

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Regional Transportation Authority Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 320
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
320.101	Amendment
320.105	Amendment
- 4) Statutory Authority: Authorized by and implementing Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking incorporates the technical changes made by P.A. 100-117, effective January 1, 2019, related to how these rules describe the exemption of low-rate items from these local taxes. It also reflects the changes made by P.A. 101-0010, effective June 5, 2019, and P.A. 101-604, effective December 13, 2019, exempting aviation fuel from the Regional Transportation Authority Retailers' Occupation Tax and providing new references regarding the low-rate items. This rulemaking reflects the recent changes made by P.A. 103-0781, effective August 5, 2024, regarding the local grocery tax.
- 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:

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Persons making sales of aviation fuel at retail are affected.
 - B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and computer skills.
 - C) Types of professional skills necessary for compliance: Basic accounting and computer skills.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
 - 42 Wholesale Trade
 - 44-45 Retail Trade
 - 48-49 Transportation and Warehousing
 - 92 Public Administration
 - B) Categories that the agency reasonably believes the rulemaking will impact, including:
 - viii. record keeping
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2024

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

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Section 320.101 Nature of the Regional Transportation Authority Retailers' Occupation Tax

a) Authority to Impose Tax

The Board of Directors of the Regional Transportation Authority is authorized to impose a Regional Transportation Retailers' Occupation Tax upon all persons engaged in the business of selling tangible personal property at retail within the metropolitan region as defined in Section 1.03 of the Regional Transportation Authority Act. [70 ILCS 3615/4.03(e)]

1) In Cook County, the tax rate shall be 1.25% of the gross receipts from sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy, and food that has been prepared for immediate consumption) and tangible personal property taxed at the 1% rate under the Retailers' Occupation Tax Act [35 ILCS 120], and 1% of the gross receipts from other taxable sales made in the course of that business. [70 ILCS 3615/4.03(e)] For guidance on the types of tangible personal property taxed at the 1% rate, see 86 Ill. Adm. Code 130.310 and 130.311.

2) In DuPage, Kane, Lake, McHenry, and Will counties, the tax rate shall be 0.75% of the gross receipts from all taxable sales made in the course of that business. The rate of tax imposed in DuPage, Kane, Lake, McHenry, and Will counties under this Section on sales of aviation fuel on or after December 1, 2019 shall, however, be 0.25% unless the Regional Transportation Authority in DuPage, Kane, Lake, McHenry, and Will counties has an "airport-related purpose" and the additional 0.50% of the 0.75% tax on aviation fuel is expended for airport-related purposes. If there is no airport-related purpose to which aviation fuel tax revenue is dedicated, then aviation fuel is excluded from the additional 0.50% of the 0.75% tax.

3) The Board and DuPage, Kane, Lake, McHenry, and Will counties must comply with the certification requirements for airport-related purposes under Section 2-22 of the Retailers' Occupation Tax Act [35 ILCS 120]. [70 ILCS 3615/4.03(e)] The certification requirements under this subsection (a)(3) apply to the non-

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grandfathered 0.50% of the 0.75% rate in effect in these counties. In order for the Board to receive its allocated 0.25% of the non-grandfathered 0.50%, it must certify that it has an "airport-related purpose". Likewise, for any of the named counties to receive its allocated 0.25% of the non-grandfathered 0.50%, it must separately certify that it also has an "airport -related purpose". For allocation details, see 70 ILCS 3615/4.03(n).

- 4) "Aviation fuel" means jet fuel and aviation gasoline. [35 ILCS 120/3] "Airport-related purposes" has the meaning ascribed in Section 6z-20.2 of the State Finance Act [30 ILCS 105]. This exclusion for aviation fuel under subsection (a)(2) only applies for so long as the revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133 are binding on the Authority. ~~The Board of Directors of the Regional Transportation Authority is authorized to impose a tax on persons engaged in the business of selling tangible personal property at retail within the metropolitan region as defined in Section 1.03 of the Regional Transportation Authority Act [70 ILCS 3615/1.03], at a rate of 1.25% of the gross receipts from sales, within the County of Cook, of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics, and 1% of the gross receipts from other taxable sales made in the course of such business within the County of Cook and 0.75% of the gross receipts from all taxable sales made in the course of such business within the Counties of DuPage, Kane, Lake, McHenry and Will. [70 ILCS 3615/4.03(e)]~~
- 5) The tax imposed under this Section and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the Department of Revenue. [70 ILCS 3615/4.03(e)]

- b) Passing on the Tax
The legal incidence of the Regional Transportation Authority Retailers' Occupation Tax is on the seller. Nevertheless, the General Assembly has authorized persons subject to this tax to reimburse themselves for their seller's tax liability by separately stating the tax as an additional charge.

