

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Home Rule Municipal Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 270
- 3) Section Number: 270.115 Proposed Action: Amendment
- 4) Statutory Authority: Implementing the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1] Illinois Municipal Code and authorized by Section 2505-15 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505/2505-15].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements Public Act 103-983, which changed the tax obligation for retailers maintaining a place of business in this State making sales to Illinois customers from outside of this State. Prior to January 1, 2025, such sales were subject to Use Tax only. On and after January 1, 2025, these retailers incur destination-based retailers' occupation tax on these sales. This rulemaking also amends the Department's sourcing rules related to the lease of tangible personal property in this State as enacted by Public Act 103-592 (Article 75).
- 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? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
270.101	Amendment	48 Ill. Reg. 15302; November 1, 2024
270.105	Amendment	48 Ill. Reg. 15302; November 1, 2024

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

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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:

Alexis K. Overstreet
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-7055
REV.GCO@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers with a physical presence in the State of Illinois making sales from locations outside of this State to consumers in Illinois.
 - 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:
 - i. hiring and additional staffing;

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- iii. purchasing;
- vi. equipment and material needs;
- vii. training requirements;
- viii. record keeping

15) Regulatory Agenda on which this rulemaking was summarized: July 2024

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 270
HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX

Section

270.101	Nature of the Home Rule Municipal Retailers' Occupation Tax
270.105	Registration and Returns
270.110	Claims to Recover Erroneously Paid Tax
270.115	Jurisdictional Questions
270.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
270.125	Penalties, Interest, and Procedures
270.130	Effective Date

AUTHORITY: Implementing the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1] Illinois Municipal Code and authorized by Section 2505-15 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505/2505-15].

SOURCE: Adopted August 1, 1955; amended at 3 Ill. Reg. 44, p. 189, effective October 19, 1979; amended at 6 Ill. Reg. 2836, 2839 and 2841, effective March 3, 1982; codified at 6 Ill. Reg. 9681; amended at 15 Ill. Reg. 3507, effective February 21, 1991; amended at 24 Ill. Reg. 8111, effective May 26, 2000; amended at 24 Ill. Reg. 18351, effective December 1, 2000; emergency amendment at 38 Ill. Reg. 4060, effective January 22, 2014, for a maximum of 150 days; emergency expired June 20, 2014; amended at 38 Ill. Reg. 14307, effective June 25, 2014; amended at 47 Ill. Reg. 2732, effective February 7, 2023; amended at 49 Ill. Reg. _____, effective _____.

Section 270.115 Jurisdictional Questions

a) Definitions

When used in this Part, "Municipality" includes all territory located within the municipality, and refers to all cities, villages or incorporated towns, including an incorporated town that has superseded a civil township.

When used in this Part, "Selling Activities" refers to those activities that comprise "an occupation, the business of which is to sell tangible personal

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property at retail". "Selling Activities" includes "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943).

b) Retailer's Selling Activities Determine Taxing Jurisdiction

- 1) Occupation of Selling. The Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1] authorizes home rule municipalities to impose a tax on those engaged in the business of selling tangible personal property at retail within the municipality. On and after January 1, 2025, the tax imposed under Section 8-11-1 applies to leases of tangible personal property in effect, entered into, or renewed on or after that date and the business of selling includes the business of leasing tangible personal property. Because the statute imposes a tax on the retail business of selling, and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the local retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing *Mahon v. Nudelman*, 377 Ill. 331 (1941) and *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136 (1943)); see also *Young v. Hulman*, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax...imposes liability upon the occupation of selling at retail and not on the sale itself"). Beginning January 1, 2021, Public Acts 101-31 and 101-604, which implemented the Leveling the Playing Field for Illinois Retail Act, enacted specific provisions regarding the location at which sales made by remote retailers and marketplace facilitators occur. See subsections (e), (f), and (g) of this Section. The changes made by these public acts and rulesregulations promulgated thereunder at 86 Ill. Adm. Code 131 provide that the location where sales occur is frequently the location to which the tangible personal property sold is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing"). Except as specifically noted herein, the

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provisions of this Section do not otherwise apply to remote retailers and marketplace facilitators.

