

TITLE 86: REVENUE
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AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Sections 2505-25 and 2505-795 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective

343 November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency
 344 expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14
 345 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1,
 346 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg.
 347 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991;
 348 amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757,
 349 effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended
 350 at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October
 351 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg.
 352 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994;
 353 amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568,
 354 effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995;
 355 amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective
 356 March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg.
 357 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996;
 358 expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg.
 359 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997;
 360 amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874,
 361 effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at
 362 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29,
 363 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713,
 364 effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a
 365 maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24
 366 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8,
 367 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of
 368 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950,
 369 effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25
 370 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May
 371 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264,
 372 effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at
 373 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15,
 374 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196,
 375 effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at
 376 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24,
 377 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795,
 378 effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003,
 379 for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg.
 380 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective
 381 November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at
 382 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21,
 383 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum
 384 of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26,
 385 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621,

386 effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at
 387 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March
 388 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a maximum of
 389 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June
 390 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg.
 391 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008;
 392 amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective
 393 January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill.
 394 Reg. 15781, effective October 27, 2009; amended at 33 Ill. Reg. 16711, effective November 20,
 395 2009; amended at 34 Ill. Reg. 9405, effective June 23, 2010; amended at 34 Ill. Reg. 12935,
 396 effective August 19, 2010; amended at 35 Ill. Reg. 2169, effective January 24, 2011; amended at
 397 36 Ill. Reg. 6662, effective April 12, 2012; amended at 38 Ill. Reg. 12909, effective June 9,
 398 2014; amended at 38 Ill. Reg. 17060, effective July 25, 2014; amended at 38 Ill. Reg. 17421,
 399 effective July 31, 2014; amended at 38 Ill. Reg. 17756, effective August 6, 2014; amended at 38
 400 Ill. Reg. 19998, effective October 1, 2014; amended at 39 Ill. Reg. 1793, effective January 12,
 401 2015; amended at 39 Ill. Reg. 12597, effective August 26, 2015; amended at 39 Ill. Reg. 14616,
 402 effective October 22, 2015; amended at 40 Ill. Reg. 6130, effective April 1, 2016; amended at 40
 403 Ill. Reg. 13448, effective September 9, 2016; amended at 41 Ill. Reg. 10721, effective August 1,
 404 2017; amended at 42 Ill. Reg. 2850, effective January 26, 2018; amended at 43 Ill. Reg. 4201,
 405 effective March 20, 2019; amended at 43 Ill. Reg. 5069, effective April 17, 2019; amended at 43
 406 Ill. Reg. 8865, effective July 30, 2019; emergency amendment at 43 Ill. Reg. 9841, effective
 407 August 21, 2019, for a maximum of 150 days; emergency amendment at 44 Ill. Reg. 552,
 408 effective December 27, 2019, for a maximum of 150 days; emergency expired May 24, 2020;
 409 emergency amendment at 44 Ill. Reg. 2055, effective January 13, 2020, for a maximum of 180
 410 days; amended at 44 Ill. Reg. 5392, effective March 16, 2020; amended at 44 Ill. Reg. 10981,
 411 effective June 10, 2020; amended at 44 Ill. Reg. 13975, effective August 11, 2020; amended at
 412 45 Ill. Reg. 352, effective December 21, 2020; amended at 45 Ill. Reg. 7248, effective June 3,
 413 2021; amended at 45 Ill. Reg. 14464, effective November 2, 2021; amended at 45 Ill. Reg.
 414 16058, effective December 3, 2021; amended at 46 Ill. Reg. 6745, effective April 12, 2022;
 415 amended at 46 Ill. Reg. 7785, effective April 26, 2022; amended at 46 Ill. Reg. 10905, effective
 416 June 7, 2022; amended at 46 Ill. Reg. 15336, effective August 23, 2022; amended at 46 Ill. Reg.
 417 18120, effective October 25, 2022; amended at 46 Ill. Reg. 18827, effective November 1, 2022;
 418 amended at 47 Ill. Reg. 1426, effective January 17, 2023; amended at 47 Ill. Reg. 2116, effective
 419 January 24, 2023; amended at 47 Ill. Reg. 5751, effective April 4, 2023; amended at 47 Ill. Reg.
 420 6068, effective April 12, 2023; amended at 47 Ill. Reg. 6309, effective April 18, 2023; amended
 421 at 47 Ill. Reg. 19135, effective December 6, 2023; amended at 47 Ill. Reg. 19349, effective
 422 December 12, 2023; amended at 48 Ill. Reg. 1870, effective January 18, 2024; amended at 48 Ill.
 423 Reg. 2856, effective February 8, 2024; amended at 48 Ill. Reg. _____, effective _____.

424
 425 SUBPART B: SALE AT RETAIL

426
 427 **Section 130.210 Sales of Tangible Personal Property to Purchasers for Resale**

428

- 429 a) The sale of tangible personal property to a purchaser for the purpose of resale in
 430 any form as tangible personal property, to the extent not first subjected to a use
 431 for which it was purchased, is not subject to the Retailers' Occupation Tax Act
 432 ("Act").
 433
- 434 b) Sales of tangible personal property, which property, to the extent not first
 435 subjected to a use for which it was purchased, as an ingredient or constituent, goes
 436 into and forms a part of tangible personal property subsequently the subject of a
 437 "sale at retail", are not sales at retail as defined in the Act, provided that the
 438 property purchased is deemed to be purchased for the purpose of resale, despite
 439 first being used, to the extent to which it is resold as an ingredient of an
 440 intentionally produced product or byproduct of manufacturing. For this purpose,
 441 slag produced as an incident to manufacturing pig iron or steel and sold is
 442 considered to be an intentionally produced byproduct of manufacturing.
 443
- 444 c) However, such sales for resale cannot be made tax-free unless the purchaser
 445 (except in the case of an out-of-State purchaser who will always resell and deliver
 446 the property to its customers outside Illinois) has an active registration number
 447 or active resale number from the Department and gives such number to suppliers
 448 in connection with certifying to any supplier that any sale to such purchaser is
 449 nontaxable because of being a sale for resale. Failure to present an active
 450 registration number or resale number and a certification to the seller that a sale is
 451 for resale creates a presumption that a sale is not for resale. This presumption
 452 may be rebutted by other evidence that all of the seller's sales are sales for resale,
 453 or that a particular sale is a sale for resale.
 454
- 455 ~~d) Except to the extent stated in Subsection (b) of this Section, tangible personal~~
 456 ~~property, even though it is essential to the process of manufacturing or otherwise~~
 457 ~~producing other tangible personal property that will be sold is, nevertheless, sold~~
 458 ~~at retail (and not for resale within the meaning of the Act) if it is sold to a~~
 459 ~~manufacturer or other producer who uses or consumes such property in the~~
 460 ~~manufacturing or other production process, but does not physically incorporate~~
 461 ~~such property into the tangible personal property which he manufactures or~~
 462 ~~otherwise produces and sells.~~
 463
- 464 de) Divisible Type of Sale. There can also be a divisible type of sale where the
 465 tangible personal property is bought partly for "use" and partly for "resale" in the
 466 first place. For examples, see Sections 86 Ill. Adm. Code 130.215 and
 467 130.330(h).~~An example of this is the sale of coal and coke to a steel manufacturer~~
 468 ~~who buys coal and coke partly to produce heat for "use" in the manufacturing~~
 469 ~~operation, and partly to provide carbon as an ingredient of the steel as well as~~
 470 ~~various byproducts which the purchasing manufacturer will sell. In this case, the~~
 471 ~~coal and coke bought for "use" in the manufacturing operation are taxable, and the~~

~~sale of the coal and coke which the purchaser bought to provide carbon is a nontaxable sale for resale.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 130.215 ~~Further~~ Illustrations of Sales for Use or Consumption Versus Sales for Resale

a) A manufacturer of ice cream may require, ~~in his occupation,~~ machinery, freezers, fuel, ammonia, and other equipment and supplies. Sales of such items to the manufacturer are sales for use or consumption. Such items do not physically enter into, nor, as ingredients or constituents, form a part of, the product sold by such ice cream manufacturer. Such items are purchased for use or consumption and not for resale within the meaning of the Retailers' Occupation Tax Act. Persons who engage in the business of making such sales incur ~~retailers' occupation tax~~ retailers' occupation tax ~~Retailers' Occupation Tax~~ liability. (However, for information regarding the Manufacturing Machinery and Equipment Exemption from sales tax, see 86 Ill. Adm. Code 130.330.) Sales of milk, cream, sugar, extracts, and various other constituents are also made to, intended to, and do enter into and form a useful part of a commodity which thereafter becomes the subject of a sale for use or consumption.