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~~*which charge may be stated in combination, in a single amount, with State taxes that sellers are required to collect under the Use Tax Act [35 ILCS 105], under any bracket schedules the Department has prescribed. [70 ILCS 3615/4.03(e)] persons subject to this tax to reimburse themselves for their sellers' Regional Transportation Authority Retailers' Occupation Tax liability by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act [35 ILCS 105] and the additional charge authorized under the provisions of the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1], the Non-Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1.3], the Home Rule County Retailers' Occupation Tax Act [55 ILCS 5/5-1006], or any other local retailers' occupation tax administered by the Department, pursuant to such bracket schedules as the Department has prescribed. (See, 86 Ill. Adm. Code 150.Table A.)*~~

- c) Exclusion ~~from~~From "Gross Receipts"
Any amount added to the selling price of tangible personal property by the seller because of ~~the~~a Regional Transportation Authority Retailers' Occupation Tax, ~~or because of~~ the Retailers' Occupation Tax ~~[35 ILCS 120], the Use Tax, or because of the Home Rule Municipal Retailers' Occupation Tax, the Non-Home Rule Municipal Retailers' Occupation Tax, or the Home Rule County Retailers' Occupation Tax,~~ or any other local retailers' occupation tax administered by the Department, ~~or as Illinois Use Tax,~~ and collected from the purchaser, shall not be regarded as a part of the seller's gross receipts that are subject to ~~the~~such Regional Transportation Authority Retailers' Occupation Tax.

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

Section 320.105 Registration and Returns

- a) Separate Registration not Required
A retailer's registration under the ~~Illinois~~ Retailers' Occupation Tax Act ~~[35 ILCS 120]~~ is sufficient for the ~~purposes of Section 4.03(e) of the~~ Regional Transportation Authority ~~Act~~. No special registration for ~~the~~ Regional Transportation Authority Retailers' Occupation Tax is required.
- b) Requirements as to Returns

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- 1) Every retailer must file a return each month for each county ~~that~~ which has a Regional Transportation Authority Retailers' Occupation Tax in effect that month if the retailer is engaged in the business of selling tangible personal property at retail within that county: Provided that if the retailer is permitted to file ~~its~~his Illinois Retailers' Occupation Tax returns quarterly, ~~the taxpayer's~~his Regional Transportation Authority Retailers' Occupation Tax returns shall also be filed quarterly; and provided that if the retailer is permitted to file ~~its~~his Illinois Retailers' Occupation Tax returns annually, ~~the taxpayer's~~his Regional Transportation Authority Retailers' Occupation Tax returns shall also be filed annually. However, the information required for the Regional Transportation Authority Retailers' Occupation ~~Tax~~Taxes may be furnished on the ~~taxpayer's~~retailer's Illinois Retailers' Occupation Tax return form in the additional space that is provided on that form for reporting Regional Transportation Authority Retailers' Occupation Tax information.
- 2) If the retailer files ~~its~~his Illinois Retailers' Occupation Tax returns on the gross receipts basis, ~~the taxpayer~~he must also report Regional Transportation Authority Retailers' Occupation Tax information in ~~its~~his returns on the ~~gross receipts~~same basis. If the retailer files ~~its~~his Illinois Retailers' Occupation Tax return on the gross sales basis, ~~the taxpayer~~he must also report Regional Transportation Authority Retailers' Occupation Tax information in ~~its~~his returns on the gross sales basis.
- 3) Aviation fuel tax returns shall be filed in accordance with Section 3 of the Retailers' Occupation Tax Act and 86 Ill. Adm. Code 130.541, except that the retailer's discount is not allowed for taxes paid on aviation fuel that are subject to the revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133. [70 ILCS 3615/4.03(e)]~~Retailers required to make payment on the 7th, 15th, 22nd and last day of the month during which liability is incurred as provided in Section 3 of the Retailers' Occupation Tax Act, are not required to make such quarter-monthly payments of Regional Transportation Authority Retailers' Occupation Tax.~~

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

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