

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>
130.210	Amendment
130.215	Amendment
130.330	Amendment
130.1930	Amendment
130.1980	Amendment
130.2005	Amendment
130.2020	Amendment
130.2145	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: This rulemaking amends several sections of Part 130, Retailers' Occupation Tax, to reflect new statutory developments, decisional law, and Department policies. This rulemaking also deletes outdated provisions in Part 130 and provides various technical changes.

Section 130.210 is being amended to update the rule with regard to production related exemptions, to remove the outdated examples, and to provide cross-reference to Section 130.215.

Section 130.215 is being amended to update the examples.

Section 130.330 is being amended to include statutory language and clarify the nonapplication of the exemption to food service businesses, and to add language to subsections (b)(8) and (C)(3)(F).

Sections 130.1930, 130.1980, and 130.2020 are being amended to correct references to 130.311 and to make pronouns gender neutral.

Section 130.2005 is being amended to incorporate Department policies from letter rulings regarding dining plans and dining facilities at universities by creating

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a new subsection (c) and dining facilities at nonprofit hospitals that are open to the public.

Section 130.2145 is being amended to provide updated cross-references with the addition of the new subsection (c) in 130.2005.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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

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

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- 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:
 - 31-33 Manufacturing
 - 42 Wholesale Trade
 - 44-45 Retail Trade
 - 61 Educational Services
 - 72 Accommodation and Food Services
 - 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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Section 130.210 Sales of Tangible Personal Property to Purchasers for Resale

- a) The sale of tangible personal property to a purchaser for the purpose of resale in any form as tangible personal property, to the extent not first subjected to a use for which it was purchased, is not subject to the Retailers' Occupation Tax Act ("Act").
- b) Sales of tangible personal property, which property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a "sale at retail", are not sales at retail as defined in the Act, provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced byproduct of manufacturing.
- c) However, such sales for resale cannot be made tax-free unless the purchaser (except in the case of an out-of-State purchaser who will always resell and deliver the property to its customers outside Illinois) has an active registration number or active resale number from the Department and gives such number to suppliers in connection with certifying to any supplier that any sale to such purchaser is nontaxable because of being a sale for resale. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale.
- d) ~~Except to the extent stated in Subsection (b) of this Section, tangible personal property, even though it is essential to the process of manufacturing or otherwise producing other tangible personal property that will be sold is, nevertheless, sold at retail (and not for resale within the meaning of the Act) if it is sold to a manufacturer or other producer who uses or consumes such property in the manufacturing or other production process, but does not physically incorporate such property into the tangible personal property which he manufactures or otherwise produces and sells.~~

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- de) Divisible Type of Sale. There can also be a divisible type of sale where the tangible personal property is bought partly for "use" and partly for "resale" in the first place. ~~For examples, see Sections 86 Ill. Adm. Code 130.215 and 130.330(h). An example of this is the sale of coal and coke to a steel manufacturer who buys coal and coke partly to produce heat for "use" in the manufacturing operation, and partly to provide carbon as an ingredient of the steel as well as various byproducts which the purchasing manufacturer will sell. In this case, the coal and coke bought for "use" in the manufacturing operation are taxable, and the sale of the coal and coke which the purchaser bought to provide carbon is a nontaxable sale for resale.~~

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

Section 130.215 Further Illustrations of Sales for Use or Consumption Versus Sales for Resale

- a) A manufacturer of ice cream may require, ~~in his occupation,~~ machinery, freezers, fuel, ammonia, and other equipment and supplies. Sales of such items to the manufacturer are sales for use or consumption. Such items do not physically enter into, nor, as ingredients or constituents, form a part of, the product sold by such ice cream manufacturer. Such items are purchased for use or consumption and not for resale within the meaning of the Retailers' Occupation Tax Act. Persons who engage in the business of making such sales incur ~~retailers' occupation tax~~ Retailers' Occupation Tax liability. (However, for information regarding the Manufacturing Machinery and Equipment Exemption from sales tax, see 86 Ill. Adm. Code 130.330.) Sales of milk, cream, sugar, extracts, and various other constituents are also made to, intended to, and do enter into and form a useful part of a commodity which thereafter becomes the subject of a sale for use or consumption.
- b) A fast-food ~~For example, a fast food~~ seller purchases cooking oil to use in preparing foods such as ~~french~~ fries and chicken. 5% of the oil is absorbed into the food and ends up as an integral part of the food when finished. 95% of the oil does not become part of the cooked food and is discarded by the ~~fast-food~~ fast-food seller after use. This being the case, the 5% of the oil that is absorbed and becomes an integral part of the food product is exempt from tax as a purchase for resale. The 95% of the oil that does not end up as an integral part of the finished product is taxable

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because it is used by the food seller. In this case, the food seller should give a blanket percentage-use Certificate of Resale to the supplier that states that 5% of its purchases of oil are exempt from tax as purchases for resale and 95% are taxable as purchases for use. The Certificate of Resale must meet all the requirements of 86 Ill. Adm. Code 130.1405 in addition to specifying the percentage of material that will be resold. The seller should charge tax only on the 95% of the oil used by the purchaser.

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

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section 130.330 Manufacturing Machinery and Equipment

- a) General Provisions Applicable to All Types of Machinery and Equipment Under This Section

~~Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax Act does not apply to the sales of~~*Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of* machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether the sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether the sale or lease is made apart from or as an incident to the seller's engaging in the service occupation of producing machines, tools, dies, jigs, patterns, gauges, or other similar items of no commercial value on special order for a particular purchaser. ~~[35 ILCS 120/2-5(14)](Section 2-5(14) of the Act)~~ *The manufacturing and assembly machinery and equipment exemption includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility, as well as machinery and equipment that are for use in an expanded or new manufacturing facility.* ~~[35 ILCS 120/2-45](Section 2-45 of the Act)~~ In certain cases, purchases of machinery and equipment by a lessor will be exempt even though that lessor does not itself employ the machinery and equipment in an exempt manner. Initially, the exemption was for purchases of conventional machinery and equipment used or consumed primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. The exemption has

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expanded over time to include not only conventional machinery and equipment used or consumed in a manufacturing or assembling process in a manufacturing facility (see subsection (c)) but also chemicals (see subsection (d)), computer software (see subsection (e)), machinery and equipment used primarily in graphic arts production (see subsection (g)), and production related tangible personal property (see subsection (h)). For purposes of this Section, unless otherwise provided, all the types of tangible personal property that qualify for the exemption under this Section will be referred to as "machinery and equipment". The following provisions apply to all items under this Section:

- 1) There may be instances in which items of tangible personal property do not meet the definition of conventional "machinery and equipment" under subsection (c), but do meet the definition of "graphic arts production" in subsection (g) or "production related tangible personal property" in subsection (h) and so would qualify for the exemption.
- 2) *The manufacturing ~~machinery~~ and ~~assembling machinery and equipment~~ exemption is ~~exempt from the not subject to the sunset provisions~~ ~~of~~~~contained in~~ Section 2-70 of the Retailers' Occupation Tax Act. [35 ILCS 120/2-45]~~Section 2-45 of the Retailers' Occupation Tax Act. (Section 2-45 of the Act)~~*
- 3) All items considered machinery and equipment under this Section must be used primarily (over 50%) in manufacturing or assembling. Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for the exemption. However, the purchaser must be able to establish through adequate records that the machinery and equipment is used over 50% of the time in an exempt manner in order to claim the exemption.
- 4) An item of machinery and equipment that initially is used primarily in manufacturing or assembling 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, allowing for reasonable depreciation on the machinery and equipment.

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- 5) The fact that particular machinery and equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery and equipment is used primarily in manufacturing or assembling.
- 6) Machinery and equipment used in the performance of a service, such as dry cleaning, is not used in the production of tangible personal property for wholesale or retail sale or lease and is thus taxable. However, a manufacturer or assembler who uses machinery and equipment to produce goods for wholesale or retail sale or lease by itself or another, or to perform assembly or fabricating work for a customer who retains the manufacturer or assembler only for its services, will not be liable for tax on the machinery and equipment it uses as long as the goods produced either for itself or another are destined for wholesale or retail sale or lease, rather than for use and consumption.
- 7) The exemption requires that the product produced as a result of the manufacturing or assembling process be tangible personal property for wholesale or retail sale or lease. Accordingly, a manufacturer or assembler who uses any significant portion of the output of its machinery and equipment, either for internal consumption or any other nonexempt use, or a lessor who leases otherwise exempt machinery and equipment to such a manufacturer or assembler, will not be eligible to claim the exemption on that machinery and equipment. No apportionment of production capacity between output for sale or lease and output for self-use will be permitted and no partial exemption for any item of machinery and equipment will be allowed. For example, the purchase of hot-mix asphalt machinery would be taxable if the majority of the asphalt produced (over 50%) was used to fulfill the purchaser's own construction contracts and not sold at wholesale or retail.
- 8) Machinery and equipment does not include foundations for, or special purpose buildings to house or support, machinery and equipment.

- b) Manufacturing and Assembling Processes Described

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- 1) The manufacturing process is the production of any article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant.
- 2) The assembling process is the production of an article of tangible personal property, whether the article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling that results in an article or material of a different form, use, or name.
- 3) The process or activity must be commonly regarded as manufacturing. To be so regarded, it must be thought of as manufacturing by the general public. Generally, the scale, scope, and character of a process or operation will be considered to determine if the process or operation is commonly regarded as manufacturing. Manufacturing includes such activities as processing, fabricating, and refining.
- 4) The use of machinery and equipment in any industrial, commercial, or business activity that may be distinguished from manufacturing or assembling will not be an exempt use and the machinery and equipment will be subject to tax.
- 5) Manufacturing generally does not include extractive industrial activities. Logging and drilling for oil, gas, and water neither produce articles of tangible personal property nor effect any significant or substantial change in the form, use, or name of the materials or resources upon which they operate. However, the extractive processes of mining or quarrying may constitute manufacturing. (See *Nokomis Quarry Co. v. Department of Revenue*, 295 Ill. App. 3d 264, 692 N.E.2d 855, 860 (5th⁵th Dist. 1998) (holding that a calculated blasting method that is performed

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with specific desired results, which changes limestone deposits into materials with a different form, possessing new qualities or combinations, constitutes manufacturing).¹ Blasting agents, high explosives, detonators, lead-in line, and blasting machines are examples of exempt tangible personal property that is often used in the extractive process of quarrying. Equipment used primarily to drill and load holes to place blasting material that fractures aggregate qualifies as manufacturing machinery and equipment. Dredges that are used primarily in a sand and gravel mining operation to pick up and sort materials from a riverbed also qualify for the exemption. Equipment, such as crawler dozers, used primarily to move shot rock after blasting, and wheel loaders, used primarily to load the mined product into off-highway haulage trucks for transport to the crusher-sorter machine, will qualify for the exemption. In addition, wheel loaders used to transport the mined product to the crusher-sorter machine or onto a conveyor system will qualify for the exemption. Machinery and equipment used primarily in activities such as crushing, washing, sizing, and blending will qualify for the exemption if the process results in the assembling of an article of tangible personal property with a different form than the material extracted, which possesses new qualities or combinations. Other types of mining and quarrying equipment may be exempt under this subsection (b)(5) if used in qualifying activities.