b) A fast-food ~~For example, a fast food~~ seller purchases cooking oil to use in preparing foods such as ~~french~~ fries and chicken. 5% of the oil is absorbed into the food and ends up as an integral part of the food when finished. 95% of the oil does not become part of the cooked food and is discarded by the ~~fast-food~~ fast food seller after use. This being the case, the 5% of the oil that is absorbed and becomes an integral part of the food product is exempt from tax as a purchase for resale. The 95% of the oil that does not end up as an integral part of the finished product is taxable because it is used by the food seller. In this case, the food seller should give a blanket percentage-use Certificate of Resale to the supplier that states that 5% of its purchases of oil are exempt from tax as purchases for resale and 95% are taxable as purchases for use. The Certificate of Resale must meet all the requirements of 86 Ill. Adm. Code 130.1405 in addition to specifying the percentage of material that will be resold. The seller should charge tax only on the 95% of the oil used by the purchaser.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section 130.330 Manufacturing Machinery and Equipment

- 515 a) General Provisions Applicable to All Types of Machinery and Equipment Under
 516 This Section
 517 Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation
 518 Tax Act does not apply to the sales of~~Notwithstanding the fact that the sales may~~
 519 ~~be at retail, the Retailers' Occupation Tax does not apply to sales of~~ machinery
 520 and equipment that will be used by the purchaser, or a lessee of the purchaser,
 521 primarily in the process of manufacturing or assembling tangible personal
 522 property for wholesale or retail sale or lease, whether the sale or lease is made
 523 directly by the manufacturer or by some other person, whether the materials used
 524 in the process are owned by the manufacturer or some other person, or whether
 525 the sale or lease is made apart from or as an incident to the seller's engaging in
 526 the service occupation of producing machines, tools, dies, jigs, patterns, gauges,
 527 or other similar items of no commercial value on special order for a particular
 528 purchaser. [35 ILCS 120/2-5(14)]~~(Section 2-5(14) of the Act)~~ The
 529 manufacturing and assembly machinery and equipment exemption includes
 530 machinery and equipment that replaces machinery and equipment in an existing
 531 manufacturing facility; as well as machinery and equipment that are for use in an
 532 expanded or new manufacturing facility. [35 ILCS 120/2-45]~~(Section 2-45 of the~~
 533 ~~Act)~~ In certain cases, purchases of machinery and equipment by a lessor will be
 534 exempt even though that lessor does not itself employ the machinery and
 535 equipment in an exempt manner. Initially, the exemption was for purchases of
 536 conventional machinery and equipment used or consumed primarily in the process
 537 of manufacturing or assembling tangible personal property for wholesale or retail
 538 sale or lease. The exemption has expanded over time to include not only
 539 conventional machinery and equipment used or consumed in a manufacturing or
 540 assembling process in a manufacturing facility (see subsection (c)) but also
 541 chemicals (see subsection (d)), computer software (see subsection (e)), machinery
 542 and equipment used primarily in graphic arts production (see subsection (g)), and
 543 production related tangible personal property (see subsection (h)). For purposes
 544 of this Section, unless otherwise provided, all the types of tangible personal
 545 property that qualify for the exemption under this Section will be referred to as
 546 "machinery and equipment". The following provisions apply to all items under
 547 this Section:
 548
 549 1) There may be instances in which items of tangible personal property do
 550 not meet the definition of conventional "machinery and equipment" under
 551 subsection (c), but do meet the definition of "graphic arts production" in
 552 subsection (g) or "production related tangible personal property" in
 553 subsection (h) and so would qualify for the exemption.
 554
 555 2) The manufacturing ~~machinery~~ and assembling machinery and equipment
 556 exemption is exempt from the~~not subject to the sunset~~ provisions of Section
 557 2-70 of the Retailers' Occupation Tax Act. [35 ILCS 120/2-45]~~contained~~

~~in Section 2-45 of the Retailers' Occupation Tax Act. (Section 2-45 of the Act)~~

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- 3) All items considered machinery and equipment under this Section must be used primarily (over 50%) in manufacturing or assembling. Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for the exemption. However, the purchaser must be able to establish through adequate records that the machinery and equipment is used over 50% of the time in an exempt manner in order to claim the exemption.
- 4) An item of machinery and equipment that initially is used primarily in manufacturing or assembling and, having been so used for less than one-half of its useful life, is converted to primarily nonexempt uses will become subject to tax at the time of the conversion, allowing for reasonable depreciation on the machinery and equipment.
- 5) The fact that particular machinery and equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery and equipment is used primarily in manufacturing or assembling.
- 6) Machinery and equipment used in the performance of a service, such as dry cleaning, is not used in the production of tangible personal property for wholesale or retail sale or lease and is thus taxable. However, a manufacturer or assembler who uses machinery and equipment to produce goods for wholesale or retail sale or lease by itself or another, or to perform assembly or fabricating work for a customer who retains the manufacturer or assembler only for its services, will not be liable for tax on the machinery and equipment it uses as long as the goods produced either for itself or another are destined for wholesale or retail sale or lease, rather than for use and consumption.
- 7) The exemption requires that the product produced as a result of the manufacturing or assembling process be tangible personal property for wholesale or retail sale or lease. Accordingly, a manufacturer or assembler who uses any significant portion of the output of its machinery and equipment, either for internal consumption or any other nonexempt use, or a lessor who leases otherwise exempt machinery and equipment to such a manufacturer or assembler, will not be eligible to claim the exemption on that machinery and equipment. No apportionment of production capacity between output for sale or lease and output for self-

601 use will be permitted and no partial exemption for any item of machinery
602 and equipment will be allowed. For example, the purchase of hot-mix
603 asphalt machinery would be taxable if the majority of the asphalt produced
604 (over 50%) was used to fulfill the purchaser's own construction contracts
605 and not sold at wholesale or retail.
606

607 8) Machinery and equipment does not include foundations for, or special
608 purpose buildings to house or support, machinery and equipment.
609

610 b) Manufacturing and Assembling Processes Described
611

612 1) The manufacturing process is the production of any article of tangible
613 personal property, whether the article is a finished product or an article for
614 use in the process of manufacturing or assembling a different article of
615 tangible personal property, by procedures commonly regarded as
616 manufacturing, processing, fabricating, or refining that changes some
617 existing material or materials into a material with a different form, use, or
618 name. These changes must result from the process in question and be
619 substantial and significant.
620

621 2) The assembling process is the production of an article of tangible personal
622 property, whether the article is a finished product or an article for use in
623 the process of manufacturing or assembling a different article of tangible
624 personal property, by the combination of existing materials in a manner
625 commonly regarded as assembling that results in an article or material of a
626 different form, use, or name.
627

628 3) The process or activity must be commonly regarded as manufacturing. To
629 be so regarded, it must be thought of as manufacturing by the general
630 public. Generally, the scale, scope, and character of a process or operation
631 will be considered to determine if the process or operation is commonly
632 regarded as manufacturing. Manufacturing includes such activities as
633 processing, fabricating, and refining.
634

635 4) The use of machinery and equipment in any industrial, commercial, or
636 business activity that may be distinguished from manufacturing or
637 assembling will not be an exempt use and the machinery and equipment
638 will be subject to tax.
639

640 5) Manufacturing generally does not include extractive industrial activities.
641 Logging and drilling for oil, gas, and water neither produce articles of
642 tangible personal property nor effect any significant or substantial change
643 in the form, use, or name of the materials or resources upon which they

644 operate. However, the extractive processes of mining or quarrying may
 645 constitute manufacturing. (See *Nokomis Quarry Co. v. Department of*
 646 *Revenue*, 295 Ill. App. 3d 264, 692 N.E.2d 855, 860 (5th^{5th} Dist. 1998)
 647 (holding that a calculated blasting method that is performed with specific
 648 desired results, which changes limestone deposits into materials with a
 649 different form, possessing new qualities or combinations, constitutes
 650 manufacturing)).[→] Blasting agents, high explosives, detonators, lead-in
 651 line, and blasting machines are examples of exempt tangible personal
 652 property that is often used in the extractive process of quarrying.
 653 Equipment used primarily to drill and load holes to place blasting material
 654 that fractures aggregate qualifies as manufacturing machinery and
 655 equipment. Dredges that are used primarily in a sand and gravel mining
 656 operation to pick up and sort materials from a riverbed also qualify for the
 657 exemption. Equipment, such as crawler dozers, used primarily to move
 658 shot rock after blasting, and wheel loaders, used primarily to load the
 659 mined product into off-highway, haulage trucks for transport to the
 660 crusher-sorter machine, will qualify for the exemption. In addition, wheel
 661 loaders used to transport the mined product to the crusher-sorter machine
 662 or onto a conveyor system will qualify for the exemption. Machinery and
 663 equipment used primarily in activities such as crushing, washing, sizing,
 664 and blending will qualify for the exemption if the process results in the
 665 assembling of an article of tangible personal property with a different form
 666 than the material extracted, which possesses new qualities or
 667 combinations. Other types of mining and quarrying equipment may be
 668 exempt under this subsection (b)(5) if used in qualifying activities.
 669

670 6) Until July 1, 2017, the printing process was not commonly regarded as
 671 manufacturing. Therefore, machinery and equipment used in any printing
 672 application will not qualify for the exemption. This includes graphic arts,
 673 newspapers, or books, as well as other industrial or commercial
 674 applications. Beginning July 1, 2017, the exemption includes machinery
 675 and equipment used in graphic arts production. (See subsection (g)).[→]
 676

677 7) Agricultural, horticultural, and related, similar, or comparable activities,
 678 including commercial fishing, beekeeping, production of seedlings or seed
 679 corn, and development of hybrid seeds, plants, or shoots, are not
 680 manufacturing or assembling and, accordingly, machinery and equipment
 681 used in those activities is subject to tax under this Section. (However, see
 682 Section 130.305 for the Farm Machinery and Equipment Exemption.)
 683

684 8) The preparation of food and beverages by restaurants, food service
 685 establishments, and other retailers [that prepare food for immediate](#)
 686 [consumption](#) is not manufacturing.