- 2) Composite of Selling Activities. The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)).
- 3) Multijurisdictional Retailers. Some retailers are engaged in retail operations with selling activities in multiple jurisdictions within the State, or in jurisdictions located in more than one state. The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail business". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Consequently, "it is...not possible to prescribe by definition which of many activities must take place in [a jurisdiction] to constitute it an occupation conducted in [that jurisdiction]... [I]t is necessary to determine each case according to the facts which reveal the method by which the business was conducted". *Ex-Cell-O-Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943); see also *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 36.
- 4) Statutory Intent. It is the intent of the Home Rule Municipal Retailers' Occupation Tax that retailers will incur local retailers' occupation tax in a jurisdiction in Illinois if they "enjoyed the greater part of governmental [services and] protection" in that jurisdiction. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 34 (quoting *Svithiod Singing Club v. McKibbin*, 381 Ill. 194, 197 (1942)). By allowing the municipality to impose tax on retailers who conduct business in the municipality, the Home Rule Municipal Retailers' Occupation Tax Act links the retailer's tax liability to where it principally enjoys the

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benefits of government services. *Svithiod Club v. McKibbin*, 38 Ill. 194, 199 (1942).

- 5) Determination of Taxing Jurisdiction. Applying the provisions in subsections (b)(1) and (b)(4), a seller incurs Home Rule Municipal Retailers' Occupation Tax in a home rule municipality if its predominant and most important selling activities take place in the municipality. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322-23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35.
- 6) Substance over Form. The Department "may look through the form of a putatively [multijurisdictional] transaction to its substance" to determine where "enough of the business of selling took place" and, thus, where the seller is subject to local retailers' occupation tax. *Marshall & Huschart Mach. Co. v. Dep't of Revenue*, 18 Ill. 2d 496, 501 (1960); *Fed. Bryant Mach. Co. v. Dep't of Revenue*, 41 Ill. 2d 64, 67 (1968); *Int'l-Stanley Corp. v. Dep't of Revenue*, 40 Ill. App. 3d 397, 406 (1st Dist. 1976); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 31. For example, the Department will not look to the location of a party that is owned by or has common ownership with a supplier or a purchaser if the party does not, in substance, conduct the selling activities related to the sales.
- 7) Same Standard Applies to Intrastate and Interstate Retailers. For purposes of determining where a retailer is engaged in the business of selling, it does not matter whether the retailer is engaged in selling activities in taxing jurisdictions in multiple states, or in multiple jurisdictions in this State. The legal standard is the same. The retailer is engaged in the business of selling in the taxing jurisdiction where its predominant and most important selling activities take place. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 30 ("the location of the business of selling inside or outside the [S]tate controls..."). If a retailer engages in

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some selling activities in a taxing jurisdiction in this State, but that retailer's predominant selling activities are outside the State, the retailer's obligation to collect and remit taxes on Illinois sales is governed, until January 1, 2025, by the Illinois Use Tax Act [35 ILCS 105/2] (defining "retailer maintaining a place of business in the State"); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 31 ("some combination of activities within the [S]tate are insufficient for the retail occupation tax to apply") (citing *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951)). *Beginning on January 1, 2025, a retailer maintaining a place of business in this State that makes retail sales of tangible personal property to Illinois customers from a location or locations outside of Illinois is engaged in the occupation of selling at retail in Illinois for the purposes of the Retailers' Occupation Tax Act. Those retailers are liable for all applicable State and locally imposed retailers' occupation taxes administered by the Department on retail sales made by those retailers to Illinois customers from locations outside of Illinois. [35 ILCS 120/2] See subsection (h).*

- 8) Because it is not practicable for retailers to divide retailers' occupation tax among competing jurisdictions, a retailer subject to the retailers' occupation tax is engaged in the business of selling in only one location in Illinois for each sale.
- c) Application of Composite of Selling Activities Test to Retailers Conducting Selling Activities in Multiple Taxing Jurisdictions. Every retailer maintaining a place of business in this State shall determine the taxing jurisdictions in which it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in this subsection (c), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit retailers' occupation tax. These retailers shall remit retailers' occupation tax as directed by statute, notwithstanding anything in this Part to the contrary.
- 1) Primary Selling Activities. Without attempting to anticipate every kind of fact situation that may arise, taxpayers that divide selling activities among personnel located in multiple jurisdictions shall consider the following selling activities to determine where they are engaged in the

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business of selling with respect to each sale. A retailer is engaged in the business of selling in only one location for each sale, but may be engaged in the business of selling in different locations for different sales:

- A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
- B) Location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale;
- C) Location where payment is tendered and received, or from which invoices are issued with respect to each sale;
- D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery; and
- E) Location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters.

- 2) A retailer engaging in three or more primary selling activities in one location in the State for a particular sale shall remit the retailers' occupation tax imposed by the taxing bodies with authority to impose retailers' occupation tax on those engaged in the business of selling in that location for that sale. Until January 1, 2025, a retailer engaging in three or more primary selling activities for a particular sale outside the State shall collect and remit tax to the State to the extent required by the Illinois Use Tax Act [35 ILCS 105] for that sale, except as provided in subsection (d). On and after January 1, 2025, a retailer engaging in three or more primary selling activities for a particular

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sale outside the State shall remit State and local retailers' occupation tax in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing") for that sale, except as provided in subsection (d). See subsection (h).