- 6) Until July 1, 2017, the printing process was not commonly regarded as manufacturing. Therefore, machinery and equipment used in any printing application will not qualify for the exemption. This includes graphic arts, newspapers, or books, as well as other industrial or commercial applications. Beginning July 1, 2017, the exemption includes machinery and equipment used in graphic arts production. (See subsection (g)).¹
- 7) Agricultural, horticultural, and related, similar, or comparable activities, including commercial fishing, beekeeping, production of seedlings or seed corn, and development of hybrid seeds, plants, or shoots, are not manufacturing or assembling and, accordingly, machinery and equipment used in those activities is subject to tax under this Section. (However, see Section 130.305 for the Farm Machinery and Equipment Exemption.)

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- 8) The preparation of food and beverages by restaurants, food service establishments, and other retailers that prepare food for immediate consumption is not manufacturing.
 - 9) Effective September 1, 1988, manufacturing includes photoprocessing if the products of photoprocessing are sold. Machinery and equipment that would qualify for exemption includes, but is not limited to, developers, dryers, enlargers, mounting machines, roll film splicers, film developing image makers, disc film opening and spindling devices, film indexers, photographic paper exposure equipment, photographic paper developing machines, densitometers, print inspection devices, photo print/negative cut assembly stations, film sleeve insertion machines, negative image producers, film coating equipment, photo transparency mounters, processor rack sanitizers, photo print embossers, photo print mounting presses, graphic slide generators, chemical mixing equipment, and paper exposure positioning and holding devices. Cameras and equipment used to take pictures or expose film are not eligible, as the photoprocessing begins after the film is exposed. Retail/net price calculation equipment and chemical reclamation equipment are not considered to be manufacturing machinery and equipment.
- c) Machinery and Equipment. This subsection (c) describes "conventional" machinery and equipment that qualify for the exemption as it was originally enacted. Qualifying items that fall outside this definition of conventional machinery and equipment are described more fully in other subsections.
- 1) *The exemption under this subsection (c) applies to machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. The manufacturing and assembly machinery and equipment exemption also includes machinery and equipment that replaces machinery and equipment in an existing manufacturing facility as well as machinery and equipment that are for use in an expanded or new manufacturing facility. The machinery and equipment exemption also includes machinery and equipment used in the general*

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maintenance or repair of exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment.

- 2) *Equipment includes an independent device or tool separate from any machinery but essential to an integrated manufacturing or assembly process, including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; any subunit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns, and molds; and any parts that require periodic replacement in the course of normal operation. [\[35 ILCS 120/2-45\]](#)~~(Section 2-45 of the Act)~~*
- 3) By way of illustration and not limitation, machinery and equipment used primarily in the following activities will generally be considered exempt:
 - A) The use of machinery and equipment to effect a direct and immediate physical change upon the tangible personal property to be sold;
 - B) The use of machinery and equipment to guide or measure a direct and immediate physical change upon the tangible personal property to be sold, provided this function is an integral and essential part of tuning, verifying or aligning the component parts of that property;
 - C) The use of machinery and equipment to inspect, test or measure the tangible personal property to be sold, when the function is an integral part of the production flow;
 - D) The use of machinery and equipment to convey, handle, or transport the tangible personal property to be sold within production stations on the production line or directly between the production stations or buildings within the same plant;
 - E) The use of machinery and equipment to place the tangible personal property to be sold into the container, package or wrapping in which this property is normally sold, when the

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machinery and equipment is used as a part of an integrated manufacturing process;

- F) The production or processing of food, including the use of baking equipment such as ovens to bake bread or other bakery items, whether that baking is performed by a central bakery or a retail grocery store as long as the equipment is used primarily in the production or processing of food that is not for immediate consumption;
 - G) The use of machinery and equipment such as buffers, builders, or vulcanizing equipment to retread tires, whether or not the tire casing is provided by the purchaser.
- 4) By way of illustration and not limitation, the machinery and equipment used primarily in the following activities will generally not be considered to be exempt:
- A) The use of machinery and equipment to transport work in process, or semifinished goods, between plants;
 - B) The use of machinery or equipment in managerial, sales, or other nonproduction, nonoperational activities, including disposal of waste, scrap or residue, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection, or training;
 - C) The use of machinery and equipment pursuant to a retail sale to combine ingredients in the preparation of food and beverages or to dispense food and beverages by a retailer for retail sale, i.e., restaurants, vending machines, convenience stores, and other food service establishments, such as fountain drink machines, coffee machines, soft serve ice cream machines, and frozen beverage machines;
 - D) The use of machinery and equipment used in the last step of the retail sale. Examples are embroidery or monogramming

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machines used by tee-shirt retailers or sewing machines used to hem garments sold by a clothing store.

E) The use of machinery and equipment for general ventilation, heating, cooling, climate control, or general illumination.

- d) ~~The exemption for equipment~~*The exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease. [35 ILCS 120/2-45](Section 2-45 of the Act)* Effective July 1, 2019, chemicals that do not make a direct and immediate change or act as a catalyst may qualify if they are production related. [See subsection \(h\)\(2\)\(B\).](#) The following examples are illustrative:

EXAMPLE 1: A chemical acid is used to etch copper off the surface of a printed circuit board during the manufacturing process. The acid causes a direct and immediate change upon the product. The acid qualifies for the exemption.

EXAMPLE 2: An aluminum oxide catalyst is used in a catalytic cracking process to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or feed are broken up into smaller molecules. After the catalyst is injected into the feed and used in the cracking process, it is drawn off and reused in subsequent manufacturing processes. The catalyst qualifies for the exemption.

- e) ~~The exemption includes computer~~*The exemption includes computer software used to operate exempt machinery and equipment used in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease. [35 ILCS 120/2-25](Section 2-25 of the Act)*
- f) The exemption includes the sale of materials to a purchaser who manufactures the materials into an exempted type of machinery and equipment or tools that the purchaser uses in the manufacturing of tangible personal property or leases to a manufacturer of tangible personal property. However, the purchaser must maintain adequate records clearly demonstrating the incorporation of these materials into exempt machinery and equipment.

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- g) Beginning July 1, 2017, the manufacturing machinery and equipment exemption includes machinery and equipment used primarily in graphic arts production. *"Graphic arts production" means the production of tangible personal property for wholesale or retail sale or lease by means of printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System (NAICS)(~~NAICS~~) published by the U.S. Office of Management and Budget, 1997 edition. Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or ~~audio-books~~audiobooks. Persons engaged primarily in the business of printing or publishing newspapers or magazines that qualify as newsprint and ink, by one or more of the processes described in Groups 511110 through 511199 of Subsector 511 of the ~~NAICS~~NAICS published by the U.S. Office of Management and Budget, 1997 edition, are deemed to be engaged in graphic arts production. ~~[35 ILCS 120/2-30](Section 2-30 of the Act)~~*
- 1) The manufacturing machinery and equipment exemption applies to qualifying machinery and equipment used in graphic arts production processes, as those processes are described in the NAICS and includes repair and replacement parts, both new and used, and including equipment that is manufactured on special order to be used primarily in graphic arts production.
 - 2) Manufacturing includes printing by methods of engraving, letterpress, lithography, gravure, flexography, and screen, quick, and digital printing. It also includes the printing of manifold business forms, blankbooks, looseleaf binders, books, periodicals, and newspapers. Included in graphic arts production are prepress services described in Subsector 323122 of the NAICS (e.g., the creation and preparation of negative or positive film from which plates are produced, plate production, cylinder engraving, typesetting, and imagesetting). Also included are trade binding and related printing support activities set forth in Subsector 323121 of the NAICS (e.g., tradebinding, sample mounting, and postpress

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services, such as book or paper bronzing, edging, embossing, folding, gilding, gluing, die cutting, finishing, tabbing, and indexing).