687
 688 9) Effective September 1, 1988, manufacturing includes photoprocessing if
 689 the products of photoprocessing are sold. Machinery and equipment that
 690 would qualify for exemption includes, but is not limited to, developers,
 691 dryers, enlargers, mounting machines, roll film splicers, film developing
 692 image makers, disc film opening and spindling devices, film indexers,
 693 photographic paper exposure equipment, photographic paper developing
 694 machines, densitometers, print inspection devices, photo print/negative cut
 695 assembly stations, film sleeve insertion machines, negative image
 696 producers, film coating equipment, photo transparency mounters,
 697 processor rack sanitizers, photo print embossers, photo print mounting
 698 presses, graphic slide generators, chemical mixing equipment, and paper
 699 exposure positioning and holding devices. Cameras and equipment used to
 700 take pictures or expose film are not eligible, as the photoprocessing begins
 701 after the film is exposed. Retail/net price calculation equipment and
 702 chemical reclamation equipment are not considered to be manufacturing
 703 machinery and equipment.
 704

705 c) Machinery and Equipment. This subsection (c) describes "conventional"
 706 machinery and equipment that qualify for the exemption as it was originally
 707 enacted. Qualifying items that fall outside this definition of conventional
 708 machinery and equipment are described more fully in other subsections.
 709

710 1) *The exemption under this subsection (c) applies to machinery and*
 711 *equipment that will be used by the purchaser, or a lessee of the purchaser,*
 712 *primarily in the process of manufacturing or assembling tangible personal*
 713 *property for wholesale or retail sale or lease. The manufacturing and*
 714 *assembly machinery and equipment exemption also includes machinery*
 715 *and equipment that replaces machinery and equipment in an existing*
 716 *manufacturing facility as well as machinery and equipment that are for*
 717 *use in an expanded or new manufacturing facility. The machinery and*
 718 *equipment exemption also includes machinery and equipment used in the*
 719 *general maintenance or repair of exempt machinery and equipment or for*
 720 *in-house manufacture of exempt machinery and equipment.*
 721

722 2) *Equipment includes an independent device or tool separate from any*
 723 *machinery but essential to an integrated manufacturing or assembly*
 724 *process, including computers used primarily in a manufacturer's computer*
 725 *assisted design, computer assisted manufacturing (CAD/CAM) system;*
 726 *any subunit or assembly comprising a component of any machinery or*
 727 *auxiliary, adjunct, or attachment parts of machinery, such as tools, dies,*
 728 *jigs, fixtures, patterns, and molds; and any parts that require periodic*

729 replacement in the course of normal operation. [\[35 ILCS 120/2-](#)
730 [45\]\(Section 2-45 of the Act\)](#)
731

- 732 3) By way of illustration and not limitation, machinery and equipment used
733 primarily in the following activities will generally be considered exempt:
734
- 735 A) The use of machinery and equipment to effect a direct and
736 immediate physical change upon the tangible personal property to
737 be sold;
738
 - 739 B) The use of machinery and equipment to guide or measure a direct
740 and immediate physical change upon the tangible personal
741 property to be sold, provided this function is an integral and
742 essential part of tuning, verifying or aligning the component parts
743 of that property;
744
 - 745 C) The use of machinery and equipment to inspect, test, or measure
746 the tangible personal property to be sold, when the function is an
747 integral part of the production flow;
748
 - 749 D) The use of machinery and equipment to convey, handle, or
750 transport the tangible personal property to be sold within
751 production stations on the production line or directly between the
752 production stations or buildings within the same plant;
753
 - 754 E) The use of machinery and equipment to place the tangible personal
755 property to be sold into the container, package, or wrapping in
756 which this property is normally sold, when the machinery and
757 equipment is used as a part of an integrated manufacturing process;
758
 - 759 F) The production or processing of food, including the use of baking
760 equipment such as ovens to bake bread or other bakery items,
761 whether that baking is performed by a central bakery or a retail
762 grocery store [as long as the equipment is used primarily in the](#)
763 [production or processing of food that is not for immediate](#)
764 [consumption; and](#)
765
 - 766 G) The use of machinery and equipment such as buffers, builders, or
767 vulcanizing equipment to retread tires, whether or not the tire
768 casing is provided by the purchaser.
769

770 4) By way of illustration and not limitation, the machinery and equipment
 771 used primarily in the following activities will generally not be considered
 772 to be exempt:
 773

774 A) The use of machinery and equipment to transport work in process,
 775 or semifinished goods, between plants;
 776

777 B) The use of machinery or equipment in managerial, sales, or other
 778 nonproduction, nonoperational activities, including disposal of
 779 waste, scrap or residue, production scheduling, work routing,
 780 purchasing, receiving, accounting, fiscal management, general
 781 communications, plant security, sales, marketing, product
 782 exhibition and promotion, or personnel recruitment, selection, or
 783 training;
 784

785 C) The use of machinery and equipment pursuant to a retail sale to
 786 combine ingredients in the preparation of food and beverages or to
 787 dispense food and beverages by ~~a retailer for retail sale, i.e.,~~
 788 restaurants, vending machines, convenience stores, and other food
 789 service establishments, such as fountain drink machines, coffee
 790 machines, soft serve ice cream machines, and frozen beverage
 791 machines;
 792

793 D) The use of machinery and equipment used in the last step of the
 794 retail sale. Examples are embroidery or monogramming machines
 795 used by tee-shirt retailers or sewing machines used to hem
 796 garments sold by a clothing store; and-.
 797

798 E) The use of machinery and equipment for general ventilation,
 799 heating, cooling, climate control, or general illumination.
 800

801 d) The exemption for equipment~~The exemption~~ *includes chemicals or chemicals*
 802 *acting as catalysts but only if the chemicals or chemicals acting as catalysts effect*
 803 *a direct and immediate change upon a product being manufactured or assembled*
 804 *for wholesale or retail sale or lease. [35 ILCS 120/2-45]*~~(Section 2-45 of the Act)~~
 805 Effective July 1, 2019, chemicals that do not make a direct and immediate change
 806 or act as a catalyst may qualify if they are production related. See subsection
 807 (h)(2)(B). The following examples are illustrative:
 808

809 EXAMPLE 1: A chemical acid is used to etch copper off the surface of a printed
 810 circuit board during the manufacturing process. The acid causes a direct and
 811 immediate change upon the product. The acid qualifies for the exemption.
 812

813 EXAMPLE 2: An aluminum oxide catalyst is used in a catalytic cracking process
 814 to refine heavy gas oil into gasoline. In this process, large molecules of gas oil or
 815 feed are broken up into smaller molecules. After the catalyst is injected into the
 816 feed and used in the cracking process, it is drawn off and reused in subsequent
 817 manufacturing processes. The catalyst qualifies for the exemption.
 818

819 e) ~~The exemption includes computer~~*The exemption includes computer* software used
 820 to operate exempt machinery and equipment used in the process of manufacturing
 821 or assembling tangible personal property for wholesale or retail sale or lease.
 822 [\[35 ILCS 120/2-25\]](#)~~(Section 2-25 of the Act)~~

823
 824 f) The exemption includes the sale of materials to a purchaser who manufactures the
 825 materials into an exempted type of machinery and equipment or tools that the
 826 purchaser uses in the manufacturing of tangible personal property or leases to a
 827 manufacturer of tangible personal property. However, the purchaser must
 828 maintain adequate records clearly demonstrating the incorporation of these
 829 materials into exempt machinery and equipment.
 830

831 g) Beginning July 1, 2017, the manufacturing machinery and equipment exemption
 832 includes machinery and equipment used primarily in graphic arts production.
 833 *"Graphic arts production" means the production of tangible personal property for*
 834 *wholesale or retail sale or lease by means of printing, including ink jet printing,*
 835 *by one or more of the processes described in Groups 323110 through 323122 of*
 836 *Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group*
 837 *512230 of Subsector 512 of the North American Industry Classification System*
 838 *(NAICS)*~~(NAICS)~~ *published by the U.S. Office of Management and Budget, 1997*
 839 *edition. Graphic arts production does not include the transfer of images onto*
 840 *paper or other tangible personal property by means of photocopying or final*
 841 *printed products in electronic or audio form, including the production of software*
 842 *or ~~audio-books~~audiobooks. Persons engaged primarily in the business of printing*
 843 *or publishing newspapers or magazines that qualify as newsprint and ink, by one*
 844 *or more of the processes described in Groups 511110 through 511199 of*
 845 *Subsector 511 of the ~~NAICS~~NAICS published by the U.S. Office of Management*
 846 *and Budget, 1997 edition, are deemed to be engaged in graphic arts production.*
 847 [\[35 ILCS 120/2-30\]](#)~~(Section 2-30 of the Act)~~

