

Sales Tax Topical Section Chapter Index

Purpose

This chapter provides a quick and easy reference source regarding many specific topics that are encountered when performing sales tax audits. It is important to realize that certain subject matter is treated in summary form within this chapter.

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.

Citations to statutes, regulations, or case law are included to assist the auditors in locating the relevant legal authority as a basis for conducting audits. The manual may be amended at any time without notice by the Department. Nothing in this manual shall contradict the official text of statutes, administrative rules, or case law. In case of any unintended inconsistency, the official text of statutes, administrative rules, and case law controls and must be followed. The Department’s Director, General Counsel, and Legal Services Bureau do not sanction any deviation by the Department staff from the official text of statutes, administrative rules, or case law in the performance of job functions.

This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

11.1 Agriculture

11.2 Alteration Charges

11.3 Auctioneers and Agents

11.4 Bad Checks

11.5 Cash Discounts

11.6 Cash Refunds

11.7 Chemicals

11.8 Computer Software

11.9 Coupons

11.10 Credit Card Fees

11.11 Data Centers

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

- 11.12 Demonstration Use/ Interim Use
- 11.13 Display Racks
- 11.14 Enterprise Zones/High Impact Businesses/Development Zones
- 11.15 Erroneous Refunds
- 11.16 Exempt Organizations – Purchases
- 11.17 Exempt Organizations – Sales
- 11.18 Finance Charges
- 11.19 Florists
- 11.20 Funeral Directors
- 11.21 Gases, other than Natural Gas or Motor Fuels
- 11.22 Gifts
- 11.23 Gift Certificates
- 11.24 Gold and Silver Coins
- 11.25 Gratuities/ Mandatory Charges
- 11.26 Identity Theft
- 11.27 Interstate Commerce
- 11.28 Labels
- 11.29 Mail Order, Online, and other Out-of-State Retailers
- 11.30 Maintenance Agreements
- 11.31 Membership Fees
- 11.32 Newspapers, Magazines, and Publications
- 11.33 Occasional Sales
- 11.34 Packing Material, Pallets, and Paper Products
- 11.35 Pets for Sale
- 11.36 Pollution Control
- 11.37 Prepayments
- 11.38 Railroads
- 11.39 Rebates

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

11.40 Repair Parts

11.41 Repossessions

11.42 Resellers

11.43 Returns and Allowance

11.44 Sales for Resale

11.45 Seminars

11.46 Shipping/Freight/Delivery Charges

11.47 Special Order

11.48 Tax Relief Exemption Certificates/ Equipment Exemption Certificate

11.49 Television Satellite Dishes

11.50 Traded-In Property

11.51 Vending Machine Sales

11.52 Voluntary Disclosure

11.53 Warranties

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory Reference

[35 ILCS 105/3-5\(7\), \(11\) and 105/3-35](#) – Use Tax Act – Exemptions & Production Agriculture
[35 ILCS 110/3-5\(6\) and 110/3-35](#) – Service Use Act – Exemptions & Production Agriculture
[35 ILCS 115/3-5\(7\) and 115/3-35](#) – Service Occupation Tax Act – Exemptions & Production Agriculture
[35 ILCS 120/2-5\(1\)-\(2\) and 120/2-35](#) – Retailers’ Occupation Tax Act – Exemptions & Production Agriculture

Regulations

- [86 Ill. Adm. Code 130.120](#) – Nontaxable Transactions
- [86 Ill. Adm. Code 130.305](#) – Farm Machinery Equipment Exemption
- [86 Ill. Adm. Code 130.1905](#) – Agricultural Producers
- [86 Ill. Adm. Code 130.1955](#) – Farm Chemicals
- [86 Ill. Adm. Code 130.1970](#) – Hatcheries
- [86 Ill. Adm. Code 130.2100](#) – Sellers of Feeds and Breeding Stock
- [86 Ill. Adm. Code 130.2110](#) – Sellers of Seeds and Fertilizer
- [86 Ill. Adm. Code 130.2165](#) – Veterinarians
- [86 Ill. Adm. Code 140.125\(m\)](#) – Examples of Nontaxability
- [86 Ill. Adm. Code 140.140\(s\)](#) – Other Examples of Taxable Transactions

Production Agriculture

“Production agriculture” is defined under the Retailers’ Occupation Tax Act as “the raising of or propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. “Production agriculture” also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture.” 35 ILCS 120/2-35.

“**Animal husbandry**”, also called animal science, stockbreeding or simple husbandry, is the agricultural practice of breeding and raising livestock. See the definition from [Merriam-Webster](#).

Floriculture means the business of producing flowers, Christmas trees or other decorative trees, plants, shrubs, sod, including such operations as greenhouses but not the sale of plants by retail outlets which do not grow plant stock. 86 Ill. Adm. Code 130.305(d).

“**Aquaculture**” is the farming of freshwater and saltwater organisms including mollusks, crustaceans, and aquatic plants. Unlike fishing, aquaculture, also known as aqua farming, implies the cultivation of aquatic populations under controlled conditions. Mariculture refers to aquaculture practiced in marine environments. Particular kinds of aquaculture include algaculture (the production of kelp/seaweed and other algae), fish farming, shrimp farming, oyster farming, and the growing of cultured pearls. Particular methods include aquaponics, which integrates fish farming and plant farming. See [7 U.S. Code § 3103](#) and [17 Ill. Adm. Code 870.5](#).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

“**Horticulture**” means the business of producing vegetables, vegetable plants, nursery stock, including the operation of nurseries and orchards, but not the sale of plants by retail outlets which do not grow the plant stock. [86 Ill. Adm. Code 130.305\(c\)](#).

“**Viticulture**” means the business of growing grapes or operating vineyards. 86 Ill. Adm. Code 130.305(e).

Production agriculture, with respect to crops, includes mapping fields, applying farm chemicals, as well as activities necessary in tilling the soil, planning, irrigating, cultivating, applying herbicide, insecticide, or fertilizer, as well as harvesting or drying of crops. Activities such as the clearing of land, mowing of fence rows or ditches, creation of ponds or drainage facilities, scouting crops and tile mapping are not included, nor are the operations involved in the storing or transporting of crops and produce. [ST 16-0060-GIL](#); see also 86 Ill. Adm. Code 130.305(f).

Corrugated plastic pipe and other water management products used in production agriculture for drainage are not considered equipment under the farm machinery and equipment exemption. [ST 21-0014-GIL](#).

Farm Machinery and Equipment (“FM&E”)

Purchases of qualifying farm machinery and equipment are exempt from occupation and use taxes. **Generally, this exemption applies to:**

- new and used FM&E;
- FM&E certified by the purchaser to be used primarily for production agriculture or State or federal agricultural programs;
- including FM&E manufactured on special order;
- including FM&E purchased for lease; and
- including individual replacement parts for the FM&E.

35 ILCS 120/2-5(2); 35 ILCS 105/3-5(10); 86 Ill. Adm. Code 130.305.

EXCLUDED from this exemption are motor vehicles required to be registered under the Illinois Vehicle Code. 35 ILCS 120/2-5(2).

Registered vehicles other than motor vehicles may qualify for the exemption if they are used primarily in production agriculture rather than in transportation or other nonexempt activities.

Examples include:

- Implements of husbandry used primarily to supply and apply farm chemicals, 86 Ill. Adm. Code 130.305(h).
- Trailers and nurse tanks used primarily to supply spreaders in the fields, 86 Ill. Adm. Code 130.305(h).
- Aircraft used primarily to apply farm chemicals, 86 Ill. Adm. Code 130.305(h).
- All-terrain vehicles (ATVs) may qualify if they are used primarily in production agriculture activities such as pulling sprayers while they apply chemicals to fields or collecting and mapping soil samples, 86 Ill. Adm. Code 130.305(h).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

- Combine header carts/trailers used to transport combine grain-heads.

Machinery which qualifies for the exemption **may include options or accessories which are not farm equipment.** Except for precision farming equipment, these items **must be installed and sold both as an integral part of the qualifying machine and in a single transaction.** 86 Ill. Adm. Code 130.305(j). Agricultural chemical tender tanks and dry boxes shall include units sold separately from a motor vehicle required to be licensed and units sold mounted on a motor vehicle required to be licensed, if the selling price of the tender is separately stated. 35 ILCS 120/2-5(2).

Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. 86 Ill. Adm. Code 130.305(i).

Examples of exempt farm machinery include:

- Implement of husbandry per Section 1-130 of the Illinois Vehicle Code, 35 ILCS 120/2-5(2).
- Chemical and fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code, 35 ILCS 120/2-5(2).
- Tractors, combines, balers, irrigation equipment, cattle and poultry feeders, 86 Ill. Adm. Code 130.305(i).
- Rotary mower if primarily used to mow crops or ground cover grown on acreage in State or Federal agricultural programs, 86 Ill. Adm. Code 130.305(i).
- Augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials), automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), and water pumps serving production areas, specialty heating or lighting equipment specifically required by the production process, i.e., ultraviolet lights, and special heaters for incubation, 86 Ill. Adm. Code 130.305(i).

Examples of non-exempt farm machinery include:

- Improvements to real estate such as fences, barns, roads, grain bins, silos, and confinement buildings, 86 Ill. Adm. Code 130.305(i).
- A rotary mower used to mow ditches or fence rows, 86 Ill. Adm. Code 130.305(i).
- General heating, lighting and ventilation equipment, 86 Ill. Adm. Code 130.305(i).

Examples of exempt equipment include:

- Farrowing crates, gestation stalls, poultry cages, portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery, 86 Ill. Adm. Code 130.305(k).
- Horticultural polyhouses or hoop houses used for propagating, growing, or overwintering plants, 35 ILCS 120/2-5(2).
- Wheeled, wire-mesh tables and wheeled, non-motorized, multiple-tray carts used primarily in floricultural or horticultural growing operations, such as those described in *Mid-American Growers v. Department of Revenue* (143 Ill.App.3d 600), 86 Ill. Adm. Code 130.305(k).
- Precision farming equipment installed or to be installed on FM&E, including, but not limited to, soil testing sensors, yield monitors, computers, monitors, software, global positioning and

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

mapping systems, guidance systems, modems, and data communications equipment. It shall also include necessary mounting hardware, wiring and antennas, 86 Ill. Adm. Code 130.305(k).

- Computers, sensors, software, and related equipment used primarily in the computer-assisted operation of production agriculture facilities, equipment, and activities such as, but not limited to, the collection, monitoring, and correlation of animal and crop data for the purpose of formulating animal diets and agricultural chemicals, 35 ILCS 120/2-5(2).
- Use of computers to record and process crop and livestock management information gathered through the use of these type of sensors or monitors, 86 Ill. Adm. Code 130.305(k).
- Use of computers to record and process land information about soil types and slope and pesticide, herbicide and fertilizer application, 86 Ill. Adm. Code 130.305(k).
- Hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks and shovels so long as they are used in production agriculture, 86 Ill. Adm. Code 130.305(k).

Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. 86 Ill. Adm. Code 130.305(k).

Examples of non-exempt equipment include:

- Ordinary building materials to be permanently affixed to real estate, 86 Ill. Adm. Code 130.305(k).
- Use of computers to record and process other farm related information such as accounts payable, correspondence, or marketing, 86 Ill. Adm. Code 130.305(k).
- Equipment used in farm management such as radios and office equipment, in repair and servicing of equipment, in security and fire protection, is not farm equipment; nor does the exemption apply to equipment used in farm maintenance, administration, selling, marketing or the exhibition of products, 86 Ill. Adm. Code 130.305(k).
- Hand tools used in maintenance activities, such as wrenches, pliers, wire stretchers, grease guns, hammers and screwdrivers, are not used in production and do not qualify for the exemption, 86 Ill. Adm. Code 130.305(k).
- Supplies, such as baling wire, baling twine, work gloves, boots, overshoes and chemicals for effluent systems are not exempt, 86 Ill. Adm. Code 130.305(k).

Refer to Sales Tax Manual Chapter 12 Motor Vehicle Dealers, Aircraft Dealers and Watercraft Dealers.

Farm Chemicals

Qualifying farm chemicals used in production agriculture are exempt from occupation and use tax under the Farm Machinery and Equipment Exemption. 35 ILCS 120/2-5(1); 35 ILCS 105/3-5(7); 86 Ill. Adm. Code 130.1955. Farm chemicals include any chemical product used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold. Examples of exempted items are stock sprays, disinfectants and the like, stock tonics, serums, vaccines, poultry remedies and other medicinal preparations and conditioners, water purifying products, insecticides, weed killers and the like. 86 Ill. Adm. Code 130.1955(b).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Chemicals used for general farm maintenance such as disinfectants to clean milking machines and pipelines do not qualify for the farm chemical exemption. However, disinfectants applied directly or indirectly on animals are exempt from tax. Chemicals used to reduce the hardness of water and to increase water penetration into the soil are exempt. Shading chemicals sprayed on greenhouse windows qualify as exempt farm chemicals because they are used in connection with raising of crops. The shading chemical is used to regulate the amount of sunlight exposure on the plants. *Mid-American Growers, Inc. v. Dep't of Rev.*, 143 Ill. App. 3d 600, 606 (App. Ct., 3rd Dist. 1986).

The retail sale of nematodes qualifies for the farm chemical exemption if the nematodes are used in production agriculture. Nematodes are tiny worms which kill insects and fleas when applied to agricultural fields, lawns, etc. However, the production of nematodes does not qualify for the Farm Chemical exemption, Manufacturing and Assembly Machinery and Equipment Exemption (MM&E), or FM&E exemptions.

Sales of sprays and farm chemicals transferred as an incident to the service by persons engaged in the service occupation of spraying crops or applying farm chemicals for others are exempt from the Service Occupation Tax on. 86 Ill. Adm. Code 140.125(m).

Transfers of pesticides and lawn care chemicals incident to service provided under contracts to maintain lawns, trees, shrubs, and other plants are subject to the Service Occupation Tax. 86 Ill. Adm. Code 140.140(s).

Feed

“Feed” includes salt, grains, tankage, oyster shells, mineral supplements, vitamins, limestone, and other generally recognized animal feeds. 86 Ill. Adm. Code 130.2100(a).

Taxable

The sale of feed is taxable when the feed is used in feeding horses, livestock or poultry that are used, employed or consumed, and the products, if any, of which are used, employed or consumed, for purposes other than sale at market. 86 Ill. Adm. Code 130.2100(b).

The sale of straw or other materials used for bedding or other non-feed purposes, is subject to tax as a consumable supply.

Not Taxable

The sale of feed is not taxable when the feed is purchased to feed livestock or poultry, or to produce dairy products or eggs for sale at market. Such sales of feeds are deemed to be sales, for purposes of resale, of the property which, “as an ingredient or constituent goes into and forms a part of tangible personal property subsequently the subject of a ‘sale at retail’”. 86 Ill. Adm. Code 130.2100.

Seed

Taxable

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

The sale of seed is taxable when the seed is purchased to use the seeds in raising lawn grass, vegetables, crops or other plants which the purchaser will use or consume and not resell. 86 Ill. Adm. Code 130.2110(a).

Not Taxable

The sale of seed is not taxable when the seed is purchased to raise vegetables, crops or other plants for sale. Such sales of seeds are deemed to be sales, for purposes of resale. 86 Ill. Adm. Code 130.2110(b).

Fertilizer

“Fertilizer” means a commodity which contains one or more substances to increase the available plant food content of the soil and which becomes a part of the products grown therein. 86 Ill. Adm. Code 130.2110.

Taxable

The sale of fertilizer is subject to retailers’ occupation tax when the fertilizer is purchased for use or consumption by the purchaser on lawns, home or private gardens, etc. 86 Ill. Adm. Code 130.2110(d). Transfers of fertilizers incident to service provided under contracts to maintain lawns, trees, shrubs, and other plants are subject to the service occupation tax. 86 Ill. Adm. Code 140.140(s).

Not Taxable

The sale of fertilizer is not taxable when the fertilizer is purchased to produce agricultural products for sale. Such sales of fertilizer are deemed to be sales for purposes of resale since the fertilizer becomes a part of products which are subsequently sold. 86 Ill. Adm. Code 130.2110.

Artificial Insemination

The sale of semen used for artificial insemination of livestock for direct agricultural production is exempt from tax. 86 Ill. Adm. Code 130.2100(d).

Hatcheries

Sales of baby chicks for consumption by the purchaser are subject to retailers’ occupation tax and use tax. 86 Ill. Adm. Code 130.1970(a)(1). Proceeds from the sale of baby chicks purchased for resale or to produce eggs for sale are exempt. 86 Ill. Adm. Code 130.1970(b)(1). Persons who hatch baby chicks for others from eggs belonging to those other persons are rendering a service and are not subject to Retailers’ Occupation Tax. 86 Ill. Adm. Code 130.1970(b)(2).

Sales of poultry-raising equipment such as brooders, water troughs, etc., are subject to retailers’ occupation tax and use tax unless it qualifies for the Farm Machinery and Equipment exemption. 86 Ill. Adm. Code 130.1970(a)(2).

Grain Bins

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

Grain bins are generally improvements to real estate and as such do not qualify for the farm machinery and equipment exemption. 86 Ill. Adm. Code 130.305(i). The taxability of grain bins is similar to the taxability of building materials. If the purchase of the grain bins is made at retail by the farmer with no installation contract at time of purchase, tax is due on the selling price. If the seller will also construct the grain bins, the seller is acting as a construction contractor. In this case, tax is due on the cost of the bins to the seller/contractor. The seller may be reimbursed by stating that the separately stated tax is a reimbursement of tax or by including the tax as a part of a lump sum billing.

86 Ill. Adm. Code 130.305(i) states that improvements to real estate such as fences, barns, roads, grain bins, silos, and confinement buildings do not qualify for the farm exemption. Certain machines qualify for the exemption if purchased by farmers directly from retailers, even though they are installed as realty improvements. Such machines include but are not limited to augers and grain dryers (heaters and fans). Therefore, building materials such as concrete and steel panels that are converted into real estate such as grain bins do not qualify for the exemption. However, certain equipment used in conjunction with grain bins such as dryers, blowers, and augers can qualify for the exemption if used primarily in production agriculture. Components of a grain drying system attached to the grain bin such as temperature monitors, grain spreaders and grain level indicators would be exempt if sold for use in production agriculture. By contrast, for example, roof vents would be taxable as a common building material. Additionally, supplies are not exempt, 86 Ill. Adm. Code 130.305(k).

The definition of production agriculture as set out in the Department's regulation at 86 Ill. Adm. Code 130.305(b) and (f) with respect to crops covers production activities that end with the harvesting and drying of crops on the producer's farm. Therefore, sales of grain bin drying system components to private or cooperative grain elevators or other businesses such as food processors would not be eligible for the farm machinery and equipment exemption. Similarly, grain cleaners would be exempt if used by a producer on his farm in production agriculture, but if used by an off-farm business after the production of the crop, the exemption would not apply.

Regulations

- [86 Ill. Adm. Code 130.450](#) – Installation, Alteration and Special Service Charges

Discussion

Charges made for altering or installing tangible personal property in conjunction with the sale of the property are taxable if the alteration charge is included in the price charged for the property. This is true even when the charge for alteration is billed as a separate item on the invoice except when the purchaser signs an itemized invoice reflecting the parties' intention to make a contract for alteration or installation. Alteration charges are not taxable when separately arranged between the buyer and the seller apart from the selling price of the property being sold. In the latter case, the charges are considered a separately contracted sale of service.

Regulations and References

- [86 Ill. Adm. Code 130.1915](#) – Auctioneers and Agents
- [86 Ill. Adm. Code 150.201](#) Use Tax – General Definitions
- [86 Ill. Adm. Code 270.115](#) Jurisdictional Questions
- [Informational Bulletin FY 2022-05](#) Update to the Taxation of Sales by Auctioneers and Internet Auction Listing Services to Illinois Purchasers
- Sales Tax Manual Chapter 12 Motor Vehicle, Aircraft, and Watercraft Sales and Purchases

Discussion

“Auctioneer” means a person or entity who, for another, for a fee, compensation, commission, or any other valuable consideration at auction or with the intention or expectation of receiving valuable consideration by the means of or process of an auction or sale at auction or providing an auction service, offers, negotiates, or attempts to negotiate an auction contract, sale, purchase, or exchange of goods, chattels, merchandise, personal property, real property, or any commodity that may be lawfully kept or offered for sale by or at auction. ([225 ILCS 407/5-10](#))

“Internet auction listing service” means a website on the Internet, or other interactive computer service, that is designed to allow or advertise as a means of allowing users to offer personal property or services for sale or lease to a prospective buyer or lessee through an online bid submission process using that website or interactive computer service and that does not examine, set the price, prepare the description of the personal property or service to be offered, or in any way utilize the services of a natural person as an auctioneer. (225 ILCS 407/5-10)

Auctioneers and agents PRIOR to January 1, 2021

In-State Auctioneers and agents

If an in-state auctioneer or agent acts for an unknown or undisclosed principal, the auctioneer or agent is deemed to be the seller and is required to remit Retailers’ Occupation Tax. If an in-state auctioneer or agent acts on behalf of a disclosed principal, the disclosed principal is considered the seller and is responsible for remitting the tax. In this case, the auctioneer or agent is not responsible for remitting tax, because the disclosed principal is liable for any tax due. For sourcing of sales, see, e.g., 86 Ill. Adm. Code 270.115.

Out-of-State Auctioneers and agents

Effective January 1, 2020, through December 31, 2020, an out-of-state auctioneer that meets a tax remittance threshold is considered a marketplace facilitator and must collect and remit Use Tax on all sales made to Illinois purchasers. 86 Ill. Adm. Code 130.1915(c)(1). If an out-of-state auctioneer does not meet a tax remittance threshold, it is not considered a marketplace facilitator. An out-of-state auctioneer that does not meet a tax remittance threshold but otherwise has nexus with Illinois, is required to collect and remit Use Tax on sales to Illinois purchasers using the disclosed/undisclosed rules of an in-state auctioneer or agent. However, if the item sold is located in Illinois, or if the selling otherwise occurs in Illinois for a transaction, (see, e.g.,

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

86 Ill. Adm. Code 270.115), the out-of-state auctioneer will incur Retailers' Occupation Tax at the rate in effect at the Illinois location of the item, or the location in Illinois where the selling otherwise occurs. Auction sales of tangible personal property that is required to be titled or registered with an agency of this state, including motor vehicles, watercraft, aircraft, and trailers are taxed at registration. See 86 Ill. Adm. Code 130.1915(c)(1) and 150.804 (b)(1)(D).

Auctioneers and agents ON and AFTER January 1, 2021

Effective January 1, 2021 – Auctioneers meeting either of the tax remittance thresholds are marketplace facilitators operating a marketplace and, therefore, all their sales are subject to Retailers' Occupation Tax.

If an auctioneer makes a sale on behalf of a marketplace seller that is identified to the purchaser (e.g., a marketplace seller that is disclosed), the auctioneer will incur Retailers' Occupation Tax at the rate in effect at the location where the tangible personal property is shipped or delivered or at which possession is taken by the purchaser (destination rate). If an auctioneer makes a sale on behalf of a marketplace seller that is not identified to the purchaser on the marketplace (e.g., a marketplace seller that is not disclosed), then, for tax remittance purposes, the auctioneer is considered the seller and is required to file its own return, separate from the returns for sales made by identified marketplace sellers, and pay taxes to IDOR on that sale. In the latter case, if the item sold is located in Illinois, or if the selling otherwise occurs in Illinois for that sale (see, e.g., 86 Ill. Adm. Code 270.115), the auctioneer will incur Retailers' Occupation Tax at the rate in effect at the Illinois location of the item, or the location in Illinois where the selling otherwise occurs (origin rate). If the item is not located in Illinois and the selling does not otherwise occur in Illinois, the auctioneer will incur Retailers' Occupation Tax at the rate in effect at the location where the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. See 86 Ill. Adm. Code 130.1915(b) for specific guidance on when a marketplace seller is disclosed or undisclosed.

Effective August 27, 2021 – The term "marketplace facilitator" does not include any person licensed under the Auction License Act. This exemption does not apply to any person who is an Internet auction listing service, as defined by the Auction License Act. 86 Ill. Adm. Code 130.1915(c)(3).

Effective February 1, 2022 – Sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made over a marketplace to purchasers in Illinois are sourced the same as all other sales made over a marketplace to purchasers in Illinois. See 86 Ill. Adm. Code 131.130(c). For sales made by a marketplace facilitator on behalf of marketplace sellers, taxes apply at the location to which the titled or registered item is shipped or delivered, or the location in Illinois where the purchaser takes possession of the titled or registered item. For a transaction in which an Illinois purchaser travels to an out-of-state location to take possession of an item that is required to be titled or registered with an agency of the State of Illinois, the sale is sourced out of state. In this case, only Use Tax is incurred.

See chapter 7 for more information on Marketplace facilitators and sellers.

Court Case

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- *McLean v. Department of Revenue*, 184 Ill. 2d 341 (1998)

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

When a retailer receives a check in payment for merchandise sold which is not honored by the payer's bank, retailers' occupation tax liability is not incurred on the transaction. The check has no value and, therefore, does not fall within the meaning of gross receipts as defined in the Retailers' Occupation Tax Act. Taxpayers who report on the cash basis are allowed a deduction on their return at the time the check is returned by the bank. Taxpayers who report on the gross sales basis are allowed a deduction on Form ST-1 for the month in which that bad debt was written off for Federal Income tax purposes.

Any deduction taken is limited to the amount of the original sale reported as taxable. A deduction is not allowed for a bad check used in payment of a sale reported as nontaxable (e.g., sale of service, sale for resale, etc.). Likewise, a deduction cannot be taken for bad checks which the retailer cashed for the customer. Bad checks, which are properly deducted but later made good by the customer, must be included in taxable receipts at the time they are made good, including any service fees charged for the returned check.

