensors or monitors constitutes precision farming. However, the use of computers to record and process other farm related information such as accounts payable, correspondence, or marketing does not constitute precision farming.

- D) The exemption includes hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, and shovels so long as they are used in production agriculture as that term is defined in subsection (b) of this Section.
- E) In general, equipment and supplies that have a useful life of less than one year do not qualify for the exemption.
- F) Items that do not qualify as equipment, include, but are not limited to, the following:
 - i) Equipment used in farm management such as radios and office equipment, in repair and servicing of equipment, in security and fire protection, farm maintenance, administration, selling, marketing, or the exhibition of products.
 - ii) Hand tools used in maintenance activities, such as wrenches, pliers, wire stretchers, grease guns, hammers, and screwdrivers.
 - iii) Supplies, such as baling wire, baling twine, work gloves, boots, overshoes, and chemicals for effluent systems.

~~When a computer is used for both precision farming and nonqualifying purposes, the primary use of the computer will determine if it qualifies for the exemption. The use of computers to record and process land information about soil types and slope and pesticide, herbicide and fertilizer application also constitutes precision farming. Equipment used in farm management such as radios and office equipment, in repair and servicing of equipment, in security and fire~~

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~~protection, is not farm equipment; nor does the exemption apply to equipment used in farm maintenance, administration, selling, marketing or the exhibition of products. The exemption does include hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks and shovels so long as they are used in production agriculture as that term is defined in subsection (b) of this Section. Hand tools used in maintenance activities, such as wrenches, pliers, wire stretchers, grease guns, hammers and screwdrivers, are not used in production and do not qualify for the exemption. Supplies, such as baling wire, baling twine, work gloves, boots, overshoes and chemicals for effluent systems are not exempt.~~

G) Corrugated plastic pipe and other water management products used in production agriculture for drainage are not considered equipment under the farm machinery and equipment exemption.

8) When an item of farm machinery and equipment is used both in a qualifying and nonqualifying manner, the burden of demonstrating primary use is on the taxpayer claiming the exemption. One method to demonstrate primary use is for the taxpayer to provide a log, documenting machine hours by qualifying and nonqualifying uses. See also 86 Ill. Adm. Code 130.810.

d) New or used repair or replacement parts, necessary for the operation of the machine used in production agriculture or in State or ~~federal~~Federal agricultural programs, qualify for the exemption. With the exception of precision farming items, accessories or replacements not essential to the operation of the machinery itself, except when sold as an integral part of a qualified machine at the time of purchase, such as radios, and tool or utility boxes, do not qualify for the exemption. Repair or replacement parts include, but are not limited to, included in the repair or replacement parts category are: batteries, tires, fan belts, mufflers, spark plugs, plow points, standard type motors, and cutting parts. Consumable supplies such as fuel, grease, oil, and anti-freeze are not repair or replacement parts.

em) Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's

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name and address, and a statement that the property purchased will be used primarily in production agriculture or in State or ~~federal~~Federal agricultural programs, including the name of the specific agricultural program. Retailers may accept blanket certificates but have the responsibility to obtain and must maintain the certificates as a part of their books and records. Retailers are required to exercise good faith in accepting exemption certificates. If, however, a retailer reasonably believes that the purchaser will use farm machinery or equipment in production agriculture or in State or ~~federal~~Federal agricultural programs and accepts the certificate in good faith and the purchaser does not, in fact, use the machinery or equipment in production agriculture or in State or ~~federal~~Federal agricultural programs, the purchaser will be liable to the Department for the tax, not the retailer.

- f) An item of farm machinery and equipment ~~that~~which is initially used primarily in production agriculture and having been so used for less than one-half of its useful life, is converted to primarily nonexempt uses, will become subject to tax at the time of the conversion. Such tax will be collected on ~~the~~such portion of the price of the machinery and equipment ~~that~~as was excluded from tax at the time the sale or purchase was made.
- g) Leasing. Farm machinery and equipment purchased for lease to be used by the lessee primarily in production agriculture or in State or ~~federal~~Federal agricultural programs qualifies for the exemption. The lessor purchasing such equipment must certify that the equipment will be so used. Should a purchaser-lessor subsequently lease the machinery or equipment primarily to lessees who do not use it in a manner that would qualify for the exemption, the purchaser-lessor will become liable for the tax from which ~~the purchaser-lessor~~he was previously exempted.
- h) Custom farmers or special service operators, ~~i.e., crop dusting, fertilizer spraying, combining or corn shelling~~, who provide a service-for-hire, such as crop dusting, pollinating, fertilizer spraying, combining, or corn shelling, that is an integral part of production agriculture on farms other than their own ~~which is an integral part of production agriculture~~ may also claim the exemption if the equipment is used primarily in production agriculture.
- i) State and federal agricultural programs. The State or federal agricultural programs can include agricultural programs administered by the United States Department of Agriculture or state agriculture agencies (e.g., Illinois Department of Agriculture) under which government cost-share funds are

