

Use Tax Act Chapter Index

Purpose

This chapter is meant to introduce the auditor to the Use Tax Act and rates charged by the Illinois Department of Revenue.

Disclaimer

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist Illinois Department of Revenue (“Department” or “IDOR”) auditors in the completion of their audits. The contents of this audit manual must not be relied upon for decision making or as a substitute for the official text of statutes, administrative rules, and case law. This manual does not carry the weight or effect of law and is only informational in nature. Auditors must conduct audits in accordance with the pertinent statutes, administrative rules, and case law.

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[35 ILCS 105/](#)
[86 Ill. Adm. Code 150](#)

In 1955, the General Assembly passed the Use Tax Act [35 ILCS 105]. Use Tax is a type of tax that applies to the privilege of using tangible personal property or services within a taxing jurisdiction. Use Tax is a tax that the purchaser owes on items that are for use in Illinois. If the seller does not collect at least 6.25 percent tax on the tangible personal property sold, then the purchaser must pay the difference to the Illinois Department of Revenue. The most common purchases on which the seller does not collect Illinois Use Tax are on sales made via the Internet, from a mail order catalog, or made when traveling outside Illinois. Purchasers must keep their receipts for these purchases in order to report and pay the appropriate amount of tax.

In 2010, the Illinois General Assembly passed a law making it easier for individuals to pay their Use Tax by putting a line on Form IL-1040 provided that the total amount due does not exceed \$600 for an individual or \$1,200 for joint filers. For total amounts due over \$600 (\$1,200 for married filing jointly taxpayers), see Section 4.6(b) of this Chapter. There are two different tax acts on how Use Tax is collected and on what types of sales or transactions Use Tax is due. The Use Tax Act ([35 ILCS 105/](#)) governs purchases from retailers. It also imposes a tax on a business that removes from inventory merchandise that it would have sold but instead uses in its business. The Service Use Tax Act ([35 ILCS 110/](#)) governs merchandise that is transferred as part of a sale of service. See *Chapter 5 on Service Use Tax*.

Use Tax is a privilege tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer, as "retailer" is defined in the Use Tax Act. Generally, the tax is designed to distribute the tax burden fairly among Illinois consumers and to ensure fair competition between Illinois and out-of-state businesses. Use Tax is due when a person purchases merchandise for use in Illinois from a retailer that did not collect Illinois Use Tax (e.g., purchases from catalogs, magazines, infomercials, the Internet, or other out-of-state businesses). This tax applies to "persons" which includes natural individuals, firms, corporations, partnerships, LLCs, trusts, and other similar entities.

The Use Tax Act complements the Retailers' Occupation Tax Act. That is why the Use Tax is restricted to cases in which the property is purchased at retail from a retailer. ([86 Ill. Adm. Code 150.125](#)) See *Chapter 3 for information on the Retailers' Occupation Tax Act*. Therefore, if the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act despite all elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act will not apply to the use of such tangible personal property in this State. ([86 Ill. Adm. Code 150.101](#))

In many cases, the retailer collects the Use Tax due by the purchaser at the time of purchase. If the retailer collects the full amount of Use Tax due by the purchaser, the purchaser does not need to pay the tax to the Department. If, however, the retailer does not collect the appropriate amount of Use Tax from the purchaser, then the purchaser is required to pay the uncollected tax amount to the Illinois Department of Revenue.

In Illinois, there are five main types of taxes imposed on the privilege of using tangible personal property:

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- 1) The Use Tax Act ([86 Ill. Adm. Code 150](#) and [35 ILCS 105/1 et seq.](#)) imposes a Use Tax on the privilege of using tangible personal property purchased from retailers. This chapter provides general information on this tax.
- 2) The Service Use Tax Act ([86 Ill. Adm. Code 160](#) and [35 ILCS 110/1 et seq.](#)) imposes a use tax on the privilege of using tangible personal property transferred as part of a sale of service. *Chapter 5, Service Occupation Tax* provides general information on that tax.
- 3) The Illinois Vehicle Code ([86 Ill. Adm. Code 151](#) and [625 ILCS 5/1-100 et seq.](#)) imposes a tax on the privilege of using a motor vehicle acquired by gift, transfer, or purchase if it is not taxable under the Use Tax Act. *Chapter 12, Motor Vehicle, Aircraft, and Watercraft Sales and Purchases* provides general information on that tax.
- 4) The Aircraft Use Tax Law ([86 Ill. Adm. Code 152](#) and [35 ILCS 157/10-1 et seq.](#)) imposes a tax on the privilege of using an aircraft acquired by gift, transfer, or purchase if it is not taxable under the Use Tax Act. *Chapter 12, Motor Vehicle, Aircraft, and Watercraft Sales and Purchases* provides general information on that tax.
- 5) The Watercraft Use Tax Law ([86 Ill. Adm. Code 153](#) and [35 ILCS 158/15-1 et seq.](#)) imposes a tax on the privilege of using a watercraft acquired by gift, transfer, or purchase if it is not taxable under the Use Tax Act. *Chapter 12, Motor Vehicle, Aircraft, and Watercraft Sales and Purchases* provides general information on that tax.

Illinois Use Tax rates are:

- 6.25% (high rate) of the purchase price for general merchandise (including, e.g., adult use cannabis, soft drinks, candy, and grooming and hygiene products) ([86 Ill. Adm. Code 130.310](#)) and automobiles and other items that must be titled (86 Ill. Adm. Code [151](#), [152](#), and [153](#)); or
- 1% (low rate) of the purchase price for qualifying food, drugs, and medical appliances. ([86 Ill. Adm. Code 130.311](#))

Typically, the 1% rate includes but is not limited to

- food consumed off the premises where 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)
- prescription and nonprescription medicines
- medical appliances that replace a malfunctioning part of the body (such as wheelchairs and hearing aids)
- Class III medical devices used for cancer treatment
- diabetic supplies
- medical cannabis including medical cannabis infused products (e.g., chewables)

Use Tax is due when a person

- purchases tangible personal property or goods from a retailer located outside of Illinois and brings those items into Illinois for use,
- has goods delivered to them from retailers located outside of Illinois,
- purchases an item for use or consumption in Illinois from an Illinois retailer which does not collect Use Tax at the time of sale, or
- originally purchases items for resale but later uses them.

Examples of situations in which a person may need to pay Use Tax directly to the Department include, but are not limited to,

- purchases from a catalog or an online retailer that does not charge Illinois tax
- Illinois retailers who originally purchased items tax-free for resale and later remove these items from their inventory for their own use should pay Use Tax on the Form ST-1 for the liability period during which the item was removed from inventory
- purchases where Retailers' Occupation Tax was not due under the Leveling the Playing Field for Retail Act [\[35 ILCS 185/\]](#)
- tangible personal property purchased while the taxpayer was
 - in **another state** from a retailer who charged no tax or tax at a lower rate than the Illinois rate, or
 - in a **foreign country**.

In addition, retailers who give tangible personal property away for premiums, advertising, prizes, etc., apart from their sale of other tangible personal property or service, are subject to Use Tax on these items. For example, a business that gives away calendars as part of general goodwill, a sales promotion, or an advertising campaign, apart from the sale of other tangible personal property or service, is subject to Use Tax on the cost of the calendars given away. Restaurants giving away meals for any promotion are subject to the low rate of tax on their cost of the food unless the food when purchased would have been subject to the high rate.

Tax does not apply to the cost of items given away or contingent upon the purchase of another item (i.e., buy one and get one free). The free item is deemed to be included in the purchase.

Also, if a manufacturer provides advertising items to retailers, then the manufacturer will be considered the end user of that promotional item and incur Use Tax on it. Conversely, a manufacturer that gives a retailer an item like a grocery store display to exclusively display the manufacturers products on, will be a considered a sale for resale. [86 Ill. Adm. Code 130.2160](#)

The following are credits and exemptions that are allowed under the Use Tax Act. The exemptions listed below are the most common. There are more exemptions available under the Use Tax Act located in 86 Ill. Adm. Code Part 150.