- 3) By way of illustration and not limitation, the following activities will generally be considered graphic arts production:
 - A) Digital Printing and Quick Printing. This means the printing of graphical text or images by a process utilizing digital technology. It also includes the printing of what is commonly known as "digital photography" (e.g., use of a qualifying integrated computer and printer system to print a digital image). The exemption extends only to machinery and equipment, including repair and replacement parts, used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.
 - B) Prepress or Preliminary Processes. Prepress or preliminary processes include the steps required to transform an original into a state that is ready for reproduction by printing. Prepress or preliminary processes include typesetting, film production, color separation, final photocomposition (e.g., image assembly and imposition (stripping)), and platemaking. Prepress or preliminary processes include the manipulation of images or text in preparation for printing for the purpose of conforming those images to the specific requirements of the printing process being utilized. For example, the images must be conformed for a specific signature layout and formatted to a specific paper size. In addition, colors must be calibrated to the specific type of paper or printing process utilized, so that they conform to customer specifications. Prepress or preliminary processes do not, however, include the creation or artistic enhancement of images that will later be reproduced in printed form by a graphic arts process. For example, the creation of an advertisement pursuant to customer direction, or enhancement of a photograph received from a customer by adding a border or text or rearranging the placement of images in the photograph, is not the performance of a

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qualifying prepress or preliminary process. Prepress or preliminary processes can be performed at the printing facility, a separate prepress or preliminary facility, the customer's location, or other location. The following are examples of equipment used in qualifying prepress or preliminary activities:

- i) Large scale, fixed-position cameras used to photograph two-dimensional copy to produce negatives or positives used in the production of plates; film processors; scanners; impositioners; RIP (raster image processor) equipment; proofing equipment; imagesetters; plate processors; helioklischographs; and computer-to-plate and computer-to-press equipment.
- ii) Computers that qualify include computers used primarily to receive, store, and manipulate images to conform them to the requirements of a specific printing process that will later be performed. Computers used in connection with what is commonly referred to as "digital photography" will qualify if used primarily to format the graphic image that will be printed (e.g., used to format the size and layout of images to be printed). If the computers are primarily used, however, to apply background colors, borders, or other artistic enhancements, or to view and select particular digital images to be printed, they will not qualify for the exemption.
- iii) Digital cameras do not qualify if they are used primarily to create an original image that will later be reproduced by a graphic arts process.
- iv) Servers used primarily to transfer images and text to qualifying equipment qualify, but do not qualify if used primarily in a nonexempt activity (for example, servers used to maintain an in-house email system).

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- v) Scanners used primarily to input previously created images or text that will be reproduced by a graphic arts process qualify for the exemption.
- C) Transfer of Images or Text from Computers, Plates, Cylinders, or Blankets to Paper or Other Stock to be Printed. This process begins when paper is introduced on the press. Examples of qualifying equipment used in this activity include printing plates, printing presses, blankets and rollers, automatic blanket washers, scorers and dies, folders, punchers, stackers, strappers used in the pressroom for signatures, dryers, chillers, and cooling towers. Laser or ink jet printers used to print on paper or other stock are also included in this exemption.
- i) Equipment used primarily to handle or convey printed materials between production stations in an integrated on-line graphic arts process is included in the exemption (e.g., a forklift or bindery cart will qualify for the exemption if it is primarily used to convey book covers that have been printed and cut to binding and finishing equipment).
 - ii) Computer equipment used primarily to operate exempt graphic arts equipment also qualifies for the exemption.
 - iii) Equipment, such as transformers, used primarily to provide power to qualifying printing presses or bindery lines qualifies for the exemption. Similarly, heating and cooling machinery and equipment used to produce an environment necessary for the production of printed material qualifies for the exemption. For example, humidity-control equipment used to reduce static during the printing process qualifies for the exemption.
- D) Activities Involving the Binding, Collating, or Finishing of the Graphic Arts Product. Equipment used in these activities includes, for instance, binders, packers, gatherers, joggers,

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trimmers, selectronic equipment, blow-in card feeders, inserters, stitchers, gluers, spiral binders, addressing machines, labelers, and ink-jet printers.

- i) Machinery and equipment used to convey materials to packaging areas after the graphic arts product has been printed, bound, and finished qualifies for the exemption. That equipment includes, for instance, conveyor systems, hoists, or other conveyance mechanisms used to direct the final printed product into packaging areas.
 - ii) Machinery and equipment used to package materials after the graphic arts product has been printed, bound, and finished qualifies for the exemption. Packaging equipment includes, for instance, cartoning systems, palletizers, stretch wrappers, strappers, shrink tunnels, and similar equipment.
- 4) By way of illustration and not limitation, machinery and equipment used primarily in the following activities will generally not be considered exempt:
- A) The use of machinery and equipment primarily to produce graphic arts items not for wholesale or retail sale or lease (e.g., items produced for internal consumption or items produced and distributed without charge).
 - B) The use of machinery and equipment (e.g., ~~forklifts~~fork-lifts, roll clamps, and roll grabbers) to convey raw materials to the press.
 - C) The use of machinery and equipment to convey materials to final storage or shipping areas. That equipment includes, for instance, ~~forklifts~~fork-lifts used primarily to place the packaged printed product into final storage or shipping areas.
 - D) The use of machinery and equipment to gather information, track jobs, or perform data-related functions prior to a

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qualifying prepress activity (e.g., computers used primarily to edit or create text, data, or other copy). That equipment includes items such as inventory tracking devices and bar-code readers.

- E) The use of machinery and equipment used primarily to photocopy printed matter. A copier that is capable of printing images or text transmitted to it in digital form may qualify if used primarily in that manner. However, a copier that produces photocopies by means of xerographic technology is subject to tax.
 - F) The use of machinery and equipment in managerial, sales, or other nonproduction, nonoperational activities, including production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, marketing, or personnel recruitment, selection, or training. Waste disposal equipment (e.g., equipment used to contain and recapture paper dust) does not qualify for the exemption.
 - G) The use of machinery and equipment for general ventilation, heating, cooling, climate control, or general illumination, except when the machinery and equipment is used to produce an environment necessary for the production of printed material.
- 5) An item of machinery or~~Machinery and~~ equipment that initially is used primarily in graphic arts production and, having been so used for less than one-half of its useful life, ~~and~~ is converted to primarily nonexempt uses will become subject to the tax at the time of the conversion, allowing for reasonable depreciation on the item of machinery ~~or~~and equipment.
- h) *Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property. [35 ILCS 120/2-45]~~(Section 2-45 of the Act)~~*
- 1) Production related tangible personal property means all tangible personal property used or consumed in a production related

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process by a manufacturer in a manufacturing facility in which a manufacturing process takes place or by a graphic arts producer in graphic arts production. Production related tangible personal property also means all tangible personal property that is used or consumed in research and development regardless of use within or without a manufacturing or graphic arts production facility.

- 2) By way of illustration and not limitation, the following uses of tangible personal property by manufacturers, including graphic arts producers, will be considered production related:
 - A) Tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process, or tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process.
 - B) Supplies and consumables used in a manufacturing process in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, and adhesives.
 - C) Hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility.
 - D) Tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging, and packing for shipping or transportation.
 - E) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of fuel used or consumed in transportation of the truck will not qualify as production related tangible personal property. The amount of fuel used in a qualifying manner to rotate the drum may be stated as a percentage of the entire amount of fuel used or consumed by the ready-mix truck.

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- 3) By way of illustration and not limitation, the following uses of tangible personal property by manufacturers, including graphic arts producers, will not be considered production related:
 - A) The use of trucks, trailers, and motor vehicles that are required to be titled or registered pursuant to the Illinois Motor Vehicle Code [625 ILCS 5], and aircraft or watercraft required to be registered with an agency of State or federal government.
 - B) The use of office supplies, computers, desks, copiers, and equipment for sales, purchasing, accounting, fiscal management, marketing, and personnel recruitment or selection activities, even if the use takes place within a manufacturing or graphic arts production facility.
 - C) The use or consumption of tangible personal property for aesthetic or decorative purposes, including landscaping and artwork.
- i) Sales to Lessors
 - 1) For the exemption to apply, the purchaser need not itself employ the exempt machinery and equipment in manufacturing. If the purchaser leases that machinery and equipment to a lessee-manufacturer who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A vendor may exclude these sales from its taxable gross receipts provided the purchaser-lessor provides the vendor with a properly completed exemption certificate and this Section would support an exemption if the sale were made directly to the lessee-manufacturer.
 - 2) If a purchaser-lessor subsequently leases the machinery and equipment to a lessee who does not use it in a manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax, allowing for reasonable depreciation on the machinery and equipment.
- j) Exemption Certificates

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- 1) A vendor that makes sales of machinery and equipment to a manufacturer or lessor of a manufacturer incurs retailers' occupation tax~~Retailers' Occupation Tax~~ on that sale and must collect use tax~~Use Tax~~ unless the purchaser certifies the exempt nature of the purchase to the vendor as set out in this subsection (j). The use of blanket certificates~~certifiicates~~ of exemption will be permitted.
- 2) ~~*The purchaser of the machinery and equipment who has an active resale registration number shall furnish that number to the seller at the time of purchase. A purchaser of the machinery, equipment, and tools without an active resale registration number shall furnish to the seller a certificate of exemption stating facts establishing the exemption, and that certificate shall be available to the Department for inspection or audit. [35 ILCS 120/2-45] The user of qualifying machinery and equipment shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction and submit the certificate to the vendor. If the user has an active registration or resale number, that number may be given in lieu of the prescribed certificate. (Section 2-45 of the Act)*~~
Certificates shall be retained by the vendor and shall be made available to the Department for inspection or audit. The Department shall prescribe the form of the certificate.
- 3) If a manufacturer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must prepare the completed exemption certificate and retain it in its files. The exemption certificate shall be available to the Department for inspection or audit.
- 4) In the case of a vendor who makes sales of qualifying machinery and equipment to a contractor who will incorporate it into real estate so that the contractor, itself, would be the taxable user (see Sections 130.1940 and 130.2075), the purchasing contractor should provide the vendor with a certification that the machinery and equipment will be transferred to a manufacturer as manufacturing machinery and equipment in the performance of a construction contract for the manufacturer. The purchasing

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contractor should include the manufacturer's name and registration number on the certification when claiming the exemption.

- k) *The exemption does not include machinery and equipment used in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. ~~[35 ILCS 120/2-45] (Section 2-45 of the Act)~~ (The provisions of this subsection (k) were established by P.A. 98-583, which states that the provisions are declaratory of existing law as to the meaning and scope of this exemption.)*

- l) Opinions and Rulings
Informal ruling and opinion letters issued by the Department regarding the coverage and applicability of this exemption to specific devices will be maintained by the Department in Springfield. They ~~are~~ will be available for public inspection ~~on the Department's website, <https://tax.illinois.gov/>~~, and may be copied or reproduced at taxpayer's expense. Trade secrets or other confidential information in these letters will be deleted prior to release to public access files.