848
 849 1) The manufacturing machinery and equipment exemption applies to
 850 qualifying machinery and equipment used in graphic arts production
 851 processes, as those processes are described in the NAICS and includes
 852 repair and replacement parts, both new and used, and including equipment
 853 that is manufactured on special order to be used primarily in graphic arts
 854 production.
 855

- 856 2) Manufacturing includes printing by methods of engraving, letterpress,
 857 lithography, gravure, flexography, and screen, quick, and digital printing.
 858 It also includes the printing of manifold business forms, blankbooks,
 859 looseleaf binders, books, periodicals, and newspapers. Included in graphic
 860 arts production are prepress services described in Subsector 323122 of the
 861 NAICS (e.g., the creation and preparation of negative or positive film
 862 from which plates are produced, plate production, cylinder engraving,
 863 typesetting, and imagesetting). Also included are trade binding and
 864 related printing support activities set forth in Subsector 323121 of the
 865 NAICS (e.g., tradebinding, sample mounting, and postpress services, such
 866 as book or paper bronzing, edging, embossing, folding, gilding, gluing, die
 867 cutting, finishing, tabbing, and indexing).
 868
- 869 3) By way of illustration and not limitation, the following activities will
 870 generally be considered graphic arts production:
 871
- 872 A) Digital Printing and Quick Printing. This means the printing of
 873 graphical text or images by a process utilizing digital technology.
 874 It also includes the printing of what is commonly known as "digital
 875 photography" (e.g., use of a qualifying integrated computer and
 876 printer system to print a digital image). The exemption extends
 877 only to machinery and equipment, including repair and
 878 replacement parts, used in the act of production. Accordingly, no
 879 other type or kind of tangible personal property will qualify for the
 880 exemption, even though it may be used primarily in the graphic
 881 arts business.
 882
- 883 B) Prepress or Preliminary Processes. Prepress or preliminary
 884 processes include the steps required to transform an original into a
 885 state that is ready for reproduction by printing. Prepress or
 886 preliminary processes include typesetting, film production, color
 887 separation, final photocomposition (e.g., image assembly and
 888 imposition (stripping)), and platemaking. Prepress or preliminary
 889 processes include the manipulation of images or text in preparation
 890 for printing for the purpose of conforming those images to the
 891 specific requirements of the printing process being utilized. For
 892 example, the images must be conformed for a specific signature
 893 layout and formatted to a specific paper size. In addition, colors
 894 must be calibrated to the specific type of paper or printing process
 895 utilized, so that they conform to customer specifications. Prepress
 896 or preliminary processes do not, however, include the creation or
 897 artistic enhancement of images that will later be reproduced in
 898 printed form by a graphic arts process. For example, the creation of

899 an advertisement pursuant to customer direction, or enhancement
 900 of a photograph received from a customer by adding a border or
 901 text or rearranging the placement of images in the photograph, is
 902 not the performance of a qualifying prepress or preliminary
 903 process. Prepress or preliminary processes can be performed at the
 904 printing facility, a separate prepress or preliminary facility, the
 905 customer's location, or other location. The following are examples
 906 of equipment used in qualifying prepress or preliminary activities:
 907

- 908 i) Large scale, fixed-position cameras used to photograph
 909 two-dimensional copy to produce negatives or positives
 910 used in the production of plates; film processors; scanners;
 911 impositioners; RIP (raster image processor) equipment;
 912 proofing equipment; imagesetters; plate processors;
 913 helioklischographs; and computer-to-plate and computer-
 914 to-press equipment.
 915
- 916 ii) Computers that qualify include computers used primarily to
 917 receive, store, and manipulate images to conform them to
 918 the requirements of a specific printing process that will
 919 later be performed. Computers used in connection with
 920 what is commonly referred to as "digital photography" will
 921 qualify if used primarily to format the graphic image that
 922 will be printed (e.g., used to format the size and layout of
 923 images to be printed). If the computers are primarily used,
 924 however, to apply background colors, borders, or other
 925 artistic enhancements, or to view and select particular
 926 digital images to be printed, they will not qualify for the
 927 exemption.
 928
- 929 iii) Digital cameras do not qualify if they are used primarily to
 930 create an original image that will later be reproduced by a
 931 graphic arts process.
 932
- 933 iv) Servers used primarily to transfer images and text to
 934 qualifying equipment qualify, but do not qualify if used
 935 primarily in a nonexempt activity (for example, servers
 936 used to maintain an in-house email system).
 937
- 938 v) Scanners used primarily to input previously created images
 939 or text that will be reproduced by a graphic arts process
 940 qualify for the exemption.
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- C) Transfer of Images or Text from Computers, Plates, Cylinders, or Blankets to Paper or Other Stock to be Printed. This process begins when paper is introduced on the press. Examples of qualifying equipment used in this activity include printing plates, printing presses, blankets and rollers, automatic blanket washers, scorers and dies, folders, punchers, stackers, strappers used in the pressroom for signatures, dryers, chillers, and cooling towers. Laser or ink jet printers used to print on paper or other stock are also included in this exemption.
- i) Equipment used primarily to handle or convey printed materials between production stations in an integrated on-line graphic arts process is included in the exemption (e.g., a forklift or bindery cart will qualify for the exemption if it is primarily used to convey book covers that have been printed and cut to binding and finishing equipment).
 - ii) Computer equipment used primarily to operate exempt graphic arts equipment also qualifies for the exemption.
 - iii) Equipment, such as transformers, used primarily to provide power to qualifying printing presses or bindery lines qualifies for the exemption. Similarly, heating and cooling machinery and equipment used to produce an environment necessary for the production of printed material qualifies for the exemption. For example, humidity-control equipment used to reduce static during the printing process qualifies for the exemption.
- D) Activities Involving the Binding, Collating, or Finishing of the Graphic Arts Product. Equipment used in these activities includes, for instance, binders, packers, gatherers, joggers, trimmers, selectronic equipment, blow-in card feeders, inserters, stitchers, gluers, spiral binders, addressing machines, labelers, and ink-jet printers.
- i) Machinery and equipment used to convey materials to packaging areas after the graphic arts product has been printed, bound, and finished qualifies for the exemption. That equipment includes, for instance, conveyor systems, hoists, or other conveyance mechanisms used to direct the final printed product into packaging areas.

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- ii) Machinery and equipment used to package materials after the graphic arts product has been printed, bound, and finished qualifies for the exemption. Packaging equipment includes, for instance, cartoning systems, palletizers, stretch wrappers, strappers, shrink tunnels, and similar equipment.
 - 4) By way of illustration and not limitation, machinery and equipment used primarily in the following activities will generally not be considered exempt:
 - A) The use of machinery and equipment primarily to produce graphic arts items not for wholesale or retail sale or lease (e.g., items produced for internal consumption or items produced and distributed without charge).
 - B) The use of machinery and equipment (e.g., forklifts~~fork lifts~~, roll clamps, and roll grabbers) to convey raw materials to the press.
 - C) The use of machinery and equipment to convey materials to final storage or shipping areas. That equipment includes, for instance, forklifts~~fork lifts~~ used primarily to place the packaged printed product into final storage or shipping areas.
 - D) The use of machinery and equipment to gather information, track jobs, or perform data-related functions prior to a qualifying prepress activity (e.g., computers used primarily to edit or create text, data, or other copy). That equipment includes items such as inventory tracking devices and bar-code readers.
 - E) The use of machinery and equipment used primarily to photocopy printed matter. A copier that is capable of printing images or text transmitted to it in digital form may qualify if used primarily in that manner. However, a copier that produces photocopies by means of xerographic technology is subject to tax.
 - F) The use of machinery and equipment in managerial, sales, or other nonproduction, nonoperational activities, including production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, marketing, or personnel recruitment, selection, or training. Waste disposal equipment (e.g., equipment used to contain and recapture paper dust) does not qualify for the exemption.