Regulations

- [86 Ill. Adm. Code 130.420](#) - Finance or Interest Charges - Penalties - Discounts

Discussion

If a discount is allowed for payment in cash within a stated time, any amounts realized by sellers through failure of purchasers to take advantage of such discounts will be considered to be a part of the taxable receipts from the sale. Conversely, if the seller allows the purchaser a discount from the selling price (such as a discount for prompt payment) and the purchaser avails itself of the discount so that the seller does not receive any receipts from that source, the amount of such discount is not subject to tax. 86 Ill. Adm. Code 130.420.

Discounts given to customers on sales of tangible personal property are deductible in computing state, local, and transit tax due. There are basically two kinds of discounts offered.

One is offered at the time of sale.

Example:

Original selling price	\$100.00
Discount	\$10.00
Taxable amount	\$90.00

The second is offered for early or prompt payment on charge sales (accounts receivable).

If a retailer allows a purchaser a discount from the selling price on the basis of the purchaser making an early payment, then such discount is not subject to tax liability. Only the receipts actually received by the retailer from the purchaser are subject to tax.

Example:

Original selling price	\$100.00
Discount if paid in 10 days	\$ 10.00
Taxable amount	\$ 90.00

Audit Issue

If a taxpayer is claiming a deduction for discounts given, or nets the amount of discount offered out of gross sales/receipts reported, two things must be examined:

- First, was tax charged and collected on the full selling price, or the selling price less the discount? If tax was collected on the full selling price, the taxpayer has over-collected tax. This over-collection, if not refunded, should be assessed in audit.
- Second, if discounts were taken on nontaxable sales (i.e., resale) what amount was deducted? Was the full sale deducted or netted after discount? If the full sale and the discount were deducted, a double deduction would exist. In this case the discount deduction should be disallowed up to the amount deducted twice.

Court Cases

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- *Leslie Car Wash Corp. v. Dept. of Revenue* 69 Ill. 2d 488 (1978).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Regulations

- [86 Ill. Adm. Code 130.401\(b\)](#) - Meaning of Gross Receipts
- [86 Ill. Adm. Code 130.501\(b\)\(2\)](#) - Monthly Tax Returns – When Due – Contents

Discussion

Refunds to customers for returned merchandise are deductible on a taxpayer's ST-1 return, providing the original sale is or was included in taxable amounts reported on the current or a prior return. A taxpayer cannot deduct refunds for returned merchandise when the original sale was reported as nontaxable or never reported.

Taxpayers who refund tax collected on legitimate nontaxable sales, which were reported as taxable sales on previous returns, cannot deduct the sales amounts on subsequent returns. They must file a claim for credit with the Department to recover the tax paid in error.

Statutory References

- [35 ILCS 120/2-5 \(14\)](#) – Retailers’ Occupation Tax Act – Exemptions
- [35 ILCS 120/2-45 \(4\)](#) – Retailers’ Occupation Tax Act – Manufacturing and Assembly Exemption
- [35 ILCS 105/3-5\(6\)](#) – Use Tax Act – Exemptions
- [35 ILCS 105/5-30\(4\)](#) – Use Tax Act – Manufacturing and Assembly Exemption
- [35 ILCS 110/2\(5\)\(3\)](#) – Service Use Tax Act
- [35 ILCS 115/2\(e\)\(3\)](#) – Service Occupation Tax Act

Regulations

- [86 Ill. Adm. Code 130.311](#) - Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products
- [86 Ill. Adm. Code 130.325](#) - Graphic Arts Machinery and Equipment Exemption
- [86 Ill. Adm. Code 130.330](#) - Manufacturing Machinery and Equipment
- [86 Ill. Adm. Code 130.1901](#) - Addition Agents to Plating Baths
- [86 Ill. Adm. Code 130.1948](#) - Tangible Personal Property Used or Consumed in the Operation of Pollution Control Facilities Located within Enterprise Zones
- [86 Ill. Adm. Code 130.1955](#) - Farm Chemicals

Discussion

The sale and use of chemicals may be subject to Retailers’ Occupation Tax or Service Occupation Tax; may be consumables subject to Use Tax; may be exempt as Manufacturing Machinery and Equipment; may be exempt as farm chemicals; or may be exempt if purchased for resale.

Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products

Chemicals may qualify for the low rate if they are intended by the manufacturer for human use and purport on the label to have medicinal qualities. Epsom Salt could qualify for the low rate if the label states that it is intended by the manufacturer for human use and purports on the label to have medicinal qualities such as that it can be used internally as a laxative or as a soaking aid for sprains and bruises. 86 Ill. Adm. Code 130.310(c)(1)(I).

Graphic Arts Supplies and Consumables

Consumable supplies such as chemicals used to clean plates, presses, and film are generally purchased for use and do not qualify for the resale exemption.

Auto Repair Servicemen

Chemicals used by auto repair servicemen to clean parts are not transferred to the consumer, thus are subject to Use Tax. For instance, items such as paint thinner which are used by auto body repairmen in repairing automobiles are subject to Retailers’ Occupation Tax/Use Tax when purchased by the repairman. The repairman or serviceman does not incur Service Occupation Tax liability because this item is not transferred to customers as an incident to the service since it evaporates. Consequently,

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

the purchase is considered a retail sale by the supplier to the serviceman and Retailers' Occupation Tax/Use Tax are applicable.

Furniture Restoration

Chemicals consumed in the stripping process by a furniture restoration serviceman are not transferred by the servicemen to their customers, but rather are used in the stripping process. There would never be any occasion for servicemen to charge tax on the paint removers and chemicals which are consumed in the stripping process. Those items are not being sold to the customers. They are being consumed by the servicemen and it is the servicemen who should pay the Use Tax on such purchases.

Water Service Utility

According to the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act, "water that is delivered to customers through pipes, pipelines, or mains [is] not subject to tax". 35 ILCS 105/3; 35 ILCS 110/3; 35 ILCS 115/3; 35 ILCS 120/2. When the public utility company sells water, it is considered a retail sale. However, the sale is not subject to tax. Therefore, the chemicals that are used to treat the water and remain with the water when it is sold are not subject to tax. However, the chemicals that evaporate during the treatment process are taxable. It should be noted, however, that purchases of chemicals that are consumed in the process of providing water service but that are not transferred as a component part of the water provided as part of the service continue to be subject to tax. With respect to these chemicals, a water service utility that is not registered as a serviceman or required to be registered as a retailer with the Department must pay Use Tax to its supplier or, for purchases from out of state retailers who are not registered to collect Illinois Use Tax, self-assess and remit Use Tax directly to the Illinois Department of Revenue.

Carpet and Upholstery Cleaning

Persons who engage in carpet cleaning, upholstery cleaning, scotchgarding and deodorizing are engaged in a service occupation and do not incur Retailers' Occupation Tax when making such sales.

Carpet and upholstery cleaning are subject to the Service Occupation Tax Act. The tax treatment of the purchase of chemicals used in carpet and upholstery cleaning depends upon whether or not the chemicals are actually transferred to the service purchaser. Carpet and upholstery cleaning are not likely to result in the transfer of tangible personal property since the chemicals are generally removed from the fabric or carpet as a part of the cleaning process. However, items such as Scotch guard and deodorizer do result in a transfer of tangible personal property because these chemicals remain on the treated surface.

Manufacturing

Chemicals may qualify for the Manufacturing and Assembly Machinery and Equipment Exemption or the Graphics Arts Production Exemption as long as they effect a direct and immediate change upon the item being manufactured or assembled for wholesale or retail sale or lease. 35 ILCS 120/2-5(4); 35 ILCS 120/2-45. This includes chemicals used as physical filters to remove impurities from products being manufactured. 86 Ill. Adm. Code 130.1901(a). Beginning on July 1, 2019, chemicals that do not

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

make a direct and immediate change or act as a catalyst may also qualify if they are production related. 86 Ill. Adm. Code 130.330(d).

A “catalyst” is a chemical which changes the rate of a chemical reaction but is not consumed by the reaction or undergoes a chemical change. A true catalyst must be chemically identical at the end of the reaction as compared to the chemical structure at the beginning of the reaction. In many cases the catalyst may be reused. A common example is the salt in salt water. Iron exposed to saltwater rusts much faster than iron exposed to fresh water because the salt acts as a catalyst and increases the reaction rate between oxygen and iron. If the purpose of a manufacturing process is to create a coating of rust, the salt would qualify for the Manufacturing and Assembly Machinery and Equipment Exemption.

Chemicals, which are purchased as manufacturing or process aids, are generally taxable to the extent they do not become a part of the final product. When a product is added for its ability to improve the production process and does not affect a direct and immediate change upon, the product would be considered as a manufacturing or process aid and therefore would be taxable. However, it is possible that some of the product (manufacturing aid) could end up in the finished product. The percentage of the chemical that ends up in the finished product could be allowed as exempt for resale. An example of a manufacturing aid is a chemical containing Teflon added as a mold release agent in a plastic molding operation. It coats the mold so that the finished product can be released easier from the mold and none of it becomes a part of the finished product.

One-time use chemicals, when used as a physical filter to remove impurities from products being manufactured qualify for the Manufacturing and Assembly Machinery and Equipment Exemption. This exemption for chemicals is under the constructs of the Manufacturing and Assembly Machinery and Equipment and the Graphic Arts Machinery and Equipment exemptions. It does not extend the Manufacturing and Assembly Machinery and Equipment Exemption to cover chemicals that are purchased for resale. For example, if a chemical is purchased as an ingredient in a product being manufactured it would not qualify for the exemption.

Chemicals which are added or included as ingredients in a manufacturing or refining process and become a part of the product or by-product produced for resale, are not subject to Use Tax when purchased. They would be considered purchases made for resale. The facts that a portion of these chemicals may not molecularly become a part of the final product is not material. If the chemical is purchased as a raw material, then the entire purchase is exempt. See 35 ILCS 120/1-2.

For example, oil or rust preventatives applied to steel do not qualify for the Manufacturing and Assembly Machinery and Equipment Exemption because they do not cause a direct change upon the steel. The oil or rust preventative remaining on the steel when it is sold as a product may qualify for the resale exemption. The resale exemption would apply to the extent an item is later sold as part of an intentionally produced product or byproduct of manufacturing. The resale exemption would not apply to oil or rust preventative that evaporates or is removed prior to another process such as final painting. Unregistered de-minimis servicemen are considered the users of any tangible personal property transferred to their service customers and cannot claim the resale exemption on such purchases. The resale exemption would; however, be available to not an unregistered de-minimis serviceman. 86 Ill. Adm. Code 140.106.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Farm Chemicals

Please refer to the topical section on "Agriculture" contained in this chapter.

Pollution Control Facility

Some chemicals can be exempt if they are used or consumed in the operation of a pollution control facility located in an enterprise zone. 86 Ill. Adm. Code 130.1948.

Statutory Reference

- [35 ILCS 120/2-25](#) – ROTA Computer Software
- [35 ILCS 115/3-25](#) – SOTA Computer Software
- [35 ILCS 105/3-25](#) – UTA Computer Software
- [35 ILCS 110/3-25](#) – SUTA Computer Software

Regulations

- [86 Ill. Adm. Code 130.1935](#) – Computer Software
- [86 Ill. Adm. Code 130.2105](#) – Transfers of Data Downloaded Electronically
- [86 Ill. Adm. Code 140.125\(x\)](#) – Examples of Nontaxability

Discussion

Canned Software

Canned or prewritten software is considered taxable tangible personal property regardless of the form in which it is transferred. The sale at retail of canned software intended for general or repeated use is taxable. 86 Ill. Adm. Code 130.1935(a). Examples of packaged software include commercial software packages for accounting, word processing, educational skill development, game playing, etc. Charges for updates of canned software are considered to be sales of software. 86 Ill. Adm. Code 130.1935(b).

When a personal computer is purchased, it usually will come with a computer software bundle already loaded into the computer. This software is not taxed individually because it is included in the purchase price of the computer. Purchases of additional software or upgrades to the software programs made with or after the purchase of the computer are taxable.

Canned software is not taxable if there is a licensing agreement meeting all of the following criteria:

- A) it is evidenced by a written agreement signed by the licensor and the customer;
- B) it restricts the customer's duplication and use of the software;
- C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

These requirements are discussed in more detail at 86 Ill. Adm. Code 130.1935(a)(1).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

In order to comply with the requirements as set out in Section 130.1935(a)(1), there must be a written “signed” agreement. A license agreement in which the customer electronically accepts the terms by clicking “I agree” does not comply with the requirement of a written agreement signed by the licensor and customer. An electronic license agreement in which the customer accepts the license by means of a signature in electronic form that is attached to or is part of the license, is verifiable, and can be authenticated will comply with the requirement of a written agreement signed by the licensor and customer. [ST-21-0045-GIL](#).

Most pre-packaged (canned) computer software programs are subject to a manufacturer license which restricts the use or reproduction of the software. They require the user to agree to these requirements by clicking or marking an “accept” button before the software can be used or installed on the computer. Because these transactions do not meet the “written agreement signed by the licensor and the customer” requirement, these sales are taxable.

Custom Software

Custom software is programmed and designed to meet the specific needs of the customer. It can also mean software which results from real and substantial changes to the operational coding of canned or pre-written software to meet the specific individualized requirements of the purchaser for limited or particular use. Custom software and substantially modified canned software are not taxable. However, if modified software is held for general or repeated sale or lease, it is considered canned software and is then taxable. 86 Ill. Adm. Code 130.1935(c)(2).

Cloud Computing Services

A provider of software as a service (SaaS) is acting as a serviceman. Computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client’s computer and is only accessed remotely – is not subject to tax. If a provider of a service provides to the subscriber an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider’s network and services, the subscriber is receiving computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to tax, unless the transfer qualifies as a non-taxable license of computer software. Illinois generally does not tax subscriptions. [ST-22-0027-GIL](#); [ST-21-0045-GIL](#).

“Cloud computing” is the use of computing resources (hardware and software) that are delivered as a service over a network (typically the Internet). Cloud computing entrusts remote services with a user’s data, software and computation. See [csrc.nist.gov](#).

There are many types of cloud computing arrangements, including applications service providers (ASPs), software as a service (SaaS), or on-demand software. These arrangements are becoming more and more popular because they place the burden on the ASP to maintain up-to-date services, provide 24/7 technical support, provide physical and electronic security and built-in support for business continuity and flexible working. There are several forms of ASP business. See [geeksforgeeks.org](#) and [csrc.nist.gov](#) for definitions.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

- A specialist or functional ASP delivers a single application, such as credit card payment processing or timesheet services;
- A vertical market ASP delivers a solution package for a specific customer type, such as a dental practice;
- An enterprise ASP delivers broad spectrum solutions;
- A local ASP delivers small business services within a limited area.

The application software resides on the vendor's system and is accessed by users through a web browser using HTML or by special purpose client software provided by the vendor. Common features associated with ASPs include:

- ASP fully owns and operates the software application(s)
- ASP owns, operates and maintains the servers that support the software
- ASP makes information available to customers via the Internet or a "thin client"
- ASP bills on a "per-use" basis or on a monthly/annual fee

At its simplest, an ASP transaction can be described as follows: A company houses software on a server located outside Illinois. Users in Illinois access software on the company's server, pursuant to a license agreement, which does not meet the five-part license test. Users do not download any software from the company onto computers in Illinois.

Maintenance Agreements

Maintenance agreements, where no tangible personal property is transferred, result in no Illinois sales tax liability.

In general, maintenance agreements that cover computer software and hardware are treated the same as maintenance agreements for other types of tangible personal property. Sellers of maintenance agreements must pay tax on their cost price of the materials transferred incident to the completion of a maintenance agreement. 86 Ill. Adm. Code 130.1935(b). This includes situations where a hardware maintenance agreement includes updates of operational software.

The taxability of maintenance agreements depends upon if the charges for the agreements are included in the selling price of the tangible personal property.

- If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. Retailers' Occupation Tax is due on 100% of the selling price of the maintenance agreement. In those instances, no tax is incurred on the maintenance services or parts when the repair or servicing is performed. ST-22-0023-GIL; 86 Ill. Adm. Code 140.141(c)(1).
- If agreements for the repair or maintenance of tangible personal property are sold separately from tangible personal property, sales of those agreements are not taxable transactions. However, when maintenance or repair services or parts are provided under those agreements, the service or repair companies will be acting as service providers

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

under provisions of the Service Occupation Tax Act. When service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. 86 Ill. Adm. Code 140.301(b)(3). The sale of an optional maintenance agreement or extended warranty is an example of an agreement that is not generally a taxable transaction. ST-22-0023-GIL.

If, under the terms of a maintenance agreement involving computer software, a software provider provides a piece of object code (“patch” or “bug fix”) to be inserted into an executable program that is a current or prior release or version of its software product to correct an error or defect in software or hardware that causes the program to malfunction, the service provider incurs Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. [ST-22-0023-GIL](#).

In contrast to a patch or bug fix, if the sale of a maintenance agreement by a software provider includes charges for updates of canned software, which consist of new releases or new versions of the computer software designed to replace an older version of the same product and which include product enhancements and improvements, the general rules governing taxability of maintenance agreements do not apply. This is because charges for updates of canned software are fully taxable as sales of software under Section 130.1935(b). Please note that if the updates qualify as custom software under 86 Ill. Adm. Code 130.1935(c), they may not be taxable. Therefore, if a maintenance agreement provides for updates of canned software, and the charges for those updates are not separately stated and taxed from the selling price for warranty repairs, training, telephone assistance, installation, consultation, or other charges, then the whole agreement is taxable as a sale of canned software. ST-22-0023-GIL.

Assuming a license of software meets the requirements of 86 Ill. Adm. Code 1935(a)(1), any charges for support, maintenance or updates of the licensed software provided pursuant to the qualified license agreement would not be subject to Retailer’s Occupation Tax, whether or not the charges for support, maintenance or updates of the licensed software are billed pursuant to the terms of the license agreement or the terms of a separate agreement.

Larger computer/software retailers are now selling the maintenance agreements provided by the vendor of the product with no tax being charged on the agreement. This creates a primary-secondary serviceman situation which can become complex. Review the multi-service regulation (86 Ill. Adm. Code 140.145) for more information on maintenance agreements and multi-service situations.

Common Charges and Taxability

- Tax applies to the entire charge made to the customer, including charges for all associated documentation and materials. 86 Ill. Adm. Code 130.1935(b). Manuals and other materials closely associated with use of such software are taxable unless the materials are transferred as the result of a valid non-taxable licensing agreement.
- Charges for updates of canned software are considered to be sales of software. 86 Ill. Adm. Code 130.1935(b).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

- Charges for training, telephone assistance, installation and consultation are exempt if they are separately stated from the selling price of canned software. 86 Ill. Adm. Code 130.1935(b).
- Value-added resellers who acquire software for re-licensing or transfer to consumers after modification or adaptation of the software may acquire the software as a sale for resale by presenting their suppliers with valid certificates. 86 Ill. Adm. Code 130.1935(a)(2).
- All software used to operate exempt manufacturing machinery and equipment (see 86 Ill. Adm. Code 130.330) is exempt. 86 Ill. Adm. Code 130.1935(d). Software used by a plant manager to formulate reports to increase plant productivity does not qualify for the MM&E exemption.

Transfers of Data Downloaded Electronically

While downloads of canned software are subject to Retailers' Occupation and Use Tax, information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to Retailers' Occupation and Use Tax. 86 Ill. Adm. Code 130.2105(a)(3).

If a company provides access to a database of information and does not transfer any software or other tangible personal property to its customers, the company will not incur tax.

Regulations

- [86 Ill. Adm. Code 130.401](#) - Meaning of Gross Receipts
- [86 Ill. Adm. Code 130.2125](#) - Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives

Discussion

Where merchandise is paid for partly in cash and partly by surrendering a discount coupon, the question of taxability of the face value of the coupon is dependent upon whether the retailer is being reimbursed or not.

If a retailer allows the purchaser a discount from the selling price based on a coupon for which the retailer receives no reimbursement from any source, the amount of such discount is not subject to retailers' occupation tax. On the other hand, if a retailer allows the purchaser a discount based on a coupon for which the retailer receives full or partial reimbursement (i.e., from a distributor, etc.) the retailer incurs retailers' occupation tax on receipts received from the purchaser and the amount of any coupon reimbursement.

Where a retailer, manufacturer, distributor, or other person issues a coupon which entitles the bearer to receive an item free of charge and which is not conditioned upon the purchase of another item, the bearer incurs no tax liability. However, the person issuing the coupon incurs use tax liability on the cost price of the item transferred.

Where a manufacturer's coupon entitles the bearer to receive an item free, if another item is purchased, retailers' occupation tax is due on any amount the retailer is reimbursed for the value of the free item.

The sale of coupon booklets is considered the sale of an intangible and is not subject to retailers' occupation tax liability on the gross receipts from those sales. When the coupon is later redeemed as partial payment for tangible personal property, the coupon will be included in gross receipts if the retailer receives reimbursement.

Deal-of-the-Day type transaction (Groupon-type transaction)

In a typical Deal-of-the-Day type transaction (Groupon type transaction), a Deal-of-the-Day voucher for \$50 of food is offered to customers for \$25. When the customer redeems the Deal-of-the-Day voucher, that transaction is taxable because it involves the sale of tangible personal property. If the retailer knows the amount that the customer paid for the voucher, then the amount that the customer paid for the voucher is taxable when the voucher is redeemed. The Department realizes that in some cases it may be difficult for a cashier to know at the time of sale/redemption of the Deal-of-the-Day voucher how much the customer paid for the voucher. As a result, retailers that do not know how much the customer paid for the voucher may calculate tax on the full value of the Deal-of-the-Day voucher.

The above transaction would be taxable as follows:

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Example 1: Customer orders \$50 of food; presents \$50 voucher
 \$25.00 subject to tax if retailer knows customer paid \$25 for voucher

TAX BASE = \$25
 Total Tax = \$2.00 [paid by customer (8% tax on \$25)]

Example 2: Customer orders \$50 of food; presents \$50 voucher
 \$50.00 subject to tax if retailer does not know what customer paid for voucher

TAX BASE = \$50
 Total tax = \$4.00 [paid by customer (8% tax on \$50)]

Example 3: Customer orders \$60 of food; presents \$50 voucher
 \$25.00 subject to tax if retailer knows what customer paid for voucher
 +\$10.00 receipts paid by customer for the additional food -subject to tax

TAX BASE = \$35 [\$25.00 + \$10.00]
 Total tax = \$2.80 (8% tax on \$35)
 Total Paid = \$12.80 [\$10.00 for extra food + tax of \$2.80] paid by customer

Example 4: Customer orders \$60 of food, presents \$50 voucher
 \$50.00 subject to tax if retailer does not know what customer paid for voucher
 +\$10.00 receipts paid by customer for the additional food - subject to tax

TAX BASE = \$60 [\$50.00 + \$10.00]
 Total tax = \$4.80 (8% tax on \$60)
 Total paid = \$14.80 [\$10.00 for extra food + tax of \$4.80] paid by customer

Persons who are engaged in the business of selling cards or coupons, or vouchers, which entitle purchasers to the right to redeem those cards for tangible personal property, are not engaged in selling tangible personal property. Rather, they are making sales of intangibles; such sales are not subject to the retailers' occupation tax.

Regulations

[86 Ill. Adm. Code 130.410](#) – Cost of Doing Business Not Deductible

Discussion

Expenses incurred by sellers such as the cost of the property sold, commissions, processing fees including credit card fees, are not deductible from gross receipts when computing the tax. These costs of doing business are an element of the retailers' gross receipts subject to tax even if separately stated on the bill to the customer.

Example 1: A retailer may choose to accept payment from a customer through the use of a credit or debit card, and the retailer may not receive the full amount of payment due to the service charges or fees charged by the credit or debit card company. These charges or fees are part of the retailer's cost of doing business and are not deductible from the gross receipts subject to tax.

Example 2: A retailer who accepts credit or debit card payments with an additional fee (i.e., 3.5%) must also charge tax on the additional fee amount. This type of transaction tends to happen when the retailer passes the credit card processor's fee (e.g., 3.5%) to their customer by including the additional charge in their total price. In this case, the additional charge is taxable. These charges or fees are still part of the retailer's cost of doing business and are not deductible from the gross receipts subject to tax.

Statutory Reference

- [35 ILCS 105/3-5\(40\)](#) – Use Tax Act – Exemptions
- [35 ILCS 110/3-5\(31\)](#) – Service Use Tax Act - Exemptions
- [35 ILCS 115/3-5\(32\)](#) – Service Occupation Tax Act – Exemptions
- [35 ILCS 120/2-5\(44\)](#) – Retailers’ Occupation Tax Act – Exemptions
- [20 ILCS 605/605-1025](#) – DCEO Law - Data Center Investment

Regulations

- [86 Ill. Adm. Code 130.1957](#) - Tangible Personal Property Used in the Construction or Operation of Data Centers

Publications

- [Informational Bulletin FY 2020-04-A](#) Tax Incentives for Qualifying Illinois Data Centers

Discussion

A “data center” is a facility whose primary services are the storage, management, and processing of digital data and that is used to house:

- computer and network systems, including associated components such as servers, network equipment and appliances, telecommunications, and data storage systems;
- systems for monitoring and managing infrastructure performance, Internet-related equipment and services, data communications connections, environmental controls, fire protection systems; and
- security systems and services.

20 ILCS 605/605-1025(c).

In general, the data center must be located in Illinois and must be carbon neutral or have attained certification under certain green building standards. The data center also must meet certain statutory capital investment thresholds and certain job creation thresholds. 20 ILCS 605/605-1025(c). Effective January 1, 2020, *qualified tangible personal property used in the construction or operation of a data center that has been granted a certificate of exemption by the Department of Commerce and Economic Opportunity ("DCEO"), whether that tangible personal property is purchased by the owner, operator, or tenant, of the data center or by a contractor or subcontractor of the owner, operator, or tenant is exempt from Retailers' Occupation Tax.* (Section 2-5(44) of the Act) To receive the exemption, the data center must obtain a certificate of exemption from DCEO pursuant to Section 605-1025 of the Department of Commerce and Economic Opportunity Law (DCEO Law) [20 ILCS 605].