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

SUBPART S: SPECIFIC APPLICATIONS

Section 130.1930 Chiropodists, Osteopaths, and Chiropractors

- a) When Liable for Tax
When chiropodists, osteopaths, or chiropractors sell such items as shoes, arch supports, trusses, braces, appliances, or other tangible personal property to purchasers for use or consumption apart from their rendering of service as chiropodists, osteopaths, or chiropractors, they incur ~~retailers' occupation tax~~ ~~Retailers' Occupation Tax~~ liability. For information about whether these items qualify as medical appliances, see ~~86 Ill. Adm. Code 130.311-Food, Drugs, Medicines and Medical Appliances, 86 Ill. Adm. Code 130.310.~~ 86 Ill. Adm. Code 130.311-Food, Drugs, Medicines and Medical Appliances, 86 Ill. Adm. Code 130.310.
- b) When Not Liable for Tax

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Chiropractors, osteopaths, and chiropractors are engaged in professions and primarily render service. To the extent ~~to which~~ they engage in such professions, they are not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Retailers' Occupation Tax Act. Consequently, they are not required to remit ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property transferred incident to those services. However, to the extent tangible personal property is transferred incident to service, chiropractors, osteopaths, and chiropractors may be liable for service occupation tax.

- c) Liability Under the Service Occupation Tax Act
For information concerning the application of the Service Occupation Tax Act to sales by chiropractors, osteopaths, and chiropractors of tangible personal property ~~that~~~~which~~ they transfer as an incident to rendering service, see ~~the Service Occupation Tax~~, 86 Ill. Adm. Code Part 140.

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

Section 130.1980 Optometrists and Opticians

- a) Optometrists – When Liable ~~for~~~~For~~ Tax
When optometrists sell tangible personal property to purchasers for use or consumption apart from their rendering of service as optometrists, they incur ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ liability. This is the case, for example, where optometrists sell spectacles, frames, or mountings, without examination or treatment of the eyes, to purchasers for use or consumption, or where optometrists sell such items as ~~sunlasses~~~~sun-glasses~~, cleaning solutions for lenses, barometers, telescopes, field glasses, opera glasses, or other tangible personal property to purchasers for use or consumption apart from their rendering of service. (For information about whether these items qualify as medical appliances, see 86 Ill. Adm. Code 130.311.~~Food, Drugs, Medicines and Medical Appliances, Section 130.310 of this Part.~~)
- b) Optometrists – When Not Liable ~~for~~~~For~~ Tax
Optometrists are engaged in professions and primarily render service. To the extent ~~to which~~ they engage in such profession, they are not engaged in the business of selling tangible personal property to purchasers for use

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or consumption within the meaning of the Retailers' Occupation Tax Act. Consequently, they are not required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property transferred incident to those services. However, to the extent tangible personal property is transferred incident to service, optometrists may be liable for service occupation tax.

c) Opticians

- 1) When opticians sell such tangible personal property as lenses ~~that~~which they produce in accordance with the prescriptions of licensed optometrists, the opticians are engaged primarily in a service occupation and do not incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability on their receipts from such sales. However, opticians may be liable for service occupation tax. (For information concerning the tax on persons engaged in the business of making sales of service, see ~~the Regulations pertaining to the Service Occupation Tax Act~~ (86 Ill. Adm. Code Part 140.)-.)
- 2) An optician would incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability if the optician~~he~~ should engage in selling any tangible personal property at retail apart from engaging in a service occupation (e.g., selling eyeglass cases or lens cleaning solutions over-the-counter).

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

Section 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Persons

- a) Sales by Nonprofit Service Organizations
Effective August 1, 1961, nonprofit country clubs, boat clubs, employees' clubs or organizations, and other nonprofit social, athletic, or recreational organizations, lodges, patriotic organizations, fraternities, sororities, professional and trade associations, civic organizations, labor unions, and other nonprofit persons who are not exclusively charitable, religious, or educational organizations are liable for retailers' occupation tax~~Retailers' Occupation Tax~~ when selling tangible personal property at retail to members, guests, or others. The same is true of exclusively charitable,

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religious, or educational organizations and institutions with certain limited exceptions.

1) Scope of the Exemption

- A) There still are some very limited exemptions ~~under from~~ the Retailers' Occupation Tax Act ("Act") for sales by exclusively charitable, religious, and educational organizations and institutions. However, the exemption is not available unless the selling organization or institution ~~qualifies~~does qualify as an "exclusively" charitable, religious, or educational organization or institution.
- B) It is not enough simply to be a nonprofit organization or institution. In case of doubt concerning any such seller's ~~retailers' occupation tax obligation~~Retailers' Occupation Tax status, apply to the Department of Revenue for a letter ruling, submitting copies of the ~~charter or constitution and bylaws~~Charter or Constitution and By-laws and other relevant information for this purpose.
- C) The exemption that is available under some circumstances for sales by exclusively charitable, religious, or educational organizations or institutions is not available in all situations. ~~For instance any situation, for example, the exemption does not apply~~ to sales by ~~such~~ other kinds of nonprofit organizations such as civic clubs, nonprofit social and recreational organizations, patriotic organizations, lodges and their auxiliaries, trade associations, etc. Even though the latter types of organizations do a considerable amount of much good charitable work, they are not "exclusively" charitable organizations under Illinois Supreme Court decisions, so any retail selling ~~that which~~ they do ~~is would be~~ subject to the Act~~Retailers' Occupation Tax~~.
- D) Some of the kinds of organizations ~~that which~~ qualify as exclusively charitable organizations are Parent-Teacher organizations, the American National Red Cross, Community Fund or United Fund organizations, the Y.M.C.A., the

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Y.W.C.A., Boy Scout organizations, and Girl Scout organizations.

- E) Exclusively charitable, religious, and educational organizations incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability when they engage in selling tangible personal property at retail except in three situations as provided in subsections (a)(2), (a)(3), and (a)(4).
- 2) Sales to Members, etc~~Etc~~.
 - A) The first exception is that the sales by such an organization are not taxable if they are made to the organization's members, ~~or~~ to its students in the case of a school, or to its patients in the case of a nonprofit hospital ~~that~~which qualifies as a charitable institution, primarily for the purposes of the selling organization.
 - B) Examples of sales that come under this exemption are sales of uniforms, insignia, and Scouting equipment by Scout organizations to their members; sales of Bibles by a church to its members; ~~and~~ sales of choir robes by a church to the members of the church's ~~choir~~choirs. The selling organization would incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability if it should engage in selling any of the foregoing items at retail to the public.
 - C) The selling of schoolbooks~~school books~~ and school supplies by schools at retail to students shall not be deemed to be "primarily for the purpose of" the school ~~that~~which does such selling. Consequently, schools incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability when they engage in selling schoolbooks~~school books~~ or school supplies at retail to their students or to others.
- 3) Noncompetitive Sales
 - A) The second exception is that sales by exclusively charitable, religious, or educational organizations are not taxable ~~if subject to the Retailers' Occupation Tax when~~ it can be said

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that such selling is noncompetitive with business establishments.

- B) The Attorney General has laid down the following tests for determining that such selling is noncompetitive:
- i) The transactions are conducted by members of the charitable entity and not by any franchisee or licensee.
 - ii) All of the proceeds must go to the charity.
 - iii) The transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Department ~~of Revenue~~.
 - iv) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity.
- C) In addition, the Attorney General has stated that there are these further considerations for the purpose of furnishing some guides to the resolution of questions raised by each individual situation:
- i) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.
 - ii) The character of the particular sale, and the real practical effect upon punitive competition.
- D) Under this second exception, examples of exempt sales are infrequent sales of cookies, doughnuts, candy, calendars, or Christmas trees by Scout organizations, ~~or~~ by other exclusively charitable organizations, or by exclusively

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religious organizations. In this category, the Attorney General's opinion stresses that the sale must be infrequent, and that the dominant motive of the purchase must be the making of a donation to the charitable or religious organization ~~that~~which conducts the sale, rather than the acquisition of property.

- E) Even if the sale to the public occurs only once a year, the charitable or religious organization ~~that~~which conducts the sale would incur ~~retailers' occupation tax~~ Retailers' Occupation Tax liability if it sells hats, greeting cards, or other items for which the dominant motive of the purchase is the acquisition of the property rather than the exchanging of the property merely as a token for the making of a donation.

4) Occasional Dinners and Similar Activities

- A) The third exception is that occasional dinners, socials, or other similar activities ~~which are~~ conducted by exclusively charitable, religious, or educational organizations or institutions are not taxable, whether or not such activities are open to the public. This exemption extends to occasional dinners, ice cream socials, fun fairs, carnivals, rummage sales, bazaars, bake sales, and the like, when conducted by exclusively charitable, religious, or educational organizations or institutions, whether the items that are sold are purchased or donated for the purposes of the sale, and even if the sale is open to the public.
- B) For the purposes of this exemption, "occasional" means not more than twice in any calendar year. Where more than two events are held in any calendar year, the organization or institution may select which two events held within that year will be considered exempt. Once the organization or institution has made the selections, the selections cannot be changed. All other events in that year will be considered taxable.
- C) This exemption does not extend to "occasional" sales, by exclusively charitable, religious, or educational organizations

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or institutions, of hats, greeting cards, cookbooks, flag kits, and other similar items because these are not "occasional" dinners, socials or similar activities" within the meaning of the Act, and the selling of these kinds of items at retail even on an occasional basis does generally place the selling organization in substantial competition with business establishments.

b) Rules Governing Some Special Kinds of Selling by Exclusively Charitable and Religious Organizations

1) Hospital Sales

A) Nonprofit hospitals ~~that~~which qualify as exclusively charitable institutions are not taxable when selling food or medicine to their patients in connection with the furnishing of hospital services to them, nor on the operation of restaurant facilities ~~that~~which are conducted primarily for the benefit of the hospital's employees, and ~~that~~which are not open to the public. However, sales made in a hospital cafeteria ~~that~~which is open to the public will be taxable sales. A nonprofit hospital dining facility is not considered to be open to the public if the dining facility is restricted to patients and their visitors, hospital employees (including staff doctors), volunteer workers in the hospital, and doctors attending patients in the hospital.