- 1028 G) The use of machinery and equipment for general ventilation,
1029 heating, cooling, climate control, or general illumination, except
1030 when the machinery and equipment is used to produce an
1031 environment necessary for the production of printed material.
1032
- 1033 5) An item of machinery or~~Machinery and~~ equipment that initially is used
1034 primarily in graphic arts production and, having been so used for less than
1035 one-half of its useful life, ~~and~~ is converted to primarily nonexempt uses
1036 will become subject to the tax at the time of the conversion, allowing for
1037 reasonable depreciation on the item of machinery or~~and~~ equipment.
1038
- 1039 h) *Beginning on July 1, 2019, the manufacturing and assembling machinery and*
1040 *equipment exemption includes production related tangible personal property. [\[35](#)*
1041 *[ILCS 120/2-45\]](#)*~~(Section 2-45 of the Act)~~
1042
- 1043 1) Production related tangible personal property means all tangible personal
1044 property used or consumed in a production related process by a
1045 manufacturer in a manufacturing facility in which a manufacturing process
1046 takes place or by a graphic arts producer in graphic arts production.
1047 Production related tangible personal property also means all tangible
1048 personal property that is used or consumed in research and development
1049 regardless of use within or without a manufacturing or graphic arts
1050 production facility.
1051
- 1052 2) By way of illustration and not limitation, the following uses of tangible
1053 personal property by manufacturers, including graphic arts producers, will
1054 be considered production related:
1055
- 1056 A) Tangible personal property purchased by a manufacturer for
1057 incorporation into real estate within a manufacturing facility for
1058 use in a production related process, or tangible personal property
1059 purchased by a construction contractor for incorporation into real
1060 estate within a manufacturing facility for use in a production
1061 related process.
1062
- 1063 B) Supplies and consumables used in a manufacturing process in a
1064 manufacturing facility, including fuels, coolants, solvents, oils,
1065 lubricants, and adhesives.
1066
- 1067 C) Hand tools, protective apparel, and fire and safety equipment used
1068 or consumed within a manufacturing facility.
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- D) Tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging, and packing for shipping or transportation.
 - E) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of fuel used or consumed in transportation of the truck will not qualify as production related tangible personal property. The amount of fuel used in a qualifying manner to rotate the drum may be stated as a percentage of the entire amount of fuel used or consumed by the ready-mix truck.
- 3) By way of illustration and not limitation, the following uses of tangible personal property by manufacturers, including graphic arts producers, will not be considered production related:
- A) The use of trucks, trailers, and motor vehicles that are required to be titled or registered pursuant to the Illinois Motor Vehicle Code [625 ILCS 5], and aircraft or watercraft required to be registered with an agency of State or federal government.
 - B) The use of office supplies, computers, desks, copiers, and equipment for sales, purchasing, accounting, fiscal management, marketing, and personnel recruitment or selection activities, even if the use takes place within a manufacturing or graphic arts production facility.
 - C) The use or consumption of tangible personal property for aesthetic or decorative purposes, including landscaping and artwork.
- i) Sales to Lessors
- 1) For the exemption to apply, the purchaser need not itself employ the exempt machinery and equipment in manufacturing. If the purchaser leases that machinery and equipment to a lessee-manufacturer who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A vendor may exclude these sales from its taxable gross receipts provided the purchaser-lessor provides the vendor with a properly completed exemption certificate and this Section would support an exemption if the sale were made directly to the lessee-manufacturer.

- 1113 2) If a purchaser-lessor subsequently leases the machinery and equipment to
 1114 a lessee who does not use it in a manner that would qualify directly for the
 1115 exemption, the purchaser-lessor will become liable for the tax, allowing
 1116 for reasonable depreciation on the machinery and equipment.
 1117
- 1118 j) Exemption Certificates
 1119
- 1120 1) A vendor that makes sales of machinery and equipment to a manufacturer
 1121 or lessor of a manufacturer incurs retailers' occupation tax~~Retailers'~~
 1122 ~~Occupation Tax~~ on that sale and must collect use tax~~Use Tax~~ unless the
 1123 purchaser certifies the exempt nature of the purchase to the vendor as set
 1124 out in this subsection (j). The use of blanket certificates~~certificaites~~ of
 1125 exemption will be permitted.
 1126
- 1127 2) The purchaser of the machinery and equipment who has an active resale
 1128 registration number shall furnish that number to the seller at the time of
 1129 purchase. A purchaser of the machinery, equipment, and tools without an
 1130 active resale registration number shall furnish to the seller a certificate of
 1131 exemption stating facts establishing the exemption, and that certificate
 1132 shall be available to the Department for inspection or audit. [35 ILCS
 1133 120/2-45] ~~The user of qualifying machinery and equipment shall prepare a~~
 1134 ~~certificate of exemption for each transaction stating facts establishing the~~
 1135 ~~exemption for that transaction and submit the certificate to the vendor. If~~
 1136 ~~the user has an active registration or resale number, that number may be~~
 1137 ~~given in lieu of the prescribed certificate. (Section 2-45 of the Act)~~
 1138 Certificates shall be retained by the vendor and shall be made available to
 1139 the Department for inspection or audit. The Department shall prescribe
 1140 the form of the certificate.
 1141
- 1142 3) If a manufacturer or lessor purchases at retail from a vendor who is not
 1143 registered to collect Illinois Use Tax, the purchaser must prepare the
 1144 completed exemption certificate and retain it in its files. The exemption
 1145 certificate shall be available to the Department for inspection or audit.
 1146
- 1147 4) In the case of a vendor who makes sales of qualifying machinery and
 1148 equipment to a contractor who will incorporate it into real estate so that
 1149 the contractor, itself, would be the taxable user (see Sections 130.1940 and
 1150 130.2075), the purchasing contractor should provide the vendor with a
 1151 certification that the machinery and equipment will be transferred to a
 1152 manufacturer as manufacturing machinery and equipment in the
 1153 performance of a construction contract for the manufacturer. The
 1154 purchasing contractor should include the manufacturer's name and
 1155 registration number on the certification when claiming the exemption.

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- k) *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. [\[35 ILCS 120/2-45\]](#)(~~Section 2-45 of the Act~~) (The provisions of this subsection (k) were established by P.A. 98-583, which states that the provisions are declaratory of existing law as to the meaning and scope of this exemption.)*

- l) Opinions and Rulings
 Informal ruling and opinion letters issued by the Department regarding the coverage and applicability of this exemption to specific devices will be maintained by the Department in Springfield. They ~~are~~*will be* available for public inspection ~~on the Department's website, <https://tax.illinois.gov/>~~, and may be copied or reproduced at taxpayer's expense. Trade secrets or other confidential information in these letters will be deleted prior to release to public access files.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART S: SPECIFIC APPLICATIONS

Section 130.1930 Chiropractors, Osteopaths, and Chiropractors

- a) When Liable for Tax
 When chiropractors, osteopaths, or chiropractors sell such items as shoes, arch supports, trusses, braces, appliances, or other tangible personal property to purchasers for use or consumption apart from their rendering of service as chiropractors, osteopaths, or chiropractors, they incur ~~retailers' occupation tax~~*Retailers' Occupation Tax* liability. For information about whether these items qualify as medical appliances, see ~~86 Ill. Adm. Code 130.311 Food, Drugs, Medicines and Medical Appliances, 86 Ill. Adm. Code 130.310.~~

- b) When Not Liable for Tax
 Chiropractors, osteopaths, and chiropractors are engaged in professions and primarily render service. To the extent ~~to which~~ they engage in such professions, they are not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the ~~Retailers' Occupation Tax~~*Retailers' Occupation Tax* Act. Consequently, they are not required to remit ~~retailers' occupation tax~~*Retailers' Occupation Tax* measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property transferred incident to those services. ~~However, to the extent tangible personal property is transferred incident to service, chiropractors,~~

osteopaths, and chiropractors may be liable for service occupation tax.

- c) Liability Under the Service Occupation Tax Act
 For information concerning the application of the Service Occupation Tax Act to sales by chiropractors, osteopaths, and chiropractors of tangible personal property ~~that~~which they transfer as an incident to rendering service, see ~~the Service Occupation Tax~~, 86 Ill. Adm. Code 140.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 130.1980 Optometrists and Opticians

- a) Optometrists – When Liable ~~for~~For Tax
 When optometrists sell tangible personal property to purchasers for use or consumption apart from their rendering of service as optometrists, they incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability. This is the case, for example, where optometrists sell spectacles, frames, or mountings, without examination or treatment of the eyes, to purchasers for use or consumption, or where optometrists sell such items as sunglasses~~sun glasses~~, cleaning solutions for lenses, barometers, telescopes, field glasses, opera glasses, or other tangible personal property to purchasers for use or consumption apart from their rendering of service. ~~(For information about whether these items qualify as medical appliances, see 86 Ill. Adm. Code 130.311. Food, Drugs, Medicines and Medical Appliances, Section 130.310 of this Part.)~~
- b) Optometrists – When Not Liable ~~for~~For Tax
 Optometrists are engaged in professions and primarily render service. To the extent ~~to which~~ they engage in such profession, they are not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Retailers' Occupation Tax Act. Consequently, they are not required to remit retailers' occupation tax~~Retailers' Occupation Tax~~ measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property transferred incident to those services. However, to the extent tangible personal property is transferred incident to service, optometrists may be liable for service occupation tax.
- c) Opticians
- 1) When opticians sell such tangible personal property as lenses ~~that~~which they produce in accordance with the prescriptions of licensed optometrists, the opticians are engaged primarily in a service occupation and do not incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability on their

1242 receipts from such sales. However, opticians may be liable for service
 1243 occupation tax. ~~(For information concerning the tax on persons engaged~~
 1244 ~~in the business of making sales of service, see the Regulations pertaining~~
 1245 ~~to the Service Occupation Tax Act (86 Ill. Adm. Code 140.)~~)

- 1246
- 1247 2) An optician would incur retailers' occupation tax~~Retailers' Occupation Tax~~
 1248 liability if the optician~~he~~ should engage in selling any tangible personal
 1249 property at retail apart from engaging in a service occupation (e.g., selling
 1250 eyeglass cases or lens cleaning solutions over-the-counter).