4.4.1 Credit for Tax Paid

A taxpayer is allowed to claim credit for tax first properly due and paid to another state on tangible personal property brought into this State. [35 ILCS 105/3-55(d)] Taxpayers are not allowed credit for any taxes paid to foreign governments; these purchases are subject to the full Illinois tax rate. In addition, the credit cannot exceed the amount of Illinois Use Tax due. This credit is allowed for tax only and cannot apply to any interest or penalty paid to another State.

For example, a person purchases a vehicle from a dealer in another state for \$10,000 and paid 5.00% tax, or \$500 to that state. When the taxpayer registers the vehicle and files Form RUT-25 Vehicle Use Tax Return with Illinois, a credit is allowed on the return for the \$500 in tax properly paid to the other state.

COURT CASES

- PHILCO CORP. V. DEPARTMENT OF REVENUE, 40 Ill. 2d 312 (1968).

4.4.2 Nonresident Exemptions

86 Ill. Adm. Code 150.315 describes two different exemptions available for nonresidents:

- 1) Nonresident **individuals** do not owe Use Tax on property both acquired and used for at least 3 months outside Illinois.
- 2) Businesses not operating in Illinois, do not owe Use Tax on property brought into Illinois for use in a new office, plant, or other business facility provided that
 - a. The property was acquired outside Illinois
 - b. The property was used in the operation of the business outside Illinois for at least 3 months
 - c. The property is not required to be titled or registered with the State of Illinois and its registration with the United States Government is not required to be filed with the State of Illinois.

4.4.3 Credit for Depreciation

Property taxable under the Use Tax Act which is acquired and used outside Illinois before being brought into Illinois will have the "selling price" on which the tax is calculated reduced by an amount that represents a reasonable allowance for depreciation. (86 Ill. Adm. Code 150.105)

The Department presumes that the average life expectancy of a vehicle is 50 months and that the rate of depreciation that is allowable is 2% of the selling price each month for such period of out-of-state use. A fraction of a month (including any period which is less than a month after the date of purchase) will be disregarded. (86 Ill. Adm. Code 150.110)

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4.4.4 Multi-State Taxation Exemptions

In an attempt to avoid taxation in multiple states, the following are some examples of when Use Tax does not apply to the use of tangible personal property in this State:

1. *Temporary Use by a Non-Resident*

Temporary use of tangible personal property that was acquired outside of Illinois by a nonresident individual and brought into this State by that individual for their own use while temporarily within this State or while passing through Illinois.

2. *Rolling Stock*

Use of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce.

3. *Tax Paid Out-of-State*

Use of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state with respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. The statute language (35 ILCS 105/3-55) clearly states that the tax paid in another state must have been paid prior to the entrance of that property into Illinois. However, the Department will allow credit for tax paid to another state even when that tax is paid to the other state after a tax was already paid in Illinois, so long as the tax was properly due in the other state sometime prior to the tax in Illinois becoming due. In other words, if a use occurred outside Illinois prior to coming into Illinois and taxes were paid to that other state in an audit after tax paid to Illinois, the taxpayer would be entitled to an Illinois tax credit.

If property is found which was first used in Illinois and then taken to another state, the auditor will not give credit for tax paid to the other state even if that tax was paid prior to Illinois tax being paid. The taxpayer would have to file a claim for refund with the other state.

If a lessor leases tangible personal property outside Illinois and pays tax on the rental receipts, the tax is considered as being properly paid to that other state. The Department would give the lessor credit for this leasing tax against the Use Tax due when the lessor brings that tangible personal property into Illinois, even if the leasing tax is passed through to the lessee.

4. *Temporary Storage*

Temporary storage of tangible personal property acquired outside this State, subsequent to being brought into this State and stored here temporarily, is used solely outside this State. ([86 Ill. Adm. Code 150.310](#)) If the temporary storage exemption is disallowed because the property came back into Illinois, the auditor should base the computation of the Use Tax liability of the property on the original cost reduced by an amount which represents a reasonable allowance for depreciation for the period of such prior out-of-State use. The statutory period would begin to run on the date the item is taken out of storage. The fact that the tangible personal property may be altered by converting, fabricating, manufacturing, printing, processing, or shaping in this State, or physically attached to or incorporated into other tangible personal property in this State, does not eliminate the exemption, if the property is used solely outside this State.