B) In the case of hospitals ~~that~~which qualify as charitable institutions, such hospitals are not taxable when selling drugs to anyone because this is for the relief of the sick (which is the hospital's primary purpose) and so is "primarily for the purpose of" such hospitals, thus qualifying such transactions for tax exemption. However, a hospital or hospital auxiliary incurs ~~retailers' occupation tax~~Retailers' Occupation Tax liability when selling candy, chewing gum, tobacco products, razor blades, and the like at retail even when such items are sold only to patients because ~~(unlike food and medicine)~~ these items are not necessary to the furnishing of hospital services, and the sales of such items~~they~~ are competitive.

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C) The same distinctions apply to nonprofit sanitarium and nonprofit nursing homes when they qualify as exclusively charitable institutions.

2) Gift Shops and Rummage Stores
Charitable or religious organizations incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability on the retail selling which they do in the course of operating gift shops and rummage stores.

3) Meals

A) Charitable or religious organizations incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability on their receipts from sales of meals to the public unless such selling constitutes an occasional dinner or other similar activity, as authorized in subsection (a)(4)(B), above. No more than two such occasional dinners or other similar activities are authorized in any calendar year. Such sales are tax exempt, provided that all the profits from such sales are used for charitable or religious purposes. If such sales occur more than twice in any calendar year, refer to subsection (a)(4)(B), above.

B) Also, a church or religious organization does not incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability on its receipts from sales of meals when~~where~~ the following conditions are met:

i) the~~The~~ profits, if any, are used for religious purposes;

ii) the meals are confined to the members of such church and their guests and are not open to the public; and

iii) the serving of the meals is connected with some religious service or function.

C) Under the circumstances just described, even if this type of selling of meals is done rather frequently, it is exempt under

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~~the Act from the Retailers' Occupation Tax~~ because it is categorized as of being in the category of sales to members "primarily for the purposes of" the religious organization (the seller).

c)4) Special Rules Concerning Sales by Educational Institutions

1)A) Dining Facilities

Generally, a school does not incur retailers' occupation tax liability on its operation of a cafeteria or other dining facility that is conducted on the school's premises, and that confines its selling to the students and employees of the school. If a dining facility is opened to the public, all sales that are made at such facility while that condition continues to prevail are taxable.

~~A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.~~

A) Sales by a university may be made tax free to students in a cafeteria or dining facility that is open to the public, in limited circumstances, when:

- i) the students live in university housing and have purchased a mandatory meal plan, including any "dining dollars" or similar "dining credits" that are purchased as part of a meal plan; and
- ii) the university has a mechanism for identifying and documenting sales to students living in university housing and enrolled in a meal plan. Such mechanisms must provide both an auditable and verifiable record of food sales to these students. The mechanism for identifying and documenting such sales must consist of something more than simply showing an identification card. No cash sales to

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students may be made tax exempt in facilities open to the public.

- B) Meals sold to employees of the university and other persons, including off-campus students, are subject to tax in facilities open to the public. Even if the employees of the university or off-campus students have purchased a meal plan, such sales are taxable because they are not made to students living in university housing.
- C) On-campus food services include not only traditional sales of food by a university, but also sales by a university operating a dining facility as a licensee of franchise or commercial vendor. Such sales are competitive and are subject to tax except for those sales to students living in university housing and using a mandatory meal plan or dining credits that are purchased as part of a mandatory meal plan. There must also be an auditable and verifiable record system for tracking sales to these students.

EXAMPLE 1: A student living in university housing purchases a mandatory meal plan that includes \$100 of dining dollars to be used at a dining facility where the university operates as a licensee. In this instance, the sale may be tax free if the university has a verifiable record system to track these dining dollar sales and distinguish them from other sales.

EXAMPLE 2: Same as Example 1 above but the student uses all of the initial \$100 of dining dollars and purchases \$50 more in dining dollars to use at a dining facility operated by the university as a licensee. In this instance, the purchases made with the additional dining dollars are taxable as the reloaded dining dollars are not part of a mandatory meal plan.

- D) Food vendors that sell meals to students and not to the school incur sales tax liability on meals purchased by the students. The fact that a school permits the food vendor to sell meals to the students or may collect the cost of the

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meals from the students and remit the money to the food vendor does not change the food vendor's tax liability. For sales to be tax exempt, the sales must be made to the school.

EXAMPLE 3: A third-party vendor makes sales directly to students, with a percentage of the proceeds being donated to the school or PTO. In this scenario, students or parents select from a range of food options and submit their orders and payment to the vendor, sometimes with the school or PTO facilitating the sales as an intermediary. Sales made directly to the students are fully taxable and any percentage donated to the school or PTO is still taxable. Vendors cannot rely on the exempt status of the schools or PTOs acting as intermediaries to avoid having to collect tax on these sales.

EXAMPLE 4: A third-party vendor makes bulk sales of prepared meals for students to the school, and the school then resells the meals to the students. In this scenario, students do not submit orders or payments directly to the vendor. The school conducts the sale using school staff or further contracts for labor in dispensing the meals. Food vendors making sales of previously prepared meals to schools that are resold by the schools to their students do not incur sales tax liability, provided that the schools provide their E-number to the food vendors. The schools are the seller in this scenario; the vendor only acts as a supplier.

EXAMPLE 5: A third-party vendor makes sales of prepared meals for students to a PTO, and the PTO then resells the meals to students. Again, in this scenario, students do not submit orders or payment directly to the vendor. The PTO conducts the sale. PTOs engaging in sales to students must register with the Department as a retailer and remit tax on those sales. PTOs possessing an E-number cannot use their E-number nor the school's E-number to purchase the meals tax free because the purchases are not for their use. Note, however, that the sale may be exempt if it qualifies under subsection (a)(4) as an occasional dinner.

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EB) Meaning of "Student"

~~In this Section~~For the purpose of the exemptions under discussion, a "student" is a person who is taking a course from ~~at~~the school for credit.

2)C) ~~Schoolbooks~~School books and School Supplies

A)i) A school incurs ~~retailers' occupation tax~~Retailers' Occupation Tax liability when selling ~~schoolbooks~~school books and school supplies to its students or others, for use. Sales of digital textbooks that are downloaded electronically do not incur tax as they are considered intangibles. See 86 Ill. Adm. Code 130.2105.

B)ii) Schools are not taxable on their sales of school ~~yearbooks~~annuals because these are noncompetitive items.

3)D) Clothing and Dormitory Supplies

Schools incur ~~retailers' occupation tax~~Retailers' Occupation Tax liability when they sell sweaters, ~~sweatshirts~~sweat-shirts, gym shoes, jackets, and other items of clothing to students or others for use. The same is true when a school sells furniture, rugs, or other dormitory supplies to users.

4)E) Miscellaneous Items

A school or school organization incurs ~~retailers' occupation tax~~Retailers' Occupation Tax liability when it sells soft drinks, candy, peanuts, popcorn, chewing gum, and the like to students or to members of the public for use or consumption, where these items are sold at a school ~~bookstore~~book store, through vending machines, or otherwise than in a restricted school cafeteria or dining facility as provided in subsection (c)(1)(A)-(D) above as a part of the selection which the student has in buying meals in such cafeteria. However, the proceeds from the sale of tangible personal property by teacher-sponsored student organizations affiliated with an elementary or secondary school located in Illinois are exempt from ~~retailers' occupation tax~~Retailers' Occupation Tax. [35 ILCS 120/2-5(6)] (See ~~also~~Section 2-5(6) of the Act and 86 Ill. Adm. Code 130.2006-).

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de) Registration and Returns

- 1) Nonprofit organizations ~~that~~which incur retailers' occupation tax ~~Retailers' Occupation Tax~~ liability as retail sellers of tangible personal property are required to register with the Department and file periodic returns. Returns are due monthly, except that if the taxpayer's average monthly liability to the Department is \$50.00 or less, the taxpayer may apply to the Department for permission to file one return each year covering the calendar year, with the return being due by January ~~2031~~ of the following year. Whenever tax is due for a return period, the remittance for the tax should accompany the return which discloses such tax to be due.
- 2) For more information concerning the filing of returns with the Department, see Subpart E of this Part.
- 3) Registration and return forms may be obtained from the Department on request.
- 4) In the case of a church, it is recommended that a single certificate of registration ~~Certificate of Registration~~ be applied for by the church and that this be allowed to cover the selling activities of that church and all of its organizations. Registration must be obtained prior to the commencement of selling activities. (See 35 ILCS 120/2a ~~Section 2a of the Act.~~)
- 5) In the case of public schools or school organizations ~~that~~which incur some retailers' occupation tax ~~Retailers' Occupation Tax~~ liability so as to be required to register with the Department ~~of Revenue~~, the Board of Education ~~that~~which governs the school district ~~;~~ (rather than each individual school or school organization ~~;~~) should apply to the Department for a certificate of registration ~~Certificate of Registration~~, and such Board of Education should file a single return for the return period covering all the taxable school activities that occur under its jurisdiction during the return period covered by the return.

ed) Suppliers of Nonprofit Institutions, Associations, and Organizations

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- 1) Suppliers of nonprofit institutions, associations, and organizations do not incur ~~retailers' occupation tax~~Retailers' Occupation Tax liability when they sell tangible personal property to any such purchaser for resale in any form as tangible personal property.
 - 2) Suppliers of such purchasers incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability when they sell tangible personal property to any such purchaser at retail (i.e., for use or consumption by the purchaser or to be given away by the purchaser, and not for resale in any form as tangible personal property), provided that the tax does not apply to receipts received by the seller from sales of any kind made to any purchaser of this character who is able to qualify as a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or any not-for-profit corporation, society, association, foundation, institution, or organization ~~that~~which has no compensated officers or employees and ~~that~~which is organized and operated primarily for the recreation of persons 55 years of age or older. See also 86 Ill. Adm. Code 130.2081 for documentation required to support an exempt sale to a qualifying organization.
 - 3) Many difficult questions of interpretation will arise in applying the above proviso. Each case will have to be decided on its own facts, but a few principles based on Supreme Court decisions in somewhat analogous cases are stated ~~below~~hereinbelow for guidance.
- fe) Nonprofit Social, Recreational, and Athletic Organizations -- Nonprofit Fraternal Organizations
- 1) A purchaser is not necessarily qualified for this total exemption as to receipts received by the seller from all sales made to such purchaser merely because ~~of the fact that~~ the purchaser is a not-for-profit service organization. For example, if the purchaser is incorporated or otherwise organized primarily to provide entertainment, social, recreational, or athletic activities or facilities to its members, the purchaser is not organized and operated exclusively for charitable, religious, or educational purposes. Such a purchaser is not organized and operated exclusively for charitable

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purposes even though it does some charitable work. This is true even though such purchaser is organized and operated as a not-for-profit corporation, association, etc.