1251

1252 (Source: Amended at 48 Ill. Reg. _____, effective _____)

1253

1254 **Section 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar**
 1255 **Enterprises Operated asAs Businesses, and Suppliers of Such Persons**

- 1256
- 1257 a) Sales by Nonprofit Service Organizations
 1258 Effective August 1, 1961, nonprofit country clubs, boat clubs, employees' clubs or
 1259 organizations, and other nonprofit social, athletic, or recreational organizations,
 1260 lodges, patriotic organizations, fraternities, sororities, professional and trade
 1261 associations, civic organizations, labor unions, and other nonprofit persons who
 1262 are not exclusively charitable, religious, or educational organizations are liable for
 1263 retailers' occupation tax~~Retailers' Occupation Tax~~ when selling tangible personal
 1264 property at retail to members, guests, or others. The same is true of exclusively
 1265 charitable, religious, or educational organizations and institutions with certain
 1266 limited exceptions.

- 1267
- 1268 1) Scope of the Exemption

- 1269
- 1270 A) There still are some very limited exemptions under~~from~~ the
 1271 Retailers' Occupation Tax Act ("Act") for sales by exclusively
 1272 charitable, religious, and educational organizations and
 1273 institutions. However, the exemption is not available unless the
 1274 selling organization or institution qualifies~~does qualify~~ as an
 1275 "exclusively" charitable, religious, or educational organization or
 1276 institution.
- 1277
- 1278 B) It is not enough simply to be a nonprofit organization or institution.
 1279 In case of doubt concerning any such seller's retailers' occupation
 1280 tax obligation~~Retailers' Occupation Tax status~~, apply to the
 1281 Department of Revenue for a letter ruling, submitting copies of the
 1282 charter or constitution and bylaws~~Charter or Constitution and By-~~
 1283 ~~laws~~ and other relevant information for this purpose.
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- C) The exemption that is available under some circumstances for sales by exclusively charitable, religious, or educational organizations or institutions is not available in all situations. For instance~~any situation, for example~~, the exemption does not apply to sales by ~~such~~ other kinds of nonprofit organizations such as civic clubs, nonprofit social and recreational organizations, patriotic organizations, lodges and their auxiliaries, trade associations, etc. Even though the latter types of organizations do a considerable amount of~~much good~~ charitable work, they are not "exclusively" charitable organizations under Illinois Supreme Court decisions, so any retail selling that~~which~~ they do ~~is~~would be subject to the Act~~Retailers' Occupation Tax~~.
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- D) Some of the kinds of organizations that~~which~~ qualify as exclusively charitable organizations are Parent-Teacher organizations, the American National Red Cross, Community Fund or United Fund organizations, the Y.M.C.A., the Y.W.C.A., Boy Scout organizations, and Girl Scout organizations.
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- E) Exclusively charitable, religious, and educational organizations incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability when they engage in selling tangible personal property at retail except in three situations as provided in subsections (a)(2), (a)(3), and (a)(4).
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- 2) Sales to Members, etc~~Etc~~.
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- A) The first exception is that the sales by such an organization are not taxable if they are made to the organization's members, ~~or~~ to its students in the case of a school, or to its patients in the case of a nonprofit hospital that~~which~~ qualifies as a charitable institution, primarily for the purposes of the selling organization.
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- B) Examples of sales that come under this exemption are sales of uniforms, insignia, and Scouting equipment by Scout organizations to their members; sales of Bibles by a church to its members; and sales of choir robes by a church to the members of the church's choir~~choirs~~. The selling organization would incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability if it should engage in selling any of the foregoing items at retail to the public.
- 1326
1327
- C) The selling of schoolbooks~~school books~~ and school supplies by schools at retail to students shall not be deemed to be "primarily

1328 for the purpose of" the school ~~that~~^{which} does such selling.
1329 Consequently, schools incur retailers' occupation tax~~Retailers'~~
1330 ~~Occupation Tax~~ liability when they engage in selling
1331 schoolbooks~~school books~~ or school supplies at retail to their
1332 students or to others.
1333

1334 3) Noncompetitive Sales
1335

1336 A) The second exception is that sales by exclusively charitable,
1337 religious, or educational organizations are not taxable if~~subject to~~
1338 ~~the Retailers' Occupation Tax when~~ it can be said that such selling
1339 is noncompetitive with business establishments.
1340

1341 B) The Attorney General has laid down the following tests for
1342 determining that such selling is noncompetitive:
1343

1344 i) The transactions are conducted by members of the
1345 charitable entity and not by any franchisee or licensee.
1346

1347 ii) All of the proceeds must go to the charity.
1348

1349 iii) The transaction must not be a continuing one but rather
1350 should be held either annually or a reasonably small
1351 number of times within a year. The test of reasonableness
1352 would be an administrative decision, to be made by the
1353 Department ~~of Revenue~~.
1354

1355 iv) The reasonably ascertainable dominant motive of most
1356 transferees of the items sold must be the making of a
1357 charitable contribution, with the transfer of property being
1358 merely incidental and secondary to the dominant purpose of
1359 making a gift to the charity.
1360

1361 C) In addition, the Attorney General has stated that there are these
1362 further considerations for the purpose of furnishing some guides to
1363 the resolution of questions raised by each individual situation:
1364

1365 i) The nature of the particular item sold. All other things
1366 being equal, the decision as to candy might well be
1367 different from the decision as to refrigerators.
1368

1369 ii) The character of the particular sale, and the real practical
1370 effect upon punitive competition.

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- D) Under this second exception, examples of exempt sales are infrequent sales of cookies, doughnuts, candy, calendars, or Christmas trees by Scout organizations, ~~or~~ by other exclusively charitable organizations, or by exclusively religious organizations. In this category, the Attorney General's opinion stresses that the sale must be infrequent, and that the dominant motive of the purchase must be the making of a donation to the charitable or religious organization ~~that~~~~which~~ conducts the sale, rather than the acquisition of property.

- E) Even if the sale to the public occurs only once a year, the charitable or religious organization ~~that~~~~which~~ conducts the sale would incur ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ liability if it sells hats, greeting cards, or other items for which the dominant motive of the purchase is the acquisition of the property rather than the exchanging of the property merely as a token for the making of a donation.

- 4) Occasional Dinners and Similar Activities
 - A) The third exception is that 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. This exemption extends to occasional dinners, ice cream socials, fun fairs, carnivals, rummage sales, bazaars, bake sales, and the like, when conducted by exclusively charitable, religious, or educational organizations or institutions, whether the items that are sold are purchased or donated for the purposes of the sale, and even if the sale is open to the public.

 - B) For the purposes of this exemption, "occasional" means not more than twice in any calendar year. Where more than two events are held in any calendar year, the organization or institution may select which two events held within that year will be considered exempt. Once the organization or institution has made the selections, the selections cannot be changed. All other events in that year will be considered taxable.

 - C) This exemption does not extend to "occasional" sales, by exclusively charitable, religious, or educational organizations or institutions, of hats, greeting cards, cookbooks, flag kits, and other

1414 similar items because these are not "occasional" dinners, socials or
 1415 similar activities" within the meaning of the Act, and the selling of
 1416 these kinds of items at retail even on an occasional basis does
 1417 generally place the selling organization in substantial competition
 1418 with business establishments.
 1419

1420 b) Rules Governing Some Special Kinds of Selling by Exclusively Charitable and
 1421 Religious Organizations
 1422

1423 1) Hospital Sales
 1424

1425 A) Nonprofit hospitals ~~that~~~~which~~ qualify as exclusively charitable
 1426 institutions are not taxable when selling food or medicine to their
 1427 patients in connection with the furnishing of hospital
 1428 ~~services~~~~service~~ to them, nor on the operation of restaurant facilities
 1429 ~~that~~~~which~~ are conducted primarily for the benefit of the hospital's
 1430 employees, and ~~that~~~~which~~ are not open to the public. However,
 1431 sales made in a hospital cafeteria ~~that~~~~which~~ is open to the public
 1432 will be taxable sales. A nonprofit hospital dining facility is not
 1433 considered to be open to the public if the dining facility is
 1434 restricted to patients and their visitors, hospital employees
 1435 (including staff doctors), volunteer workers in the hospital, and
 1436 doctors attending patients in the hospital.
 1437

1438 B) In the case of hospitals ~~that~~~~which~~ qualify as charitable institutions,
 1439 such hospitals are not taxable when selling drugs to anyone
 1440 because this is for the relief of the sick (which is the hospital's
 1441 primary purpose) and so is "primarily for the purpose of" such
 1442 hospitals, thus qualifying such transactions for tax exemption.
 1443 However, a hospital or hospital auxiliary incurs retailers'
 1444 occupation tax~~Retailers' Occupation Tax~~ liability when selling
 1445 candy, chewing gum, tobacco products, razor blades, and the like
 1446 at retail even when such items are sold only to patients because
 1447 ~~(unlike food and medicine)~~ these items are not necessary to the
 1448 furnishing of hospital ~~services~~~~service~~, and the sales of such
 1449 items~~they~~ are competitive.
 1450

1451 C) The same distinctions apply to nonprofit sanitarium and nonprofit
 1452 nursing homes when they qualify as exclusively charitable
 1453 institutions.
 1454

1455 2) Gift Shops and Rummage Stores
 1456 Charitable or religious organizations incur retailers' occupation

1457 ~~tax~~retailers' Occupation Tax liability on the retail selling which they do in
1458 the course of operating gift shops and rummage stores.