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Temporary storage cannot be extended to transactions where the seller would incur Illinois Retailers' or Service Occupation Tax. The exemption does not exist as far as Retailers' or Service Occupation Tax is concerned.

A registered combination retailer and construction contractor would be eligible for the exemption on tangible personal property that is either acquired in this State or out of this State, which will be ultimately incorporated into real estate out of this State by the retailer-construction contractor.

The Legal Services Office has advised that the temporary storage exemption would be allowed for an unregistered, de minimus Illinois serviceman who is subject to tax under the ROT or UT Acts. Since the UT Act has a provision for temporary storage, and if the serviceman meets the criteria for temporary storage, they are entitled to claim it. Legal advised that the statutes and regulations cannot be interpreted to mean that the purchaser of the tangible personal property (TPP) must also use the TPP outside the state, but rather only the TPP must be used outside the state.

EXAMPLE:

If linens that are being used for rental are purchased outside of this State, the purchaser will incur Use tax on those linens when they are brought into this State unless the purchaser can document a valid exemption. The subsequent return of the linens to this State for laundering under such rental contracts also does not fall within the temporary storage exemption provided under 86 Ill. Adm. Code 150.310(a)(4). If the linens have been purchased out-of-State, the taxpayer will owe Illinois Use Tax on the cost price of the linens when they are brought into the State for laundering. Depreciation and a credit for taxes properly due and paid to another state may be claimed in determining the amount of Illinois Use Tax incurred when the linens are brought into this State. See 86 Ill. Adm. Code sections 150.105(a) and 150.310(a)(3).

4.4.5 Occasional Sale Exemption

A purchaser of tangible personal property from a seller who qualifies as an isolated or occasional seller who does not incur Retailers' Occupation Tax liability (86 Ill. Adm. Code 130.110) is not liable to pay Use Tax when using that property in Illinois. (86 Ill. Adm. Code 150.101).

4.4.6 Interim Use Exclusion

An interim use exclusion is available to retailers when tangible personal property purchased for resale is put to use by the retailer prior to its ultimate sale at retail. Whether the property will qualify for the interim use exclusion depends, among other things, on how the property is carried on the retailer's books and whether the property is deducted or depreciated under certain provisions of the Internal Revenue Code. ([86 Ill. Adm. Code 150.306\(a\)](#))

In order to qualify for the interim use exclusion,

- A. The item must be listed in the retailer's records as part of inventory, and not depreciated by the retailer under IRS section 167, or otherwise shown by the retailer's records as available for sale during the interim use period.

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- B. The period of use or lease of the item by the retailer must be less than 24 months, and of the same general type of property sold by the retailer.
- C. The item also must be ultimately sold by the retailer.

If the interim use item is being leased then the annual total of lease revenues received by the retailer must be less than the annual total of the sales revenues received from the property. Additionally, if the item is leased under a lease agreement for more than 30 days, the lease agreement must contain a provision that, if the retailer locates a buyer for the item, the lease may be terminated within 7 days or the lessee may receive comparable property substituted by the retailer for the item within 7 days.

For example, vehicles that are purchased for resale by an automobile dealership but are used in the interim as loaner cars may, if the requirements of the rule are met, qualify for the interim use exclusion under 86 Ill. Adm. Code 150.306. Subdivision (a)(1)(A) of the rule sets forth conditions under which the interim use exclusion may not be claimed.

The interim use exclusion cannot be claimed for any item

- i) titled to any party other than the retailer, except that title may be held by the retailer, the manufacturer of the item, or a captive finance company;
- ii) for which the retailer elects to claim an Internal Revenue Code §179 deduction on the item as a depreciable business asset; or
- iii) leased by the retailer, if the aggregate gross receipts received from all leasing of the item by the retailer exceeds the retailer's selling price of the item.

Although the regulation provides that to qualify for interim use the period of use or lease of the item by the retailer must be less than 24 months, it does not specify when the 24-month period begins. The Department's position is that the 24-month interim lease period would begin from the original purchase date and include any period of time the item was leased out of state by the retailer prior to being brought into Illinois. Thus, if the item was leased out-of-state for 18 months, the maximum period of time the item could be leased in Illinois would be less than 6 months.

