DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

1)   Heading of the Part: Leveling the Playing Field for Illinois Retail Act

2)   Code Citation: 86 Ill. Adm. Code 131

3)   Section Numbers: Proposed Actions:
     131.160   Amendment
     131.165   Amendment

4)   Statutory Authority: Implementing Article 5 of the Leveling the Playing Field for
     Illinois Retail Act [35 ILCS 185] and authorized by Section 12 of the Retailers'
     Occupation Tax Act [35 ILCS 120] and Section 2505-795 of the Department of
     Revenue Law [20 ILCS 2505].

5)   A Complete Description of the Subjects and Issues Involved: This rulemaking
     implements the provisions of P.A. 103-592 that impose a $1,000-per-month cap,
     effective January 1, 2025, on the discount retailers may claim when remitting
     certain taxes to the Department as reimbursement for the expenses incurred in
     keeping records, preparing and filing returns, remitting the tax and supplying data to
     the Department on request ("vendor's discount"). The corresponding returns on
     which the vendor's discount is capped at $1,000 per month are Form ST-1 for non-
     titled property other than aviation fuel and cannabis; Form ST-70 for aviation fuel;
     Form CD-1 for cannabis; and Forms ST-556/ST-556-LSE for titled property.

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.

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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:

>   Samuel J. Moore
>   Illinois Department of Revenue
>   Legal Services Office
>   101 West Jefferson
>   Springfield, Illinois 62794
>   REV.GCO@illinois.gov
>   (217) 782-7055

13)   Initial Regulatory Flexibility Analysis:

A)   Types of small businesses, small municipalities and not for profit corporations affected: Retailers who report less than $914,286 per month in taxable gross sales receipts at a 6.25% sales tax rate are not affected.

B)   Reporting, bookkeeping or other procedures required for compliance: Basic accounting and computer skills.

C)   Types of professional skills necessary for compliance: Basic accounting and computer skills.

14)   Small Business Impact Analysis:

A)   Types of businesses subject to the proposed rule:

        44-45 Retail Trade

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

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

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15)   <u>Regulatory Agenda on which this rulemaking was summarized</u>: July 2024

<u>The full text of the Proposed Amendments begins on the next page</u>:

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Section 131.160 Certified Service Providers – Obligations – Procedures – Hold Harmless Provisions

a)	A certified service provider (CSP) is an agent of a remote retailer that performs all of a remote retailer's sales tax functions, as outlined in the contract between the Department and the CSP. These functions include the preparation and filing of all required tax returns or amended returns, payment of tax, and resolution of any notices or audits of the remote retailer. These functions do not include remittance of Use Tax by the remote retailer on its own purchases.

b)	The software of a CSP interfaces with a remote retailer's accounting system to:

   1)	Identify which products are taxable;

   2)	Apply the appropriate tax rate; and

   3)	Maintain a record of the transaction

c)	A CSP will provide services necessary to:

   1)	Set up and integrate the CSP's software with the remote retailer's system;

   2)	As agent for the remote retailer, prepare and file all required returns or amended returns;

   3)	As agent for the remote retailer, remit tax to the Department;

   4)	As agent for the remote retailer, resolve any notices or audits by the Department; and

   5)	Provide for the protection and confidentiality of tax information consistent with the requirements of Section 11 of ROTA.

d)	The Department shall send all notices, assessments and other communications regarding the remote retailer's tax functions to the CSP, as

agent for the remote retailer. The Department shall not, except as otherwise provided in this subsection, send these communications to the remote retailer. A remote retailer must contact the CSP with whom it has contracted in order to receive copies of the notices, assessments and other communications. In the event that an assessment has been issued to a CSP and the CSP demonstrates to the satisfaction of the Department that its failure to correctly remit tax on a retail sale resulted from its good faith reliance on incorrect or insufficient information provided by a remote retailer, the Department shall withdraw the assessment of the CSP and issue the assessment to the remote retailer, who shall be liable for any resulting tax, penalties and interest due.

e)   A CSP, or the remote retailer that has contracted with the CSP, shall be subject to all the same conditions, restrictions, limitations, penalties and modes of procedure as other retailers under ROTA in cases in which assessments have been issued as provided in subsection (d).

f)   If, for any reason, a CSP ceases to remit tax under the provisions of this Part, it must notify the Department and the remote retailers for whom it provides services of this change. Notification to the Department shall be made electronically as required by the Department and shall include proof that notification has been made to its remote retailers. Until notification is made as required by this subsection (f), CSPs remain liable for tax under the Act and ROTA.

g)   Before acting as a CSP for a remote retailer, a CSP must be certified by the Department. Certification requires that a CSP applicant meet all established evaluation criteria. In addition, the systems of a CSP must have been tested and approved by the Department for properly determining the taxability of items to be sold, the correct rate of tax to apply to a transaction, and the appropriate jurisdictions to which the tax must be remitted.