1459
1460 3) Meals

1461
1462 A) Charitable or religious organizations incur retailers' occupation
1463 ~~tax~~retailers' Occupation Tax liability on their receipts from sales
1464 of meals to the public unless such selling constitutes an occasional
1465 dinner or other similar activity, as authorized in subsection
1466 (a)(4)(B); above. No more than two such occasional dinners or
1467 other similar activities are authorized in any calendar year. Such
1468 sales are tax exempt, provided that all the profits from such sales
1469 are used for charitable or religious purposes. If such sales occur
1470 more than twice in any calendar year, refer to subsection (a)(4)(B);
1471 above.

1472
1473 B) Also, a church or religious organization does not incur retailers'
1474 occupation tax~~retailers' Occupation Tax~~ liability on its receipts
1475 from sales of meals ~~when~~where the following conditions are met:

1476
1477 i) ~~the~~The profits, if any, are used for religious purposes;
1478
1479 ii) the meals are confined to the members of such church and
1480 their guests and are not open to the public; and
1481
1482 iii) the serving of the meals is connected with some religious
1483 service or function.

1484
1485 C) Under the circumstances just described, even if this type of selling
1486 of meals is done rather frequently, it is exempt under the Act~~from~~
1487 ~~the Retailers' Occupation Tax~~ because it is categorized as of being
1488 ~~in the category of~~ sales to members "primarily for the purposes of"
1489 the religious organization (the seller).

1490
1491 c4) Special Rules Concerning Sales by Educational Institutions~~Problems Concerning~~
1492 ~~Sales by Schools~~

1493
1494 1A) Dining Facilities
1495 Generally, a school does not incur retailers' occupation tax liability on its
1496 operation of a cafeteria or other dining facility that is conducted on the
1497 school's premises, and that confines its selling to the students and
1498 employees of the school. If a dining facility is opened to the public, all
1499 sales that are made at such facility while that condition continues to

1500 prevail are taxable.~~A school does not incur Retailers' Occupation Tax~~
1501 ~~liability on its operation of a cafeteria or other dining facility which is~~
1502 ~~conducted on the school's premises, and which confines its selling to the~~
1503 ~~students and employees of the school. In any instance in which the dining~~
1504 ~~facility is opened up for the use of other persons, all sales that are made at~~
1505 ~~such facility while that condition continues to prevail are taxable.~~

1506
1507 A) Sales by a university may be made tax free to students in a
1508 cafeteria or dining facility that is open to the public, in limited
1509 circumstances, when:

1510
1511 i) the students live in university housing and have purchased
1512 a mandatory meal plan, including any "dining dollars" or
1513 similar "dining credits" that are purchased as part of a meal
1514 plan; and

1515
1516 ii) the university has a mechanism for identifying and
1517 documenting sales to students living in university housing
1518 and enrolled in a meal plan. Such mechanisms must
1519 provide both an auditable and verifiable record of food
1520 sales to these students. The mechanism for identifying and
1521 documenting such sales must consist of something more
1522 than simply showing an identification card. No cash sales
1523 to students may be made tax exempt in facilities open to the
1524 public.

1525
1526 B) Meals sold to employees of the university and other persons,
1527 including off-campus students, are subject to tax in facilities open
1528 to the public. Even if the employees of the university or off-
1529 campus students have purchased a meal plan, such sales are
1530 taxable because they are not made to students living in university
1531 housing.

1532
1533 C) On-campus food services include not only traditional sales of food
1534 by a university, but also sales by a university operating a dining
1535 facility as a licensee of franchise or commercial vendor. Such
1536 sales are competitive and are subject to tax except for those sales to
1537 students living in university housing and using a mandatory meal
1538 plan or dining credits that are purchased as part of a mandatory
1539 meal plan. There must also be an auditable and verifiable record
1540 system for tracking sales to these students.

1541

1542 EXAMPLE 1: A student living in university housing purchases a
1543 mandatory meal plan that includes \$100 of dining dollars to be
1544 used at a dining facility where the university operates as a licensee.
1545 In this instance, the sale may be tax free if the university has a
1546 verifiable record system to track these dining dollar sales and
1547 distinguish them from other sales.

1548
1549 EXAMPLE 2: Same as Example 1 above but the student uses all
1550 of the initial \$100 of dining dollars and purchases \$50 more in
1551 dining dollars to use at a dining facility operated by the university
1552 as a licensee. In this instance, the purchases made with the
1553 additional dining dollars are taxable as the reloaded dining dollars
1554 are not part of a mandatory meal plan.

1555
1556 D) Food vendors that sell meals to students and not to the school incur
1557 sales tax liability on meals purchased by the students. The fact that
1558 a school permits the food vendor to sell meals to the students or
1559 may collect the cost of the meals from the students and remit the
1560 money to the food vendor does not change the food vendor's tax
1561 liability. For sales to be tax exempt, the sales must be made to the
1562 school.

1563
1564 EXAMPLE 3: A third-party vendor makes sales directly to
1565 students, with a percentage of the proceeds being donated to the
1566 school or PTO. In this scenario, students or parents select from a
1567 range of food options and submit their orders and payment to the
1568 vendor, sometimes with the school or PTO facilitating the sales as
1569 an intermediary. Sales made directly to the students are fully
1570 taxable and any percentage donated to the school or PTO is still
1571 taxable. Vendors cannot rely on the exempt status of the schools
1572 or PTOs acting as intermediaries to avoid having to collect tax on
1573 these sales.

1574
1575 EXAMPLE 4: A third-party vendor makes bulk sales of prepared
1576 meals for students to the school, and the school then resells the
1577 meals to the students. In this scenario, students do not submit
1578 orders or payments directly to the vendor. The school conducts the
1579 sale using school staff or further contracts for labor in dispensing
1580 the meals. Food vendors making sales of previously prepared
1581 meals to schools that are resold by the schools to their students do
1582 not incur sales tax liability, provided that the schools provide their
1583 E-number to the food vendors. The schools are the seller in this
1584 scenario; the vendor only acts as a supplier.

1585
 1586 EXAMPLE 5: A third-party vendor makes sales of prepared meals
 1587 for students to a PTO, and the PTO then resells the meals to
 1588 students. Again, in this scenario, students do not submit orders or
 1589 payment directly to the vendor. The PTO conducts the sale. PTOs
 1590 engaging in sales to students must register with the Department as
 1591 a retailer and remit tax on those sales. PTOs possessing an E-
 1592 number cannot use their E-number nor the school's E-number to
 1593 purchase the meals tax free because the purchases are not for their
 1594 use. Note, however, that the sale may be exempt if it qualifies
 1595 under subsection (a)(4) as an occasional dinner.

1596
 1597 EB) Meaning of "Student"
 1598 In this Section~~For the purpose of the exemptions under discussion,~~
 1599 a "student" is a person who is taking a course from a~~the~~ school for
 1600 credit.

1601
 1602 2C) Schoolbooks~~School Books~~ and School Supplies

1603
 1604 Ai) A school incurs retailers' occupation tax~~Retailers' Occupation Tax~~
 1605 liability when selling schoolbooks~~school books~~ and school
 1606 supplies to its students or others; for use. Sales of digital textbooks
 1607 that are downloaded electronically do not incur tax as they are
 1608 considered intangibles. See 86 Ill. Adm. Code 130.2105.

1609
 1610 Bi) Schools are not taxable on their sales of school yearbooks~~annuals~~
 1611 because these are noncompetitive items.

1612
 1613 3D) Clothing and Dormitory Supplies

1614 Schools incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability
 1615 when they sell sweaters, sweatshirts~~sweat shirts~~, gym shoes, jackets, and
 1616 other items of clothing to students or others for use. The same is true
 1617 when a school sells furniture, rugs, or other dormitory supplies to users.