4.4.7 Demonstration Use Exclusion

A demonstration use exclusion is available to retailers who lease tangible personal property to prospective buyers for the purpose of allowing them to ascertain whether the property suits their particular needs and for the purpose of trying to induce them to buy the property. This illustrates a use for demonstration purposes. The demonstration use exclusion does not apply to tangible personal property that is consumed or destroyed in order to promote or demonstrate the product available for sale or is given away to a prospective customer as an inducement to make future purchases. For example, a retail grocer offering free samples of pizza to customers in his or her store in order to promote the sale of a new frozen pizza would not be able to claim a demonstration use exclusion on his or her purchase price of the pizza consumed in the promotion. ([86 Ill. Adm. Code 150.306\(b\)](#))

The demonstration use exclusion can also apply to watercraft and aircraft used by the retailer; however, the period of use may not exceed 18 months otherwise the retailer would be responsible to pay the Use Tax on the original cost price of the item and would not be able to claim credit for tax collected when the item is subsequently sold by the retailer. For example, if the retail owner claimed the demonstration use exclusion and used the aircraft for demonstration purposes for 20 months, the retailer would be

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required to pay Use Tax on the original cost of the aircraft. If the retailer sold the same aircraft a month later, no credit would be allowed for the Use Tax that was paid to the Department. ([86 Ill. Adm. Code 150.306\(c\)](#))

For purposes of Use Tax, exempt organizations, such as units of government, churches, charities, schools, etc. who have a valid exemption identification number (“E” number) issued from the Illinois Department of Revenue, are allowed to purchase items of tangible personal property in support of their organizational purposes tax-free. ([86 Ill. Adm. Code 150.710](#))

4.6.1 IL-1040 – Individual Income Tax Return

The Form IL-1040 Individual Income Tax Return is used by taxpayers who have earned income in or as residents of Illinois. Since 2010, the Form IL-1040 Individual Income Tax Return has allowed Illinois taxpayers to self-assess their Use Tax liability and pay it directly to the Department for any Use Tax liability which does not exceed \$600 (\$1,200 for married filing jointly taxpayers). The Use Tax paid on this form is generally from purchases made through the Internet, from a mail order catalog, or when traveling outside of Illinois. The Form IL-1040 return is due on April 15th for the prior year's income.

Illinois taxpayers must pay Use Tax directly to the Department if taxable items are brought into Illinois, used, or consumed in Illinois, and the seller either did not collect any tax, or collected less than the Illinois Use Tax rate of 6.25% for general merchandise or 1% for food, medicine, and medical appliances. For example, if a taxpayer purchased jewelry from an Internet retailer not registered with Illinois and that retailer did not collect any tax, the Illinois taxpayer would owe 6.25% Use Tax on the purchase price. Use Tax already reported and paid on the Form ST-44 Illinois Use Tax Return should not be included on the Form IL-1040.

4.6.2 ST-44 Illinois Use Tax Return

The Form [ST-44 Illinois Use Tax Return](#) is used by Illinois taxpayers to report and pay their Use Tax liability on taxable retail purchases (excluding cigarettes; motor vehicles, watercraft, aircraft, or trailers purchased from an out-of-state dealer; and purchases made by a registered retailer or serviceperson). This form is generally used to report and pay Use Tax liability on purchases over the Internet, out-of-state, overseas, etc. If the total Use Tax liability is \$600 or less (\$1,200 for married filing jointly taxpayers) then the taxpayer may file and pay the liability for the entire calendar year on or before April 15th of the following year. If the total Use Tax liability is over \$600 (\$1,200 for married filing jointly taxpayers) then the taxpayer is required to file and pay the Use Tax liability by the last day of the month following the month the total Use Tax liability exceeds either \$600 or \$1,200.

Example 1: If an Illinois taxpayer purchased artwork for \$58,670 on May 13, 2020, from a seller located in Italy, the Form ST-44 Illinois Use Tax Return would be due on June 30, 2020. Regardless of any taxes paid to a foreign government, the Use Tax liability would be reported at 6.25% totaling \$3,667 because these purchases are subject to the full Illinois tax rate.