h)   A CSP that has been certified by the Department shall enter into a contractual relationship with the Department. The contract shall, at a minimum:

        1)   *Provide that the CSP shall be held liable for State and local retailers' occupation taxes administered by the Department if the CSP fails to*

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correctly remit the tax after having been provided with the tax and information by a remote retailer to correctly remit those taxes. However, if the CSP demonstrates to the satisfaction of the Department that its failure to correctly remit tax on a retail sale resulted from the CSP's good faith reliance on incorrect or insufficient information provided by the remote retailer, the CSP shall be relieved of liability for the tax on that retail sale, and the remote retailer shall be liable for any resulting tax, penalties and interest due;

2)   *Provide for the responsibilities of the CSP and the remote retailers that contract with the CSP with respect to record keeping and auditing consistent with the requirements imposed under ROTA;*

3)   *Provide for the protection and confidentiality of tax information consistent with the requirements of Section 11 of ROTA;*

4)   *Provide that the CSP is entitled to compensation equal to 1.75%,* not to exceed $1,000 per month beginning on January 1, 2025, *of the tax dollars remitted to the State by a CSP on a timely basis on a return that has been properly and timely filed by the CSP on behalf of a remote retailer, and that a remote retailer using a CSP may not claim the vendor's discount allowed under Section 3 of ROTA;*

5)   Provide that a CSP shall enter into a Tax Remittance Agreement with a remote retailer prior to acting as a CSP for that remote retailer, under which the CSP agrees to remit all State and local retailers' occupation taxes administered by the Department for sales made by the remote retailer. The agreement shall be retained by the CSP in its books and records and shall be provided to the Department upon demand;

6)   Provide that a CSP shall obtain and provide to the Department, upon request, a Power of Attorney, in the form and manner required by the Department, for each remote retailer with whom it has a Tax Remittance Agreement;

7)   Provide that a CSP shall obtain and maintain updated information for each remote retailer with which it has a Tax Remittance Agreement. This information shall include the name, post office address, email

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address, phone number, and FEIN or SSN of the remote retailer. It shall also include the name and address of the person or persons identified by the remote retailer who are responsible for filing returns and payment of taxes due under ROTA. This information shall be made available to the Department upon request.

8)   *Provide that a CSP shall file a separate return for each remote retailer with which it has a tax remittance agreement* and make payment by electronic means as required by the Department. [35 ILCS 185/5-25]

i)   A CSP that has been certified must electronically register with the Department. Registration shall include an acceptance of responsibility signed by the person or persons of the CSP who will be responsible for filing returns and payment of the taxes due under ROTA. As part of its registration, a CSP must also certify that it has obtained from each remote retailer for whom it acts as agent an acceptance of responsibility signed by the person or persons of the remote retailer who are responsible for filing returns and making payment of taxes under ROTA, that it will keep the information current, and that it will provide the information to the Department upon request.

j)   Once certified, a CSP must notify the Department that it has entered into a Tax Remittance Agreement with a remote retailer within 30 days after execution of the Tax Remittance Agreement. A CSP cannot file returns or pay tax on behalf of a remote retailer until it has notified the Department that it has entered into a Tax Remittance Agreement with a remote retailer. Returns and payment of tax made on behalf of a remote retailer may then be filed by the CSP only for periods beginning with the current reporting period of the remote retailer (monthly, quarterly or annual). The CSP is not authorized to file returns, including amended returns, for any periods prior to the commencement of the current reporting period. Only one CSP is authorized to file a return for a remote retailer for any given reporting period (e.g., if the remote retailer terminates its contract with a CSP and enters into a contract with a new CSP before the end of its current reporting period, only one of those CSPs can file the return for the remote retailer). A CSP shall notify the Department of the termination of a Tax Remittance Agreement within 30 days after the termination of the Tax Remittance Agreement. Notification shall be made electronically as required by the Department.

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k)   *A CSP shall file a separate return for each remote retailer with whom it has a Tax Remittance Agreement.* [35 ILCS 185/5-25]

l)   *A CSP shall be entitled to compensation equal to 1.75%,* not to exceed $1,000 per month beginning on January 1, 2025, *of the tax that is remitted with a return that is timely and properly filed on behalf of a remote retailer.* [35 ILCS 185/5-25], as well as any supplemental compensation allowed pursuant to the Act.