Per 86 Ill. Adm. Code 130.1957(b)(2), "*Qualified tangible personal property*" means:

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

electrical systems and equipment; climate control and chilling equipment and systems; mechanical systems and equipment; monitoring and secure systems; emergency generators; hardware; computers; servers; data storage devices; network connectivity equipment; racks; cabinets; telecommunications cabling infrastructure; raised floor systems; peripheral components or systems; software; mechanical, electrical, or plumbing systems; battery systems; cooling systems and towers; temperature control systems; other cabling; and other data center infrastructure equipment and systems necessary to operate qualified tangible personal property, including fixtures; and

component parts of any of the property listed in subsection (b)(2)(A)(i), including installation, maintenance, repair, refurbishment, and replacement of qualified tangible personal property to generate, transform, transmit, distribute, or manage electricity necessary to operate qualified tangible personal property; and all other tangible personal property that is essential to the operations of a computer data center;

also includes building materials physically incorporated into the qualifying data center.

Per 86 Ill. Adm. Code 130.1957(d), Data centers that would have qualified for a certificate of exemption prior to January 1, 2020, had P.A. 101-31 been in effect, may apply for and obtain an exemption for subsequent purchases of computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the original investment that would have qualified. (Section 2-5(44) of the Act)

Statutory Reference

[35 ILCS 105/2](#) - Use Tax - Definitions

[35 ILCS 110/2](#) - Service Use Tax - Definitions

Regulations

- [86 Ill. Adm. Code 150.306](#) - Interim Use and Demonstration Exemptions
- [86 Ill. Adm. Code 160.105](#) - Definitions
- Sales Tax Manual Chapter 12 Motor Vehicle, Aircraft, and Watercraft Sales and Purchases

Discussion

Tangible personal property purchased by a retailer for resale and used by the retailer or their agents prior to its ultimate sale at retail, is exempt from Use Tax (provided that the tangible personal property is of the same general type of property sold by that retailer and is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period).

Interim Use Exclusion

Beginning July 1, 2008, the following provisions apply to persons claiming the interim use exclusion:

Specific Prohibitions. The interim use exclusion may not be claimed for any item if any of the following circumstances exist:

- Title to the item is held by any party other than the retailer, except that such title may be held by the retailer, the manufacturer of that item, or a captive finance company (a wholly owned subsidiary of a manufacturing company that finances wholesale or retail purchases from that manufacturing company);
- The retailer elects to claim an Internal Revenue Code Section 179 deduction on the item as a depreciable business asset; or
- If the item is leased or rented by the retailer, the aggregate gross receipts received from all leasing or renting of the item by the retailer exceeds the retailer's selling price of the item.

Safe Harbor Rule. For items that are not excluded (prohibited) from the exemptions listed above, interim use will be deemed to occur if the retailer satisfies **all** of the requirements below:

- The item is one of the following:
 - Listed in the retailer's records as part of inventory;
 - Not depreciated by the retailer under Internal Revenue Code Section 167; or
 - Otherwise shown by the retailer's records, documents, or through its operations as available for sale during the interim use period.
- The period of use or lease of the item by the retailer is less than 24 months.
- The item is of the same general type of property sold by the retailer.
- The item is ultimately sold by the retailer.
- If the retailer receives revenues from the lease of the same general type of property as the item for which interim use is claimed, then the annual total of such lease revenues must be less than the annual total of the sales revenues received from such property.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- 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 (i) the lease may be terminated within 7 days or (ii) the lessee receive comparable property substituted by the retailer for the item within 7 days.

Demonstration Use Exclusion

The demonstration use exclusion does not extend, however, to property which is destroyed or consumed during demonstration. For example, a retail grocer offering free samples of pizza to induce people to buy the product cannot claim demonstration use on the pizza given away and consumed. Food given away in these situations is subject to Use Tax at the low rate. The demonstration use exclusion cannot be claimed by a retailer on the purchase of a competitor's product which will be used in comparison demonstrations of the retailer's product. Also, the demonstration use exclusion cannot be claimed on ancillary items which are used in demonstrating a product.

Audit Issues

When determining if something qualifies for interim use the auditor needs to discuss this with the taxpayer. Interim use and demonstration use are both similar; however, a taxpayer that does not qualify under some of the interim constraints may qualify under the demonstration use constraints.

Leasing

The leasing of tangible personal property by persons who are primarily engaged in the business of selling such property at retail is within the interim use exclusion if such property is available for sale during the lease period. The interim use exclusion is not available to persons who purchase tangible personal property with the intent to engage in the business of leasing such property and who sell such property only as an incident to their leasing activity.

Court Cases

- L&L SALES AND SERVICE V. DEPARTMENT OF REVENUE 68 Ill. App. 3d 329 (4th Dist. 1979)
- HUMPHREY CADILLAC AND OLDS INC. V. DEPARTMENT OF REVENUE 68 Ill. App. 3d 27 (2nd Dist. 1979).
- CHICAGO AND ILLINOIS MIDLAND RAILWAY CO. V. DEPARTMENT OF REVENUE, (1978), 66 Ill. App. 3d 397
- MIDWEST AERIAL PLATFORMS, INC., Plaintiff, v. ILLINOIS DEPARTMENT OF REVENUE AND KENNETH E. ZEHNDER, DIRECTOR OF THE ILLINOIS DEPARTMENT OF REVENUE, Defendants, 98 CH 08521, 06/08/1999

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Regulations

- [86 Ill. Adm. Code 130.201\(b\)](#) - The Test of a Sale at Retail

Discussion

Merchandise display racks which are given free of charge by a manufacturer to a retailer for purposes of displaying the manufacturer's product are not subject to use tax if transferred to the retailer along with the products to be sold. Display racks or store fixtures which are purchased by a retailer separate from merchandise to be resold would be subject to Use Tax.

Court Cases

- BOYE NEEDLE CO. V. DEPARTMENT OF REVENUE 45 Ill. 2d 484 (1970)

Statutory References

[20 ILCS 655](#) - Illinois Enterprise Zone Act

[35 ILCS 120/1d](#) - Expanded Manufacturing Machinery and Equipment Exemption and Graphic Arts MM&E exemption

[35 ILCS 120/1e](#) - Expanded Pollution Control Facilities Exemption

[35 ILCS 120/1f](#) - Scope of Exemption

[35 ILCS 120/1i](#) - High Impact Service Facility

[35 ILCS 120/5k](#) - Building Materials Exemption

[35 ILCS 120/5l](#) - Building materials exemption - High Impact Business

Regulations

- [86 Ill. Adm. Code 130.330](#) Manufacturing Machinery and Equipment
- [86 Ill. Adm. Code 130.1946](#) -Tangible Personal Property Used or Consumed in Graphic Arts Production within Enterprise Zones Located in a County of more than 4,000 Persons and less than 45,000 Persons
- [86 Ill. Adm. Code 130.1947](#) - Tangible Personal Property Used or Consumed in the Process of Manufacturing and Assembly within Enterprise Zones or by High Impact Businesses
- [86 Ill. Adm. Code 130.1948](#) - Tangible Personal Property Used or Consumed in the Operation of Pollution Control Facilities Located within Enterprise Zones
- [86 Ill. Adm. Code 130.1951](#) - Sales of Building Materials Incorporated into Real Estate within Enterprise Zones
- [86 Ill. Adm. Code 130.1952](#) - Sales of Building Materials to a High Impact Business
- [86 Ill. Adm. Code 130.1954](#) - Sales of Building Materials Incorporated into Real Estate within River Edge Redevelopment Zones

Publications

- [Publication 104](#) Common Sales and Use Tax Exemptions
- [Publication 139](#) Application Process to Obtain Sales Tax Exemption Certificates for Building Materials
- Sales Tax Manual Chapter 15 Manufacturing and Assembling Machinery and Equipment

Discussion

Enterprise Zones

The Illinois Enterprise Zone Act became effective December 7, 1982 Public Act 82-1019. The purpose of the Act is to stimulate economic growth and neighborhood revitalization in economically depressed areas of the State by means of relaxed government controls and tax incentives in those areas. Businesses located, or those that choose to locate and operate, in an enterprise zone may become eligible for certain state and local tax incentives and governmental assistance. This in turn helps attract private sector investment into the depressed areas and directly aids the local community and its residents. 20 ILCS 655/2.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

In order to take advantage of the below listed tax incentives, a business must make an application to, and be certified by, the Department of Commerce and Economic Opportunity ("DCEO"). See e.g., 35 ILCS 120/1d, 5k. Each enterprise zone has a designated zone administrator who is responsible for zone compliance and is available to answer questions regarding the zone. 20 ILCS 655/8. For information regarding what areas have been designated as "enterprise zones" and a list of the enterprise zone administrators visit [DCEO's website](#).

Businesses located in an Illinois enterprise zone may be eligible for the following tax incentives:

- **Enterprise Zone Manufacturing, Assembly and Graphic Arts Production tax exemption, 35 ILCS 120/1d.**

Section 1d of the Retailers' Occupation Tax Act provides an exemption for:

- tangible personal property to be used or consumed within an enterprise zone; and
- in the process of the manufacturing or assembly of tangible personal property for wholesale or retail sale or lease; or
- in the process of graphic arts production if used or consumed at a facility which is a DCEO certified business and located in a county of more than 4,000 persons and less than 45,000 persons.

This exemption includes:

- repair and replacement parts for machinery and equipment used primarily in the process of
 - manufacturing or assembling tangible personal property or
 - graphic arts production if used or consumed at a facility which is a DCEO certified business and located in a county of more than 4,000 persons and less than 45,000 persons and
- for wholesale or retail sale, or lease, and equipment, manufacturing or graphic arts fuels, material and supplies for the maintenance, repair or operation of such manufacturing or assembling or graphic arts machinery or equipment. 35 ILCS 120/1d.

To qualify for the exemption, a business located in an enterprise zone must meet the following requirements contained in Section 1f of the Retailers' Occupation Tax Act:

- be located in an enterprise zone established pursuant to the Illinois Enterprise Zone Act;
- make investments that:
 - cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or
 - cause the retention of a minimum of 2,000 full-time jobs in Illinois; or
 - total a minimum of \$40,000,000 and retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption; and
- be certified by DCEO as complying with the requirements specified in 35 ILCS 120/1f. 35 ILCS 120/1f.

Businesses seeking certificates of eligibility must make application to DCEO on application forms provided by DCEO. 35 ILCS 120/1f. The Illinois Department of Revenue does not

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

certify business enterprises as eligible for this exemption. 86 Ill. Adm. Code 130.1947(d), 1946(c).

This exemption is available to all retailers registered to collect or remit Illinois tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones. 86 Ill. Adm. Code 130.1947(k), 1946(i). A certified business must present a certificate of eligibility for exemption to its supplier when making the initial purchase of tangible personal property for which an exemption is granted together with a certification by the business that the tangible personal property is exempt from taxation. 35 ILCS 120/1f. For requirements on documenting this exemption refer to 86 Ill. Adm. Code 130.1947(n) and 130.1946(k).

For examples of items that qualify for the exemption refer to 86 Ill. Adm. Code 130.1947(g) and 130.1946(f). The tangible personal property not used or consumed within the enterprise zone and not used or consumed in manufacturing or assembling or in graphic arts production remains subject to tax. 86 Ill. Adm. Code 130.1947(e), (j); 130.1946(d), (h). The tangible personal property must be used primarily (50%) in manufacturing or assembling or graphic arts production to qualify for exemption. 86 Ill. Adm. Code 130.1947(h); 130.1946(g). An item that initially is used primarily in a qualifying manner but that is converted to a nonexempt use or is moved to a nonqualifying location will become subject to tax at the time of its conversion, based on the fair market value of the item at the time of conversion. 86 Ill. Adm. Code 130.1947(n)(4); 130.1946(l).

- **Enterprise Zone Pollution Control Facilities tax exemption, 35 ILCS 120/1e.**

Section 1e of the Retailers' Occupation Tax Act provides that all tangible personal property to be used or consumed in the operation of pollution control facilities, as defined in Section 1a of the Retailers' Occupation Tax Act, within an enterprise zone established pursuant to the "Illinois Enterprise Zone Act", as amended, shall be exempt from the tax. 35 ILCS 120/1e.

"Pollution control facilities" means any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "air pollution" or "water pollution" is defined in the "Environmental Protection Act", enacted by the 76th General Assembly, or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. 35 ILCS 120/1a.

Please note that the pollution control facilities exemption referred to in Section 130.335(a) was repealed effective July 1, 2003, by P.A. 93-24. 86 Ill. Adm. Code 130.335. Thus, the exemption granted by the DCEO certification cannot be used for purchases of tangible personal property that previously qualified under the repealed pollution control facilities exemption. 86 Ill. Adm. Code 130.1948(a).

To qualify for the exemption, a business located in an enterprise zone must meet the following requirements contained in Section 1f of the Retailers' Occupation Tax Act:

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- be located in an enterprise zone established pursuant to the Illinois Enterprise Zone Act;
- make investments that:
 - cause the creation of a minimum of 200 full-time equivalent jobs in Illinois; or
 - cause the retention of a minimum of 2,000 full-time jobs in Illinois; or
 - total a minimum of \$40,000,000 and retain at least 90% of the jobs in place on the date on which the exemption is granted and for the duration of the exemption; and
- be certified by DCEO as complying with the requirements specified in 35 ILCS 120/1f. 35 ILCS 120/1f.

Businesses seeking certificates of eligibility must make application to DCEO on application forms provided by DCEO. 35 ILCS 120/1f.

This exemption is available to all retailers registered to collect or remit Illinois tax. It is not restricted to retailers located in jurisdictions that have established enterprise zones. 86 Ill. Adm. Code 130.1948(f). A certified business must present a certificate of eligibility for exemption to its supplier when making the initial purchase of tangible personal property for which an exemption is granted together with a certification by the business that the tangible personal property is exempt from taxation. 35 ILCS 120/1f. For requirements on documenting this exemption refer to 86 Ill. Adm. Code 130.1948(h).

For examples of items that qualify for the exemption refer to 86 Ill. Adm. Code 130.1948(d). Tangible personal property not used or consumed within the enterprise zone and not used or consumed in the operation of pollution control facilities remains subject to tax. The pollution control facility must be located in the enterprise zone. 86 Ill. Adm. Code 130.1947(d). The tangible personal property must be used primarily (50%) in the operation of pollution control facilities within an enterprise zone to qualify for exemption. 86 Ill. Adm. Code 130.1948(e). An item that is used primarily in a qualifying manner but that is converted to a nonexempt use or is moved to a nonqualifying location will become subject to tax at the time of its conversion, based on the fair market value of the item at the time of conversion. 86 Ill. Adm. Code 130.1948(i).

- **Enterprise Zone Building Materials Exemption, 35 ILCS 120/5k.**

Each retailer who makes a qualified sale of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction, may deduct receipts from such sales when calculating the retailers' occupation tax. 35 ILCS 120/5k(a). Examples of qualifying building materials can be found in 86 Ill. Adm. Code 130.1951(e)-(f).

A construction contractor or other entity shall not make tax-free purchases unless it has an active Exemption Certificate issued by IDOR at the time of the purchase. 35 ILCS 120/5k(a). The exemption certificates are valid for 2 years from date of issuance and may be renewed. 35 ILCS 120/5k(b).

Before July 1, 2013, "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the administrator of the enterprise zone in which the building project is located. 35 ILCS 120/5k(a). To document this exemption, the retailer must obtain from the purchaser a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the administrator of the enterprise zone into which the building materials will be incorporated, and a certification from the purchaser. 35 ILCS 120/5k(b); 86 Ill. Adm. Code 130.1951(b). Refer to 86 Ill. Adm. Code 130.1951(b)(3)(B) for requirements regarding the content of the purchaser's certification. To receive a Certificate of Eligibility for Sales Tax Exemption, the local zone administrator of the zone into which the purchased building material will be incorporated must be contacted.

On and after July 1, 2013, "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which an Enterprise Zone Building Materials Exemption Certificate has been issued to the purchaser by the Department. 35 ILCS 120/5k(a). The enterprise zone administrator must submit a request for an Enterprise Zone Building Materials Exemption Certificate to IDOR. 35 ILCS 120/5k(b). IDOR may issue or deny the to issue such certificate. 35 ILCS 120/5k(b). To document this exemption, the retailer must obtain from the purchaser the certification required under 35 ILCS 120/5k(c), which must contain the Enterprise Zone Building Materials Exemption Certificate number issued to the purchaser by the Department. 35 ILCS 120/5k(b); 86 Ill. Adm. Code 130.1951(d). Refer to 86 Ill. Adm. Code 130.1951(d)(2) for requirements regarding the content of the purchaser's certification.

- **Gas and Electric Utility tax exemptions**

- Section 2-4(c) of the Electricity Excise Tax Law provides an exemption from the electricity excise tax for electricity used by business enterprises certified under Section 9-222.1 of the Public Utilities Act, 220 ILCS 5/9-222.1, as amended, to the extent of such exemption and during the time specified by the DCEO. 35 ILCS 640/2-4(c).
- Section 1 of the Gas Revenue Tax Act provides an exemption from the gas revenue tax on natural gas sold to a business located in an enterprise zone for use or consumption. 35 ILCS 615/1.
- Section 5-50 of the Gas Use Tax Law provides an exemption from gas use tax collection obligation for any gas used by a business located in an enterprise zone certified by DCEO. 35 ILCS 173/5-50.
- Section 222.1 of the Public Utilities Act exempts business enterprises located in an enterprise zone from the additional charges added to the business enterprise's utility bills as a pass-on of municipal and State utility taxes under Sections 9-221 and 9-222 of Public Utilities Act, to the extent such charges are exempted by ordinance adopted in accordance with paragraph (e) of Section 8-11-2 of the Illinois Municipal Code in the case of municipal utility taxes, and to the extent such charges are exempted by the

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

percentage specified by the Department of Commerce and Economic Opportunity in the case of State utility taxes. 220 ILCS 5/9-222.1.

- **Telecommunication Services tax exemptions**

- Section 2(a)(5) of the Telecommunications Excise Tax Act states that gross charges do not include charges to businesses certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the DCEO. 35 ILCS 630/2(a)(5).
- Section 10(a)(5) of the Telecommunications Infrastructure Maintenance Fee Act states that gross charges do not include charges to businesses certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the DCEO. 35 ILCS 635/10(a)(5).
- Section 5-7(5) of the Simplified Municipal Telecommunications Tax Act states that gross charges do not include charges to businesses certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the DCEO. 35 ILCS 636/5-7(5).

High Impact Businesses

According to the Illinois Enterprise Zone Act, the purpose of the High Impact Business (“HIB”) program is to assist in the encouragement, development, growth, and expansion of the private sector through large scale investment and development projects. Businesses may apply with DCEO for the designation of a High Impact Businesses in Illinois, for an initial term of 20 years with an option for renewal for a term not to exceed 20 years. 20 ILCS 655/5.5(a). In summary, applicants must meet the following conditions:

- Applications may be submitted at any time during the year;
- Business applying is not located, at the time of designation, in an enterprise zone; and
- The business intends to do one or more of the following:
 - Make a minimum investment of \$12,000,000 which will be placed in service in qualified property and intends to create 500 full-time equivalent jobs at a designated location in Illinois or intends to make a minimum investment of \$30,000,000 which will be placed in service in qualified property and intends to retain 1,500 full-time retained jobs at a designated location in Illinois. 20 ILCS 655/5.5(a)(3)(A).
 - Establish a new electric generating facility at a designated location in Illinois. 20 ILCS 655/5.5(a)(3)(B) (emphasis added).
 - Establish a new gasification facility at a designated location in Illinois. 20 ILCS 655/5.5(a)(3)(B-5) (emphasis added).
 - Establish production operations at a new coal mine, re-establish production operations at a closed coal mine, or expand production at an existing coal mine at a designated location in Illinois. 20 ILCS 655/5.5(a)(3)(C) (emphasis added).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

- Construct new transmission facilities or upgrade existing transmission facilities at designated locations in Illinois. 20 ILCS 655/5.5(a)(3)(D) (emphasis added).
- Establish a new wind power facility at a designated location in Illinois. 20 ILCS 655/5.5(a)(3)(E) (emphasis added).
- Establish a new utility-scale solar facility at a designated location in Illinois. 20 ILCS 655/5.5(a)(3)(E-5) (emphasis added).
- Commits to (i) make a minimum investment of \$500,000,000, which will be placed in service in a qualified property, (ii) create 125 full-time equivalent jobs at a designated location in Illinois, (iii) establish a fertilizer plant at a designated location in Illinois. 20 ILCS 655/5.5(a)(3)(F) (emphasis added).

Tax Exemptions:

- A business designed as HIB under 20 ILCS 655/5.5(a)(3)(A) qualifies for exemptions under Section 1d of ROTA, Section 5l of ROTA, and Sections 9-222 and 9-222.1A of the Public Utilities Act, 220 ILCS 5/9-222, 9-222.1A.
- A business designed as HIB under 20 ILCS 655/5.5(a)(3)(B), (B-5), (C) or (D) qualifies for exemptions under Section 5l of ROTA, and Sections 9-222 and 9-222.1A of the Public Utilities Act, 220 ILCS 5/9-222, 9-222.1A.
- A business designed as HIB under 20 ILCS 655/5.5(a)(3)(E) or (E-5) qualifies for exemptions under Section 5l of ROTA.

High Impact Businesses located in federally designated foreign trade zones or sub-zones are also eligible for additional credits, exemptions and deductions as described in Section 9-221 and Section 9-222.1 of the Public Utilities Act. 20 ILCS 655/5.5(c).

High Impact Service Facility

A High Impact Service Facility is not to be confused with a High Impact Business.

“High impact service facility” means a

1. facility used primarily for the sorting, handling and redistribution of mail, freight, cargo, or other parcels received from agents or employees of the handler or shipper for processing at a common location and redistribution to other employees or agents for delivery to an ultimate destination on an item-by-item basis, and which:
2. will make an investment of \$100,000,000 or more, and
3. cause the creation of at least 750 jobs in an enterprise zone established pursuant to the Illinois Enterprise Zone Act, and
4. is certified by the DCEO. 35 ILCS 120/1i.

E.g., United Parcel Service (UPS) has been designated as a high impact service facility.

Tax Exemptions:

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- **35 ILCS 120/1j**
 - Machinery or equipment used in the operation of a high impact service facility, as defined in Section 1i of this Act, located within an enterprise zone established pursuant to the Illinois Enterprise Zone Act shall be exempt from the tax imposed by Retailers' Occupation Tax Act.
 - Machinery and equipment, new and replacement, shall include, but not be limited to:
 - motor driven heavy equipment not considered rolling stock which is used for the purpose of transporting parcels, machinery, or equipment, or trailers used for the shipment of parcels, and equipment used to maintain and provide in-house services, within the confines of the facility, and
 - automated machinery and equipment used for the purposes of transporting parcels within the facility, along with all components, parts, pieces, and computer software or hardware contained in the electronic control systems related thereto.
- **35 ILCS 120/1j.1**
 - Jet fuel and petroleum products sold to and used in the conduct of its business of sorting, handling and redistribution of mail, freight, cargo or other parcels in the operation of a high impact service facility, as defined in Section 1i of this Act, located within an enterprise zone established pursuant to the Illinois Enterprise Zone Act shall be exempt from the tax imposed by Retailers' Occupation Tax Act, provided that the business enterprise has waived its right to a tax exemption of the charges imposed under Section 9-222.1 of the Public Utilities Act.

Exceptions:

High impact service facilities qualifying under this Act and seeking the exemption under 1j.1 shall be ineligible for the exemptions of taxes imposed under Section 9-222.1 of the Public Utilities Act. High impact service facilities qualifying under this Act and seeking the exemption under Section 9-222.1 of the Public Utilities Act shall be ineligible for the exemptions of taxes as described in Section 1j.1. 35 ILCS 120/1j.2.

Application and documentation:

A business seeking the above listed exemptions must apply to the DCEO. DCEO shall determine whether the business meets the criteria and upon approval issue a certificate of eligibility for the exemptions. 35 ILCS 120/1i. The certificate of eligibility for exemption, issued by the DCEO, must be presented to the business's supplier when purchasing qualifying machinery and equipment or jet fuel and petroleum products. In addition, the business must present certification that machinery and equipment or jet fuel and petroleum products is exempt under Section 120/1j or Section 120.1j.1 of the Retailers' Occupation Tax Act by indicating the exempt status of each subsequent purchase on the face of the purchase order. 35 ILCS 120/1i.

River Edge Redevelopment Zones

The River Edge Redevelopment Zone Act became effective July 12, 2006 through P.A. 94-1021. The purpose of the Act is to identify and initiate River Edge Redevelopment Zones to stimulate the safe and

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

cost-effective re-use of environmentally-challenged properties adjacent to or surrounding rivers by means of tax incentives or grants. Environmentally-challenged properties adjacent to or surrounding Illinois rivers are a threat to the health, safety, and welfare of the people of this State. Many of these environmentally-challenged properties adjacent to or surrounding rivers were former industrial areas that now, subject to appropriate environmental clean-up and remediation, would be ideal for office, residential, retail, hospitality, commercial, recreational, warehouse and distribution, and other economically productive uses. The cost of the cleaning and remediation of these environmentally-challenged properties is often the primary obstacle to returning these properties to a safe and economically productive use. Cooperative and continuous partnership among the State, through the Department of Commerce and Economic Opportunity and the Environmental Protection Agency, municipalities adjacent to or surrounding rivers, and the private sector is necessary to appropriately encourage the cost-effective cleaning and remediation of these environmentally-challenged properties in order to bring about a safe and economically productive use of the properties. 65 ILCS 115/10-2.

Currently, there are 5 River Edge Redevelopment Zones in the following cities: East St. Louis, Rockford, Aurora, Elgin and Peoria. 65 ILCS 115/10-5.3(d). A River Edge Redevelopment Zone is in effect for the period stated in the certificate, which shall in no event exceed 30 calendar years. 65 ILCS 115/10-5.3(c).