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provided to agricultural producers for expenditure for land treatment structures or devices such as terraces or grass waterways. This exemption can be claimed by any person, including subcontractors, who will use machinery or equipment primarily in State or federal agricultural programs.

- j) No item qualifies for the exemption in and of itself, and no transaction is exempt unless the seller obtains a certification that contains the information required by subsection (e). Machinery and equipment that is used both in qualifying and non-qualifying activities must be used primarily in a qualifying activity for the exemption to apply.

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

SUBPART N: SALES FOR RESALE

Section 130.1415 Resale Number – When Required and How Obtained

- a) If the purchaser is not registered with the Department as a taxpayer, but claims to be a reseller of the tangible personal property in such a way that such resales are not taxable under the Retailers' Occupation Tax Act ("Act") or under some other tax law thatwhich the Department administersmay administer, such purchaser, ~~(except in the case of an out-of-State purchaser who will always resell and deliver the property to his customers outside Illinois.)~~ shall apply to the Department for a resale number. Such applicant shall state facts detailingwhich will show the Department why such applicant is not liable for tax under the Act or under some other tax law thatwhich the Department administersmay administer on any of itshis resales and shall furnish such additional information as the Department may reasonably require.
- b) Examples of purchasers for resale who would need a resale number from the Department are persons who resell only to schools and other totally exempt purchasers and persons who resell only to purchasers who in turn resell the property apart from engaging in a service occupation.
- c) Upon approval of the application, the Department will assign a resale number to the applicant and will certify such number to the applicanthim. The Department may cancel any such number thatwhich is obtained through misrepresentation, ~~or~~ thatwhich is used to make a purchase tax free when the purchase, in fact, is not a purchase for resale, or

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~~that which~~ no longer applies because ~~of~~ the ~~purchaser has~~purchaser's ~~having~~ discontinued ~~the~~ making of ~~tax-exempt~~tax exempt resales of the property.

- d) The Department may restrict the use of the number to one year at a time or to some other definite period if the Department finds it impracticable or otherwise inadvisable to issue such numbers for indefinite periods.
- e) Except as provided in this Section Subpart, a sale shall be made tax free~~tax-free~~ on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller ~~when in connection with~~ certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.
- f) For the purpose of enabling agricultural producers to buy feed, seed, fertilizer, and baby chicks for resale to the extent permitted by Sections 130.1970, 130.2100, and 130.2110 of this Part and still be in compliance with Section 2c of the ~~Retailers' Occupation Tax~~ Act, such agricultural producers who are not registered with the Department as retailers will be given a resale number as a class, without making application, individually, to the Department ~~therefor~~, with all such persons being assigned the same resale number by the Department.
- g) The Department will assign Resale Number 0000-0110 to all such buyers of feed, seed, fertilizer, and baby chicks for this purpose.
- h) Nothing that is stated hereinabove changes anything contained in Sections 130.1970, 130.2100, and 130.2110 of this Part.

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

SUBPART S: SPECIFIC APPLICATIONS

Section 130.1955 Farm Chemicals

- a) ~~Vendors Effective October 1, 1975, vendors~~ of farm chemicals are exempt from Retailers' Occupation Tax on their receipts from such sales. [35 ILCS 120/2-5(a)]

