

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Regional Transportation Authority Service Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 330
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
330.101	Amendment
330.105	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 Service 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 transferring aviation fuel as incident to a sale of service 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 330.101 Nature of the Regional Transportation Authority Service Occupation Tax

a) Authority to Impose Tax

1) The Board of Directors of the Regional Transportation Authority is authorized to impose a tax upon all persons engaged in the business of making sales of service~~on persons engaged in the business of making sales of service~~ within the metropolitan region as defined in Section 1.03 of the Regional Transportation Authority Act [70 ILCS 3615/1.03]-, *who as an incident to making the sales of service, transfer tangible personal property within the metropolitan region, either in the form of tangible personal property or in the form of real estate as an incident to a sale of service. In Cook County, the tax rate shall be:*

A) *1.25% of the serviceman's cost price of food prepared for immediate consumption and transferred incident to a sale of service subject to the service occupation tax by an entity that is located in the metropolitan region and that is licensed under the Hospital Licensing Act, the Nursing Home Care Act, the Assisted Living and Shared Housing Act, the Specialized Mental Health Rehabilitation Act of 2013, the ID/DD Community Care Act, or the MC/DD Act, or the Child Care Act of 1969, or an entity that holds a permit issued pursuant to the Life Care Facilities Act that is located in the metropolitan region;*

B) *1.25% of the selling price 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 Service Occupation Tax Act [35 ILCS 115] (For guidance on the types of tangible personal property taxed at the 1% rate, see 86 Ill. Adm. Code 130.310 and 130.311.); and*

C) *1% of the selling price from other taxable sales of tangible personal property transferred. In DuPage, Kane, Lake,*

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McHenry, and Will counties, the rate shall be 0.75% of the selling price of all tangible personal property transferred. The rate of tax imposed in DuPage, Kane, Lake, McHenry, and Will counties under ~~this Section~~ 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.

D) 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(f)] The certification requirements under this subsection (a)(1)(D) apply to the non-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).

E) "Aviation fuel" means jet fuel and aviation gasoline. [35 ILCS 115/9] "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)(1)(C) 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.

2) The tax imposed ~~under this Section~~ pursuant to this subsection and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the ~~Illinois~~ Department of Revenue. [70 ILCS 3615/4.03(f)]

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b) Passing on the Tax

~~Service men are required to collect the Regional Transportation Authority Service Occupation Tax [70 ILCS 3615/4.03] (when applicable) from purchasers of service in conformance with the requirements of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140).—~~The legal incidence of the Regional Transportation Authority Service Occupation Tax is on the serviceman. Nevertheless, the General Assembly has authorized person subject to this tax to reimburse themselves for their serviceman's tax liability by separately stating the tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax that servicemen are authorized to collect under the Service Use Tax Act [35 ILCS 110], pursuant to bracket schedules as the Department has prescribed. [70 ILCS 3615/4.03(f)]persons subject to this tax to reimburse themselves for their serviceman's Regional Transportation Authority Service Occupation Tax liability by separately stating that tax as an additional charge that may be stated in combination, in a single amount, with State tax servicemen are authorized to collect under the Service Use Tax Act [35 ILCS 110], pursuant to such bracket schedules as the Department has prescribed. (See 86 Ill. Adm. Code 150.Table A.)

c) Exclusion from "Selling PriceCost Prices"

Any amount added by a serviceman to the selling price of tangible personal property ~~sold to a serviceman for retransfer~~ as an incident to service because of the Regional Transportation Authority Service Occupation Tax, ~~or because of the Illinois~~ Service Occupation Tax [~~35 ILCS 115~~], the Service Use Tax Actand reimbursing amounts collected pursuant to the ~~Home Rule County Service Occupation Tax Act [55 ILCS 5/5-1007], Home Rule Municipal Service Occupation Tax Act [65 ILCS 5/8-11-5], Non-Home Rule Municipal Service Occupation Tax Act [65 ILCS 5/8-11-1.4],~~ or any other local ~~service~~ occupation tax administered by the Department ~~and collected from the purchasing serviceman,~~ shall not be regarded as a part of the selling price that is~~prices that are~~ subject to the Regional Transportation Authority Service Occupation Tax.

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

Section 330.105 Registration and Returns

- a) A serviceman's registration under the Service Occupation Tax Act [35 ILCS 115] or the Retailers' Occupation Tax Act [35 ILCS 120](~~Ill. Rev.~~

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~~Stat. 1989, ch. 120, pars. 440 et seq.)~~ is sufficient for the purposes of Section 4.03(f) of the Regional Transportation Authority Act. No special registration for the Regional Transportation Authority Service Occupation Tax is required.

- b) The information required for the Regional Transportation Authority Service Occupation ~~Tax~~Taxes may be furnished on the taxpayer's Service Occupation Tax return form.
- c) Aviation fuel returns shall be filed in accordance with Section 9 of the Service 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(f)]

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