Tax Exemption:

Effective July 12, 2006, each retailer that makes a qualified sale of building materials to be incorporated into real estate within a River Edge Redevelopment Zone in accordance with the River Edge Redevelopment Zone Act by remodeling, rehabilitating, or new construction may deduct receipts from those sales when calculating the tax imposed by the Retailers' Occupation Tax Act. 86 Ill. Adm. Code 130.1954(a)(1); 35 ILCS 120/2-54.

A "qualified sale" means a sale of building materials that will be incorporated into real estate as part of an industrial or commercial project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the corporate authorities of the municipality in which the building project is located before July 1, 2013, and for which a River Edge Building Materials Exemption Certificate has been issued by the IDOR on or after July 1, 2013. 35 ILCS 120/2-54.

To qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate. Examples of sales which qualify and do not qualify for the deduction are available in 86 Ill. Adm. Code 130.1954(b).

Building materials incorporated into stand-alone residential homes or any other residential structures do not qualify for the deduction. Building materials physically incorporated into a commercial project, a portion of which is dedicated for residential purposes, shall be allocated on a square-footage basis for common building materials (for example, lumber, cement, bricks, insulation, air conditioning and heating equipment serving an entire project and roofing materials) and directly allocated to either the commercial portion or residential portion when direct allocation of the building materials is possible (for example, bath tubs, sinks, lavatories, cabinets, built-in appliances and air conditioning and heating equipment serving individually owned or leased units or space). Only the building materials allocated to the commercial portion of the project can qualify for the exemption. 86 Ill. Adm. Code 130.1954(b)(3).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Documentation:

For purchases made through June 30, 2013, the retailer must obtain from the purchaser:

- Certificate of Eligibility for Sales Tax Exemption issued by the municipality, and
- Certificate from the purchaser stating that the building materials are being purchased for incorporation into real estate located in a River Edge Redevelopment Zone, location of the real estate, name of zone, description of building materials purchased, and date and signature of purchase. 86 Ill. Adm. Code 130.1954(c); 35 ILCS 120/2-54(b)-(c).

For purchases made on or after July 1, 2013, the retailer must obtain from the purchaser:

- River Edge Building Materials Exemption Certificate number issued by the IDOR, 35 ILCS 120/2-54(d), and
- Certificate from the purchaser stating that the building materials are being purchased for incorporation into real estate located in a River Edge Redevelopment Zone, location of the real estate, name of zone, description of building materials purchased, and date and signature of purchase. 86 Ill. Adm. Code 130.1954(e);

To obtain a River Edge Building Materials Exemption Certificate from the IDOR, the municipality in which the building project is located must file a request for such request with IDOR. Given all legal requirements are met, the IDOR shall issue a River Edge Building Materials Exemption Certificate to each construction contractor or other entity identified by the corporate authorities of the municipality in which the building project is located. A construction contractor or other entity shall not make tax-free purchases unless it has an active exemption certificate issued by IDOR at the time of purchase. The certificate is valid for no more than 2 years after date of issuance and can be renewed at the request of the municipality in which the building project is located. 35 ILCS 120/2-54(d).

Statutory References

[35 ILCS 120/6b](#) – Retailers' Occupation Tax Act

Discussion

An erroneous refund is one in which the Department has mistakenly refunded money to the taxpayer. Under Section 6(b) of the Retailers' Occupation Tax Act, a notice of tax liability must be issued at any time within either:

- 3 years of making the refund, OR
- 5 years from making the refund if fraud or misrepresentation of the facts appears to have induced the making of such refund.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory References

[35 ILCS 105/2, 105/2c and 105/3-5](#) – Use Tax Act – Definitions & Exemptions

[35 ILCS 110/2 and 110/3-5](#) – Service Use Tax Act – Definitions & Exemptions

[35 ILCS 115/2, 115/2c and 115/3-5](#) – Service Occupation Tax Act – Definitions & Exemptions

[35 ILCS 120/1, 120/1g, 120/2h and 120/2-5](#) – Retailers’ Occupation Tax Act – Definitions & Exemptions

Regulations

- [86 Ill. Adm. Code 130.120](#) - Nontaxable transactions
- [86 Ill. Adm. Code 130.2004](#) - Sales to Nonprofit Arts or Cultural Organizations
- [86 Ill. Adm. Code 130.2005](#) - Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Persons
- [86 Ill. Adm. Code 130.2007](#) - Exemption Identification Numbers
- [86 Ill. Adm. Code 130.2011](#) - Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals
- [86 Ill. Adm. Code 130.2012](#) - Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies
- [86 Ill. Adm. Code 130.2075\(d\)\(1\)](#) - Sales to Construction Contractors, Real Estate Developers and Speculative Builders
- [86 Ill. Adm. Code 130.2076](#) - Sales to Purchasers Performing Contracts with Governmental Bodies
- [86 Ill. Adm. Code 130.2080](#) - Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
- [86 Ill. Adm. Code 130.2081](#) - Tax-Free Purchases by Exempt Entities, Their Employees and Representatives, and Documenting Sales to Exempt Entities, Their Employees and Representatives
- [86 Ill. Adm. Code 150.331](#) - Persons Who Lease Tangible Personal Property to Exempt Hospitals
- [86 Ill. Adm. Code 130 Illustration A](#) - Examples of Tax Exemption Cards

Publications

- [Publication 104](#) - Common Sales and Use Tax Exemptions
- [Publication PIO-37](#) - Information for exclusively charitable, religious, or educational organizations; governmental bodies; and certain other tax-exempt organizations

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

Discussion

The Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, and Service Use Tax Act provide exemptions from sales tax for certain qualified organizations that would otherwise be subject to tax on their purchases. Whether an organization qualifies for exempt status is determined by the Department pursuant to the relevant Act and its administrative rules. See 35 ILCS 120/2-5; 35 ILCS 120/1g; 86 Ill. Adm. Code 130.2005, 130.2007, 130.2081. Publication PIO-37, which can be found on the Department's website, provides a summary overview of the requirements.

“E”- Exemption Numbers

Generally, exempt organizations must obtain “E” numbers from the IDOR to document their exempt status before purchasing items from retailers or servicemen. 86 Ill. Adm. Code 130.2007(a), 2081(b). However, foreign diplomatic and consular officials covered by the Foreign Missions Act and officials under the Taiwan Relations Act do not require “E” numbers to receive tax exemptions on their purchases. Instead, they must possess tax exemption identification cards issued by the U.S. State Department. 86 Ill. Adm. Code 130.2008.

An entity which would otherwise qualify for tax-exempt status on its purchases of tangible personal property for use or consumption cannot make tax-free purchases unless it has an active exemption identification number issued by the Department. 86 Ill. Adm. Code 130.2007(a). Once such organizations have been granted their “E” numbers, they may purchase items tax free to further their organizational purposes. 86 Ill. Adm. Code 130.2081(b). Exemption certificate numbers are valid for five years after the first day of the month following issuance. 35 ILCS 120/1g. Organizations which have never obtained an exemption number may do so by submitting to IDOR the information described in 86 Ill. Adm. Code 130.2007 and explained in Publication PIO-37.

35 ILCS 120/2-5(11) Exemption

To qualify for this exemption, the entity must be:

1. A governmental body, a corporation, society, association, foundation or an institution, that is organized and operated exclusively for charitable, religious or educational purposes.
 - o purchaser must be organized and conducted as not-for-profit to qualify as being organized and operated exclusively for charitable purposes. 86 Ill. Adm. Code 130.2005(h).;

or

2. A not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older.

A limited liability company may qualify for the exemption under this paragraph only if the limited liability company is organized and operated exclusively for educational purposes.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

35 ILCS 120/2-5(9) Exemption

To qualify for this exemption, the not-for-profit arts or cultural organization must establish, by proof required by the Department by rule, that it has received an exemption under Section 501(c)(3) of the Internal Revenue Code and that is organized and operated primarily for the presentation or support of arts or cultural programming, activities, or services.

Examples of Exempt Purchasers:

- Churches, Sunday Schools, Church Ladies' Aid Societies, Salvation Army and other nonprofit entities organized and operated exclusively for religious purposes
 - but not including Ministers or other individuals when making purchases from their own funds. 86 Ill. Adm. Code 130.2005(k)(1).
- Entities organized and operated exclusively for educational purposes as a business enterprise or not-for-profit. 86 Ill. Adm. Code 130.2005(k)(1).
 - Includes all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools; licensed day care centers as defined in Section 2.09 of the Child Care Act of 1969 which are operated by a not for profit corporation, society, association, foundation, institution or organization; vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation. 35 ILCS 120/2h.
 - However, a corporation, limited liability company, society, association, foundation or institution organized and operated for the purpose of offering professional, trade or business seminars of short duration, self-improvement or personality development courses, courses which are avocational or recreational in nature, courses pursued entirely by open circuit television or radio, correspondence courses, or courses which do not provide specialized training within a specific vocational or technical field shall not be considered to be organized and operated exclusively for educational purposes. 35 ILCS 120/2h.
- Entities organized and operated exclusively for the purpose of conducting scientific research of a character that would be beneficial to the public (charitable purpose). 86 Ill. Adm. Code 130.2005(k)(1).
- American National Red Cross (exclusively charitable). 86 Ill. Adm. Code 130.2005(a)(1)(D), (k)(1).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- Community Fund or United Fund organizations (exclusively chartable), 86 Ill. Adm. Code 130.2005(k)(1).
- Y.M.C.A., the Y.W.C.A. (exclusively chartable). 86 Ill. Adm. Code 130.2005(a)(1)(D), (k)(1).
- Boy Scouts of America (as a corporation, but not as individuals) (exclusively chartable). 86 Ill. Adm. Code 130.2005(a)(1)(D), (k)(1).
- Girl Scouts of America (as a corporation or association, but not as individuals) (exclusively chartable). 86 Ill. Adm. Code 130.2005(a)(1)(D), (k)(1).
- Nonprofit Parent-Teacher Associations (exclusively chartable). 86 Ill. Adm. Code 130.2005(a)(1)(D), (k)(1).
- National Safety Council and similar organizations and nonprofit societies for the prevention of cruelty to children or animals (all classified as charitable), 86 Ill. Adm. Code 130.2005(k)(1).
- Free public libraries that are not operated for profit and that are not operated by commercial enterprises whether such libraries are governmental units or not. 86 Ill. Adm. Code 130.2005(k)(1).
- Local housing authorities. 86 Ill. Adm. Code 130.2005(k)(1).
- Homes for the aged that are nonprofit and charitable. 86 Ill. Adm. Code 130.2005(k)(1).
- Nonprofit Hospitals and Sanitaria. 86 Ill. Adm. Code 130.2005(m).
 - A hospital must be organized and operated as a nonprofit enterprise and must not discriminate against patients or doctors because of race, color, creed or religion, and that the hospital must not refuse admittance to any patient because of his inability to pay for hospital service. 86 Ill. Adm. Code 130.2005(m)(1).
 - Government-owned hospitals are deemed by the Department to be organized and operated exclusively for charitable purposes. 86 Ill. Adm. Code 130.2005(m)(5).
- Not-for-profit organizations that are operated primarily for arts or cultural purposes.
 - These organizations include, but are not limited to, music and dramatic arts organizations such as symphony orchestras and theatrical groups, arts and cultural service organizations, local arts councils, visual arts organizations, and media arts organizations. 35 ILCS 120/2-5(9); 86 Ill. Adm. Code 130.2004.
- State, local, and federal governments.

Not All Not-For-Profit Organizations Qualify for Tax Exemption on Purchases.

A charitable organization is not necessarily qualified because it has a charter from the Secretary of State's office designating it as a not-for-profit corporation, or an exemption from federal taxes under Section 501(c)(3) of the Internal Revenue Code. See 86 Ill. Adm. Code 130.2005(e)(1). Although the information is relevant, it doesn't prove the exclusively charitable nature of the organization. 86 Ill. Adm.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Code 130.2005(h). Not-for-profit organizations that obtain Federal income tax exemptions are issued a number by the I.R.S. Also, Illinois Secretary of State's office issues a file number upon filing of Not-for-profit Articles of Incorporation. These numbers are not the equivalent of the E number issued by IDOR and may NOT be used to claim exemption from Illinois sales taxes.

Some organizations do charitable work but are not organized exclusively for charitable purposes. 86 Ill. Adm. Code 130.2005(e), (f), (g), (j). Therefore, they do not qualify for the tax exemption. These include civic clubs; nonprofit social, athletic, and recreational organizations; patriotic organizations; lodges and their auxiliaries; labor unions; professional and trade associations; sororities and fraternal organizations. Examples include:

- American Legions, [86 Ill. Adm. Code 130.2005\(g\)](#).
- Amvets, 86 Ill. Adm. Code 130.2005(g).
- Daughters of the American Revolution, 86 Ill. Adm. Code 130.2005(g).
- Chambers of Commerce, 86 Ill. Adm. Code 130.2005(g).
- Elks Lodge, 86 Ill. Adm. Code 130.2005(j).
- Lions Clubs, 86 Ill. Adm. Code 130.2005(g).
- Masonic Lodge, 86 Ill. Adm. Code 130.2005(f)(2).
- Rotary Clubs, 86 Ill. Adm. Code 130.2005(g).
- Veterans of Foreign Wars, 86 Ill. Adm. Code 130.2005(g).

Sales to Exempt Organizations – Purchases Made by Exempt Organizations

Organizations claiming the exemption must give their exemption number to the retailer when purchasing tangible personal property for use or consumption. Retailers, when making sales to any organization claiming to be exempt, are required to determine whether in fact such organization has an active exemption number. 86 Ill. Adm. Code 130.2081(c).

Sales of Materials to Construction Contractors Acting for Exclusively Charitable, Religious or Educational Organizations or Institutions, or for Governmental Bodies

86 Ill. Adm. Code 130.2075(d)(1) states that sales of materials to construction contractor for incorporation into real estate owned by governmental bodies, or exclusively charitable, religious, or educational organizations or institutions, or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older, are exempt from retailers' occupation tax.

The intent of the Legislature was to relieve the above-designated kinds of purchasers from the burden of tax on their purchases whether the purchases are made directly or indirectly by these organizations.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Therefore, the exemption applies to their indirect purchase of building materials. 86 Ill. Adm. Code 130.2075(d)(1). It is imperative that the tax exempt purchaser has an active exemption number that can be presented to the supplier before purchases are made by its construction contractors. Consequently, the contractor can purchase the materials tax free by providing his supplier with the exempt organization's "E" number or certificate. Tax exemption on the purchases is not available to exempt purchasers who obtain an exemption number after the purchase of qualified materials has occurred and subsequently supply the exemption number. 86 Ill. Adm. Code 130.2075(d)(4), 130.2081(b), 130.2007(a).

However, 86 Ill. Adm. Code 130.2075(d)(3) states that sales of tools, fuel, lumber for forms and other end use or consumption items to construction contractors who do not incorporate these items into real estate are taxable sales regardless of who the contractor's customer may be; unless the contract meets the requirements of 130.2076. For a sale to be exempt as a sale to a governmental body, the sale must be invoiced directly to the governmental agency. In addition, only sales of tangible personal property invoiced directly to and paid by governmental bodies that possess active E-numbers are exempt. 86 Ill. Adm. Code 130.2080(a).

Leases to Exempt Hospitals and Government Entities

Computers or other equipment being leased under qualifying leases that were entered into between January 1, 1996, and December 31, 2000, pursuant to the provisions of 86 Ill. Adm. Code 150.331(e) continue to be exempt after January 1, 2001, until such time as the computers or other equipment is no longer being leased under those qualifying leases or is used in any other non-qualifying manner. If the computers or other equipment are no longer leased in an exempt manner or used in any other non-exempt manner, the amount of use tax liability incurred by the lessor is based on the fair market value of the computers or other equipment at the time the non-qualifying use occurred. 86 Ill. Adm. Code 150.331(e).

Diplomatic Tax Exemption Card

Foreign consulates (missions), diplomats, consular officers, and staff members may be eligible to make tax-exempt purchases in Illinois. 86 Ill. Adm. Code 130.2008.

Foreign diplomatic and consular officials covered by the Foreign Missions Act and officials under the Taiwan Relations Act do not require "E" numbers to receive tax exemptions on their purchases. Instead, they must possess tax exemption identification cards issued by the U.S. State Department. 86 Ill. Adm. Code 130.2008.

Tax exemption cards issued by the U.S. Department of State's Office of Foreign Missions fall into two basic categories: a card used for purchases on behalf of individuals (personal tax exemption card); and a card used for purchases on behalf of missions (mission tax exemption card). For additional information refer to 86 Ill. Adm. Code 130.2080 and 130.Illustration A.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Regulations

- [86 Ill. Adm. Code 130.2005](#) - Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses
- [86 Ill. Adm. Code 130.2006](#) - Sales by Teacher-Sponsored Student Organizations
- [86 Ill. Adm. Code 130.2008](#) - Sales by Nonprofit Service Enterprises
- [86 Ill. Adm. Code 130.2055](#) - Sales by Governmental Bodies

Discussion

If an exempt organization purchases tangible personal property to resell in such a way as to incur Retailers' Occupation Tax, the organization must obtain a registration number and collect and remit the appropriate amount of tax to the Department.

Exclusively charitable, religious, and educational organizations incur retailers' occupation tax liability when they engage in selling tangible personal property at retail except, in three situations.

1. Sales are made to the organization's members, students, patients or inmates. 35 ILCS 120/1; 86 Ill. Adm. Code 130.2005(a)(2)(A).
2. Such selling is noncompetitive with business establishments organized for profit. 35 ILCS 120/1; 86 Ill. Adm. Code 130.2005(a)(3)(A).
 - Conducted by members of the charitable entity and not by any franchisee or licensee
 - All of the proceeds must go to the charity.
 - Sales must be infrequent – ex. annual.
 - Motive of most transferees of the items sold must be the making of a charitable contribution. 86 Ill. Adm. Code 130.2005(a)(3)(B).
3. Occasional dinners, socials or other similar activities which are conducted by exclusively charitable, religious or educational organizations or institutions are not taxable, whether or not such activities are open to the public. 35 ILCS 120/1. "Occasional" means not more than twice in any calendar year. 86 Ill. Adm. Code 130.2005(a)(4)(A)-(B).

It is not enough simply to be a nonprofit organization or institution. 86 Ill. Adm. Code 130.2005(a)(1)(B). To qualify the selling organization or institution must be "exclusively" charitable, religious or educational in purpose. 86 Ill. Adm. Code 130.2005(a)(1)(A).

Gift shops or rummage stores operated by exempt organizations incur retailers' occupation tax liability on the retail selling which they do in the course of operating gift shops and rummage stores. 86 Ill. Adm. Code 130.2005(b)(2).

Sales by teacher-sponsored student organizations affiliated with an elementary or secondary school located in Illinois are exempt from Retailers' Occupation Tax. 35 ILCS 120/2-5(6); 86 Ill. Adm. Code 130.2006.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Not-for-profit hospitals and nursing homes that qualify as exclusively charitable institutions are not subject to sales tax when selling food or medicine to their patients in connection with the furnishing of hospital service to them. Hospital dining facilities which are conducted primarily for the benefit of the hospital's employees and are not open to the general public are also exempt. 86 Ill. Adm. Code 130.2005(b)(1)(A). However, a hospital or hospital auxiliary incurs a tax liability when selling candy, chewing gum, tobacco products, razor blades and the like at retail, even when such items are sold only to patients because, unlike food and medicine, these items are not necessary to the furnishing of hospital service, and they are competitive. 86 Ill. Adm. Code 130.2005(b)(1)(A).

Court Cases

- *Subway Rests. of Bloomington-Normal, Inc. v. Topinka*, 322 Ill. App. 3d 376 (4th Dist. 2001).
- *Farm Progress Show Concessions v. Dep't of Rev.*, 83 Ill. App. 3d 228 (2nd Dist. 1980).

Regulations

- [86 Ill. Adm. Code 130.420](#) - Finance or Interest Charges - Penalties - Discounts
- [86 Ill. Adm. Code 470.190](#) - Discounts, Penalties and Finance or Interest Charges
- [86 Ill. Adm. Code 510.190](#) - Discounts, Penalties and Finance or Interest Charges
- [86 Ill. Adm. Code 140.301](#) - Cost Price
- [Compliance Alert](#) - Procedures for Reporting Selling Price on Transaction Returns for Leases (Forms ST-556-LSE and RUT-25-LSE)" released in August 2019

Discussion

Where any tangible personal property is sold under installment contracts, receipts from finance or interest charges assessed customers on credit accounts are not subject to Retailers' Occupation Tax. However, a retailer's records should clearly reflect such finance charges apart from the selling price of tangible personal property sold. Where the taxpayer's books and records do not clearly reflect the amount of finance charges, the Department will presume they exist, but will not allow an amount more than such charges common to the taxpayer's industry. Finance charges in conditional sales contracts and installment sales are treated the same way. If a vehicle lease contract includes finance charges on the tax reimbursement, these finance charges also become part of the selling price subject to tax.

Both the Public Utilities Revenue Act and the Gas Revenue Tax Act have incorporated language for dealing with interest and finance charges. Much like the finance and interest charges on credit accounts a taxpayer's records should clearly show that these charges are not included in the selling price. Otherwise, they will be considered as part of the gross receipts and will be taxable.

For Service Occupation Tax, finance and interest charges are excluded from the "cost price" associated with the transfer of goods to the serviceman. These charges must be separately stated in the books and records of the supplier.

Statutory Reference

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - Definitions

[35 ILCS 120/2-5\(23\)](#) – Retailers' Occupation Tax Act – Exemptions

Regulations

- [86 Ill. Adm. Code 130.1965](#) - Florists and Nurserymen
- [86 Ill. Adm. Code 130.415](#) - Transportation and Delivery Charges

Discussion

Generally, florists are subject to Retailers' Occupation Tax on sales of tangible personal property like other retailers. This is true even though such items are made by the florist on special order. However, the following special statutory provisions apply to transactions conducted through a Florists' Delivery Association.

- 1) On all retail orders taken by an Illinois florist and transmitted to a second florist in Illinois for delivery in the state, the sending florist will be responsible for Retailers' Occupation Tax on the transaction with respect to the total amount which is collected from customers, except for the cost of the message conveying delivery instructions where this item is charged for separately from the selling price of the flowers.
- 2) Where an Illinois florist receives an order and gives instructions to a second florist located outside of Illinois for delivery of flowers outside Illinois, tax will likewise be owed with respect to the receipts of the Illinois florist from the customer who placed the order.
- 3) Where an Illinois florist receives instructions from other florists (whether located within or outside Illinois) for delivery of flowers, the receiving florist is not liable for tax on any receipts realized from the transaction. In this instance, if the order originated in Illinois, the tax will be due from and payable by the Illinois florist who *first* received the order and transmitted instructions to the second florist.

Delivery charges are part of the gross receipts subject to Retailers' Occupation Tax when there is an inseparable link between the sale of tangible personal property and the outgoing transportation and delivery of the property. (See *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351(2009).)

Except for cases in which an inseparable link exists, outgoing transportation and delivery is considered a service separate and distinct from the sale of tangible personal property that is being transported or delivered and is excluded from the gross receipts subject to the Retailers' Occupation Tax.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Regulations

- [86 Ill. Adm. Code 130.2130](#) - Undertakers and Funeral Directors
- [86 Ill. Adm. Code 130.2150](#) - Vendors of Memorial Stones and Monuments
- [86 Ill. Adm. Code Part 150](#) Use Tax

Discussion

Sales by undertakers and funeral directors of such tangible personal property as caskets, grave vaults, grave clothing, and flowers are subject to the Retailers' Occupation Tax on their gross receipts from such sales. This is true even though they make such sales as a part of a funeral. It is presumed that the retail selling price of a casket is at least twice the price at which it was purchased by the funeral director, and the retail price of grave clothing, vaults, flowers, and other property is at least the retail price of similar property sold apart from undertaking services, unless records indicate a different retail price.

Funeral directors who derive income from such services as embalming are engaged in a service occupation and are not subject to Retailers' Occupation Tax on receipts from such services or from the transfer of property incident to the service. 86 Ill. Adm. Code 130.2130. However, funeral directors are subject to Service Occupation Tax on the purchase of property (such as embalming fluids) transferred as an incident to the services. Refer to Sales Tax Manual Chapter 5 Service Occupation Tax.

When a funeral home charges rent on clothing or other tangible personal property used during the funeral service, the funeral home is considered the owner of that tangible personal property and would owe Use Tax on the cost.

When a taxpayer engages in a pre-need contract for cemetery or other funeral merchandise in installments over a period and the payments received are placed in trust and not paid to the seller until a certified death certificate, a death maturity form, and a certificate of performance is given to the trustee. The tax will not be due until the delivery date of each of these individually purchased items. (86 Ill. Adm. Code 130.2130(d))

Vendors of Memorial Stones and Monuments

Sales of monuments or grave markers are subject to the Retailers' Occupation Tax. Sales of wreaths, flowers, floral or grave blankets, or other tangible property are also taxable. This is true even though such vendors make such things as wreaths, bouquets, floral and other grave blankets on special order because such items have commercial value.

Statutory Reference

[35 ILCS 120/2-45](#) – Retailers' Occupation Tax Act – Manufacturing and Assembly Exemption

Regulations

- [86 Ill. Adm. Code 130.2156](#) - Vendors of Steam
- [86 Ill. Adm. Code 130.330](#) - Manufacturing Machinery and Equipment (MM&E)

Discussion

Gases, other than natural gas, sold by suppliers other than utilities are considered by the Department to be subject to Use Tax.

Steam

Per 86 Ill. Adm. Code 130.2156 (a), persons who engage in the business of selling steam to purchasers for use or consumption and not for resale, incur Retailers' Occupation Tax liability on their receipts from such sales. For example, when steam heat energy is transferred to the purchaser and the condensate, which results when the steam loses its heat, is not returned to the seller of the steam heat energy, then Retailers' Occupation Tax liability is incurred. The Department considers steam (liquid vapor) to be tangible personal property.