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- b) Farm chemicals include any chemical product used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold. Examples of exempted items include, but are not limited to, ~~are~~ stock sprays, disinfectants and the like, stock tonics, serums, vaccines, poultry remedies and other medicinal preparations and conditioners, water purifying products, insecticides, and weed killers and the like. ~~(For a definition of production agriculture, see Section 2-35 of the Act.)~~
- c) Specific examples include:
- 1) Chemicals applied to crops or fields to control disease, pests, and weeds qualify for the exemption as well as chemicals applied to farm animals to control disease or pests as long as they are used in conjunction with animals to be sold or the products of which are to be sold.
 - 2) Chemicals used to reduce the hardness of water and to increase water penetration into the soil are exempt.
 - 3) Shading chemicals sprayed on greenhouse windows qualify because they are used in connection with the raising of crops by regulating the amount of sunlight exposure on the plants. See Mid-American Growers, Inc v. Department of Revenue, 143 Ill. App. 3d 600, 606 (3d Dist. 1986).
 - 4) The retail sale of nematodes qualifies for the farm chemical exemption if the nematodes are used in production agriculture. Nematodes are tiny worms that kill insects and fleas when applied to agricultural fields, lawns, etc. However, the production of nematodes does not qualify for the farm chemical exemption, the manufacturing machinery and equipment exemption, or the farm machinery and equipment exemption.
- d) Chemicals and disinfectants used for general farm maintenance, such as to clean milking machines and pipelines do not qualify for the farm chemical exemption.

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

Section 130.1970 Hatcheries

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- a) When Liabile ~~for~~ Tax
- 1) Sales of baby chicks ~~that~~~~which~~ are purchased for the buyer's consumption, ~~and~~~~which~~ are consumed by such buyer ~~or lost~~ and not subsequently resold on the market, constitute retail sales, the receipts from which are subject to the Retailers' Occupation Tax.
 - 2) ~~Hatchery operators~~~~Hatcherymen~~ also incur ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ liability when ~~selling~~~~they sell~~ brooders, water troughs, and other poultry-raising equipment to purchasers for use or consumption unless ~~the item qualifies for the farm machinery and equipment exemptions~~~~such sale is exempt by virtue of 86 Ill. Adm. Code 130.305 (Farm Machinery and Equipment).~~ See 86 Ill. Adm. Code 130.305.
- b) When Not Liabile ~~for~~ Tax
- 1) ~~Persons selling baby chicks to purchasers for resale on the market as poultry and not to be consumed by such purchaser, or for the production of eggs for sale, are deemed to be sales for purposes of resale by the hatchery operator.~~~~Baby chicks which are purchased by the buyer for resale on the market as poultry and which are not consumed by such buyer, or which are purchased by the buyer for the production of eggs for sale, are deemed to be sold for resale by the hatcheryman, notwithstanding the fact that some of the chicks so purchased may die before they are resold.~~ The ~~hatchery operator~~~~hatcheryman~~ is not liable for tax with respect to ~~the~~~~his~~ receipts from such sales of baby chicks for resale.
 - 2) ~~Persons~~~~Also, persons~~ engaged in the business of operating incubators or hatcheries, who hatch baby chicks for other persons from eggs belonging to such persons (i.e., custom hatching), are deemed to render service with respect to such transactions, and they are not required to remit ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ measured by their gross receipts from their rendering of such service.
- c) Records of Sales of Baby Chicks
If a seller of baby chicks has adequate records to establish which ~~of his~~ sales of baby chicks are at retail and which ~~of such~~ sales are for resale,

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such records will control. See 86 Ill. Adm. Code 130.805, 130.810, and 130.1415 regarding what constitutes minimum records.

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

Section 130.2100 Sellers of FeedFeeds and Breeding Livestock

- a) Sellers of Feed – When Liable for Tax
The sale of feed to purchasers for feeding livestock or poultry that will be used or consumed by the purchaser or where the products of such livestock or poultry are to be used or consumed for purposes other than for resale or sale at retail, constitutes a "sale at retail" within the meaning of the Retailers' Occupation Tax Act [35 ILCS 120]. See also 86 Ill. Adm. Code 130.210. In such case, gross receipts of the seller from this source must be included in computing retailers' occupation tax liability. For purposes of this Section, "feed" means and includes salt, grains, tankage, oyster shells, mineral supplements, vitamins, limestone, and other generally recognized animal feeds. The sale of straw or other materials used for bedding or other non-feed purposes, is subject to tax as a consumable supply.

Illustrations

The term "feed" includes salt, grains, tankage, oyster shells, mineral supplements, vitamins, limestone and other generally recognized animal feeds.

- b) Sellers of Feed – When Not Liable for Tax
The sale of feed to purchasers for feeding livestock or poultry that will be sold for resale or at retail or the products of such livestock or poultry will be sold for resale or at retail, is not a sale for use or consumption. Such sales of feed are deemed to be sales for purposes of resale, "as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a 'sale at retail". 86 Ill. Adm. Code 130.210(b).