- 3) Application of Primary Selling Activities to Common Selling Operations. Retailers engaged in selling operations with a single location where the primary selling activities predominate constitute the vast majority of retailers in the State. Subsections (c)(3)(A) through (c)(3)(C) apply the primary selling activities to certain common selling operations and identify the location where the Department will presume the seller is engaged in the business of selling with respect to each sale.
 - A) Over the Counter Sales. If a purchaser is present at a place of business owned or leased by a retailer and there enters into an agreement with the retailer's sales personnel to purchase tangible personal property, and makes payment for that property at the same place of business, then the retailers' occupation tax for that sale is incurred at the retailer's place of business where the sale occurred regardless of whether the purchaser takes immediate possession of the tangible personal property, or the retailer delivers or arranges for the property to be delivered to the purchaser.
 - B) Sale through Vending Machines. A retailer is engaged in the business of selling food, beverages or other tangible personal property through a vending machine at the location where the vending machine is located when the sale is made if:
 - i) the vending machine is a device operated by coin, currency, credit card, token, coupon or similar device that dispenses food, beverage or other tangible personal property;

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- ii) the food, beverage or other tangible personal property is contained within the vending machine and dispensed from the vending machine; and
 - iii) the purchaser takes possession of the purchased food, beverage or other tangible personal property immediately.
 - C) Sales from Vehicles Carrying Uncommitted Stock of Goods. The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries actually are made. The vehicle carrying the stock of goods for sale is regarded as a portable place of business.
- 4) Secondary Selling Activities. If the primary selling activities listed in subsection (c)(1) occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, the following additional selling activities shall be considered to determine the jurisdiction in which the retailer is engaged in the business of selling.
- A) Location where marketing and solicitation occur;
 - B) Location where the seller engages in activities necessary to procure goods for sale;
 - C) Location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A);
 - D) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed, or fulfilled in a location or locations different from where they are received;

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- E) Location where title passes; and
 - F) Location where the retailer displays goods to prospective customers, such as a showroom.
- 5) Except as provided in subsection (d), a retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) is engaged in the business of selling in the jurisdiction where its inventory is located under subsection (c)(1)(D), or where its headquarters is located under subsection (c)(1)(E), whichever jurisdiction is the location where more selling activities occur, considering both primary and secondary selling activities.
- 6) A retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) or (c)(5) is presumed to be engaged in the business of selling at the location of its headquarters absent clear and convincing evidence to the contrary.
- 7) **EXAMPLE:** Company X is a manufacturer and retailer of pet supplies headquartered in Chicago. Company X has a team of sales personnel who work from their own homes located throughout Illinois. Company X makes sales to customers in Illinois through a variety of channels including internet sales, telephone sales, pet expositions, and brick and mortar stores. Many of its sales to Illinois customers are through its remote sales team who make sales over the phone and receive purchase orders over the phone. Team members then input the order and customer payment information received from the customer on the phone into the company's computer system. Payment information is then uploaded to a third-party payment processor in Kankakee, Illinois and processed. Invoices are sent to the customer from Company X's headquarters in Chicago. Sales are fulfilled from inventory located at the company's fulfillment center in Champaign, Illinois. A team member working remotely from his home in Peoria, Illinois makes a sale over the phone to a customer who had seen the item advertised in a magazine, and the item is shipped to the customer's home in Kankakee, Illinois.

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Applying the primary selling activities listed in (c)(1), Peoria is the site with regard to (A) and (B); Kankakee or Chicago is the site with regard to (C); Champaign is the site with regard to (D); and Chicago is the site with regard to (E). Peoria and Chicago are both the site of two primary selling activities. Because no site is the location of three primary selling activities, the secondary selling activities listed in (c)(4) must be considered.

Applying the secondary selling activities in (c)(4), Peoria is the site with regard to (A) and (D); Chicago is the site with regard to (B) and (C); Kankakee is the site with regard to (E); and, because in this sale the customer viewed the items in a magazine and ordered over the phone, (F) is not applicable. Again, Peoria and Chicago are both the site of two secondary selling activities.

Under subsection (c)(5), because no site was the location of three primary selling activities under (c)(1), the retailer is engaged in the business of selling either in Champaign, where its inventory is located under subsection (c)(1)(D), or in Chicago, where its headquarters is located under subsection (c)(1)(E), whichever jurisdiction is the location where more selling activities occur, considering both primary and secondary selling activities. Because Champaign is the site of only one selling activity and Chicago is the site of four, this sale would be sourced to Chicago.