Per 86 Ill. Adm. Code 130.2156(b), persons who are engaged in the business of transferring heat energy to purchasers using steam as the vehicle for that transfer, do not incur Retailers' Occupation Tax liability so long as no tangible personal property is transferred to the purchaser. This would be the case, for example, where the condensate, which results when the steam loses its heat is returned to the seller. For example, this occurs when the purchaser is only purchasing heat from the seller by means of the use of steam and the condensate that results from the cooling of the steam is returned to the seller. In that case, no tangible personal property has been transferred.

Gases

Gases are used to manufacture, to package and to deliver food, material goods and healthcare products and services essential to modern life. Almost every field of human endeavor involves the use of some type of gas. Gases are used in processes including life support, medical diagnosis, medical treatment, heating and cooking, waste treatment, refrigeration, welding, agriculture, beverage packaging and dispensing, water treatment, light bulb manufacturing, etc.

Some of the major product groups of gases are:

- Welding and Cutting Gases – oxygen, acetylene, shielding gases.
- Inert gases – argon, nitrogen, helium.
- Fuel gases – Liquid Propane Gas, acetylene.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- Laser gases – laser assist and lasing gases enhance reliability and productivity for all types of industrial and medical lasers. Assist gases are used to enhance the laser process at the point of use. Industrial lasers use a gas as the lasing medium for generating reliable laser light.
- Balloon gas – helium.
- Beverage Dispensing Gases - carbon dioxide, nitrogen and carbon dioxide/nitrogen mixtures.
- Electronic Gases – carrier gases and process gases. Gases used in the semiconductor, flat panel display, solar cell, and electronic packaging industries.
- Medical Gases – for life support and diagnosis. Examples of medical gases include; medical oxygen, nitrous oxide, heliox, entonox, medical air, medical carbon dioxide. Medical gases ingested by humans in treatment of a medical condition that requires the use of the gases are taxed at the 1% low state rate of tax that is applicable to sales of qualifying food, drugs, medicines and medical appliances. A medical gas is defined as one that is manufactured, packaged, and intended for administration to a patient in anesthesia, therapy, or diagnosis. Title 21 of the Code of Federal Regulations (CFR) designates medical gases as drugs, and mandates the Secretary of the Treasury and the Secretary of Health and Human Services to promulgate regulations for the efficient enforcement of the Federal Food, Drug, and Cosmetic Act (FDA) (drug portion of 21 CFR). Medical Gases are considered prescription drugs because their use as drugs is unsafe without the supervision of a licensed practitioner or by properly instructed emergency personnel.
- Refrigerants – HFCs, HCFCs and environmentally friendly CARE hydrocarbons, ammonia R-717 and R-744 Refrigerant grade CO₂.
- Gaseous Chemicals – including chlorine and ammonia.
- Foam Blowing Agents and Fire Suppression Chemicals.
- Scientific Gases – high purity gases, rare gases and gas mixtures including calibration, instrumentation and carrier gases.

Most gases have multiple uses and can be combined with other gases to form gas mixtures which have additional multiple uses. The tax treatment of gases depends on how the gas is used by the purchaser. A few typical applications of the taxation of gases are shown in the following examples.

Oxygen

Medical oxygen purchased by a non-exempt hospital which will be used on patients is taxable at the low rate for qualifying food and drugs. Oxygen purchased by a non-exempt hospital to be used by the maintenance department for welding and cutting is taxable at the high rate for general merchandise. Oxygen purchased by an exempt hospital is not taxable.

Oxygen is often used as a consumable supply in a production-related manufacturing process. If this is the case, it would qualify for the expanded manufacturing and assembling machinery and equipment exemption. 86 Ill. Adm. Code 130.330. Oxygen used by a manufacturer of oxidizing bleach of which

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

the oxygen is an essential component would be a purchase for resale and would not be taxable. Oxygen bought for personal use (e.g., for use with a cutting torch) would be taxable at the high rate for general merchandise.

Argon

Argon gas used by a manufacturer of light bulbs to fill incandescent light bulbs would be a purchase for resale and would not be taxable. Argon gas purchased to be used as a gas shield in an arc welding application would be taxable at the high rate for general merchandise because it is consumed in the process and not transferred. Argon gas purchased as a medical gas by a hospital to be used in certain types of surgeries would be taxable at the low rate for qualifying food and drugs.

Argon gas purchased for the use of calibrating analytical equipment used in applications such as petrochemical process monitoring, environmental studies and research would be taxed at the high rate for general merchandise.

Gas and the Manufacturing and Assembly Machinery and Equipment Exemption

In general, the exemption does not include machinery and equipment used in the generation of electricity for wholesale or retail sale; the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines or mains; or the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines or mains. (86 Ill. Adm. Code 130.330(k)) However, there may be applications in which gaseous chemicals act as a catalyst and effect a direct and immediate change on the product being manufactured. (86 Ill. Adm. Code 130.330(d))

EXAMPLE: An aluminum oxide catalyst is used in a catalytic cracking process to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or feed are broken up into smaller molecules. After the catalyst is injected into the feed and used in the cracking process, it is drawn off and reused in subsequent manufacturing processes. The catalyst qualifies for the exemption.

Gas Cylinders and Gas Storage Tanks

There are various gas storage containers used to store gases. Some of the most common means of storing gases are compressed liquid gas cylinders and cryogenic tanks. The compressed liquid gas cylinders can either be disposable/non-refillable or refillable.

The “disposable cylinders” are like the small cylinders of gas bought at the local hardware store such as, propane gas for small propane heaters, propane lanterns, soldering torches, etc. These cylinders are discarded after all the gas is consumed. The cylinders filled with gas would have been purchased as a purchase for resale by the retailer and subject to the high rate of tax as general merchandise when sold to a consumer.

“Refillable gas cylinders” are metal cylinders or tanks of varying sizes which are required to meet certain mandated specifications and require periodic inspections, testing and certifications.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Refillable Tanks/Cylinders

- A brand new pre-filled tank may be purchased from a retailer. The sale is subject to Retailers' Occupation Tax on the selling price of the filled tank. The selling price includes the price of the tank and the price of the gas. The retailer/supplier would have purchased the tanks as a purchase for resale.
- A consumer may bring an empty tank to a retailer to have it refilled. The sale is subject to Retailers' Occupation Tax on the selling price of the gas only.
- A consumer may bring an empty tank and exchange that tank for a new filled tank. The sale is subject to Retailers' Occupation Tax on the selling price of the filled tank less the exchange allowance. Basically, the retailer is accepting a trade-in on the tank. The retailer would have purchased the original tank as a purchase for resale.
- A customer may purchase his own bulk tank. In this case the customer would have paid Retailers' Occupation Tax to a retailer at the time of purchase for the tank. Purchases of a gas from a supplier would be taxable.
- A customer may rent the bulk tank from a supplier.
 - When the customer does not have the option of purchasing and using their own storage facilities when they purchase gas from a retailer, the rental fees charged to the customer are includable in the retailer's total gross receipts and are subject to sales tax.
 - When customers have the option of using and purchasing their own tanks, the tank rental fees are excluded from the selling price of the gas and are exempt from Retailers' Occupation Tax. Concerning the tank rentals, the supplier is considered a lessor of the tanks and would incur a Use Tax liability at the time the tanks were acquired for rental purposes.
- When a customer enters into a lease-to-own agreement on a tank, that transaction is a conditional sale from the outset, and all of the receipts from the transaction are subject to Retailers' Occupation Tax.

Cryogenic tanks (stand tanks) are used to hold large volumes of gas at a customer's site or are used at the supplier's site for storage. Usually, these tanks are owned and maintained by the supplier. The taxation of these tanks is the same as above. The stand tank (when located at a manufacturing facility) is mainly used to hold a raw material prior to its entrance into the production process. These tanks are not considered as part of the supplier's manufacturing process because the supplier fills these tanks with a fully manufactured finished product.

Stand tanks, located at the supplier's plant, which are used to hold "inventory" prior to being pumped into cylinders or into tanker truck for delivery to a customer do not qualify for the manufacturing and assembly machinery and equipment exemption. The auditor must ascertain if stand tanks are used in the manufacturing process.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Court Cases

- NORTHWESTERN STEEL AND WIRE CO. V. DEPARTMENT OF REVENUE, 120 Ill. App. 3d 461 (3rd Dist. 1983)
- LONZA, INC. V. DEPARTMENT OF REVENUE, Sangamon County Circuit Court, Case No. 88-TX-6, January 18, 1991

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Regulations

- [86 Ill. Adm. Code 130.201](#) - The Test of a Sale at Retail
- [86 Ill. Adm. Code 130.2005](#) - Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Persons
- [86 Ill. Adm. Code 130.2050](#) - Sales and Gifts by Employers to Employees
- [86 Ill. Adm. Code 130.2125](#) - Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives
- [86 Ill. Adm. Code 150.305\(c\)](#) - Effect of Limitation that Purchase Must be at Retail from a Retailer to be Taxable
- [86 Ill. Adm. Code 150.306\(b\)\(3\)](#) - Interim Use and Demonstration Exemptions
- [86 Ill. Adm. Code 151.105](#) - Basis and Rate of the Tax
- [86 Ill. Adm. Code 152.105](#) - Basis and Rate of the Tax
- [86 Ill. Adm. Code 152.115](#) - Nontaxable Transactions
- [86 Ill. Adm. Code 153.110](#) - Basis and Rate of the Tax
- [86 Ill. Adm. Code 153.115](#) - Nontaxable Transactions

Discussion

The Department's position regarding gifts is that the receiver is not a taxable user as defined by the Use Tax statutes. To be subject to Use Tax, the user must purchase the tangible personal property at retail from a retailer. The recipient does not fit these requirements.

However, the gift giver who purchases the property within Illinois and gives it away within Illinois makes a taxable use of the property when making the gift. (See 86 Ill. Adm. Code 150.305(c)) Tax is due by the purchaser/gift giver, if the recipient takes possession of the tangible personal property in Illinois and even if recipient is an exclusively religious, charitable, or educational organization. Tax is not due if the seller ships (on behalf of the purchaser) the gift directly to a recipient outside the state in a manner which qualifies as Interstate Commerce. Tax is also not due if the purchaser is located outside Illinois and sends it to a recipient located within Illinois. In this instance, the gift is being made outside Illinois. However, if the out-of-state purchaser comes into Illinois and gives the gift to a someone in Illinois, Use Tax would be due.

There may be instances where the Illinois taxpayer purchases tangible personal property (TPP) from an Illinois supplier and gives that supplier a resale certificate. The Illinois taxpayer sells most of the TPP but gives away some of the items. The Legal Services Office has advised that when this taxpayer mails some of the gifts to out-of-state recipients, the taxpayer is subject to Use Tax on the gift. The fact that this taxpayer purchased the items from an Illinois supplier would preclude them from claiming the temporary storage exemption. The temporary storage exemption is only available where tangible personal property is "acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State."

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Retailers who give away some of the items they purchased tax free from an Illinois supplier by giving that supplier a resale certificate, owe Use Tax on the cost price of the items given away.

Retailers who give away free samples to potential consumers owe Use Tax on the cost price of the items given away. The demonstration use exemption does not apply when tangible personal property given away is used or consumed by a customer to induce future purchases of similar items. (See 86 Ill. Adm. Code 150.306(b)(3))

Sales by exclusively charitable, religious, or educational organizations are not subject to the Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments. When they occur, the transfer of property must be merely incidental and secondary to the dominant purpose of making a gift to the charity. (86 Ill. Adm. Code 130.2005(a)(1-4))

Vehicles, Watercraft, and Aircraft Gifts

Aircraft are exempt when gifted to a beneficiary in the administration of an estate when the beneficiary is a surviving spouse. (86 Ill. Adm. Code 152.115(a)(4)) For other gift transfers that do not qualify for a Use Tax exemption, tax will be due on the fair market value of that aircraft at the date it is acquired or the date it is brought into the State whichever is later. (86 Ill. Adm. Code 152.105(c))

The ways to treat vehicles transferred by gift or without reasonable compensation depends on the date the gift was transferred and will also be based on the fair market value as determined by the year, make, model, and Vehicle Identification Number. The Department or the Department's vendor will determine the fair market value based on those factors. (86 Ill. Adm. Code 151.105(j)).

When a watercraft is gifted, the tax is calculated on the fair market value of the watercraft when it is acquired or when it is brought into the State whichever is later. (86 Ill. Adm. Code 153.110(b)) The exception is if the watercraft is a gift to an immediate family member, no tax is due on that transfer. (86 Ill. Adm. Code 153.110(b)) Also, like with the aircraft, if the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is a surviving spouse no tax is due. (86 Ill. Adm. Code 153.115(c))

Refer to Sales Tax Manual Chapter 12 for information on vehicles, watercrafts, and aircrafts.

Regulations

- [86 Ill. Adm. Code 130.120\(a\)](#) - Nontaxable Transactions
- [86 Ill. Adm. Code 130.2125](#) - Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives

Discussion

The sale of a gift certificate is considered a sale of an intangible and is not subject to retailers' occupation tax liability. When the gift certificate is later redeemed as payment for tangible personal property purchased, the value of the gift certificate must be included in gross receipts when calculating the retailers' occupation tax. In other words, the tax is calculated on the entire purchase price of the tangible personal property purchased before the gift certificate is applied as a payment.

Statutory Reference

[35 ILCS 120/2-5 \(18\)](#) – Retailers' Occupation Tax - Exemptions

Regulations

- [86 Ill. Adm. Code 130.120](#) – Nontaxable Transactions
- [86 Ill. Adm. Code 130.1910](#) - Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles

Discussion

Receipts from the sale of certain legal tender, currency, medallions, or gold or silver coinage issued by the State of Illinois, the United States, or the government of any foreign country and bullion are exempt from the sales tax. "Legal Tender" includes currency, gold coins, silver coins, and any other item accepted as money in the country in which it is issued. "Medallions" are coins, other than legal tender, which are issued by a governmental body, usually as a memorial. "Bullion" is gold, silver, or platinum in a bulk state with a purity of not less than 980 parts per 1,000.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory References

[35 ILCS 120/2-5\(15\)](#) – Retailers’ Occupation Tax Act – Exemptions

Regulations

- [86 Ill. Adm. Code 130.120\(r\)](#) - Nontaxable Transactions
- [86 Ill. Adm. Code 130.2145\(d\)](#) - Vendors of Meals

Discussion

Under the Retailers’ Occupation Tax Act, “selling price” is determined without any deductions for costs of doing business. Mandatory charges which are not subject to negotiation would be considered a cost of doing business. They would be subject to tax even if they are billed by the seller to the customer as a separate item.

Mandatory gratuity charges which are separately stated and paid directly by a retailer to its service employees are not subject to tax provided that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting, or cleaning up the food or beverage function with respect to which the service charge is imposed. Only the portion of a separately stated mandatory service charge that is turned over to a service employee is exempt from sales tax. If any part of the service charge is used to fund or pay wages, labor costs, employee benefits or employer costs of doing business, that part of the service charge is includable in gross receipts. Voluntary gratuities are not included in taxable gross receipts.

Example 1: If a restaurant adds a 15% mandatory charge onto a customer’s bill and pays the 15% to the food server in lieu of tips, the restaurant would not owe retailers’ occupation tax on the gratuity charges collected. (See 86 Ill. Adm. Code 130.120(r)).

Example 2: If a business distributes gratuities based on a rate of allocation assigned to job titles, and those gratuities are then added to the employees’ gross wages, the gratuities distributed by the employer on the employees’ gross wages are considered taxable.

Example 3: It is up to the taxpayer to show that the gratuities are paid to the employees as a gratuity and not in the form of higher wages. If the employer’s payroll records show wages are being paid to employees rather than gratuities, then the mandatory gratuities will be subject to retailers’ occupation tax.

A mandatory gratuity charge which is inseparable from services rendered would be included in taxable receipts if it is not paid to employees providing the service. This is true even if the gratuity amount was separately stated. (See *Fontana D’Or, Inc., v. Dept. of Revenue* , 44 Ill. App. 3d 1064 (1st Dist. 1976)).

Service employees include **ALL** individuals directly involved in making the service. For example, in a hotel banquet business, this could include such positions as the director of catering, the catering sales

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

manager, and the convention services sales manager who are all vitally involved in the overall success of the hotel's banquet function.

Differences between a gratuity/tip and service charge:

- Service charges are considered wages, and, therefore, not eligible for the FICA Tip Credit (The 45B Credit) and may be considered taxable in Illinois.
- Tips and wages are reported on separate lines of the quarterly Federal payroll tax return (Form 941).

Examples of taxpayer records that will show tips/gratuities:

- Payroll records
- Federal Form 941
- Federal Form W-3
- Employee Tip Reports (IRC Form 4070A)
- Revenue-Tips account
- Journal Sheets
- POS Records
- Sales Journal

Court Cases

- *Fontana D'Or, Inc., v. Dept. of Revenue* , 44 Ill. App. 3d 1064 (1st Dist. 1976).
- *Cohen v. Playboy Clubs International, Inc.*, 19 Ill. App. 3d 215 (1st Dist. 1974).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

If a retailer makes a taxable sale to a purchaser who commits identity theft, the retailer is entitled to a deduction from gross receipts for that sale. Identity theft occurs when the purchaser, for example, uses stolen identification to obtain a loan, uses a stolen check, or uses a stolen credit card. In these cases, the retailer has not received any gross receipts if the bank debits the retailer's bank account or returns the draft unpaid. The retailer is allowed an "identity theft" deduction from gross receipts because a retail sale has not occurred. This is true even if an insurance company reimburses the retailer for the theft where title to the merchandise is transferred to insurance company. In order to make the claim of identity theft, the taxpayer must be able to provide support for their claim.

Statutory Reference

[35 ILCS 115/3-45](#) - Service Occupation Tax – Interstate Commerce Exemption
[35 ILCS 120/2-60](#) – Retailers’ Occupation Tax – Interstate Commerce Exemption

Regulations

- [86 Ill. Adm. Code 130.605](#) – Sales of Property Originating in Illinois; Questions of Interstate Commerce
- [86 Ill. Adm. Code 140.501](#) – Sales of Service Involving Property Originating in Illinois

Discussion

Interstate commerce commonly refers to the movement of persons or property from one state to another, or among more than two states. The sole power to regulate commerce between the states was granted to Congress in the U.S. Constitution by what is commonly called the commerce clause. The interpretation of the commerce clause with respect to whether state tax provisions are in violation of this constitutional mandate has been the responsibility of the judicial system. A long series of U.S. and individual state Supreme Court decisions exist in attempting to define and interpret the effect of the commerce clause on state tax matters. In general, the commerce clause has been held to prohibit states from imposing sales taxes, which constitute a direct or real burden on interstate commerce, or which unduly burdens, obstructs or interferes with interstate commerce activity. In line with these constitutional limitations, the Retailers’ Occupation Tax statutes do not impose tax on the privilege of engaging in any business in interstate commerce.

For purposes of Retailers’ Occupation Tax, the Interstate Commerce Exemption applies to all transactions where the delivery of the property sold is made outside Illinois and the property is not returned to a point within the State. In most situations, the exemption does not apply where tangible personal property is delivered to persons in Illinois, even if the purchaser transports the property outside the State for use.

If an Illinois business sells to an out-of-State purchaser and the Illinois business ships the tangible personal property to the out-of-State purchaser, this would be a sale in interstate commerce. If the out-of-State purchaser arranges for shipment by a common carrier, and the out-of-State purchaser is listed as the shipper or consignor, the sale is taxable in Illinois. Auditors must make sure the seller is listed as the consignor or shipper on the bill of lading before allowing the Interstate Commerce Exemption.

There are three exceptions which allow taxpayers to claim the Interstate Commerce Exemption on property delivered in Illinois:

- 1) The sale of motor vehicles delivered in Illinois to nonresidents provided they meet all the requirements of 86 Ill. Adm. Code 130.605(b)(1).
- 2) Beginning July 1, 2007, the sale of aircraft delivered in Illinois which will be based outside Illinois provided the purchaser meets the requirements of 86 Ill. Adm. Code 130.605(b)(2).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

- 3) The use or purchase of tangible personal property by a common carrier by rail or motor that receives the physical possession of the property in Illinois, and that transports the property, or shares with another common carrier in the transportation of the property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of the property to a destination outside Illinois, for use outside Illinois, is exempt from tax as explained in 86 Ill. Adm. Code 130.605(b)(3).

For purposes of Service Occupation Tax, the Interstate Commerce Exemption applies to all sales of service where property transferred as an incident to that service is delivered outside Illinois.

An exemption for interstate commerce does not exist under the Use Tax law. The courts have held in numerous cases that the incidence of a use tax is not affected by the provisions of the commerce clause. Use Tax has been held not to be a burden on interstate commerce even though the property being subjected to the tax was formerly in interstate commerce. The 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. However, a temporary storage exemption does exist under the Use Tax regulations for tangible personal property shipped to Illinois from out-of-State, stored here temporarily, and subsequently transferred and used solely outside this State. (See Topical Section "Temporary Storage" discussed later in this chapter.) Note also, to avoid multi-state taxation, credit is given against Illinois Use Tax for sales taxes properly due and paid to another state. 86 Ill. Adm. Code 150.310(a)(3).

Summarily, an out-of-State retailer with nexus in Illinois may be required to be a Use Tax collector while at the same time having certain sales exempt from the Retailers' Occupation Tax as sales in interstate commerce, even though the selling activities take place in Illinois. Refer to the "Nexus" section in this chapter.

Note: The Interstate Commerce Exemption is not the same as the "rolling stock" exemption. The Interstate Commerce Exemption is for products shipped from Illinois to out-of-State purchasers. The "rolling stock" exemption is for vehicles involved in interstate commerce. 86 Ill. Adm. Code 130.340.

Regulations

- [86 Ill. Adm. Code 130.1995](#) – Personalizing Tangible Personal Property

Discussion

Sales of stock or standard labels and pricing tags to wholesalers and retailers for use in pricing articles which they are engaged in selling are taxable sales for use and are not considered to be exempt sales for resale. The person using the labels or tags for pricing purposes is the user, even though the label or tag is affixed to and remains with the article sold. Such labels are subject to retailers' occupation tax and use tax.

If the label contains information other than the price which is primarily for the benefit of the consumer, the labels qualify for the resale exemption and are not taxable to the seller. Examples of this type of label would be those containing warranty information, safety instructions, price per pound, total weight of package, etc. Also, labels that list product ingredients, consumer information, or cooking or storage instructions, product model number, serial number, date of manufacture and other product information are generally for the benefit of the purchaser and may be purchased for resale.

Universal Product Codes (UPC), Bar Codes, QR Codes, and similar electronically readable codes are generally taxable because they contain specialized information having usefulness primarily to the manufacturer and/or retailer of the product for inventory control or marketing purposes. If those codes are primarily for the benefit of the purchaser, however, the labels qualify for the resale exemption. For example, a QR Code label attached to a food product which links to cooking instructions on a website could qualify for the exemption.

If a pricing label or price tag is specially printed, which is of use or value primarily to the person to whom it is sold, it would be subject to the service occupation tax or service use tax depending on the serviceman's activities. For example, tangible personal property sold to a serviceman, such as a pharmacist, for use in the pharmacist's service business is generally subject to tax depending upon the tax base the serviceman has chosen. For general information, see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and service occupation tax.

For labels that are personalized to customers' requests the labels will be considered a service and the seller of them will not be required to collect retailer's occupation tax if they are deemed to have no commercial value. See 86 Ill. Adm. Code 130.1995(b)(1).

Statutory Reference

[35 ILCS 105/2\(1-10\)](#) – Use Tax Act – Definitions

[35 ILCS 120/1](#) – Retailers’ Occupation Tax Act – Definitions

[35 ILCS 110/2](#) – Service Use Tax Act – Definitions

Regulations

- [86 Ill. Adm. Code 130.415](#) – Transportation and Delivery Charges
- [86 Ill. Adm. Code PART 131](#) – LEVELING THE PLAYING FIELD FOR ILLINOIS RETAIL ACT
- [86 Ill. Adm. Code 150.201](#) – Use Tax – General Definitions
- [86 Ill. Adm. Code 150.801](#) – When Out-of-State Retailers Must Register and Collect Use Tax
- [86 Ill. Adm. Code 150.802](#) – Trade Show Appearances
- [86 Ill. Adm. Code 150.803](#) – Wayfair Nexus – Nexus Without Physical Presence October 1, 2020 through December 31, 2020
- [86 Ill. Adm. Code 150.804](#) – Marketplace Facilitators January 1, 2020 through December 31, 2020
- [86 Ill. Adm. Code 150.805](#) – Voluntary Registration by Certain Out-of-State Retailers
- [86 Ill. Adm. Code 270.115](#) – Jurisdictional Questions

Discussion

Whether a mail order, online, or other out-of-state retailer is subject to Illinois Retailers’ Occupation Tax liability or is required to collect Illinois Use Tax from its Illinois customers depends upon whether that retailer has sufficient “nexus” with the State of Illinois. Refer to Chapter 7, Nexus Rules.

Court Cases

- *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018)
- *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977)
- *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960)
- *Brown’s Furniture v. Wagner*, 171 Ill. 2d 410 (1996)

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

Statutory Reference

[35 ILCS 105/3-75](#) – Use Tax Act – Serviceman Transfer

[35 ILCS 110/2](#) – Service Use Tax Act - Definitions

[35 ILCS 115/2](#) - Service Occupation Tax Act

[35 ILCS 120/2-55](#) – Retailers' Occupation Tax Act – Serviceman Transfer

Regulations

- [86 Ill. Adm. Code 130.1935](#) - Computer Software
- [86 Ill. Adm. Code 140.141](#) - Warranty Repairs
- [86 Ill. Adm. Code 140.301\(b\)\(3\)](#) - Cost Price

Discussion

Maintenance agreements are contracts to provide repairs for a particular item within a stated time period and for a pre-determined fee. 86 Ill. Adm. Code 140.141(c)(1). Maintenance agreements are commonly sold in conjunction with sales of office equipment (copy machines, typewriters, etc.), home appliances (refrigerators, stoves, etc.), and consumer electronics (cell phones, televisions, etc.) Maintenance agreements are also commonly referred to as "service contracts" or "extended warranties."