- 2) The same is true of nonprofit fraternal benefit societies ~~that~~~~which~~ derive their funds from their members and are organized primarily to provide different forms of insurance benefits to their members and to persons standing in designated relationships to their members, except when such fraternal benefit societies are organized under a statutory provision ~~that~~~~which~~ expressly declares them to be exclusively charitable organizations.
- 3) Nonprofit fraternities and sororities are not considered to be organized and operated exclusively for charitable, religious, or educational purposes.

~~gf~~) Lodges

- 1) Similarly, nonprofit corporations, societies, associations, etc. ~~that~~~~which~~ have, ~~as~~ a substantial purpose ~~in~~~~the~~ providing ~~of~~ a lodge system with ritualistic work and social activities for members, and ~~that~~~~which~~ derive their funds in large measure from such members, are not organized and operated exclusively for charitable, religious, or educational purposes, even though they engage to some extent in one or more of these activities, because a substantial purpose for the existence of such an organization is one ~~that~~~~which~~ does nothing to relieve the public of a duty to the persons benefited and otherwise bestows no benefit upon the public.
- 2) For example, the Supreme Court has held a Masonic Lodge not to be charitable and has held that a Masonic Home for aged and destitute Masons is charitable. The Department will follow that distinction in this Section when separate legal entities are involved, considering receipts from retail sales to the former to be taxable, and considering receipts ~~received by the seller~~ from retail sales made to the latter to be exempt. However, if the same legal entity operates the noncharitable lodge and the charitable home, the Department will not regard such entity (when making purchases) as coming within this exemption. This is true because the importance of the noncharitable lodge function makes it impossible to say that

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such a purchaser is organized and operated exclusively for charitable, religious, or educational purposes.

- ~~h~~g) Nonprofit Professional and Trade Associations – Labor Unions – Civic Clubs – Patriotic Organizations
Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce, and other professional, trade, or business associations and labor unions ~~that, which~~ draw their funds largely from their own members, and ~~that have as to which~~ an important purpose ~~is~~ to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution, and other similar nonprofit, patriotic organizations.
- ~~i~~h) Organization Must be Nonprofit to be Exclusively Charitable
On the other hand, a purchaser cannot qualify as being organized and operated exclusively for charitable purposes unless it is organized and conducted on a not-for-profit basis, with no personal profit inuring to anyone as a result of the purchaser's operation. The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.
- ~~j~~i) Other Conditions Necessary for Being Exclusively Charitable
- 1) In the case of a corporation, there can be no capital structure nor capital stock, no provision for disbursing dividends or other profits, and no payment of ~~directors' director's~~ fees if the corporation seeks to qualify as an exclusively charitable corporation.
 - 2) The Supreme Court has stated that a charitable purpose may refer to almost anything ~~that which~~ promotes the well-being of society and ~~that which~~ is not forbidden by law; but to qualify as a charity, the purchaser must be organized and operated to benefit an indefinite number of the public. There may be restrictions on the group to be benefited, (such as an organization for women, for children, for the aged, etc.), but the service rendered to those eligible for benefits must, nevertheless, in some way relieve the public of a duty

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~~that~~which it would have to such beneficiaries or otherwise confer some benefit on the public.

kj) Determination of the Purpose for ~~which~~Which an Organization or Institution is "Organized and Operated"

- 1) In the case of a corporation, the purpose for which it is "organized" will be determined by reference to its ~~charter~~Charter. For example, ~~it has been held by~~ the Supreme Court has held that an Elks Lodge, whose ~~charter~~Charter stated it was incorporated for the mutual benefit and social intercourse of its members, was not "organized" exclusively for "charitable purposes", even though the corporation engaged in a considerable amount of charitable work.
- 2) In the case of an unincorporated society, association, etc., the ~~constitution and bylaws~~Constitution and Bylaws thereof will determine the purpose for which it is organized.
- 3) To qualify for total exemption, the purchaser must be "organized ~~and operated~~" exclusively for charitable, religious, or educational purposes.

lk) Examples of Exempt ~~Purchasers~~Buyers

- 1) Some examples of purchasers ~~which come~~ within this exemption are churches, Sunday Schools, Church Ladies' Aid Societies, the Salvation Army, and other nonprofit corporations, societies, associations, foundations, and institutions organized and operated exclusively for religious purposes (but not including Ministers or other individuals when making purchases from their own funds); corporations, societies, associations, foundations, and institutions organized and operated exclusively for educational purposes, whether such purchaser is organized and operated as a business enterprise or on a not-for-profit basis (but see subsection (l) below); homes for the aged ~~that~~which are not organized or operated as a business enterprise with a view to profit and ~~that~~which otherwise qualify as charitable institutions; nonprofit corporations, societies, associations, foundations, and institutions organized and operated exclusively for the purpose of conducting scientific research of a character that would be beneficial to the public (held to be a

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charitable purpose); the American National Red Cross, Community Fund, or United Fund organizations; the Y.M.C.A., the Y.W.C.A., Boy Scouts of America (as a corporation, but not as individuals), and Girl Scouts of America (as a corporation or association, but not as individuals); nonprofit Parent-Teacher Associations; the National Safety Council and similar organizations; ~~and~~ nonprofit societies for the prevention of cruelty to children or animals (all classified as charitable); free public libraries that are not operated for profit and that are not operated by commercial enterprises (whether such libraries are governmental units or not); and local housing authorities.

- 2) ~~The above~~These examples are illustrative, but not exhaustive.
- 3) To come within this exemption, the purchaser (in addition to being organized and operated exclusively for charitable, religious, or educational purposes) must be a "corporation", a "society", an "association", a "foundation", or an "institution".

m) "Educational Purposes" and "School" Defined and Illustrated

- 1) Receipts received from retail sales to corporations, societies, associations, foundations, and institutions that are organized and operated exclusively for educational purposes are not taxable. There is no specific exemption in the Constitution for "educational purposes" as to any kind of tax, but Section 6 of Article IX of the Illinois Constitution authorizes the General Assembly to grant a property tax exemption for property that is used for "school...purposes". Consequently, the Department will construe the ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ exemption for "educational purposes" as meaning for "school... purposes", as the phrase "school... purposes" has been interpreted or may be interpreted by the Supreme Court. Section 2h of the Act provides the statutory definition of "a corporation, society, association, foundation or institution organized and operated exclusively for educational purposes." [35 ILCS 120/2h]
- 2) The Supreme Court has said that a school is a place where systematic instruction in useful branches of learning is given by methods common to schools and institutions of learning and does

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not include schools for teaching dancing, riding, and deportment. ~~For example~~~~In that connection~~, the Supreme Court has held that an organization ~~that~~~~which~~ conducts a four-week training school each summer for funeral directors is not a school because the courses given and the intensity of their instruction do not compare favorably with those in a department of mortuary science and mortuary practice at regular colleges and universities, but represent only a superficial or brief instruction in courses constituting a minor part of the study of mortuary science.

- 3) Consequently, flying schools, driving schools, art association schools, modeling schools, charm schools, and the like are not organized and operated exclusively for educational purposes because they do not offer courses ~~that~~~~which~~ constitute systematic instruction in useful branches by methods common to public schools and ~~that~~~~which~~ compare favorably in their scope and intensity with the course of study presented in tax-supported schools within the meaning of the ~~Retailers' Occupation Tax~~ Act.
- 4) However, the exemption for educational purposes includes private schools (such as parochial grade and high schools, private colleges, and the like) as well as government-owned, tax-supported schools so long as the institution qualifies as a school as ~~above~~~~hereinabove~~ described.
- 5) Also, the ~~Retailers' Occupation Tax~~ "educational purposes" exemption is not limited by the statute to nonprofit institutions. The exemption ~~includes vocational or technical schools or institutions organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation~~would include vocational or technical schools or institutions organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation (such as a business-operated law school) as long as the institution otherwise qualifies as a school within the meaning of this subsection and the Act. [35 ILCS

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120/2h] (See also subsection (r) of this Section). ~~and Section 2(h) of the Act.)~~

- 6) In addition, for Property Tax purposes, the Supreme Court has held that an association ~~that, which~~ is not itself a school in the ordinary sense, but ~~thatwhich~~ provides a substantial service in improving the educational standards of schools (such as the Association of American Medical Colleges), is within the "school purposes" exemption, so the Department will consider such an organization to be "organized and operated" exclusively for "educational purposes" under the Act for Retailers' Occupation Tax purposes.
- 7) Literary societies, though somewhat educational, are mainly for the benefit of their own members as a hobby or pastime and do not relieve the public of a duty nor contribute sufficiently to the public to qualify for an exemption, and they are not places where systematic instruction in useful branches of learning is given by methods common to schools and institutions of learning in the ordinary or commonly accepted meanings of those terms.

nm) Nonprofit Hospitals and Sanitaria

- 1) In the case of a privately-owned ~~hospital hospitals~~, in addition to the fact that the hospital must be organized and operated as a nonprofit enterprise (with proceeds, if any, over expenses being put into the expansion of the hospital's services, equipment, and physical plant), ~~some of the tests which~~ the Supreme Court has required the following tests to be met before the hospital can qualify as being organized and operated exclusively for charitable purposes:

A) the hospital must not discriminate against patients or doctors because of race, color, creed, or religion; and

B) the hospital must not refuse admittance to any patient because of the patient's inability to pay for hospital services.

