

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Non-Home Rule Municipal Service Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 694
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
694.101	Amendment
694.105	Amendment
694.130	Amendment
- 4) Statutory Authority: Implementing the Non-Home Rule Municipal Service Occupation Tax Act [65 ILCS 5/8-11-1.4] 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 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 Non-Home Rule Municipal 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, removing the requirement for referendum approval for imposing local taxes.
- 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

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rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Kimberly Rossini
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Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

REV.GCO@Illinois.gov
(217) 782-2844

- 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

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

Section 694.101 Nature of the Non-Home Rule Municipal Service Occupation Tax

a) Authority to Impose Tax

- 1) Pursuant to the Non-Home Rule Municipal Service Occupation Tax Act [65 ILCS 5/8-11-1.4], the corporate authorities of a non-home rule municipality may impose a tax upon all persons engaged, in such municipality, in the business of making sales of service for expenditure on public infrastructure or for property tax relief or both as defined in Section 8-11-1.2 if until August 5, 2024, approved by referendum, or if, on or after August 5, 2024, approved by ordinance or resolution as provided in Section 8-11-1.1, on the selling price of all tangible personal property transferred by such servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service.

~~On and after January 1, 2002, the corporate authorities of a non-home rule municipality are authorized by the Non-Home Rule Municipal Service Occupation Tax Act [65 ILCS 5/8-11-1.4] to impose the Non-Home Rule Municipal Service Occupation Tax on all persons engaged in the business of making sales of service in the municipality, if a proposition for the tax has been submitted to the electors of that municipality and approved by a majority of those voting on the question. If imposed, the tax shall be imposed at a rate of not more than, through December 31, 2005, ½%, and, beginning on January 1, 2006, 1%, of the selling price of all tangible personal property transferred by the servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service for expenditure on public infrastructure or property tax relief or both as defined in Section 8-11-1.2 of the Illinois Municipal Code. The tax may not be imposed on the sale of food for human consumption that 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 non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics. The tax imposed by the corporate authorities under the Non-Home Rule Municipal Service~~

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~~Occupation Tax Act and this Part, and all civil penalties that may be assessed as an incident of that Act and this Part, may be imposed only in ¼% increments and shall be collected and enforced by the Illinois Department of Revenue (Department).~~

- 2) *The tax imposed may not be more than 1% and may be imposed only in ¼% increments.*
- 3) *If the tax is approved by referendum on or after July 14, 2010, and until August 5, 2024, the corporate authorities of a non-home rule municipality may, until December 31, 2030, use the proceeds of the tax for expenditure on municipal operations, in addition to or in lieu of any expenditure on public infrastructure or for property tax relief. [65 ILCS 5/8-11-1.4] If the tax is approved by ordinance or resolution on or after August 5, 2024, the corporate authorities of a non-home rule municipality, may until July 1, 2030, use the proceeds of the tax for expenditure on municipal operations, in addition to or in lieu of any expenditure on public infrastructure or for property tax relief.*
- 4) *The tax may not be imposed on tangible personal property taxed at the 1% rate under the Service Occupation Tax Act [35 ILCS 115]. [65 ILCS 5/8-11-1.4] For guidance on the types of tangible personal property taxed at the 1% rate, see 86 Ill. Adm. Code 130.310 and 130.311.*
- 5) *Beginning December 1, 2019, this tax is not imposed on sales of aviation fuel unless the tax revenue is expended for airport-related purposes. If a municipality does not have an airport-related purpose to which it dedicates aviation fuel tax revenue, then aviation fuel is excluded from the tax. Each municipality must comply with the certification requirements for airport-related purposes under Section 2-22 of the Retailers' Occupation Tax Act. [65 ILCS 5/8-11-1.4] "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 only applies for so long the revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133 are binding on the municipality.*

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6) *The tax imposed by a municipality pursuant to this Section and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the Department of Revenue. [65 ILCS 5/8-11-1.4]*

b) Passing on the Tax

The legal incidence of the Non-Home Rule Municipal Service Occupation Tax is on the serviceman. Nevertheless, the General Assembly has authorized *persons subject to this tax to reimburse themselves for their serviceman's 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 servicemen are authorized to collect under the Service Use Tax Act [35 ILCS 110], pursuant to such bracket schedules the Department has prescribed. [65 ILCS 5/8-11-1.4]* ~~persons subject to any tax imposed pursuant to the authority granted in the Non-Home Rule Municipal Service Occupation Tax Act to reimburse themselves for their Non-Home Rule Municipal Service Occupation 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 which servicemen are required to collect under the Service Use Tax Act [35 ILCS 110], pursuant to the bracket schedules the Department has prescribed (Seese 86 Ill. Adm. Code 150.Table A).~~

c) Exclusion from "Selling Price"

Any amount added by a serviceman to the selling price of tangible personal property as an incident to service because of a Non-Home Rule Municipal Service Occupation Tax, ~~or because of the Illinois Service Occupation Tax [35 ILCS 115], the Service Illinois Use Tax [35 ILCS 105], or any other local occupation tax administered by the Department the Metro East Mass Transit District Service Occupation Tax [70 ILCS 3610/5.01], the Regional Transportation Authority Service Occupation Tax [70 ILCS 3615/4.03] or the County Water Commission Service Occupation Tax [70 ILCS 3720/4(c)],~~ shall not be regarded as a part of the selling price that is subject to *such* ~~the~~ Non-Home Rule Municipal Service Occupation Tax.

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

Section 694.105 Registration and Returns

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- a) A serviceman's registration under the ~~Illinois~~ Service Occupation Tax Act [35 ILCS 115] or the ~~Retailers' Illinois Retailer's~~ Occupation Tax Act [35 ILCS 120] is sufficient for the purposes of the Non-Home Rule Municipal Service Occupation Tax Act. No special registration for ~~at~~ the Non-Home Rule Municipal Service Occupation Tax is required.
- b) The information required for the Non-Home Rule Municipal Service Occupation Tax shall be furnished on the taxpayer's Service Occupation Tax return form.
- c) If applicable, aviation fuel tax 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 this revenue use requirement of 49 U.S.C. 47107(b) and 49 U.S.C. 47133. [65 ILCS 5/8-11-1.4] (See also 86 Ill. Adm. Code 694.101(a)(5)).

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

Section 694.130 Ordinance Filing Deadlines; When Tax Rate Change Applies

- a) *Beginning January 1, 2014, if an ordinance or resolution imposing the tax under this Section, discontinuing the tax under this Section, or effecting a change in the rate of tax under this Section is adopted, a certified copy of that ordinance or resolution, ~~together with a certification that the ordinance or resolution received referendum approval in the case of the imposition of or increase in the rate of the tax,~~ shall be filed with the Department of Revenue, either:*
 - 1) *on or before the first day of May, whereupon the Department shall proceed to administer and enforce the ordinance as of the first day of July next following the adoption and filing; or*
 - 2) *on or before the first day of October, whereupon the Department shall proceed to administer and enforce the ordinance as of the first day of January next following the adoption and filing. [65 ILCS 5/8-11-1.1(~~cb~~)]*
- b) Until August 5, 2024, the effective date of P.A. 103-0781, in the case of the imposition of or increase in the tax rate, the corporate authorities must

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also file a certification that the ordinance or resolution received referendum approval.

- c) For purposes of determining which tax rate applies, the date of the sale of service is deemed to be the date of the delivery, to the user, of the tangible personal property that the serviceman retransfers as an incident to service.

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