The taxability of maintenance agreements depends upon whether charges for the agreements are included in the selling price of the tangible personal property. [ST-14-0017-GIL](#).

• Maintenance agreements included in selling price

If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. No tax is incurred by either the customer or the serviceman on the maintenance services or parts when the repair or servicing is performed. The tax liability has been satisfied by the original taxable sale of the maintenance agreement. ST-14-0017-GIL.

EXAMPLE: A retailer sells a refrigerator and as an incentive to help sell the refrigerator, the retailer includes a one-year maintenance agreement to take effect after the manufacturer warranty expires. Since the maintenance agreement was included in the selling price of the refrigerator, parts transferred subject to the maintenance agreement are not subject to tax. HOWEVER, if the maintenance agreement is renewed or extended, the selling price of the maintenance agreement is non-taxable and the serviceman will owe Use Tax on the purchase of parts used in the repair or service.

• Maintenance agreements sold separately

If maintenance agreements are sold separately from tangible personal property, sales of the agreements are not taxable transactions. Service providers incur use tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. ST-14-0017-GIL.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Warranties

Maintenance agreements should not be confused with a manufacturer's warranty, which is often included in the selling price. Where a seller/warrantor (e.g., a retailer or a manufacturer) is required to make a repair to an item under the terms of a warranty included in the retail selling price of that item, the repair parts and materials transferred incident to the repair are not subject to tax. This is because the warranty (and the work to be done under the warranty) was included as part of the retail selling price of the item and, as such, was subject to retailers' occupation tax and use tax when the item was sold at retail. 86 Ill. Adm. Code 140.141(b). However, the tax treatment of extended warranties is the same as the tax treatment of maintenance agreements since an extended warranty are a form of a maintenance agreement. 86 Ill. Adm. Code 140.141(c)(2). Refer to topical section "Warranties" for more information.

Exemptions

A serviceman will incur no tax liability on repairs made under a maintenance agreement for a person that is able to claim an exemption, either because of that person's exempt status (e.g., the person possesses an exemption identification number issued by the Department, such as the Federal or State government) or because the tangible personal property being repaired is exempt from tax (e.g., due to the manufacturing machinery, graphic arts or pollution control equipment exemptions). 86 Ill. Adm. Code 140.301(b)(3).

A de minimis serviceman incurring a use tax liability may claim exemptions predicated upon either the exempt status of his customer or upon exemptions claimed by his customer based on nontaxable uses of the tangible personal property transferred by the serviceman. 86 Ill. Adm. Code 140.108(a)(2). A customer's status as an exempt entity shall "flow through" to the de minimis serviceman making the sale of service. The customer must provide its "E" number to the de minimis serviceman in order to relieve the de minimis serviceman of use tax liability on the sale of tangible personal property being transferred to that customer. 86 Ill. Adm. Code 140.108(a)(2)(A). A de minimis serviceman incurring a use tax liability may claim any of the exemptions, except as provided in Section 140.108(a)(2)(C), authorized under the Service Occupation Tax Act. For instance, these exemptions would include, but are not limited to, sales to customers who are able to properly document the farm chemicals, newsprint and ink, manufacturing machinery and equipment, graphic arts machinery and equipment, pollution control, farm machinery and rolling stock exemptions. De minimis servicemen may likewise claim the interstate commerce exemption, which is more fully explained at 86 Ill. Adm. Code 130.605. 86 Ill. Adm. Code 140.108(a)(2)(b).

A de minimis serviceman incurring service occupation tax liability on his cost price is authorized to claim any of the various exemptions provided for in the Service Occupation Tax. For example, he may claim the interstate commerce exemption or accept various exemption certificates from his customers (e.g., he can accept Certificates of Resale). 86 Ill. Adm. Code 140.109(a)(3).

A serviceman who incurs SOT on his selling price is authorized to claim any exemption provided for in the Service Occupation Tax. For example, he may claim the interstate commerce exemption or accept

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

various exemption certificates from his customers (e.g., Certificates of Resale, exemption identification numbers). 86 Ill. Adm. Code 140.106(d).

Computer Software

In general, maintenance agreements that cover computer software are treated the same as maintenance agreements for other types of tangible personal property. 86 Ill. Adm. Code 130.1935(b).

If, under the terms of a maintenance agreement involving computer software, a software company provides a piece of object code (“patch” or “bug fix”) to be inserted into an executable program that is a current or prior release or version of its software product to correct an error or defect in software or hardware that causes the program to malfunction, the tangible personal property transferred incident to providing the patch or bug fix is taxed in accordance with the provisions discussed above. [ST-17-0014-GIL](#).

In contrast to a patch or bug fix, if the sale of a maintenance agreement by a software provider includes charges for updates of canned software, which consist of new releases or new versions of the computer software designed to replace an older version of the same product and which include product enhancements and improvements, the general rules governing taxability of maintenance agreements do not apply. This is because charges for updates of canned software are fully taxable as sales of software under 86 Ill. Adm. Code 130.1935(b). Please note that if the updates qualify as custom software under 86 Ill. Adm. Code 130.1935(c), they may not be taxable. Therefore, if a maintenance agreement provides for updates of canned software, and the charges for those updates are not separately stated and taxed from the charges for training, telephone assistance, installation, consultation, or other maintenance agreement charges, then the whole agreement is taxable as a sale of canned software. ST-17-0014-GIL.

Regulations

- [86 Ill. Adm. Code Part 130.401](#) - Meaning of Gross Receipts
- [86 Ill. Adm. Code 130.2145\(c\)\(2\)\(C\)](#) - Vendors of Meals
- [86 Ill. Adm. Code Part 140.101](#) - Basis and Rate of the Service Occupation Tax
-

Discussion

Membership fees are, generally, considered intangibles and are not subject to retailers' occupation tax or use tax. If a membership charge entitles the customer to receive an item of tangible personal property, or to receive a service and tangible personal property is transferred incident to the service, the charge may result in retailers' occupation tax liability, service occupation tax liability, or use tax liability. ([ST 16-0006-GIL](#)).

Minimum Charges

Minimum charges imposed by country clubs that must be paid regardless of whether the member purchases food or beverages are subject to tax only to the extent they are incurred for actual food or beverage purchases. (See *Aurora Country Club, Inc. v. Department of Revenue*, 50 Ill. App. 3d 756, (2d Dist. 1977)).

For example, if a country club charges a member \$100 each month as a "minimum charge" for food services at the club, but the member only consumes \$75 worth of food in a particular month, tax is due on \$75.

Telecommunications Excise Tax

The Telecommunications Excise Tax Act, 35 ILCS 630/1 et seq., provides that a tax is imposed upon the act or privilege of originating or receiving intrastate telecommunications by a person in this State at the rate of 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer. "All services and equipment provided in connection therewith" include call-waiting, call-forwarding, and operator assistance. 86 Ill. Adm. Code 495.100(g). Charges for answering services are taxable unless such charges are disaggregated and separately identified from other charges. 86 Ill. Adm. Code 495.100(c).

A monthly membership fee is a portion of the gross charges for "the act or privilege of originating or receiving telecommunications in this State" and not the provision of a service in connection with originating or receiving telecommunications. As such, a monthly membership fee is subject to the Telecommunications Excise Tax.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory Reference

[35 ILCS 120/1](#) - Retailers' Occupation Tax Act - Definitions

Regulations

- [86 Ill. Adm. Code 130.120\(g\)](#) – Nontaxable Transactions
- [86 Ill. Adm. Code 130.330\(g\)](#) – Manufacturing Machinery and Equipment
- [86 Ill. Adm. Code 130.1910](#) – Antiques, Curios, Artwork, Collectors' Coins, Collectors' Postage Stamps and Like Articles
- [86 Ill. Adm. Code 130.2105](#) - Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings, and Their Suppliers; Transfers of Data Downloaded Electronically
- [86 Ill. Adm. Code 140.108\(a\)\(2\)\(B\)](#) – “De Minimis” Servicemen Who Incur Use Tax on Their Cost Price
- [86 Ill. Adm. Code 140.125\(i\)](#) - Examples of Nontaxability

Discussion

Sales of publications, such as, newspapers, magazines, comic books, etc., are generally exempt from Illinois Retailers' Occupation Tax. To determine if a publication qualifies as a magazine for the purpose of the newsprint and ink exception, it must be published periodically, meaning at least two times per year, in the form of newsprint and ink. Other factors to consider include:

- (1) whether a member of the public can subscribe to the publication;
- (2) whether the publication is one that has the basic format of a magazine, including soft covers, individual pages, and indexed articles;
- (3) whether the publication contains articles and items that have value to the general public, rather than to a specialized class of people; or
- (4) whether the publication contains general advertising.

A publication that has one or more of the above characteristics would be considered a magazine, assuming the first test of periodic publication is met. 86 Ill. Adm. Code 2105.

Generally, items such as paper and ink that are purchased by a printer are being purchased for resale and qualify for the resale exemption. 86 Ill. Adm. Code 130.2105(b). However, printers may also qualify for the newsprint and ink exemption when purchasing paper, ink, glue, etc., which will be incorporated into an exempt newspaper or magazine. A serviceman, such as a printer, does not have to be registered in order to claim the newsprint and ink exemption. 86 Ill. Adm. Code 140.108(a)(2)(B).

Purchases of supplies and chemicals which are not incorporated into an exempt publication do not qualify for the newspaper and ink exemption and are taxable. Beginning July 1, 2017, machinery and

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

equipment used to print newspapers and magazines may qualify for the manufacturing and assembly machinery and equipment exemption. 86 Ill. Adm. Code 130.330(g). See Sales Tax Manual Chapter 15 for additional information regarding the manufacturing and assembling machinery and equipment exemption.

Paper used to wrap newspapers or magazines can qualify for the exemption if these wrappers reach the ultimate purchaser of the newspaper or magazine. If the wrappers are removed by delivery personnel, then the wrapping paper is taxable.

Advertising inserts provided by third parties are exempt if distributed with an exempt publication.

Comic books that are published and sold as current serial publications are exempt from Retailers' Occupation Tax as newsprint and ink. 86 Ill. Adm. Code 1910(e). Comic books sold as collectors' items rather than as newsprint and ink are subject to Retailers' Occupation Tax. For example, old comic books sold at conventions that are not current serial publications are subject to tax.

Statutory References

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - Definitions

[35 ILCS 105/2](#) – Use Tax Act - Definitions

Regulations

- [86 Ill. Adm. Code 130.110](#) – Occasional Sales
- [86 Ill. Adm. Code 130.2013](#) – Persons in the Business of Both Renting and Selling Tangible Personal Property—Tax Liabilities, Credit
- [86 Ill. Adm. Code 131.140](#) – Factors Used by Marketplace Facilitators in Determining if Thresholds in Section 131.135 of this Part are Met

Discussion

The Retailers' Occupation Tax Act imposes a tax upon persons who are engaged in the business of selling at retail tangible personal property. Persons who make isolated or occasional sales do not incur tax liability. The Retailers' Occupation Tax and Use Tax do not apply to occasional sales because the seller is not engaged in a business of making sales. For example, if a business sells tangible personal property, such as machinery or other capital assets, which has been used in the business and is no longer needed, and which such business does not otherwise engage in selling, it does not incur Retailers' Occupation Tax liability when selling such tangible personal property.

When a person purchases an item of tangible personal property with the intent of reselling the item for use or consumption, that person engages in conduct equivalent to a retailer. In such a situation, the initial purchase is a sale for resale and the subsequent sale is a taxable sale at retail subject to Retailers' Occupation Tax, not an occasional sale. For example, if a hospital possessing an exemption identification number issued by the Department purchases a computer system with the intent of reselling the computer system to a group of doctors, the hospital incurs Retailers' Occupation Tax. In this instance, the hospital is holding itself out as a retailer and its sale of the computer system to the group of doctors is taxable. The hospital should provide a Certificate of Resale to its supplier on the purchase of the computer system. It is improper for the hospital to use its exemption identification number to purchase the computer system in this circumstance. [86 Ill. Adm. Code 130.110\(f\)](#)

When persons engaged primarily in the business of selling tangible personal property that is not for use or consumption (such as the business of selling tangible personal property primarily to purchasers for resale), do sell items for use or consumption, they would be liable for the tax, even though these sales are only a small fraction of their total sales. These retail sales would not be isolated or occasional. For example, a company operating a cafeteria for employees is subject to tax. Such sales are not exempt as isolated or occasional sales although the main business of the company may be manufacturing. [86 Ill. Adm. Code 130.110\(d\)](#)

No sales made on a marketplace are considered to be occasional sales. [86 Ill. Adm. Code 131.140\(b\)\(3\)](#)

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory Reference

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - Definitions

[35 ILCS 105/2](#) – Use Tax Act - Definitions

Regulations

- [86 Ill. Adm. Code 130.2070](#) - Sales of Containers, Wrapping and Packing Materials and Related Products

Discussion

Sales for Resale

- ***Containers***

Sellers are not subject to the retailers' occupation tax on their sales of containers to purchasers if the ownership of the containers together with the ownership of the tangible personal property contained in such containers will be transferred by the purchasers to their customers during the subsequent sale of the tangible personal property. The sale of these containers to such purchasers are considered sales for resale. This includes purchases of containers that are transferred with a deposit (i.e., returnable). 86 Ill. Adm. Code 130.2070(b)(1).

The term "containers" includes all containers, wrapping and packing materials, bags, twines, container handles, wrapping papers, gummed tapes, cellophane, boxes, bottles, drums, cartons, sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained. 86 Ill. Adm. Code 130.2070(a).

- ***Nonreusable tangible personal property***

Nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias, or drive-ins, is a sale for resale when it is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package, or consume food or beverages, regardless of where consumption of the food or beverage occurs. 86 Ill. Adm. Code 130.2070(b)(3).

Examples of such items include, but are not limited to, paper and plastic cups, plates, baskets, boxes, sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags and wrapping or packaging materials that cannot be reused by the food or beverage vendor and which are transferred to customers as part of the sale of food or beverages. Such items do not include items which are used by the food vendor in conducting his business and which are not transferred to the customer, including, but not limited to, paper products, serving trays, serving dishes, utensils or condiment bottles. 86 Ill. Adm. Code 130.2070(b)(3).

Note: If a restaurant charges their customer a carryout charge to cover the cost of nonreusable tangible personal property, then that charge is subject to tax.

Sales for Use or Consumption

Retailers are subject to tax and may not provide a resale certificate to their suppliers on the purchase of containers if the retailers will not transfer the ownership of the containers to their customers. In this situation, the retailers are purchasing the containers to serve only as a means of containing the tangible personal property while in the process of being delivered to their customers. Since the retailer is intending to retain and reuse, or discard such containers once the retailer has completed its subsequent sale, the retailer is purchasing the containers for use or consumption. As a result, retailers' suppliers are liable for retailers' occupation tax on such sales. 86 Ill. Adm. Code 130.2070(c)(1). For example, a manufacturer who purchases containers to store products during the manufacturing process or during delivery, but who discards or reuses the containers after selling the products, is liable for tax on the purchase. Other common examples include milk crates and pallets. 86 Ill. Adm. Code 130.2070(c)(7).

A "facility charge" for a container storing liquid nitrogen is included in gross receipts of nitrogen sale subject to Retailers' Occupation Tax. The sale of the nitrogen could not be completed unless a special container is leased to the purchaser. The cost of supplying and maintaining the container is a cost of completing the sale and the reimbursement for that expense is subject to the Retailers' Occupation Tax.

The sale of custom boxes and bags to retailers who will sell tangible personal property contained therein is deemed to be a sale for resale and not subject to the retailers' occupation tax or use tax.

Paper towels and toilet tissues are also items deemed to be sold for use or consumption when sold to a purchaser for use in connection with the conduct of the business and not for resale as such. 86 Ill. Adm. Code 130.2070(c)(2). Additionally, sales of paper napkins, drinking straws, paper cups and paper plates to operators of office buildings, hotels and the like for the use of their employees, tenants or guests are taxable retail sales. 86 Ill. Adm. Code 130.2070(c)(3).

Nonreusable paper products such as napkins, drinking straws, cups or plates sold to a food or beverage vendor who uses some of these products on the premises in conducting the business, but who resells some of these products as hereinabove provided, and it is impracticable, at the time of the sale to such food or beverage vendor, to determine exactly how much of the purchase is for use and how much is for resale, the purchaser may determine, from his experience, approximately what percentage of his purchases of such paper products is for resale and may give the supplier a blanket Certificate of Resale certifying that that percentage of his purchases of such products in the future will be for resale. If the Department goes behind such a Certificate of Resale to check its accuracy, the Department will not disallow the Certificate of Resale if the percentage stated is reasonably close to what the facts actually are. Such a purchaser should redetermine and recertify such percentage to suppliers of such paper products at least every 12 months. If the purchaser uses some of the paper products which the purchaser has certified are for resale so that they do not pay tax to the suppliers on the purchases of such products, the purchaser is liable to pay the use tax directly to the Department on the cost price of such paper products. 86 Ill. Adm. Code 130.2070(c)(5).

Court Cases

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- *United States Can Co. v. Ill Dep't of Rev., Case No. 92 CH 11568, December 2, 1994.*

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory Reference

[35 ILCS 105/3-5 \(21\)](#) - Use Tax Act - Exemptions

[35 ILCS 120/2-5 \(27\)](#) – Retailer’s Occupation Tax Act - Exemptions

Regulations

- [86 Ill. Adm. Code 130.120 \(gg\)](#) - Nontaxable Transactions
- [86 Ill. Adm. Code 130.1971](#) - Sellers of Pets and the Like
- [86 Ill. Adm. Code 130.2100\(d\)](#) - Sellers of Feeds and Breeding Livestock

Discussion

The sale of pets, animals, horses, fish, birds, insects, and the like are subject to Retailers' Occupation Tax on the gross receipts from sales. However, the sale of breeding animals, horses, fish, birds, insects, and the like are considered as sales for resale and not subject to Retailers' Occupation Tax. Also, the farmers and producers of breeding livestock are not liable for Retailers' Occupation Tax on sales of bulls, stallions, or other servicing animals for breeding purposes, and this is further addressed in 86 Ill. Adm. Code 130.2100(d).

Statutory Reference

[35 ILCS 120/1a](#) – Retailers’ Occupation Tax Act – Pollution control facilities

[35 ILCS 120/1e](#) – Retailers’ Occupation Tax Act – Pollution control facilities

Discussion

Subject to the provisions of Section 1f of the Retailers’ Occupation Tax Act, or subject to the provisions of Section 5.5 of the Illinois Enterprise Zone Act, all tangible personal property to be used or consumed in the operation of pollution control facilities, as defined in Section 1a of the Retailers’ Occupation Tax Act, within an enterprise zone established pursuant to the "Illinois Enterprise Zone Act", as amended, shall be exempt from the Retailers’ Occupation Tax. 35 ILCS 120/1e.

Refer to the “Enterprise Zones/Development Zones” section.

Regulations

- [86 Ill. Adm. Code 130.430](#) - Deposit or Prepayment on Purchase Price

Discussion

If a buyer in a sale at retail makes a binding commitment to purchase, and the tangible personal property which is the subject of the binding commitment has been identified to the contract, any payment on the purchase price must, at the time of such payment, be included in the measure of the seller's tax liability. Tangible personal property is identified to a contract pursuant to the standards set forth in Section 2-501 of the Uniform Commercial Code Sales (810 ILCS 5/2-501). The giving of the binding purchase order by the purchaser, identification of the tangible personal property, and the making of a payment on the price are sufficient to establish that a sale is intended for the purpose of determining that the seller has received taxable "gross receipts".

After the seller has paid retailers' occupation tax, if the transaction is rescinded and the seller refunds payment to the purchaser, the seller may take a deduction on the return for the period in which such a refund is made. This is the same position as when a refund is made on account of the return of merchandise after having paid retailers' occupation tax on the amount so refunded.

Court Cases

- *United Technical Corp. v. Dept. of Revenue*, 107 Ill. App. 3d 1062 (1st Dist. 1982).

Statutory Reference

[35 ILCS 120/2-5 \(17\)](#) – Retailers' Occupation Tax Act - Exemptions

Regulations

[86 Ill. Adm. Code 130.120\(s\)](#) - Nontaxable Transactions

[86 Ill. Adm. Code 130.340\(a\)](#) - Rolling Stock

[86 Ill. Adm. Code 130.605\(a\)](#) - Sales of Property Originating in Illinois

Discussion

Railroads are common carriers for hire. As such, they qualify for the rolling stock exemption when purchasing locomotives and rail cars which either physically move in interstate commerce or transport property or passengers which move in interstate commerce. Repair parts for rolling stock also qualify for the exemption. Switching engines, used in the rail yard to switch rail cars moving in interstate commerce also fall within the rolling stock exemption.

Railroads are taxable on their purchases of equipment, supplies, or other tangible personal property used in Illinois that do not qualify for the rolling stock exemption. However, sales of such tangible personal property are exempt from state, local or mass transit taxes if the property is transported and used outside the state. This is so, even if the railroad took possession of the property in Illinois. To claim this exemption, the railroad must itself transport or share in transporting the property outside Illinois, and there must be a standard bill of lading showing the seller of the property as the shipper or consignor of such property to a destination outside the state.

One of the more common problems in this area deals with the purchase of fuel by the railroad. Only the fuel loaded into the locomotives in Illinois will be subject to Illinois tax. All such fuel will be subject to Illinois tax regardless of where it is actually "burned-off". In this case the fuel would be in use in Illinois and for determining its taxability for the fuel that is "burned-off" in the other state, that will depend on the laws of that state.

The Legal Services Office has advised that federal legislation provides that "Amtrak is not a department, agency, or instrumentality of the United States Government." [49 U.S.C. §24301\(a\)\(3\)](#). However, Amtrak or a rail carrier subsidiary of Amtrak is exempt from a tax or fee imposed by a State, a political subdivision of a State, or a local taxing authority levied on it after September 30, 1981, pursuant to the provisions of 49 U.S.C. §24301(l). The exemption from tax that Amtrak enjoys stems solely from Federal law. It is not exempt as a governmental body.

Amtrak until recently did not qualify as a sales tax-exempt purchaser under Illinois law. The Federal statute exempts Amtrak from Illinois Use Tax liability. The Federal law did not relieve Illinois retailers of ROT liability when they sold to Amtrak. Therefore, Illinois retailers generally incurred ROT liability on such sales even though they could reimburse themselves for that liability by collecting the complementary Use Tax from Amtrak. The exemption from ROT in Section 2-5(17) was limited to sales of petroleum products. P.A. 100-1171 amended Section 2-5(17) of the ROT. Beginning January 4,

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

2019, all tangible personal property sold to a purchaser that is exempt from use tax by operation of federal law is exempt from ROT.

Court Case

- BURLINGTON NORTHERN INC. V. DEPARTMENT OF REVENUE 32 Ill. App. 3d 166 (1st Dist. 1975)

Regulations

- [86 Ill. Adm. Code 130.2125](#) – Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives

Discussion

The Retailers' Occupation Tax Act imposes the tax specifically upon the seller's gross receipts. Manufacturer's rebates are cash inducements offered for the specific purpose of enticing a consumer to purchase a specific item and are paid directly to the purchaser. These rebates are not deductible from the retailer's gross receipts because there is nothing in the Retailers' Occupation Tax Act or regulations which permit a seller to deduct from gross receipts an amount paid by a third party directly to the purchaser. This is the case even though the purpose of the payment is to reimburse the purchaser for a part of the purchase price. The gross receipts of the seller remain the same whether or not rebate is paid by someone not directly involved in the retail sale.

If a retailer accepts a manufacturer's rebate provided by a customer as part of the payment for the retail sale of any tangible personal property, the amount of the reimbursement or payment paid by the manufacturer to the retailer is part of the taxable gross receipts received by the retailer for the sale of that tangible personal property.

Court Cases

- *Keystone Chevrolet Co., et al. v. Frank A. Kirk, et al.*, 69 Ill. 2d 483 (1978).
- *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill. App. 3d 944 (2d Dist. 2004).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory References

[35 ILCS 120/1d, k, m, n, and o](#) – Retailers' Occupation Tax Act – Definitions

[35 ILCS 120/2-5\(4\), \(12-5\), \(20\), \(40\), and \(44\)](#) – Retailers' Occupation Tax Act - Exemptions

[35 ILCS 120/2-45](#) – Retailers' Occupation Tax - Manufacturing and Assembly Machinery and Equipment Exemption

Regulations

- [86 Ill. Adm. Code 130.305](#) - Farm Machinery & Equipment
- [86 Ill. Adm. Code 130.325](#) - Graphic Arts Machinery and Equipment Exemption
- [86 Ill. Adm. Code 130.330](#) - Manufacturing Machinery and Equipment
- [86 Ill. Adm. Code 130.340](#) - Rolling Stock
- [86 Ill. Adm. Code 130.2015](#) - Persons Who Repair or Otherwise Service Tangible Personal Property
- [86 Ill. Adm. Code 140.301\(b\)\(3\)](#) - Cost Price

Discussion

Purchases of repair or replacement parts (including drill bits and fan belts) by manufacturers which are used to repair qualifying machinery and equipment can qualify for the manufacturing and assembly machinery and equipment exemption. Parts used to repair qualifying graphic arts machinery and equipment can qualify for the graphic arts exemption. Repair parts used to repair qualifying farm machinery and equipment are also exempt under 86 Ill. Adm. Code 130.305 (Farm Machinery & Equipment). They will qualify under both the Retailers' Occupation Tax and the Service Occupation Tax.

Repair parts transferred under a manufacturer's warranty are not subject to Retailers Occupation Tax (ROT), Service Occupation Tax (SOT), Use Tax (UT) or Service Use Tax (SUT). This is because the warranty (and the work to be done under the warranty) was included as part of the retail selling price of the item, and as such, was subject to ROT and UT when the item was sold at retail. The warranty constitutes an agreement, included in the retail selling price of the item, that the item is free from defects in materials and workmanship and, if any such defects exist, will be cured. The warranty may be express or implied. So long as the seller/warrantor is obligated to make a repair under the terms of a warranty that was included in the retail selling price of the item, the repair is not subject to tax by the manufacturer, the seller or the customer.