Sellers of Feeds – When Liable For Tax

The sale of feeds to a purchaser for use in feeding horses, livestock or poultry that are used, employed or consumed, and the products (if any) of which are used, employed or consumed, for purposes other than sale at market, constitutes a "sale at retail" within the meaning of the Retailers'

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~~Occupation Tax Act. In such case, gross receipts of the seller from this source must be included in computing tax liability.~~

- c) Sellers of Breeding Livestock – When Not Liable for Tax
Farmers or producers of breeding livestock are not liable for retailers' occupation tax with respect to gross receipts realized from the sale of bulls, stallions, or other animals for breeding purposes. In addition, sellers of semen used for artificial insemination of livestock for direct agricultural production are not liable for retailers' occupation tax with respect to gross receipts realized from such sales.

~~Sellers of Feeds – When Not Liable For Tax
Persons selling feeds to purchasers for feeding livestock or poultry for marketing, or for producing dairy products or eggs for marketing, are not making sales for use or consumption. Such sales of feeds are deemed to be sales, for purposes of resale, of the property which, "as an ingredient or constituent goes into and forms a part of tangible personal property subsequently the subject of a 'sale at retail'".~~

- d) ~~Sellers of Breeding Livestock – When Not Liable For Tax
Farmers or producers of breeding livestock are not liable for Retailers' Occupation Tax with respect to gross receipts realized from the sale of bulls, stallions or other servicing animals for breeding purposes. In addition, sellers of semen used for artificial insemination of livestock for direct agricultural production are not liable for Retailers' Occupation Tax with respect to gross receipts realized from such sales.~~

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

Section 130.2110 Sellers of Seeds and Fertilizer

- a) Sellers of Seeds – When Liable ~~for~~For Tax
~~Persons~~When persons who are engaged in the business of selling seeds ~~sell seeds~~ to purchasers who use the seeds in raising lawn grass, vegetables, crops, or other plants ~~that~~which they will use or consume and not resell, ~~such vendors~~ are engaged in the business of selling tangible personal property to purchasers for use or consumption and are required to remit ~~retailers' occupation tax~~Retailers' Occupation Tax to the Department on their gross receipts from such sales.
- b) Sellers of Seeds – When Not Liable ~~for~~For Tax

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Persons ~~selling who sell~~ seeds to purchasers who employ such seeds in raising vegetables, crops, or other plants for sale are selling seeds to purchasers for purposes of resale and are not required to remit retailers' occupation tax~~Retailers' Occupation Tax to the Department on~~ measured by their gross receipts from such sales.

- c) Sellers of Fertilizer – When Liable for Tax
Persons engaged in the business of selling fertilizer to purchasers who use such fertilizer on lawns, home or private gardens, parks, boulevards, and the like are engaged in the business of selling tangible personal property to purchasers for use or consumption and are required to remit retailers' occupation tax to the Department on their gross receipts from such sales. For purposes of this Section, "fertilizer" means a commodity that contains one or more substances to increase the available plant food content of the soil and becomes a part of the products grown.

Definition of Fertilizer

~~The word "fertilizer", as used in this Section, means a commodity which contains one or more substances to increase the available plant food content of the soil and which becomes a part of the products grown therein.~~

- d) Sellers of Fertilizer – When Not Liable for Tax
Persons selling fertilizer to purchasers who are regularly engaged in the business of producing agricultural products for sale are considered to be making sales for purposes of resale because, in such cases, the fertilizer becomes a part of products that are subsequently sold. Such sellers of fertilizer, therefore, are not required to remit retailers' occupation tax measured by their gross receipts from such sales.

~~Sellers of Fertilizer – When Liable For Tax~~

~~When persons who are engaged in the business of selling fertilizer sell fertilizer to purchasers who use such fertilizer on lawns, home or private gardens, parks, boulevards and the like, such vendors are engaged in the business of selling tangible personal property to purchasers for use or consumption and are required to remit Retailers' Occupation Tax to the Department on their gross receipts from such sales.~~

- e) ~~Sellers of Fertilizer – When Not Liable For Tax~~
~~Persons who sell fertilizer to purchasers who are regularly engaged in the business of producing agricultural products for sale are considered to be~~

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~~making sales for purposes of resale because, in such cases, the fertilizer becomes a part of products which are subsequently sold. Such sellers of fertilizer, therefore, are not required to remit Retailers' Occupation Tax measured by their gross receipts from such sales.~~

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