~~are that the hospital must not discriminate against patients or doctors because of race, color, creed or religion, and that the hospital must not refuse admittance to any patient because of his inability to pay for hospital service.~~

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- 2) It is immaterial that most of the hospital's patients may be paying patients if the hospital does not adopt any policy ~~that~~which is calculated to prevent persons who cannot pay from seeking and obtaining admittance to the hospital.
- 3) Delaying the admittance of nonemergency cases while the hospital makes an investigation to try to find someone who will give the prospective patient financial help has been held not to be an obstacle to admittance if the hospital does not engage in such delaying tactics in the case of emergency patients and if the hospital ultimately admits destitute patients notwithstanding the fact that they cannot pay for services and cannot procure financial help.
- 4) A hospital does not lose its character as a charitable organization because ~~of the fact that~~ it refuses admittance to patients who are suffering from dangerously contagious diseases.
- 5) Government-owned hospitals are deemed by the Department to be organized and operated exclusively for charitable purposes within the meaning of this Section.
- 6) The principles stated in this subsection with respect to hospitals apply also to sanatoria and clinics.

~~on~~) Meaning of "Exclusively"

- 1) Although the provision of the ~~Retailers' Occupation Tax~~ Act under discussion, in excluding receipts from all sales to certain kinds of purchasers, refers to them as being organized and operated "exclusively" for charitable, religious, or educational purposes, the Supreme Court has not given the word "exclusively" its most literal interpretation under similar circumstances because of the virtual impossibility of anyone being engaged "exclusively" in anything, and so the Department will follow a similar policy in applying the word "exclusively", as used in the ~~Retailers' Occupation Tax~~ Act and in this Section, in order to carry out the manifest intention of the General Assembly.

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2) However, if a substantial purpose or activity of the purchaser is not charitable, religious, or educational, the Department will not consider the purchaser to be organized and operated exclusively for charitable, religious, or educational purposes within the meaning of the Act.

pe) Educational, Scientific, and Similar Institutions, Associations, and Organizations Operated as "Business" Enterprises – When Liable ~~for~~ For Tax

Persons engaged habitually, for livelihood or gain, in hospital, educational, religious, scientific, social, or cultural enterprises are among those who are engaged in a service occupation ~~that~~ which is nevertheless a "business" within the meaning of the Act. When persons who operate businesses of the type described in the preceding sentence sell tangible personal property to purchasers for use or consumption apart from their rendering of service, such persons incur ~~retailers' occupation tax~~ Retailers' Occupation Tax liability. This is the case, for example, where hospitals ~~that~~ which are conducted as "business" enterprises operate public dining rooms, public pharmaceutical dispensaries, or otherwise sell tangible personal property at retail to the general public, or where schools ~~that~~ which are operated as "business" enterprises sell tangible personal property at retail to the general public or make retail sales to students of clothing, dormitory supplies, or other items ~~that~~ which cannot be said to be used "primarily for the purposes of" the school. Also, business-operated schools incur ~~retailers' occupation tax~~ Retailers' Occupation Tax liability on their retail sales of ~~schoolbooks~~ school books and school supplies to their students and faculty members.

gp) Educational, Scientific, and Similar Institutions, Associations, and Organizations Operated as "Business" Enterprises – When Not Liable ~~for~~ For Tax

1) Persons of the type described in the preceding paragraph are engaged primarily in rendering service, and, to this extent, they are engaged in a service occupation. To the extent to which they engage in such service occupation, they are not required to remit ~~retailers' occupation tax~~ Retailers' Occupation Tax measured by any of their receipts, which they realize from their rendering of service, including those receipts ~~that~~ which represent the price of tangible personal property ~~transferred~~ which they transfer to others as a

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~~necessary~~ incident to their rendering of service. The sale of meals to patients and the furnishing of medicine for a consideration to patients in the course of treatment by business-operated hospitals and business-operated, licensed nursing homes come within this service occupation exemption for ~~retailers' occupation tax~~Retailers' Occupation Tax purposes. However, the tax liability of the person engaged in such service occupation is governed by the Service Occupation Tax Act [35 ILCS 115] (~~See also~~ see Subpart A of the Service Occupation Tax Regulations, 86 Ill. Adm. Code 140).

- 2) Business-operated schools do not incur ~~retailers' occupation tax~~Retailers' Occupation Tax liability on their sales of meals in a dining facility ~~that~~which is located on the premises of the school and ~~whose use~~ is confined to the students and employees of the school. For more information about dining facilities, see subsection (c)(1) above.

ra) Suppliers of Educational, Scientific, and Similar Institutions, Associations, and Organizations Operated as "Business" Enterprises

- 1) Suppliers of educational, scientific, and similar institutions, associations, and organizations operated as "business" enterprises do not incur ~~retailers' occupation tax~~Retailers' Occupation Tax liability when they sell tangible personal property to any such purchaser for resale either in connection with or apart from the purchaser's rendering of service to others. However, for information concerning the fact that purchases of food, medicine, and other tangible personal property by business-operated hospitals or business-operated, licensed nursing homes for retransfer to patients as an incident to service are subject to the Service Occupation Tax Act, see Subpart A of the Service Occupation Tax Regulations. (86 Ill. Adm. Code 140). Suppliers of purchasers of the kind referred to in the first sentence of this paragraph incur ~~retailers' occupation tax~~Retailers' Occupation Tax liability when they sell tangible personal property to any such purchaser at retail (i.e., for use or consumption by the purchaser or to be given away by the purchaser, and not for resale in any form as tangible personal property), provided that the tax does not apply to receipts received by the ~~supplier~~seller from sales of any kind made to any purchaser of this character who is able to qualify as a

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school. In excluding ~~7~~ from the measure of the tax, receipts received by the ~~supplier~~~~seller~~ from sales of any kind to a school, the Act does not distinguish between business and nonprofit schools.

- 2) Nevertheless, while the Department recognizes that a purchaser may qualify as a school for exemption purposes notwithstanding the fact that the purchaser is organized and operated as a business enterprise, the Department takes the position that such a purchaser cannot be organized and operated exclusively for charitable or religious purposes if such purchaser is organized and operated as a business enterprise with a view to profit.

~~sf~~) Reporting – Records – Burden of Proof

- 1) When a seller claims an exemption from the retailers' occupation tax~~Retailers' Occupation Tax~~ for receipts received by the seller from sales~~his sale~~ of tangible personal property to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, the seller should include such receipts in the seller's tax~~his Retailers' Occupation Tax~~ return form, but then should deduct such receipts on the line provided for that purpose in the return form. (See~~see~~ Subpart E of this Part).
- 2) The seller must maintain adequate books and records to sustain such deductions. (See~~see~~ Subpart H of this Part).
- 3) Sellers claiming the benefit of this exemption are cautioned against laxity in claiming ~~the benefit of~~ this exemption without verifying the status of the purchaser since the ~~seller~~~~seller~~ will have the burden of proof in establishing their~~his~~ right to any such claimed exemption. The courts~~Courts~~ have held repeatedly that the burden of sustaining a right to a tax exemption is on the person claiming such exemption. Tax exemption provisions in statutes are strictly construed against the taxpayer, although the words employed in such provisions will be given their commonly accepted and understood meanings.

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

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Section 130.2020 Physicians and Surgeons

- a) When Liabile ~~for~~^{For} Tax
When physicians or surgeons sell items of tangible personal property such as medical bracelets, crutches, wheelchairs, first-aid kits, and the like, to purchasers for use or consumption apart from their rendering of service as physicians or surgeons, they incur ~~retailers' occupation tax~~^{Retailers' Occupation Tax} liability. For information about whether these items qualify as medical appliances, see ~~86 Ill. Adm. Code 130.311. Food, Drugs, Medicines and Medical Appliances, 86 Ill. Adm. Code 130.310.~~
- b) When Not Liabile ~~for~~^{For} Tax
Physicians and surgeons are engaged in professions and primarily render service. To the extent ~~to which~~ they engage in such professions, they are not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the ~~Retailers' Occupation Tax~~^{Retailers' Occupation Tax} Act. Consequently, they are not required to remit ~~retailers' occupation tax~~^{Retailers' Occupation Tax} measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property transferred incident to those services. ~~However, to the extent tangible personal property is transferred incident to service, physicians and surgeons may be liable for service occupation tax.~~
- c) Liability Under the Service Occupation Tax Act
For information concerning the application of the ~~service occupation tax~~^{Service Occupation Tax} to sales by physicians and surgeons of tangible personal property that they transfer as an incident to rendering service, see ~~the Service Occupation Tax regulations at~~ 86 Ill. Adm. Code ~~Part~~^{Part} 140.

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

Section 130.2145 Vendors of Meals

- a) Vendors of Meals – When Liabile ~~for~~^{For} Tax
- 1) Persons engaged in the business of selling meals to purchasers for use or consumption incur ~~retailers' occupation tax~~^{Retailers' Occupation Tax} liability on their receipts from those sales. It is immaterial that no profit is realized from the operation of this type of

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business if the seller is engaged in a commercial enterprise, or if the seller engages in activities that make ~~it~~him/her taxable under the terms of Section 130.2005 of this Part. It is also immaterial that the class of purchasers may be a limited one, such as the employees of a particular employer who operates a cafeteria or other dining facilities for the benefit of ~~it~~his/her employees.

- 2) Subsection (a)(1) includes, but is not limited to, the following types of vendors:
 - A) hotels;
 - B) restaurants;
 - C) caterers;
 - D) boarding houses;
 - E) concessionaires;
 - F) nonprofit service organizations and institutions to the extent indicated in Section 130.2005(a), (b), and ~~(d)~~(e) of this Part, and similar enterprises when conducted with a view to profit to the extent indicated in Section 130.2005~~(p)~~(e) of this Part;
 - G) employers who operate dining facilities for the benefit of their employees, except to the extent noted in Section 130.2005(b) of this Part; and
 - H) sellers of food and beverages, delivered in Illinois to airlines, for use in serving passengers on aircraft without a separate charge for the food or beverages being made by the airline, regardless of whether the airline may serve the food and beverages in Illinois or outside Illinois; sales of meals to airlines for use on their aircraft in serving crews, where the cost is deducted from a food allowance, are nontaxable sales for resale, but if the meals are delivered to the airline in Illinois, the airline incurs ~~retailers' occupation tax~~Retailers' Occupation Tax liability on its receipts (consideration in the form of compensation for service rendered) from reselling

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the meals to crews, regardless of whether the aircraft is in Illinois or outside Illinois when it serves the meals to its crew.