Repair parts transferred under maintenance agreements may or may not be taxable. The taxability of the parts transferred depends on how the maintenance agreement was purchased. If the maintenance agreement charge is included in the selling price of the tangible personal property, that charge is part of the gross receipts of the retail transaction and subject to ROT and no tax is incurred on the repair parts when the repairs or servicing is performed.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not an ROT taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

acting as a service provider under the SOT. The SOT provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3).

Parts that are used to repair tangible personal property that will be resold are exempt as being purchased for resale.

Repair and replacement parts bought over the counter from a retailer by a consumer are subject to ROT.

Repair and replacement parts transferred incident to service are subject to SOT. The tax treatment for these parts (who pays the tax and how it is paid) depends on the serviceman's registration requirements with IDOR.

The rolling stock exemption may be claimed for purchases of repair and replacement parts that are incorporated into motor vehicles and trailers that meet the rolling stock test that is applicable for the 12-month qualifying period in which the purchase of the repair or replacement parts occurred.

Beginning on July 1, 2019, the manufacturing and assembling machinery and equipment exemption includes production related tangible personal property. See Section 130.330(h).

Court Case

- CITY SUBURBAN ELECTRIC MOTORS, INC. V. WAGNER, ILL. APP. 1ST DIST. NO. 1-94-3209, MARCH 20, 1996.

Regulations

- [86 Ill. Adm. Code 130.1960](#) - Finance Companies and Other Lending Agencies--Installment Contracts--Bad Debts

Discussion

Where a retailer repossesses any tangible personal property and subsequently resells that property to a purchaser for use or consumption, his or her gross receipts from that sale are subject to ROT.

When retailers repossess tangible personal property, they are entitled to a bad debt deduction with respect to the original sales in which defaults have occurred. Any bad debt deduction is limited to the amount on which the retailer previously paid tax, did not collect, or is not permitted to retain because of being required to make a repayment to a lending agency under a "with recourse" agreement.

When a retailer repossesses an item that the retailer self-financed, it is entitled to a bad debt deduction for the amounts that have become worthless or uncollectible and on which tax previously has been paid. This deduction is claimed on line 14, Schedule A of the ST-1 return. See 86 Ill. Adm. Code 130.1960(d)(4)(f) for examples on computing the bad debt deduction.

Where a retail installment contract is sold by a retailer to a lending agency "without recourse," but where there simultaneously exists a contract between the retailer and the lending agency requiring the retailer to make good on the paper if a default occurs, we must construe all relevant contracts as part of the transaction and must be governed by the total effect, rather than going only by what the assignment of the installment contract may say on its face. Retailers would be allowed bad debt deductions in the event of defaults requiring them to make refunds on installment contracts to a lending agency to the extent which the retailers have paid tax on the amount of the refunds. When a retailer repossesses an item that it originally financed but sold the finance contract to a finance company (or similar entity), the retailer would be entitled to a bad debt deduction for the unpaid balance of the finance contract on which tax was paid, only if certain conditions are met. A retailer may claim this credit only when the retailer financed the item under a "with-recourse" agreement. A "with-recourse" agreement is one under which the retailer guaranteed and is required to make total repayment to the finance company.

Vehicle Repossessions –

Retailers, of motor vehicle, watercraft, trailers, mobile homes and aircraft, remit tax to the Department on a transaction-by-transaction basis, must file a claim for credit with the Department on any transaction which they desire to receive the benefit of a bad debt deduction for the repossessed property. To apply for this credit, the dealer must file Form ST-557, Claim for Credit for Repossession of Motor Vehicles, Watercraft, Aircraft, Trailers, and Mobile Homes.

When lienholders repossess a vehicle and obtain a repossession title from the Secretary of State, they would owe state, local, and mass transit taxes if they sell the vehicle to someone for use. If a repossession title is not obtained, the auditor will need to determine whether the lienholder acts as an agent of the debtor (owner) when selling the vehicle to a third party. If the lienholder acts as a sales agent and discloses the name of the debtor (seller) to prospective buyers, and no title is claimed by the lienholder, tax would not be due by the lienholder on the sale. If, however, the lienholder fails to disclose

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

the name of the debtor (owner), prior to or at the time of sale, tax would be due by the lienholder, even if the repossession title was not obtained.

When a bank or other type of lending institution sells an item that it has repossessed, the transaction is a retail sale, and the gross receipts received from the sale are subject to sales tax. These institutions must report the sale of these items on Form ST-556. If the bank or lending agency applies for title to the repossessed item in their name and then sells the item to a new buyer, a sale occurs, and tax is due either on Form ST-556 (if registered) or Form RUT-25. However, if the original owner, co-owner, or co-signer (of the loan) redeems (resumes) possession of the item, with no change to the original contract, the transaction is not regarded as a sale and is not subject to tax.

If the bank or lending agency does not apply for title to the repossessed item in their name and reassigns the title to the new buyer, then tax is due by the new buyer on the applicable Form RUT-50 or Form RUT-75 as a private transaction between the previous owner of the repossessed item and the new buyer.

Statutory References

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - Definitions

[35 ILCS 120/2c](#) – Retailers' Occupation Tax Act

Regulations

[86 Ill. Adm. Code 130.1415](#) - Resale Number – When Required and How Obtained

Discussion

Reseller is a term given to those persons who make only nontaxable sales. Resellers are not required to submit monthly sales tax returns to the Department since all their sales are exempt. However, resellers are required to report Use Tax liability on purchases if tax is not paid to their suppliers. (Refer to section "Sales for Resale".)

Resellers register with the Department via a REG-1 application and are assigned an IBT number or an account ID. Resellers may also register electronically using [MyTax Illinois](#). When auditing a reseller, an auditor must be aware of the possibility of potential Use Tax liability. If necessary, the reseller may have to register to self-assess Use Tax.

Court Case

Tri-America Oil Company v The Department of Revenue 102 Ill. 2d 234 (1984)

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory References

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - definition

Regulations

- [86 Ill. Adm. Code 130.401\(b\)](#) – Returned Merchandise and Cancellations

Discussion

When a buyer returns merchandise, which has been purchased from a retailer, the retailer should refund the selling price of the merchandise and all tax collected on that selling price. The retailer may take a deduction on the next monthly return filed with the Department. However, this deduction is limited to the amount which the retailer had previously reported and paid tax to the Department.

If the retailer gives customers an allowance for payment in cash, the amount of such allowance is not subject to tax if the customers avail themselves of the allowance offered. In this instance, taxable receipts are not received by the retailer for the value of the allowance.

Statutory Reference

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - Definitions

[35 ILCS 120/2c](#) – Retailers' Occupation Tax Act

Regulations

- [86 Ill. Adm. Code 130.210](#) - Sales of Tangible Personal Property to Purchasers for Resale
- [86 Ill. Adm. Code 130.1401](#) - Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale
- [86 Ill. Adm. Code 130.1405\(d\)](#) - Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale

Discussion

86 Ill. Adm. Code 130.1405 (d) provides that a purchaser's failure to furnish a valid registration or resale number and certification to the seller that the sale is for resale creates a presumption that the sale is not for resale. This presumption can, however, be rebutted by the submission of other evidence. Thus, the failure to produce a resale certificate no longer precludes sellers from establishing with other evidence that a sale is for resale. The burden of proof that a sale is a sale for resale is still on the seller.

This means that the auditor cannot require a retailer to furnish only a traditional resale certificate before a particular sale can be allowed as a sale for resale. The retailer is allowed to furnish other evidence that a sale is for resale. If this is done, the auditor must consider this other evidence and, if acceptable, allow the sale as a resale.

The following audit policy has been established regarding resale certificate acceptance.

- 1) Attempt to obtain a traditional resale certificate (CRT-61) with the purchaser's ROT or resale number stating all sales are for resale or that a sale is for resale.

Inform the taxpayer that the traditional resale certificate is the easiest method to document a resale. The auditor should also inform the taxpayer that once a valid resale certificate is obtained and accepted by the seller in good faith, the Department has no further claim against the seller if the sale is later determined to be taxable.

The requirements for a valid Certificate of Resale, are:

1. Statement that items are being purchased for resale.
2. The seller's name and address.
3. The purchaser's name and address.
4. The purchaser's signature and date of signature.
5. Description of products being purchased for resale.
6. The purchaser's Illinois Sales Tax Account ID number or Illinois resale number.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

The Multistate Tax Commission has distributed a certificate, “Uniform Sales & Use Tax Certificate—Multijurisdictional”, that may be used, under certain conditions, to document non-taxable Illinois transactions. This certificate contains the following restrictions:

- This certificate may NOT be used to claim a resale exemption for the purchase of a taxable service.
- Use of this certificate in Illinois is subject to the provisions of 86 Ill. Adm. Code 130.1405, Seller’s Responsibility to Obtain Certificate of Resale and Requirements for Certificates of Resale, of the Regulations.
- The registration number must be supplied next to Illinois on page 1 of the certificate and must be the Illinois registration or resale number. No other state’s registration is acceptable.

In addition, the registration number must have been in effect at the time of the transaction in question.

If it is suspected that a certificate or Account ID number may not be valid, cross-check it with Department records. Some judgment is required to determine which certificates or numbers need to be checked. It is not expected or required that each number be checked against Department records. Check only those that are questionable. **If the taxpayer accepted the invalid certificate in good faith, refer the purchaser for audit. If a situation is found where a purchaser provides a certificate of resale to the seller and it appears that it is not a purchase for resale, refer the purchaser for audit.**

- 2) If a traditional resale certificate cannot be obtained with a Sales Tax Account ID or resale number, obtain a statement or a resale certificate without a number with an explanation from the purchaser as to why the sale is a sale for resale and why the purchaser will not or cannot furnish an active ROT or resale number.

This type of documentation can only be allowed as establishing a resale with the approval of the audit supervisor. Documentation must be included in the audit file to sustain the supervisor’s review.

- 3) An oral statement by the taxpayer that the sale is a sale for resale without other evidence will never be accepted by auditors. The seller and purchaser should also be made aware that the failure to furnish a valid resale certificate or other acceptable evidence that the sale is for resale, may subject the purchaser to audit to determine the taxability of the transaction.
- 4) If the decision is made to tax the sale, this does not preclude the taxpayer from going to a hearing and presenting other evidence to rebut the presumption that the sale was a taxable transaction.
- 5) In the case of a three-party drop shipment consignment sale, a registration or resale number from the purchaser is a preferred method for documenting that it is a sale for resale.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers’ Bill of Rights.

However, considering the statutory language, other evidence can be used to document the fact that the drop shipment is a sale for resale. For example, the invoices and shipping documents are sufficiently specific to make it clear that the transaction was for resale. Another example would be a statement from the purchaser which describes the drop shipment, the fact that the purchaser has no contact with Illinois which would require it to be registered and indicates that it chooses not to obtain an Illinois resale number. This would constitute evidence that this sale is a sale for resale despite the fact no registration number or resale number is provided. The risk run by the purchaser in providing such a notification is that we are likely to go behind a certification which does not contain a valid resale-number or an explanation as to why no number was furnished. The auditor may want to initiate an audit referral on the party to which the material was dropped shipped to verify if tax was paid.

Court Cases

- *Dearborn Wholesale Grocers, Inc. v. Whitler* 82 Ill. 2d 471 (1980).
- *Illinois Cereal Mills, Inc. v. Department of Revenue* 99 Ill. 2d 9 (1983).
- *Tri-America Oil Company v. The Department of Revenue* 102 Ill. 2d 234 (1984).
- *Jefferson Ice Co. v. Department of Revenue* 139 Ill. App. 3d 626 (1985)
- *Rock Island Tobacco and Specialty Company v. Ill. Dept. of Rev.* 87 Ill. App. 3d, 476 (3rd Dist. 1980).
- *American Welding Supply v. Dept. Of Revenue* 106 Ill. App. 3d 93 (5th Dist. 1982).
- *Hess, Inc. v. Department of Revenue* 278 Ill. App. 3d 483 (5th Dist. 1996)

Statutory References

[35 ILCS 120/1g](#) - Retailers' Occupation Tax Act

[35 ILCS 115/2c](#) – Service Occupation Tax Act

Regulations

- [86 Ill. Adm. Code 140.129](#) - Taxation of Seminar Materials
- [86 Ill. Adm. Code 160.115](#) - Collection Of The Service Use Tax By Servicemen
- [86 Ill. Adm. Code Part 140](#) - Service Occupation Tax
- [86 Ill. Adm. Code 130.2005\(a\)\(1\) through \(4\)](#) - Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons

Discussion

“Seminar” means any presentation, conference, training program, or continuing education course designed for educational, informational, professional, or recreational purposes.

“Seminar Attendance” occurs when a person is required to be physically present at a specific location at a specific date and time to participate in the seminar. For videoconferences and teleconferences, attendance occurs only when instant interactive communication with the speaker is available.

“Seminar Provider” means a person, group, organization, association, or other legal entity that offers, organizes, or presents seminars. A seminar provider does not include an organization or institution granted a Department issued exemption identification number (“E” number) pursuant to 35 ILCS 120/1g of the Retailers' Occupation Tax Act when conducting a seminar or course of study in furtherance of its organizational purpose.

Taxation of Seminar Materials

“Seminar Materials” mean any educational or informational material, and any other items of tangible personal property, prepared, compiled, or otherwise obtained for distribution to seminar customers incident to the presentation of a seminar, or of a right to attend the seminar. Seminar materials include, but are not limited to: books, manuals, practice guides, study guides, outlines, audio and video tapes, compact discs, cassette tapes, and items related to the subject of the seminar. Seminar materials that are transferred to persons as part of their attendance at a seminar are considered a service transaction and will result in tax liability under either the Service Occupation Tax Act or the Use Tax Act.

Seminar Materials – Service Transactions

A seminar provider will incur either Service Occupation Tax or Use Tax liability on all seminar materials transferred during the presentation of a seminar for which a fee or other charge is made for attendance. Retail sales at seminars are discussed in the next section.

Tax liabilities of seminar providers conducting seminars for which no fee or other charge is made for attendance and seminars conducted by exempt organizations are discussed in later sections.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

The serviceman's liability as a seminar provider may be calculated in one of four ways:

- Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;
- Service Occupation Tax on 50% of the serviceman's entire bill;
- Service Occupation Tax on the serviceman's cost price of tangible personal property transferred incident to service if registered as a de minimus serviceman; or,
- Use Tax on the serviceman's cost price of tangible personal property transferred incident to service if considered a de minimus serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. To determine the proper tax base for seminar materials transferred incident to the sale of service, see the examples below and 86 Ill. Adm. Code sections 140.101 through 140.109.

Examples:

- Unregistered De minimus Serviceman.

The seminar provider is an unregistered de minimus serviceman (e.g., unregistered because no tangible personal property is sold at retail, and they have not chosen to become registered and remit Service Occupation Tax). A seminar is presented on antiques appraisal in Illinois, and as a part of the seminar attendees are given a manual, a chart and some graphs. The provider purchases manuals at retail from a bookseller and the charts and graphs are photocopied at the seminar provider's office. The seminar provider incurs Use Tax liability on the cost price of the manual (i.e., on the amount charged by the bookseller for the purchase of the manuals). The seminar provider incurs Use Tax on the cost price of the paper and ink used to produce the chart and graphs (i.e., the amount charged by the office supply store for the paper and ink.) If tax is not paid to either of these suppliers, the seminar provider must self-assess and remit tax to the Department.

If the seminar provider were to make any sales at retail, such as a videotape of the seminar sold outside the seminar, or an antiques appraisal booklet sold over the internet, they would be required to register with the Department and be required to remit Service Occupation Tax to the Department on all service sales.

- Registered De minimus Serviceman.

A seminar provider presents a seminar in Illinois, and, as part of the seminar provides the attendees with a manual, a chart and some graphs. The seminar provider is registered with the Department either because they have chosen to remit Service Occupation Tax or because sales are made at retail. Otherwise, the seminar provider qualifies as a "de minimus" serviceman.

The seminar provider may remit Service Occupation Tax and any applicable local taxes to the Department on the cost price of the materials transferred as part of the seminar. In this situation, the seminar provider is not authorized to pay tax to suppliers. They must instead provide their

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

suppliers (the bookseller and the office supply store) with a Certificate of Resale for the purchase of materials transferred as part of the seminar. The seminar provider must remit Service Occupation Tax to the Department on the cost price of the manuals, the paper, and the ink. If the seminar provider contracts with a print shop to photocopy the chart and graphs, the seminar provider would provide a Certificate of Resale to the print shop and then remit Service Occupation Tax to the Department on the cost price of the charts and graphs (i.e., on a lump sum invoice from the print shop, tax would be calculated on 50% of the total print shop bill).

- Registered Serviceman who is not De minimus - Charge for Materials Not Separately Stated.

A seminar provider presents a seminar in Illinois for \$500. As a part of the seminar, the attendees are provided manuals, a chart, and some graphs. The seminar provider is registered with the Department to remit Service Occupation Tax and the annual aggregate cost price of materials transferred incident to service is 45% of total sales of service (the provider does not qualify as a “de minimus” serviceman).

The seminar provider does not separately state a charge for the seminar materials on the invoice to the seminar attendees. The seminar provider incurs Service Occupation Tax and any applicable local taxes on 50% (\$250) of the total invoice charged to the seminar attendees. However, the tax base cannot be less than the serviceman’s cost price. If the serviceman’s cost price of the materials transferred is \$300, then the serviceman’s tax base is \$300. In this situation, the seminar provider is not authorized to pay tax to suppliers. They must instead provide their suppliers with a Certificate of Resale for the purchase of the manuals, charts, and graphs that are transferred as part of the seminar.

- Registered Serviceman who is not De minimus; Charge for Materials Separately Stated.

A seminar provider presents a seminar in Illinois and provides the attendees with a manual, some charts, and graphs. The total charge to the seminar attendees for the seminar is \$125, which includes the price of the seminar materials. On the invoice to the attendees, the seminar provider lists a charge for the seminar materials of \$75. The seminar provider is registered with the Department to remit Service Occupation Tax and their annual aggregate cost of materials transferred is 43% of total gross receipts from sales of service (the provider does not qualify as a “de minimus” serviceman).

The seminar provider incurs Service Occupation Tax and any applicable local taxes on the separately stated charge of \$75. However, the tax base cannot be less than the serviceman’s cost price. If the serviceman’s cost price of the materials transferred is \$85, then the serviceman’s tax base is \$85. In this situation, the seminar provider is not authorized to pay tax to suppliers. They must instead provide suppliers with a Certificate of Resale for the purchase of materials transferred as part of the seminar and remit tax to the Department.

Seminar Materials – Retail Transactions

Transactions in which a seminar provider transfers seminar materials to a person without requiring attendance are subject to Retailers' Occupation Tax liability.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

The tax base is the selling price of the seminar materials transferred to the purchaser. A seminar provider, however, does not incur Retailers' Occupation Tax liability for materials that are provided to a person who is registered to attend a seminar but who is unable to attend because of illness, inclement weather, or similar event.

Examples:

A seminar provider presents a seminar on how to capitalize on investments through use of the internet. The charge to attend the seminar is \$400. However, the seminar provider makes the seminar materials available, without requiring attendance, for \$175. Sales of the seminar materials to persons who do not attend the seminar are subject to Retailers' Occupation Tax, and any applicable local taxes, on the \$175 selling price of the seminar materials.

A seminar provider presents a seminar on how to buy real estate for \$400. During the seminar, the provider transfers manuals to the attendees. The transfer of manuals to attendees during the seminar is considered a sale of service. However, the provider also sells a videotape of the seminar presentation along with the manuals at a table outside the seminar room for a reduced selling price of \$200. The sale of the video presentation and manuals is subject to Retailers' Occupation Tax liability, and any applicable local taxes, on the \$200 selling price. The provider's sale of the videotapes disqualifies the seminar provider from electing to handle the service tax liability by paying Use Tax to suppliers. The provider must instead remit Service Occupation Tax to the Department.

Non-Seminar Materials

“Non-Seminar Materials” means materials or items transferred incident to the presentation of a seminar but not related to the actual subject matter of the seminar presentation or necessary for participation in the seminar. Such items would include, but are not limited to, coffee mugs, briefcases or other promotional items. Pencils, pens, pads of paper and similar items are considered items necessary for participation in the seminar.

The sale of non-seminar materials by a seminar provider is subject to Retailers' Occupation Tax liability. The gift of non-seminar materials by a seminar provider will result in the seminar provider incurring Use Tax liability on the cost price of those non-seminar materials.

Examples:

- Sales.
A seminar provider sells briefcases, coffee mugs, t-shirts, tote bags, and other novelty items. The seminar provider would incur Retailers' Occupation Tax liability, including any applicable local tax liability, on the selling price of those items.
- Gifts – Items.
A seminar provider purchases calendars, coffee mugs, and tote bags and gives the items to the seminar attendees without charge. The seminar provider incurs Use Tax liability on the cost price of the items given as a gift. A seminar provider may discharge their tax liability on these items by paying tax to an Illinois-registered supplier. If the supplier is not registered to remit tax to

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Illinois (e.g., the items were purchased over the internet from a supplier not registered to remit tax to Illinois), the seminar provider must self-assess and remit Use Tax directly to the Department.

- **Gifts – Food and Beverage.**

A seminar provider presents a seminar on weight reduction. During the seminar, the provider makes coffee and fresh fruit available to the attendees at no charge. The seminar provider incurs Use Tax liability on the cost price of the coffee and fresh fruit. If the seminar provider purchased the fresh fruit and coffee at a local supermarket and paid tax at the time of purchase, Use Tax liability has been discharged. If the coffee and fresh fruit were purchased from a caterer (or other provider of food and beverages, including, but not limited to, a hotel), the seminar provider's liability is discharged when tax is paid to the caterer. If the seminar provider does not remit tax to a supermarket or caterer, they must self-assess and remit Use Tax to the Department.

Seminars for Which No Charge is Made for Attendance

If a seminar provider does not impose a charge for attendance, no sale of service occurs under the Service Occupation Tax. However, the seminar provider is considered the end user of tangible personal property that is used to conduct the seminar, including materials that are distributed to attendees, and generally incurs Use Tax liability on the cost price of such items. Such items could include tangible personal property that the provider uses to conduct the seminar (e.g., a CD used to record information for a presentation or a laser pointer) or items that are provided to attendees (e.g., a binder; legal pads for notes, pencils, or pens). In the former instance, the seminar provider is considered the end user of such items because it consumes them in conducting the seminar. In the latter instance, the seminar provider is the end user of these items because it is a donor of the items to attendees. As a donor, it incurs a Use Tax liability.

If the seminar provider does not pay tax to its suppliers on these items (e.g., it purchased them over the internet from a supplier not registered to collect and remit tax to the Department), the seminar provider is required to self-assess and remit tax to the Department. A seminar provider that has obtained an E-number from the Department and conducts a seminar in furtherance of its organizational purpose may make tax-free purchases of tangible personal property for use at the seminar, including donations, by providing suppliers with its E-number.

Exempt Organizations

An organization that has been granted a Department issued E-number pursuant to 35 ILCS 120/1g of the Retailers' Occupation Tax Act may incur Retailers' Occupation Tax, Use Tax, or Service Occupation Tax liability if the seminar presented by the organization is not in furtherance of the organization's purpose.

Organizations granted Department issued E-numbers that present seminars in furtherance of organizational purposes are not considered to be "seminar providers" for purposes of the tax liability incurred on seminar materials. However, if an exempt entity engages in selling tangible personal property at a seminar, Retailers' Occupation Tax liability will be incurred on the sale of the tangible

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

personal property unless the selling is one of the three types of limited selling authorized for exempt entities as provided in 86 Ill. Adm. Code 130.2005(a)(1) through (4).

Examples:

A health services group that has been granted a Department issued E-number presents a seminar on automobile repair. The health services group would be subject to tax because automobile repair is not an organizational purpose of the group.

A church that has been granted a Department issued E-number presents a seminar in furtherance of its organizational purpose on the teachings of religious scholars. The church would not incur tax liability because it is not included in the definition of a seminar provider when presenting a seminar in furtherance of its organizational purpose.

An organization whose purpose is to promote heart health, and that has been granted a Department issued E-number, sponsors a heart health seminar on Valentine's Day. During break, the organization sells red roses as a fundraiser. The charges for the seminar are not taxable because the organization is not considered a seminar provider when presenting a seminar in furtherance of its organizational purpose. However, the sale of the roses is subject to Retailers' Occupation Tax unless it is one of the organization's two annual authorized tax-exempt fundraising events.

Regulations

- [86 Ill. Adm. Code 130.410](#) – Cost of Doing Business Not Deductible
- [86 Ill. Adm. Code 130.415](#) – Transportation and Delivery Charges

Discussion

For Illinois tax purposes, shipping and handling and delivery charges are often used interchangeably.

Handling charges represent a retailer's cost of doing business and are not deductible from the gross charges subject to tax. However, such charges are often stated in combination with shipping charges. In that case, charges designated as "shipping and handling", as well as delivery or transportation charges, are subject to tax as provided in 86 Ill. Adm. Code 130.415. 86 Ill. Adm. Code 130.410.

Incoming Transportation and Delivery

Incoming transportation and delivery costs are costs incurred by a retailer in acquiring tangible personal property for sale or moving tangible personal property from one location to another location, up to and including transportation to a point from which the property will be delivered or shipped to the customer or picked up by the customer. 86 Ill. Adm. Code 130.415(b)(2).

Costs incurred by the retailer in moving property to some point from which the property will be delivered or shipped to the customer, or picked up by the customer, are not outgoing transportation and delivery charges; they are incoming transportation and delivery costs and are part of the retailer's costs of doing business. Any amounts the retailer charges a customer for moving the property cannot be deducted from gross receipts from that sale. 86 Ill. Adm. Code 130.415(b)(1)(A)(iii) - (iv).

