



## Illinois Department of Revenue

Legal Services Office  
101 W. Jefferson St. MC 5-500  
Springfield, IL 62794

### SECOND NOTICE OF PROPOSED RULEMAKING

- 1) Agency: Illinois Department of Revenue
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: Retailers' Occupation Tax, 86 Ill. Adm. Code 130
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: March 15, 2024, Issue 11, 48 Ill. Reg. 3576
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period: See attachment.
- 5) Final Regulatory Flexibility Analysis:
  - A. Summary of the issues raised by affected small businesses during the First Notice Period: No issues were raised by small businesses during the First Notice Period.
  - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: None.
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: The Agency's Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking is attached.
- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply with the Codification Scheme: All changes requested by the Administrative Code Division have been made.
- 8) Evaluation of the comments received by the agency from interested persons during the first notice period (but not including any questions raised by the Joint Committee in a preliminary review) including:
  - A. Date of any public hearing held during the first notice period. Name of the person or group requesting a hearing: No public hearing requested.
  - B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments:
    1. Scott Reimers, Vice President, State Legislative Affairs, Illinois State

Medical Society; David Porter, Senior Vice President, Health Policy Research & Advocacy, Illinois State Medical Society – this was an *ex parte* communication and documents are attached.

2. David Kupiec, Kupiec & Martin, LLC; Natalie Martin, Kupiec & Martin, LLC - this was an *ex parte* communication and documents are attached.

3. Jonathan C. Eastvold, Ph.D., Regulatory Flexibility Manager, Office of Entrepreneurship, Innovation, and Technology, Illinois Department of Commerce and Economic Opportunity, 607 E. Adams St., Springfield, IL 62701

C. A list of all specific criticisms and suggestions raised in the comments:

1. The Medical Society did not request any specific action regarding the Proposed Amendments. With respect to the amendments to Section 130.2020, the Medical Society asked:

Our question: this last sentence, beginning with “However,” is somewhat vague. It’s not so much a new rule as it is advice to physicians and surgeons about their potential tax liability. Can you provide us with greater clarity or more explanation around the inclusion of this sentence, and what the Department hopes to convey to licensed professionals?

2. Mr. Kupiec and Ms. Martin did not request any specific action regarding the Proposed Amendments. During a meeting regarding a client issue and unrelated to this rulemaking, Mr. Kupiec and Ms. Martin only briefly mentioned the Department’s proposed rulemaking and asked whether there was anything in the proposed rulemaking that would change things for their client or of which they should be aware.

3. Mr. Eastvold questioned whether the Department prepared more of an initial regulatory flexibility analysis than was published in the Illinois Register at First Notice and was interested in any information that would quantify the effects of this rulemaking (in terms of anticipated differences in tax revenue, etc.), especially on small businesses.

D. The agency's evaluation of each of the specific criticisms and suggestions:

1. The additional sentence at the end of 130.2020 was to clarify that a physician or surgeon who is not subject to retailers' occupation tax may be subject to service occupation tax and such person should review those rules as well. It is not a new rule as guidance to physicians and surgeons about potential tax liability.

2. In response to whether anything in this proposed rulemaking would change things for their client or if there was anything of which they should be aware, Department Staff referred Mr. Kupiec and Ms. Martin to review the rulemaking. Department Staff informed Mr. Kupiec and Ms. Martin where they could find the proposed rule in the Illinois Register. Further, Department Staff read a relevant portion of the "Notice of Proposed Rulemaking" to Mr. Kupiec and Ms. Martin.

3. Most of the rulemaking is updating the rules to correspond with the Department's policies as published in the letter rulings and statute and should not impact small businesses. The only new change would be the clarification regarding manufacturing machinery and equipment in Section 130.330(b)(8) and (c)(3)(F).

E. A statement that the agency has considered all comments received during the first notice period: The Department has reviewed and considered all comments received during the first notice period.

9) An analysis of the expected effects of the proposed rulemaking, including:

A. Impact on the public: Persons making sales of tangible personal property at retail and for resale are affected.

B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: None.

C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any methods not utilized: The Retailers' Occupation Tax rules are being amended to update several outdated provisions and to reflect Department policies already in place. Affected taxpayers are already subject to these requirements, and no additional skills are required to comply. The Department is currently handling these sales as required by the statute, and therefore, the methods described in 5 ILCS 100/30 are not legal or feasible in meeting the requirements of the Retailers' Occupation Tax Act. The Department published the proposed rulemaking in the Illinois Register and on the Department's website.

10) A justification and rationale for the proposed rulemaking, including:

A. Any changes in statutory language requiring the proposed rulemaking:  
None

- B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: This rulemaking amends Section 130.330 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). Section 130.2005 is being amended to incorporate Department policies from letter rulings regarding dining plans and dining facilities at universities by creating a new subsection (c) and dining facilities at nonprofit hospitals that are open to the public. All other sections are being updated to correct cross references and technical changes.
  - C. Relationship to any relevant federal rules, regulations, or funding requirements: None
  - D. Court orders or rulings which are related to the rulemaking: None
  - E. A complete explanation of any other reasons for the proposed rulemaking: No other reasons exist.
- 11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No.

Agency Personnel Who Will Respond to Joint Committee Questions Regarding the Proposed Rulemaking:

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