- b) Vendors of Meals to Organizations or Their Members
 - 1) Effective August 1, 1961, when members of an organization meet at a hotel, restaurant, or other place of business where food or drinks are sold and pay for those items, the hotel, or other vendor of meals, is considered to be selling such tangible personal property directly to members as users or consumers, and the sales shall be considered to be taxable. This is true even if the organization collects from the members and makes payment to the vendor, and even if the organization is permitted to retain a portion of what it collects for its own purposes.
 - 2) In this situation, the organization is deemed to be acting for the accommodation of all concerned and is not deemed to be standing in the role of a purchaser and reseller.
 - 3) The measure of the tax is the amount received by the hotel, etc., for the tangible personal property that it furnishes.
 - 4) The principles stated in this Section apply also when the tangible personal property that is being sold is something other than food and drinks, but this Section is concerned primarily with vendors of food and drinks.
- c) Cover Charges and Minimum Charges
 - 1) Cover Charges
 - A) Cover charges are not included in the taxable receipts of persons operating restaurants, hotels and other places of business that come within the Retailers' Occupation Tax Act ("Act"), when cover charges are made exclusively for the privilege of occupying space within the eating place, and when the payment of a cover charge by a patron does not entitle the patron to use or consume any food or beverage or other tangible personal property.

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- B) In such an instance, the cover charge is a receipt on account of a service rendered, whether the service be entertainment or otherwise, and does not accrue on account of the sale of tangible personal property at retail.
- 2) Minimum Charges
- A) The provisions regarding cover charges do not apply to so-called "minimum charges" that are made by night clubs, public eating places, private clubs or other retailers of food or beverages or both, and that entitle the persons paying the charge to use or consume some tangible personal property, such as food or beverages, without additional payment. The retailer's receipts from these charges are subject to retailers' occupation tax~~Retailers' Occupation Tax~~.
 - B) Similarly, when a single charge is made for both entertainment and food and the charge for food is not separately stated on the customer's bill, the entire charge is subject to tax. For example, when a dinner theater charges \$50 for a show and includes food and beverages, the entire \$50 is subject to tax unless a separate charge is made for the food and beverages.
 - C) However, minimum charges imposed by country clubs that must be paid regardless of whether the member purchases food or beverages are subject to tax only to the extent they are incurred for actual food or beverage purchases. (See *Aurora Country Club, Inc. v. Department of Revenue*, 50 Ill.App.3d 756, 365 N.E.2d 229 (2d Dist. 1977).)
- d) **Mandatory Service Charges**
Mandatory gratuities are not included in the taxable receipts of persons operating restaurants, hotels and other places of business that come under the Act, if the mandatory gratuity is added to banquet or dinner checks in the form of a percentage of the total bill, or as a flat rate, to the extent that *the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed.* [35 ILCS 120/2-

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~~5(15)~~ ~~(Section 2-5(15) of the Act)~~ If any part of the service charges are used to fund or pay wages, labor costs, employee benefits or employer costs of doing business, that part of the service charge is includable in gross receipts.

- e) Rentals of Banquet, Meeting and Conference Rooms – True-object Test
The taxation of charges for the rental of a banquet, meeting, conference, or similar room in conjunction with the providing of food or beverages will depend upon the nature of the transaction. The Department uses a "true-object" test to characterize the nature of these transactions.
- 1) If the true object of the transaction is the rental of the room and if food or beverages are provided incidentally to the rental of the room, no tax is incurred on the charges for the rental of the room. If no separate charge is made under the contract for the incidental amount of food or beverages provided, the rentor is considered the user of the food or beverages and incurs ~~use tax~~Use Tax on its cost price of the food or beverages transferred incidentally to the rental of the room. If a separate charge is made for any food and beverages transferred incidentally to the rental of the room, the rentor incurs ~~retailers' occupation tax~~Retailers' Occupation Tax on the selling price of the food or beverages. See Section 130.310 of this Part regarding the appropriate tax rate for sales of food.
 - 2) If the true object of the transaction is the sale of food or beverages, any room rental charges are part of the seller's costs of doing business and are includable in the seller's taxable gross receipts even if the charges for the room rental are separately stated on the agreement or bill between the seller and its customers. See Section 130.410 of this Part. The rental of the room is considered an inseparable link in the sale of the food and beverages to the customer and is not merely incidental to the seller's business of selling food or beverages.
 - 3) If the rental contract requires that alcoholic beverages or food and other beverages be provided or sold by a specific third party or from a choice of providers specified by the rentor, the rentor shall be deemed to be the provider of the alcoholic beverages, food, and other beverages for purposes of determining the taxation of the room rental charge.

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4) This subsection (e) is applicable to rentals of rooms in situations in which those rentals are not subject to tax under the Hotel Operators' Occupation Tax Act.

- f) True Object – Rental of Room
The Department deems an incidental provision of food or beverages to include the providing of non-alcoholic beverages, such as coffee, tea, and soft drinks, and the providing of snacks, such as cookies, popcorn, candy, doughnuts, fruits, and raw vegetables.

EXAMPLE 1: A person contracts for the rental of a meeting room at a hotel for a business meeting. As part of the contract, the hotel agrees to provide coffee, tea, soft drinks, and cookies at no extra charge to the participants of the meeting. The true object of this transaction is deemed to be the rental of the room and any food and beverages provided are incidental to the renting of the room. The hotel does not incur retailers' occupation tax~~Retailers' Occupation Tax~~ on the charges for the rental of the room and the incidental providing of food and beverages. The hotel does incur Use Tax on its cost price of the coffee, tea, soft drinks, and cookies provided incidental to the rental of the room.

EXAMPLE 2: A person contracts for the rental of a meeting room at a hotel for a business meeting. The hotel agrees to provide coffee, tea, soft drinks, and cookies at the meeting for a separately stated charge as part of the contract. The true object of this transaction is deemed to be the rental of the room and any food and beverages provided are incidental to the renting of the room. In this transaction, the hotel incurs retailers' occupation tax~~Retailers' Occupation Tax~~ on the charge for sale of the coffee, tea, soft drinks, and cookies. The gross receipts subject to retailers' occupation tax~~Retailers' Occupation Tax~~ do not include the separate charge for the rental of the room.

EXAMPLE 3: A person rents a room for a wedding reception from a hotel, but that person separately contracts for the food and beverages with a caterer instead of the hotel. The contract between the hotel and the customer did not specify any particular caterers. The true object of the transaction is deemed to be the rental of the room since the caterer and not the hotel provides the food and beverages. No retailers' occupation

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~~tax~~Retailers' Occupation Tax is incurred on the hotel's rental charges in this instance.

- g) True Object – Sale of Food and Beverages
The Department deems the providing of any food other than snacks to be the true object of the transaction and not the rental of the room. If alcoholic beverages are either provided or sold by the rentor to the persons attending the event for which the room is rented, the true object of the transaction will always be deemed the sale of food or beverages and not the rental of the room. If the rental contract requires that the alcoholic beverages or the food and other beverages be provided or sold by a specific third party or from a choice of providers specified by the rentor, the rentor shall be deemed to be the provider of those alcoholic beverages, food, and other beverages for purposes of determining the taxation of the room rental charge.

EXAMPLE 1: A person contracts for the rental of a meeting room at a hotel for a business luncheon. As part of the contract, the hotel agrees to provide coffee, tea, soda, soup, sandwiches, and various desserts to the participants of the luncheon meeting for no extra charge. The true object of this transaction is deemed to be the sale of food and beverages and not the rental of the room. The hotel incurs retailers' occupation tax~~Retailers' Occupation Tax~~ on its gross receipts from the sale of the food and beverages, including the charges for the rental of the room.

EXAMPLE 2: A person contracts for the rental of a meeting room at a hotel for a business after hours gathering with a speaker from a local business group. The hotel provides snacks and non-alcoholic beverages for a separately stated charge as part of the contract. The hotel provides for a bartender and agrees to sell alcoholic beverages to the participants at the gathering. The true object of this transaction is deemed to be the sale of food and beverages and not the rental of the room. The hotel incurs retailers' occupation tax~~Retailers' Occupation Tax~~ on its gross receipts from the sale of the food and beverages, including the charges for the rental of the room.

EXAMPLE 3: A person contracts with a hotel for the rental of a banquet room for a wedding reception. As part of the contract, the hotel charges that person a specific amount for each individual who attends the reception in exchange for providing beverages and a buffet meal to those

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individuals. The true object of this transaction is deemed to be the sale of food and beverages and not the rental of the room. The hotel incurs ~~retailers' occupation tax~~Retailers' Occupation Tax on its gross receipts from the sale of the food and beverages, which includes the specific charge for each individual who attends the reception, along with any charges for the rental of the room.

EXAMPLE 4: A person contracts with a hotel for a room for a cocktail reception. The hotel's rental contract requires that all alcoholic beverages and food be provided by a restaurant located on the hotel premises. The restaurant is a separate legal entity from the hotel. Because the hotel's rental contract requires ~~this specific~~the restaurant to provide the food and beverages, the hotel is considered to be the provider of the food and beverages, for purposes of determining taxation of the room charge. The true object of the transaction is the provision of food and beverages, ~~because~~since alcoholic beverages and food are provided. As a result, the hotel's charge for the room rental is subject to retailers' occupation tax~~Retailers' Occupation Tax~~. The restaurant is subject to retailers' occupation tax~~Retailers' Occupation Tax~~ on the sale of the alcoholic beverages and food. If the hotel's rental contract had not required a specific third party to provide food and beverages, the charges for the room rental would not be subject to tax.

- h) Other Charges
- Charges that are related to the provision of food or beverages are always part of the gross receipts from the sale of the food or beverages. The reason the charges are part of the gross receipts subject to tax is because those charges are part of a seller's costs of doing business and are not deductible from a seller's gross receipts. See Section 130.410 of this Part. Examples of charges that are related to the provision of food and beverages include, but are not limited to, fees for food serving or carving and corkage, and charges for linens, chairs, tables, dishes, glassware, flowers, and centerpieces. Examples of charges that are not related to the provision of food or beverages include, but are not limited to, charges for security, valet, coat check, entertainment, audiovisual and telecommunications services, and cancellation fees.

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