Incoming transportation and delivery costs are a business expense to the retailer and may not be deducted from the gross receipts from sales of tangible personal property at retail, even though the retailer may pass those costs on to its customers by quoting and billing those costs separately from the price of the tangible personal property sold. 86 Ill. Adm. Code 130.415(b)(2).

Outgoing Transportation and Delivery

Outgoing transportation and delivery charges are charges for the final transport or delivery of tangible personal property from the possession and control of the seller to the possession and control of the purchaser. Outgoing transportation and delivery charges are part of the gross receipts subject to Retailers' Occupation Tax when there is an inseparable link between the sale of tangible personal property and the outgoing transportation and delivery of the property. (See *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351 (2009)).

An inseparable link exists when the transportation and delivery charges are not separately identified to the purchaser on the contract or invoice or when the transportation and delivery charges are separately identified to the purchaser on the contract or invoice, but the seller does not offer the purchaser the

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

option to receive the tangible personal property in any manner except by the payment of transportation and delivery charges added to the selling price of the item (e.g., the seller does not offer the purchaser the option to pick up the tangible personal property or the seller does not offer, or the purchaser does not qualify for, a free transportation and delivery option).

Except for cases in which an inseparable link exists, outgoing transportation and delivery are considered a service separate and distinct from the sale of tangible personal property that is being transported or delivered and is excluded from the gross receipts subject to the Retailers' Occupation Tax. Charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the excess charges are subject to tax.

Whether shipping and handling charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such shipping and handling charges but upon whether the charges are included in the selling prices of the property or are contracted for separately by purchasers and retailers. The best evidence that shipping and handling or delivery charges were agreed to separately and apart from selling prices, are separate and distinct contracts for freight or shipping. Alternatively, documentation in the sellers' records that purchasers had options of taking delivery of the property at sellers' locations, for the agreed purchase prices, or having delivery made by sellers for the agreed purchase prices plus ascertainable delivery charges, may suffice.

For example, if a seller of tangible personal property offers the purchaser free transportation and delivery of the property, for which the purchaser qualifies (e.g., purchases over \$25 qualify for free shipping, and the purchaser spends more than \$25), or the option to pick up the property, any separately identified transportation and delivery charges chosen by the purchaser (e.g., amounts paid for expedited transportation and delivery) will be nontaxable, as long as the selling price of the tangible personal property neither increases nor decreases depending on the method chosen by the purchaser to obtain the merchandise. If the selling price of the tangible personal property increases or decreases depending on the method chosen by the purchaser to obtain the merchandise, any transportation and delivery charges imposed will be subject to Retailers' Occupation Tax to the extent those charges exceed the actual cost of outgoing transportation and delivery. 86 Ill. Adm. Code 130.415(b)(1)(C).

Tax on delivery charges may be calculated for each separately listed item on an invoice if the invoice itemizes the delivery charge for the items. When an invoice contains a lump sum delivery charge for separately listed items, the lump sum delivery charge will not be taxable if the selling price of the items for which delivery is nontaxable is greater than the selling price of the items for which delivery is taxable. 86 Ill. Adm. Code 130.415(b)(1)(E).

If a retailer has determined that the delivery charges are part of its gross receipts, then the retailer must determine if any exemptions apply and, if not, determine the appropriate tax rate for that transaction. See 86 Ill. Adm. Code (b)(1)(F)(i) through (vi).

It should be noted that if a "free shipping" option exists, but only at a certain dollar amount, then the shipping charges for items under that dollar amount will be considered taxable (if you cannot pick-up

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

the goods), and only the charges above that dollar amount will not be taxable. See the examples in 86 Ill. Adm. Code 130.415(b)(1)(D).

Audit Issue

The following questions are good to ask of a taxpayer when unsure of the nature of their shipping options available on their products sold:

- Does the taxpayer offer the purchaser the option to receive the goods in any manner except by the payment of transportation and delivery charges added to the selling price of the item?
- Does the taxpayer offer the purchaser the option to pick up the item?
- Does the taxpayer offer a free transportation and delivery option? If yes, is it qualified free delivery or unqualified free delivery?
- Do any of the products have a unique shipping option? Example: a product that is not available in the taxpayer's buildings for pick-up and does not have the option for pick-up.

Court Case

Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351(2009)

Statutory References

[35 ILCS 115/2\(d\)](#) – Service Occupation Tax Act

[35 ILCS 115/3-5\(5\), \(7\), and \(11\)](#) – Service Occupation Tax Act - Exemptions

[35 ILCS 115/3-10](#) – Service Occupation Tax Act – Rate of Tax

[35 ILCS 120/2-5\(2\), \(4\), \(14\), and \(20\)](#) – Retailers' Occupation Tax Act – Exemptions

Regulations

- [86 Ill. Adm. Code 130.2115\(b\)\(1\)](#) - Sellers of Machinery, Tools and Special-Order Items

Discussion

Sellers of special-order items may be subject to Retailer's Occupation Tax, Use Tax or Service Occupation Tax. The fact that some service is rendered in connection with the sale of tangible personal property at retail does not necessarily make it a special-order transaction.

Auditing Sellers of Special-Order Machinery and Tools

Per 86 Ill. Adm. Code 130.2115(b)(1), sellers of special machinery, tools, and the like do not incur Retailers' Occupation Tax from the sale of such items when ALL the following requirements (tests) are met:

1. The purchaser employs the seller primarily for the engineering or other scientific skill to design and produce the property on special-order for the purchaser and to meet the particular needs of the purchaser;

An auditor will consider the following in examining the requirements of Test 1 to determine if a sale is a "special-order":

- On the requirement of design by the seller, it is sufficient if the seller is responsible for making a substantial contribution to the design of the property that is to be produced on special-order and sold.
- The special-order exemption is not lost merely because the seller subcontracts the service work to someone else as long as the seller is contractually responsible to see that the necessary service work is provided.
- Even if the sale would otherwise qualify as special, the sale is taxable if the design work is done by the purchaser, or by someone other than the seller hired by the purchaser.

2. The property has use or value only for the specific purpose for which it is produced;

3. The property has use or value only to the purchaser;

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Auditors should consider the following in examining the requirements of Tests No. 2 and No. 3 to determine if a sale is a "special-order":

- The property must not be standard enough to be stocked or to be ordered from a catalog or other type of sales literature. It must be produced in accordance with special requirements, which are peculiar to the purchaser and not common to someone else whose conditions for possible use of the property can be shown by the Department to be reasonably comparable to those of the purchaser.
4. The order is not a volume production purchase, or a second or subsequent purchase. Volume production is defined as 50 or more.

Auditors should consider the following in examining the requirements of Test 4 to determine if a sale is a "special order":

- A single order from a purchaser for 50 or more of the same item is considered as volume production and is subject to Retailer's Occupation Tax.
- Simultaneous orders consist of any orders placed on the same day by the same purchaser. Simultaneous orders from a purchaser for 50 or more of the same item on the same day are subject to Retailers' Occupation Tax. Simultaneous orders from a purchaser for fewer than 50 items placed on the same day will be subject to either Service Occupation Tax or Use Tax liability.
- Even if an item qualifies as special-order, subsequent sales by the seller of the same item without material change to any purchaser for use (repeat orders) are subject to the Retailers' Occupation Tax. The skill that is involved after the first item is made is production skill and not specialized engineering and design skill. A repeat order is an order for the same item without material change that is placed by the same purchaser on a date after the date of the original order or an order for the same item without material change by a different purchaser at any time after the original order.
- NOTE: 86 Ill. Adm Code 130.2115 gives detailed examples showing how these are applied.

Other points to consider include:

- The fact that an item is not a stock item and is only produced after an order is received, or is an alteration of a standard item, is not sufficient to exempt it from Retailers' Occupation Tax, unless it meets all the exemption tests.
- In the case of special assemblies such as special conveyors, the sale does not become taxable (if it would otherwise be exempt) merely because a substantial portion of the completed product is made of standard parts or raw materials which can be stocked for sale.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- In the case of special assemblies, such as switchboards, where the completed product is made almost entirely of standard parts and materials which can be interchanged in other like products and sold to other users, the sale is taxable.
- In many instances, the purchaser will design and produce the "piece part" they require the tool or die for. Do not confuse the purchaser's design of a piece part with Test No. 1. The purchaser will bring the blueprints of the piece part to the die-maker for the die-maker to design and produce a tool or die for the piece part. As long as the tests concerning THE PURCHASE OF THE TOOL OR DIE ONLY are met, the die-maker will be considered a service person.

Reference 86 Ill. Adm. Code 130.2115 and 86 Ill. Adm. Code 140, Subpart A when dealing with special order matters. Employ the above tests when examining sales or purchases of tools, dies, jigs, patterns, molds, fixtures, gauges, selected machinery and conveyer belts, etc.

When the above tests are met, the seller will incur state and local Service Occupation Taxes. The seller is considered a serviceperson and must follow those rules and regulations pertaining to Service Occupation or Service Use Tax. If any one of the above tests is not satisfied, the seller incurs state and local Retailers' Occupation Tax on the total gross receipts received from such sales. An out-of-state retailer would incur only Use Tax.

Auditing Purchasers of Special-Order Items

When auditing the purchaser of special-order equipment, the auditor should keep in mind the following:

1. If the above four tests are met, liability may not be assessed on the purchaser if the seller is an Illinois serviceperson or registered out-of-state serviceperson. This assumes that the serviceperson is below the 35% de minimus threshold.
2. Service Use Tax liability may be assessed in very limited circumstances even when all four tests above are satisfied for purchases made from out-of-state unregistered servicepersons. 86 Ill. Adm. Code 160.101 (a) provides that the Department must apply the same standard to the out-of-state servicemen that is applied to in-state servicemen. If an invoice from a serviceman does not show the tax, the Department will presume that the serviceman is either registered and has included the Service Use Tax in the selling price of the tangible personal property transferred or is a de minimus serviceman incurring a Use Tax liability. Even if it is known that the out-of-state servicemen were non-de minimus, the Department would still have to prove that the out-of-state serviceman did not collect tax (it could be buried in the selling price of the transactions). This presumption can only be overcome where the Department has evidence that the serviceman and/or the service customer were both aware that the proper tax due was the Service Use Tax and that no action was taken to remit the Service Use Tax by either party to the Transaction.
3. If any one of the above four tests is not satisfied, purchasers would incur Use Tax, notwithstanding, the seller being in-state or out-of-state.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

4. Purchases of special-order machinery and equipment used in manufacturing may qualify for the Manufacturing and Assembly Machinery and Equipment Exemption.

Court Cases

- AMERICAN BRAKE SHOE COMPANY V. DOR, 25 Ill. 2d 354 (1962).
- MAHON V. NUDELMAN, Illinois Supreme Court, 377 Ill. 331 (1941).
- INGERSOLL MILLING MACHINE V. DOR, 405 Ill. 367, 373 (1950).
- J. H. WALTERS AND COMPANY V. DOR, 44 Ill. 2d 95 (1969).
- STERLING STEEL CASTING COMPANY V. DOR, 7 Ill. 2d 444 (1955).
- WALLENDAR-DEDMAN CO. V. DOR, 15 Ill, 2d 485, 487 (1959), Illinois Supreme Court, (1959).
- COMMONWEALTH EDISON AND WESTINGHOUSE ELECTRIC CORP. V. DOR, 179 Ill. App. 3d 968 (1989)
- CATERPILLAR TRACTOR CO. V. DOR, 29 Ill. 2d 564 (1963)
- SPURGEON d/b/a SUNNYLAND CABINET SHOP V. DOR, 52 Ill. App.3d 29 (1977)
- VELTEN & PULVER, INC. V. DOR, 29 Ill. 2d 524 (1963)

Regulations

- [86 Ill. Adm. Code 130.305](#) - Farm Machinery and Equipment
- [86 Ill. Adm. Code 130.325](#) - Graphic Arts Machinery and Equipment Exemption
- [86 Ill. Adm. Code 130.330](#) Manufacturing Machinery and Equipment

Discussion

Purchasers/users wanting to claim the machinery and equipment exemptions must provide to the their suppliers exemption certificates for purchases of equipment or machinery that will be used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease, primarily in production agriculture, or primarily in graphic arts production. See 86 Ill. Adm. Code Sections 130.330(j), 130.305(m), and 130.325(b)(8).

The Department has prescribed Form ST-587, Equipment Exemption Certificate, to document exemptions for purchases of machinery and equipment used primarily in:

- Manufacturing
- Graphic arts production
- Production agriculture
- Coal exploration, mining and reclamation (some items may qualify for the Manufacturing and Assembly Machinery and Equipment Exemption)

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

The method of taxing satellite dishes and related items will depend upon whether they are deemed to be tangible personal property or real property. Generally, the satellite dish, wiring and receiver, are considered tangible personal property (i.e., will not be permanently affixed to real estate). If the mounting structure (bracket and pole) is permanently affixed to real estate, becomes real property and The installer will be acting as a construction contractor.

A construction contractor of the mounting structure incurs Illinois Use Tax liability on its cost price of the mounting structure purchased for incorporation into real estate. If the supplier is registered as an Illinois Use Tax collector, the construction contractor should pay Use Tax to that supplier. If the supplier is not so registered, the construction contractor should pay the Use Tax liability directly to the Illinois Department of Revenue.

The seller will be acting as a retailer when it makes sales for use or consumption of items which are only temporarily attached to the mounting structure (e.g., antennae, cables, co-axes, etc.) and, thus, remain tangible personal property after installation.

Retailers of satellite dishes and related equipment incur Retailers' Occupation Tax on the sales of such systems as well as on installation charges, unless the installation charge is separately contracted for between the buyer and the seller.

Court Case

Zenith Electronics Corp. v. Dep't of Rev., 293 Ill. App.3d 651 (1st Dist. 1997).

Statutory Reference

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - Definitions

Regulations

- [86 Ill. Adm. Code 130.425](#) - Traded-In Property
- [86 Ill. Adm. Code 130.455](#) - Motor Vehicle Leasing and Trade-In Allowances

Discussion

The value of property traded-in on "like kind and character" property, is exempt from tax. For example, if someone trades in a car when they purchase a new one from an automobile dealer, tax is due and charged on the difference between the price of the new car and the trade-in value assigned to the old car. The trade-in value of the old car is exempt from tax on this transaction. A motor vehicle traded to a farm implement dealer would not qualify unless the farm implement dealer was also a motor vehicle dealer.

The real test is whether the retail sale of the traded-in property, by the person who accepts it in trade, would be subject to Retailers' Occupation Tax, or whether such sale would be exempt as an isolated or occasional sale. In the former event, the tangible personal property qualifies for the "Traded-In Property" exemption, as in the car-for-car trade. In the latter event, it does not. Thus, if the farm implement dealer was only a farm implement dealer, the disposal of the traded-in motor vehicle would be exempt as an isolated or occasional sale.

Taxpayers whose total sales have been reduced due to traded-in property, may claim a deduction for "Traded-In Property," only if the gross amount of the sale is included on Line 1 and not the net proceeds realized from the sale. Traded-in property does not extend to amounts representing the proceeds due or paid under an insurance contract. Also, the value of traded-in real estate or intangible personal property may not be considered "Traded-In Property."

Beginning January 1, 2020 and until January 1, 2022, \$10,000 is the maximum credit a retailer may take on the return to reduce the taxable selling price of a motor vehicle when the trade-in of a first division motor vehicle is accepted in the transaction, regardless of the value of, or credit given for, the trade-in. This does not prohibit the retailer from reducing the price of the vehicle being sold by the value of, or credit given for, the traded-in motor vehicle. It only limits the credit the retailer may take on the return for that trade-in. See examples in 86 Ill. Adm. Code 130.425(j)(5).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory Reference

[35 ILCS 120/1](#) – Retailers' Occupation Tax Act - Definitions

[35 ILCS 120/2-10](#) – Retailers' Occupation Tax Act – Rate of Tax

[35 ILCS 105/2](#) – Use Tax Act - Definitions

[35 ILCS 105/3-10](#) – Use Tax Act – Rate of Tax

Regulations

- [86 Ill. Adm. Code 130.310\(a\)](#) - Food, Soft Drinks and Candy
- [86 Ill. Adm. Code 130.2135](#) - Vending Machines

Discussion

The sale of merchandise from a vending machine is subject to the Retailers' Occupation Tax. An exception to this is sales from a bulk vending machine.

Effective January 1, 2002, Public Act 92-213 amended the Use Tax Act and the Retailers' Occupation Tax Act. As a result, the Acts now provide that "bulk vending machine" means a vending machine containing unsorted confections, nuts, toys, or other items designed primarily to be used or played with by children which when a coin or coins of a denomination not larger than \$.50 are inserted, are dispensed in equal portions, at random, and without selection by the customer.

The person who owns the property that is sold through the vending machines is the person responsible for reporting and paying the tax measured by the gross receipts made through such vending machines. This person may be the owner of the establishment or someone other than the owner of the establishment where the vending machine is located. The place where the vending machine is located at the time of the sale determines the locality for municipal or county and mass transit taxes.

For more information refer to 86 Ill. Adm. Code 130.2135.

86 Ill. Adm. Code 130.310 (a) states that food for human consumption that is to be consumed off the premises where it is sold includes all food sold through a vending machine, except for soft drinks, candy and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine.

The Metropolitan Pier and Exposition Authority (MPEA) is authorized to levy in specified areas in the city of Chicago and its metropolitan area, a 1% Retailers' Occupation Tax on gross receipts (1) from sales of food, alcoholic beverages and soft drinks sold for consumption on the premises where sold, and (2) on sales of such items for off-premises consumption by retailers whose principal source of receipts is from the sale of food, alcoholic beverages and soft drinks prepared for immediate consumption. The Illinois Department of Revenue is responsible for collecting this tax. For a description of the area covered by this tax, refer to [70 ILCS 210/13](#).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory Reference

[35 ILCS 735/3-10](#) – Uniform Penalty and Interest Act - Limitations

Regulations and References

- [86 Ill. Adm. Code 210.126](#) - Voluntary Disclosure
- Informational bulletin [FY 2019-13](#)

Discussion

If a taxpayer fails to file a return but voluntarily discloses the failure to the Department, the assessment period is limited to four years. The voluntary disclosure program provides the following benefits to taxpayers who participate: (1) the assessment period is limited to four years; (2) no civil fraud penalties will be imposed; (3) the Department will not recommend criminal prosecution; and (4) the taxpayer may petition the Board of Appeals for relief from penalties and interest. Taxpayers who have underreported or underpaid their taxes do not qualify; they must correct previously filed returns as required under existing tax law.

To take advantage of the program, a taxpayer must voluntarily come forward and disclose their liability to the Board of Appeals (BOA) using the form BOA-2. All the forms to apply to the Board of Appeals can be found on the [Department website here](#).

86 Ill. Adm. Code 210.126(c) contains the "voluntary disclosure" language. A taxpayer does not qualify for voluntary disclosure if:

- 1) The Department has initiated an audit or investigation prior to the date the taxpayer filed an application with the Board.
 - A) Initiated an audit. The Department has initiated an audit of the taxpayer if at a minimum:
 - i) The Audit Bureau has contacted the taxpayer by telephone to schedule an appointment to audit the taxpayer for the Illinois tax type being disclosed, or
 - ii) The Audit Bureau has contacted the taxpayer in writing regarding a possible tax liability or a notice of intent to audit for the Illinois tax type being disclosed; or
 - B) Initiated an investigation. The Criminal Investigation Division of the Department has initiated an investigation of a taxpayer if, at a minimum, the Department has opened a criminal investigation file on the taxpayer.
 - C) Partnerships. Once the Department has initiated an audit or investigation of a partnership or a general partner of the partnership, the Department is deemed to have initiated an audit or investigation of the partnership and all partners of that partnership

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

with respect to the liability from such partnership for the purpose of qualifying for voluntary disclosure.

- 2) Taxpayer does not file returns. Taxpayer does not file tax returns within 30 days from the Signature Date on the form BOA-2. The Board of Appeals member's Signature Date is the date the Board member signs the Application.
- 3) Taxpayer does not pay tax liability. Taxpayer does not pay all tax and interest (except for those amounts for which the taxpayer is seeking relief from the Board) within thirty days from the Signature Date.
- 4) Taxpayer does not comply with the Board's Order regarding taxpayer's petition seeking relief.
- 5) Taxpayer does not begin prospective compliance. Taxpayer must begin prospective compliance with Illinois tax law as a part of voluntary disclosure. Taxpayer has begun prospective compliance when taxpayer has made a good faith effort to comply with Illinois tax law. This would include prospectively filing all returns that are due, paying the tax liability owed, registering with the Department and remitting all taxes collected.
- 6) Taxpayer has not remitted all taxes collected for the Illinois tax type being disclosed as part of voluntary disclosure. Taxpayer must remit all taxes (and interest) previously collected for all periods for the Illinois tax type being disclosed as part of taxpayer's voluntary disclosure with the Department. This includes periods beyond the four-year limitation for which the taxes were collected but not remitted. Failure to remit all taxes (and interest) previously collected for the Illinois tax type being disclosed will disqualify taxpayer from the relief provided under voluntary disclosure.

Being contacted by the Department for one tax will not automatically preclude a taxpayer from petitioning for voluntary disclosure of other taxes.

The Department retains the right to audit a taxpayer for all open years of the voluntary disclosure period and assess all tax, penalty and interest that is owed by the taxpayer. The taxpayer will not qualify for the penalty relief provided under voluntary disclosure when the Department finds that the taxpayer understated the final tax liability to the Board by 10% or more.

If the BOA accepted the application and the taxpayer filed the return and paid the tax and interest, then the audit period is limited to the approved 4-year limitation.

For more information read Informational bulletin FY 2019-13.

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

Statutory Reference

[35 ILCS 105/3-75](#) – Use Tax Act – Serviceman Transfer

[35 ILCS 120/2-55](#) – Retailers' Occupation Tax Act – Serviceman Transfer

Regulations

- [86 Ill. Adm. Code 140.141](#) - Warranty Repairs

Discussion

Generally

Transfers of repair parts, repair materials and other tangible personal property by persons who repair tangible personal property belonging to others as an incident of furnishing repair services are generally subject to tax under the Service Occupation Tax Act. 86 Ill. Adm. Code 140.141(a).

However, where a seller/warrantor (e.g., a retailer or a manufacturer) is required to make a repair to an item under the terms of a warranty included in the retail selling price of that item, the repair parts and materials transferred incident to the repair are not subject to tax. This is because the warranty (and the work to be done under the warranty) was included as part of the retail selling price of the item and, as such, was subject to Retailers' Occupation Tax and Use Tax when the item was sold at retail. The warranty constitutes an agreement, included in the retail selling price of the item, that the item is free from defects in materials and workmanship and, if any such defect exists, it will be cured. The warranty may be express or implied. So long as the seller/warrantor is obligated to make a repair under the terms of a warranty that was included in the retail selling price of the item, the repair is not subject to tax. 86 Ill. Adm. Code 140.141(b). The following situations are examples.

- **Express Warranties**

When an item of tangible personal property is sold at retail, an express warranty from the manufacturer is often included in the selling prices. This express warranty obligates the manufacturer to correct defects in materials and workmanship during a specified timeframe. When repairs are made under the terms of an express warranty; no tax is due and this is true whether the manufacturer makes the repairs or whether the manufacturer pays someone else to make the repairs. 86 Ill. Adm. Code 140.141(b)(1).

- **Safety Related Recall:** sometimes a product line is recalled by a manufacturer to correct a manufacturing defect that relates to product safety on the manufacturer's own initiative or as the result of a recommendation by a governmental agency. No tax is incurred as a result of those repairs even if the repairs are not required by the manufacturer's express warranty. This is so because manufacturers make an implied warranty that the items they sell are free from safety-related manufacturing defects. Repairs made under safety related recalls are not taxable whether the manufacturer makes the repairs or pays someone else to make the repairs. 86 Ill. Adm. Code 140.141(b)(2).

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist IDOR auditors in the completion of their audits. This manual does not carry the weight or effect of law and is only informational in nature. This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

- **Non-safety Related Recall:** sometimes a particular product line is recalled by a manufacturer to correct a non-safety related defect in materials and workmanship. So long as the manufacturer is required to correct the defect as the result of an enforceable agreement included in the retail selling price of the item that the item was being purchased free of manufacturing defects and the repairs are necessary to correct a manufacturing defect, no tax liability is incurred as a result of the repair. Again, this is true whether the manufacturer makes the repairs or pays someone else to make the repairs. It is also true even if the repairs are required to be made outside the time limits contained in the manufacturer's express warranty. 86 Ill. Adm. Code 140.141(b)(3).

Repairs Made by Seller not Under a Warranty

- **Extended Warranties:** Extended warranties are contracts to provide repairs for a particular item for a stated period of time after a manufacturer's express warranty has expired. Extended warranties are a form of maintenance agreement and are subject to tax just as maintenance agreements are subject to tax. 86 Ill. Adm. Code 140.141(c)(2).

An extended warranty that is not included in the selling price of the item covered by the extended warranty is not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. Consequently, repairs made under an extended warranty result in tax liability. 86 Ill. Adm. Code 140.141(c)(2). The serviceman owes use tax on the cost price of the parts used to repair the item. No tax is charged to the customer.

If an extended warranty is included in the selling price of the item it covers, then the selling price of the extended warranty is subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. As a result, the parts transferred when repairing the item under warranty will not be subject to tax as it was covered in the selling price.

- **Maintenance Agreements:** Please refer to 86 Ill. Adm. Code 140.141(c)(1) and the topical section on "Maintenance Agreements".
- **Goodwill Repairs:** are repairs made by a seller for no charge that a seller is not obligated to make. 86 Ill. Adm. Code 140.141(c)(3).
 - If the seller makes the goodwill repair himself, no service situation exists and the seller making the goodwill repair himself incurs a Use Tax liability based on his cost price of all tangible personal property used in making the repair, including the repair parts transferred to the customer. 86 Ill. Adm. Code 140.141(c)(3)(A).

If the seller pays another person to make the goodwill repair, a service situation exists in which the person making the repairs is the serviceman and the seller is the service customer. Refer to 86 Ill. Adm. Code 140.141(c)(3)(B) for determining the tax liabilities.