Example 2: An Illinois taxpayer purchased artwork for \$58,670 on May 13, 2020, from an Arizona retailer. The Arizona retailer properly collected Arizona tax at 5.6%. The Illinois resident would owe Illinois use tax when the item is brought into Illinois ($\$58,670 \times 6.25\% = \$3,667$ Illinois tax). In addition, the taxpayer may take credit for the taxes properly paid to Arizona of \$3,286 ($\$58,670 \times 5.6\% = \$3,286$ tax paid to Arizona). The remaining Illinois Use Tax liability due would total \$381 ($\$3,286$ (tax paid to Arizona) - $\$3,667$ (Illinois use tax due) = \$381). Since the remaining tax due does not exceed \$600, an ST-44 is not required. However, if with such purchase the individual taxpayer's total Use Tax liability exceeded \$600, an ST-44 would be due by June 30.

Example 3: An Illinois taxpayer purchased artwork for \$58,670 on May 13, 2020, from an Indiana retailer. The Indiana retailer properly collected Indiana tax at 7%. Since the taxpayer paid tax to Indiana at 7%, no Illinois Use Tax return is due. The taxpayer is allowed to claim credit for tax properly paid to another state and only needs to file and pay Illinois Use Tax if the tax paid is less than the Illinois Use Tax rate.

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4.6.3 RC-44 Cigarette Use Tax Return

Similar to the Form ST-44 Illinois Use Tax Return, the Form RC-44 Cigarette Use Tax Return is filed by Illinois residents who purchase cigarettes from a seller not licensed by Illinois. This return is due no later than 30 days after the taxpayer purchases or acquires cigarettes for use in Illinois.

4.6.4 ST-1 – Sales and Use Tax and E911 Surcharge Return

The Form ST-1 Sales and Use Tax and E911 Surcharge Return is filed by registered taxpayers who make retail sales of general merchandise, qualifying foods, medicine, and medical appliances, and/or prepaid wireless telecommunications service. Taxpayers are able to report their Use Tax collection liability on retail sales from locations outside of Illinois on lines 6a and 7a, or lines 12a or 13a on purchases of general merchandise or qualifying food, medicine, and medical appliances where tax was not paid during purchase. This return and payment are due on or before the 20th day of the month following the end of the taxpayer's reporting period.

4.6.5 Vehicle Use Tax Returns (RUT-25, RUT-25-LSE, RUT-50, RUT-75)

Use Tax is also remitted on sales or purchases of tangible personal property which is titled or registered in Illinois (e.g., vehicles, aircraft, watercraft, ATVs, etc.). *See Sales Tax Audit Manual Chapter 12.*

Prior to October 1, 2018, retailers were required to have a physical presence in Illinois before they were required to collect Use Tax. The types of activities constituting a physical presence, as limited by the series of court cases described in this subsection (a)(1) (i.e., *Scripto v. Carson*, 362 U.S. 207 (1960); *National Bellas Hess v. Department of Revenue of the State of Illinois*, 386 U.S. 753 (1967); *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992), and *Brown's Furniture v. Wagner*, 171 Ill. 2d 410 (1996)), are found in Section 2 of the Use Tax Act's definition of a "retailer maintaining a place of business in this State". [\[See 35 ILCS 105/2\]](#) [\(86 Ill. Adm. Code 150.803\(a\)\)](#)

See Sales Tax Audit Manual Chapter 7 for information on situations where registration will be required without a physical presence after October 1, 2018.

Remote retailers who do not meet or exceed either the tax remittance threshold or who are no longer required to remit State and local Retailers', may voluntarily collect and remit Use Tax as a courtesy to their Illinois purchasers, since those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. ([Informational Bulletin FY 2022-04](#)) Additionally, if remote retailers are voluntarily collecting and remitting Use Tax to the Department, the Department does not impose penalty or interest on the taxpayer.

Tax collected is allocated to both the State and local governments. Local governments receive 20% of the State's 6.25% use tax rate and 100% of the State's 1% use tax rate on food, medicine, and medical appliances. [\[35 ILCS 105/9\]](#)