m)   *A CSP shall not be held liable for any State and local retailers' occupation taxes administered by the Department if the remote retailer does not provide the CSP with the tax and information to correctly remit all taxes due. A CSP that demonstrates to the satisfaction of the Department that it relied in good faith on incorrect or insufficient information provided by the remote retailer shall be relieved of liability for the tax on that transaction.* [35 ILCS 185/5-25] Incorrect or insufficient information includes, but is not limited to, incorrect information that an item being sold is taxable or not taxable, exempt from tax, or taxed at a specified rate (e.g., the rate applicable to either general merchandise or the low preferential 1% rate). Incorrect or insufficient information also includes failure of the remote retailer to report sales or to obtain properly executed documentation of an exemption as required by ROTA and 86 Ill. Adm. Code 130.

n)   *A CSP is relieved of liability to the Department for having remitted the incorrect amount of tax resulting from reliance, at the time of the sale, on erroneous data provided by the Department in database files on tax rates, boundaries or taxing jurisdictions, or erroneous data provided by the Department concerning the taxability of products and services* (Illinois Sales Tax Matrix). [35 ILCS 185/5-30]

o)   *When a CSP contemplates a material revision to its systems, it must notify the Department at least 60 days before any such revision. Upon receipt of that notification, the Department shall discuss the proposed revision with the CSP. If the Department determines that the revision is sufficiently material, the CSP must be recertified. The Department shall test the proposed revision to assess whether the revised system of the CSP can properly determine the taxability of items to be sold, the correct tax rate to*

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apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. The Department shall recertify revised systems that meet these requirements. A CSP shall be liable for any tax resulting from errors caused by use of a revised system prior to recertification by the Department. [35 ILCS 185/5-25]

p) The Department shall provide each CSP with a test deck two times per year, in December and June, as a check to ensure that the CSP's system can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. (See 35 ILCS 185/5-25.)

q) A CSP must be recertified every three years. At least 1 year prior to expiration of a CSP's certification status, the Department shall contact the CSP to initiate the recertification process. Once recertified, the Department's contract with the CSP shall be amended or renewed.

(Source: Amended at 49 Ill. Reg. _____, effective _____)

Section 131.165 Certified Automated Systems – Obligations – Procedures – Hold Harmless Provisions

a) A certified automated system (CAS) is software that is designed for or by a remote retailer that wants to use certified tax calculation software but keep the responsibility for filing returns and remitting tax in-house.

b) The software system of a CAS interfaces with a remote retailer's accounting system to:

1) Identify which products are taxable;

2) Apply the appropriate tax rate;

3) Maintain a record of the transaction; and

4) Determine the amount of tax the remote retailer must report and pay to the Department.

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c)   Before a CAS can be utilized by a remote retailer, the CAS must be certified by the Department. Certification requires that a CAS applicant meet all established evaluation criteria. In addition, the systems of a CAS must have been tested and approved by the Department or p properly determining the taxability of items to be sold, the correct rate of tax to apply to a transaction, and the appropriate jurisdictions to which the tax must be remitted.

d)   A remote retailer that uses a CAS shall be subject to all provisions of ROTA, including, but not limited to, recordkeeping, audit, confidentiality, and electronic filing and payment requirements.

e)   A remote retailer using a CAS shall maintain in its books and records the name of the owner or provider of the CAS it is using. A remote retailer shall also maintain this information in its books and records for any subsequent uses of a different CAS. This information shall be made available to the Department upon demand.

f)   A remote retailer using a CAS shall file its own returns and make payment of tax by electronic means, and perform all other sales and use tax functions.

g)   A remote retailer using a CAS shall be entitled to a retailers' discount of 1.75%, not to exceed $1,000 per month beginning on January 1, 2025, of the tax that is remitted with a return that is timely and properly filed.

h)   *Remote retailers using certified automated systems and their certified automated systems providers are relieved of liability to the Department for having remitted the incorrect amount of tax resulting from reliance, at the time of the sale, on erroneous data provided by the Department in database files on tax rates, boundaries or taxing jurisdictions, or erroneous data provided by the Department concerning the taxability of products and services* (Illinois Sales Tax Matrix). [35 ILCS 185/5-30]

i)   When a material revision to a certified automated system is contemplated, the owner or provider of the CAS must notify the Department at least 60 days prior to any such revision. Upon receipt of that notification, the Department shall discuss the proposed revision with the owner or provider of the CAS. If the Department determines that the revision is sufficiently material, the CAS must be recertified. *The Department shall test the proposed revision to*

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assess whether the revised system of the CAS can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. The Department shall recertify revised systems that meet these requirements. If the Department notifies the remote retailer using a CAS that a recertification is necessary, the remote retailer shall be liable for any tax resulting from errors caused by use of a revised system prior to recertification by the Department. [35 ILCS 185/5-25]

j)   The Department will provide each CAS with a test deck two times per year, in December and June, as a check to ensure that the CAS's system can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted.

k)   A CAS must be recertified every three years. At least 1 year prior to expiration of a CAS's certification status, the Department shall contact the CAS to initiate the recertification process.

(Source: Amended at 49 Ill. Reg. _____, effective _____)