- d) Presumptions Applying to Certain Selling Operations
- 1) For certain classes of retailers with unique, complicated or widely dispersed selling activities, determining appropriate tax situs in every situation presents substantial administrative difficulties for both retailers and tax enforcement personnel. Subsections (d)(2) through (d)(65) provide administrative "short cuts" that balance the administrative difficulties presented by certain selling operations against the need for accurate tax assessment.
 - 2) In-State-Inventory/Out of State Selling Activity. Except as provided in subsections (f) and (g) of this Section, if a retailer's selling activities take place in taxing jurisdictions outside the State, except that the

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tangible personal property that is sold is in an inventory in the possession of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced by the retailer in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced by the retailer will determine where the retailer is engaged in business with respect to the sale. *Chemed Corp., Inc. v. Department of Revenue*, 186 Ill. App. 3d 402 (4th Dist. 1989).

- 3) Sales over the Internet. Except as provided in subsections (e), (f), and (g) of this Section, when a customer places an order for the purchase of tangible personal property through a consumer-based retailer website available without limitation on the world wide web and the retailer ships the property to the customer in this State, the Department will presume that the retailer's predominant selling activities take place outside of this State. Therefore, such a sale will be subject to the Illinois Use Tax Act until January 1, 2025, and the Retailers' Occupation Tax Act beginning January 1, 2025, as provided in subsection (h) below, unless there is clear and convincing evidence the retailer's predominant and most important selling activities take place in this State. Clear and convincing evidence sufficient to overcome the presumption provided for in this subsection (d)(3) includes, but is not limited to, the following circumstances:
 - A) the tangible personal property that is sold is in an inventory in the possession of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced by the retailer in the jurisdiction), in which case the retailer is engaged in the business of selling in the jurisdiction where the property is located at the time of the sale with respect to the sale; or
 - B) the customer takes possession of the tangible personal property at a place of business owned or leased by the retailer in the State, in which case the retailer is engaged in the business of selling in the jurisdiction where the customer takes possession of the property with respect to that sale.

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- 4) Leases with an Option to Purchase. A lease with a dollar or other nominal option to purchase is considered to be a conditional sale subject to retailers' occupation tax. (See 86 Ill. Adm. Code 130.2010(a)). On and after July 23, 2015, *a retailer selling tangible personal property to a nominal lessee or bailee pursuant to a lease with a dollar or other nominal option to purchase is engaged in the business of selling at the location where the property is first delivered to the lessee or bailee for its intended use.* [35 ILCS 120/2-12(5)]. This provision applies to all retailers, including, on and after January 1, 2021, remote retailers and retailers making sales over a marketplace that meets either of the tax remittance thresholds established at 86 Ill. Adm. Code 131.135 (a). The retailer must maintain books and records that document the physical location to which the property is first delivered to the lessee or bailee for its intended use. An executed contract between the retailer and lessee that clearly specifies the location of the property creates a rebuttable presumption that such location is where the property is first delivered to the lessee for its intended use. The Department may rebut this presumption with clear and convincing evidence that such location is not the location where the property is first delivered to the lessee for its intended use. Absent such a contract, the lessee must provide the retailer with a certification at the time of sale that declares the location where the product is first delivered for its intended use. The retailer must maintain this certification in its books and records and may presume this certification is valid.

Example: A retailer sells equipment to a nominal lessee or bailee pursuant to a lease with a dollar option to purchase. The equipment is first delivered to the lessee's Springfield, Illinois warehouse to be inspected. The property is then delivered to the lessee's headquarters in Chicago, Illinois to be used in the lessee's business. For purposes of this sale, the retailer is engaged in the business of selling in Chicago, Illinois, since that is the location where the property is first delivered for its intended use.

- 5) Sales of Coal or Other Minerals. A retail sale by a producer of coal or other mineral mined in Illinois is a sale at retail in the jurisdiction

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where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this subsection (d)(5), "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine. On and after January 1, 2021, this provision applies to retailers, including marketplace sellers and marketplace facilitators.

- A) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- B) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the jurisdiction and transports it over its own line to an ~~out-of-State~~out-of-state destination.
- C) A sale by mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and local retailers' occupation tax on that sale will go to the jurisdiction where the retailer is engaged in the business of selling, as provided in this subsection (d)(5).

6) Lease Transactions. Beginning January 1, 2025, the lease of tangible personal property that is subject to the tax on leases is sourced as follows:

- A) For a lease that requires recurring periodic payments and for which the property is delivered to the lessee by the lessor, each periodic payment is sourced to the primary property location for each period covered by the payment. The primary

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property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

B) For all other leases, including a lease that does not require recurring periodic payments and any lease for which the lessee takes possession of the property at the lessor's place of business, the payment is sourced as otherwise provided by the application of the Composite of Selling Activities Test provided in subsection (c) and the other Presumptions Applying to Certain Selling Operations provided in this subsection (d). [35 ILCS 120/2-12(5-5)]

- e) Sales to Illinois purchasers by remote retailers. *Beginning January 1, 2021, remote retailers, as defined in Section 2 of the Retailers' Occupation Tax Act, that meet either of the tax remittance thresholds set out at 86 Ill. Adm. Code 131.115(a), are engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing"). [35 ILCS 120/2-12(6)]. A retailer is not considered a remote retailer if it maintains inventory in Illinois or has any other type of physical presence in Illinois. However, a remote retailer's inventory at the location of a marketplace facilitator in Illinois does not create physical presence nexus when used exclusively to fulfill orders made over the marketplace that meets a tax remittance threshold under Section 131.135(a). See 86 Ill. Adm. Code 131.105.*
- f) Sales made to Illinois purchasers by marketplace facilitators on behalf of marketplace sellers. *Beginning January 1, 2021, marketplace facilitators, as defined in Section 2 of the Retailers' Occupation Tax Act, that meet either of the tax remittance thresholds established at 86 Ill. Adm. Code 131.135(a), are engaged in the business of selling at the location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser for sales made over the marketplace on behalf of marketplace*

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sellers ("destination sourcing"). [35 ILCS 120/2-12(7)]. This is the case notwithstanding the presence of a marketplace seller's inventory in Illinois. This subsection (f) is subject to the exception for sales of coal and other minerals set out in subsection (d)(5).

- g) Sales made by marketplace facilitators to Illinois purchasers not on behalf of marketplace sellers. When a marketplace facilitator makes a sale of its own to Illinois purchasers, or the marketplace seller of the tangible personal property is not identified (see 86 Ill. Adm. Code 131.130(b)), it may incur either destination sourcing or sourcing determined under the provisions of subsection (c) of this Section ("origin sourcing").
 - 1) When a marketplace facilitator located in Illinois makes its own sale to an Illinois purchaser that is fulfilled from inventory located in Illinois or for which selling activities otherwise occur at a location in Illinois as provided in this Section, it is engaged in the business of selling at the Illinois location at which the inventory is located or at which the selling activities otherwise occur ("origin sourcing"), as determined by applying the provisions of subsection (c) of this Section.
 - 2) When a marketplace facilitator makes its own sale to an Illinois purchaser that is fulfilled from inventory located outside Illinois and for which selling activities otherwise do not occur at a location in Illinois as provided in this Section, it is engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").
- h) *Beginning on January 1, 2025, for sales that would otherwise be sourced outside of this State, a retailer maintaining a place of business in this State that makes retail sales of tangible personal property to Illinois customers from a location or locations outside of Illinois is engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. [35 ILCS 120/2-12] If, after application of the Composite of Selling Activities Test provided in subsection (c) and the Presumptions Applying to Certain Selling Operations provided in subsection (d), it is determined that a retailer*

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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

maintaining a place of business in this State is engaged in the business of selling in a jurisdiction outside of this State for a sale to an Illinois customer, that retailer incurs applicable State and local retailers' occupation tax in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

- i) The requirements of this Section also apply to the following Retailers' Occupation Taxes:
- 1) 86 Ill. Adm. Code 220 (Home Rule County Retailers' Occupation Tax);
 - 2) 86 Ill. Adm. Code 320 (Regional Transportation Authority Retailers' Occupation Tax);
 - 3) 86 Ill. Adm. Code 370 (Metro East Mass Transit District Retailers' Occupation Tax);
 - 4) 86 Ill. Adm. Code 395 (Metro-East Park and Recreation District Retailers' Occupation Tax);
 - 5) ~~86 Ill. Adm. Code 630 (County Water Commission Retailers' Occupation Tax);~~
 - ~~6)~~ 86 Ill. Adm. Code 670 (Special County Retailers' Occupation Tax for Public Safety);
 - ~~67)~~ 86 Ill. Adm. Code 690 (Salem Civic Center Retailers' Occupation Tax);
 - ~~78)~~ 86 Ill. Adm. Code 693 (Non-Home Rule Municipal Retailers' Occupation Tax);
 - ~~89)~~ 86 Ill. Adm. Code 695 (County Motor Fuel Tax); and
 - ~~910)~~ 86 Ill. Adm. Code 696 (Municipal Motor Fuel Tax).

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