1618
 1619 4E) Miscellaneous Items

1620 A school or school organization incurs retailers' occupation tax~~Retailers'~~
 1621 Occupation Tax liability when it sells soft drinks, candy, peanuts, popcorn,
 1622 chewing gum, and the like to students or to members of the public for use
 1623 or consumption, where these items are sold at a school bookstore~~book~~
 1624 store, through vending machines, or otherwise than in a restricted school
 1625 cafeteria or dining facility as provided in subsection (c)(1)(A)-(D) above~~as~~
 1626 a part of the selection which the student has in buying meals in such
 1627 cafeteria. However, the proceeds from the sale of tangible personal

1628 property by teacher-sponsored student organizations affiliated with an
 1629 elementary or secondary school located in Illinois are exempt from
 1630 retailers' occupation tax~~Retailers' Occupation Tax~~. [35 ILCS 120/2-5(6)]
 1631 (See also~~Section 2-5(6) of the Act and~~ 86 Ill. Adm. Code 130.2006-).

1632
 1633 de) Registration and Returns

- 1634
 1635 1) Nonprofit organizations that~~which~~ incur retailers' occupation tax~~Retailers'~~
 1636 ~~Occupation Tax~~ liability as retail sellers of tangible personal property are
 1637 required to register with the Department and file periodic returns. Returns
 1638 are due monthly, except that if the taxpayer's average monthly liability to
 1639 the Department is \$50.00 or less, the taxpayer may apply to the
 1640 Department for permission to file one return each year covering the
 1641 calendar year, with the return being due by January 2034 of the following
 1642 year. Whenever tax is due for a return period, the remittance for the tax
 1643 should accompany the return which discloses such tax to be due.
 1644
- 1645 2) For more information concerning the filing of returns with the
 1646 Department, see Subpart E of this Part.
 1647
- 1648 3) Registration and return forms may be obtained from the Department on
 1649 request.
 1650
- 1651 4) In the case of a church, it is recommended that a single certificate of
 1652 registration~~Certificate of Registration~~ be applied for by the church and that
 1653 this be allowed to cover the selling activities of that church and all of its
 1654 organizations. Registration must be obtained prior to the commencement
 1655 of selling activities. (See 35 ILCS 120/2a).~~Section 2a of the Act.~~
 1656
- 1657 5) In the case of public schools or school organizations that~~which~~ incur some
 1658 retailers' occupation tax~~Retailers' Occupation Tax~~ liability so as to be
 1659 required to register with the Department ~~of Revenue~~, the Board of
 1660 Education that~~which~~ governs the school district, (rather than each
 1661 individual school or school organization,) should apply to the Department
 1662 for a certificate of registration~~Certificate of Registration~~, and such Board
 1663 of Education should file a single return for the return period covering all
 1664 the taxable school activities that occur under its jurisdiction during the
 1665 return period covered by the return.
 1666

1667 ed) Suppliers of Nonprofit Institutions, Associations, and Organizations

- 1668
 1669 1) Suppliers of nonprofit institutions, associations, and organizations do not
 1670 incur retailers' occupation tax~~Retailers' Occupation Tax~~ liability when they

1671 sell tangible personal property to any such purchaser for resale in any form
 1672 as tangible personal property.

1673
 1674 2) Suppliers of such purchasers incur retailers' occupation tax~~Retailers'~~
 1675 ~~Occupation Tax~~ liability when they sell tangible personal property to any
 1676 such purchaser at retail (i.e., for use or consumption by the purchaser or to
 1677 be given away by the purchaser, and not for resale in any form as tangible
 1678 personal property), provided that the tax does not apply to receipts
 1679 received by the seller from sales of any kind made to any purchaser of this
 1680 character who is able to qualify as a corporation, society, association,
 1681 foundation, or institution organized and operated exclusively for
 1682 charitable, religious, or educational purposes, or any not-for-profit
 1683 corporation, society, association, foundation, institution, or organization
 1684 that~~which~~ has no compensated officers or employees and that~~which~~ is
 1685 organized and operated primarily for the recreation of persons 55 years of
 1686 age or older. See also 86 Ill. Adm. Code 130.2081 for documentation
 1687 required to support an exempt sale to a qualifying organization.

1688
 1689 3) Many difficult questions of interpretation will arise in applying the above
 1690 proviso. Each case will have to be decided on its own facts, but a few
 1691 principles based on Supreme Court decisions in somewhat analogous
 1692 cases are stated below~~hereinbelow~~ for guidance.

1693
 1694 fe) Nonprofit Social, Recreational, and Athletic Organizations -- Nonprofit Fraternal
 1695 Organizations

1696
 1697 1) A purchaser is not necessarily qualified for this total exemption as to
 1698 receipts received by the seller from all sales made to such purchaser
 1699 merely because ~~of the fact that~~ the purchaser is a not-for-profit service
 1700 organization. For example, if the purchaser is incorporated or otherwise
 1701 organized primarily to provide entertainment, social, recreational, or
 1702 athletic activities or facilities to its members, the purchaser is not
 1703 organized and operated exclusively for charitable, religious, or educational
 1704 purposes. Such a purchaser is not organized and operated exclusively for
 1705 charitable purposes even though it does some charitable work. This is true
 1706 even though such purchaser is organized and operated as a not-for-profit
 1707 corporation, association, etc.

1708
 1709 2) The same is true of nonprofit fraternal benefit societies that~~which~~ derive
 1710 their funds from their members and are organized primarily to provide
 1711 different forms of insurance benefits to their members and to persons
 1712 standing in designated relationships to their members, except when such
 1713 fraternal benefit societies are organized under a statutory provision

- 1714 ~~that~~~~which~~ expressly declares them to be exclusively charitable
 1715 organizations.
 1716
- 1717 3) Nonprofit fraternities and sororities are not considered to be organized and
 1718 operated exclusively for charitable, religious, or educational purposes.
 1719
- 1720 ~~gf~~) Lodges
 1721
- 1722 1) Similarly, nonprofit corporations, societies, associations, etc. ~~that,~~~~which~~
 1723 have, ~~as~~ a substantial purpose ~~in,~~~~the~~ providing ~~of~~ a lodge system with
 1724 ritualistic work and social activities for members, and ~~that~~~~which~~ derive
 1725 their funds in large measure from such members, are not organized and
 1726 operated exclusively for charitable, religious, or educational purposes,
 1727 even though they engage to some extent in one or more of these activities,
 1728 because a substantial purpose for the existence of such an organization is
 1729 one ~~that~~~~which~~ does nothing to relieve the public of a duty to the persons
 1730 benefited and otherwise bestows no benefit upon the public.
 1731
- 1732 2) For example, the Supreme Court has held a Masonic Lodge not to be
 1733 charitable and has held that a Masonic Home for aged and destitute
 1734 Masons is charitable. The Department will follow that distinction in this
 1735 Section when separate legal entities are involved, considering receipts
 1736 from retail sales to the former to be taxable, and considering receipts
 1737 ~~received by the seller~~ from retail sales made to the latter to be exempt.
 1738 However, if the same legal entity operates the noncharitable lodge and the
 1739 charitable home, the Department will not regard such entity (when making
 1740 purchases) as coming within this exemption. This is true because the
 1741 importance of the noncharitable lodge function makes it impossible to say
 1742 that such a purchaser is organized and operated exclusively for charitable,
 1743 religious, or educational purposes.
 1744
- 1745 ~~hg~~) Nonprofit Professional and Trade Associations – Labor Unions – Civic Clubs –
 1746 Patriotic Organizations
 1747 Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs,
 1748 Chambers of Commerce, and other professional, trade, or business associations
 1749 and labor unions ~~that,~~~~which~~ draw their funds largely from their own members,
 1750 and ~~that have~~~~as to~~~~which~~ an important purpose ~~is~~ to protect and advance the
 1751 interests of their members in the business world, are not organized and operated
 1752 exclusively for charitable or educational purposes, even though such
 1753 organizations may engage in some charitable and educational work. The same
 1754 conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets,
 1755 the Daughters of the American Revolution, and other similar nonprofit, patriotic
 1756 organizations.

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h) Organization Must be Nonprofit to be Exclusively Charitable
 On the other hand, a purchaser cannot qualify as being organized and operated exclusively for charitable purposes unless it is organized and conducted on a not-for-profit basis, with no personal profit inuring to anyone as a result of the purchaser's operation. The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.

i) Other Conditions Necessary for Being Exclusively Charitable

- 1) In the case of a corporation, there can be no capital structure nor capital stock, no provision for disbursing dividends or other profits, and no payment of ~~directors'~~director's fees if the corporation seeks to qualify as an exclusively charitable corporation.
- 2) The Supreme Court has stated that a charitable purpose may refer to almost anything ~~that~~which promotes the well-being of society and ~~that~~which is not forbidden by law; but to qualify as a charity, the purchaser must be organized and operated to benefit an indefinite number of the public. There may be restrictions on the group to be benefited, (such as an organization for women, for children, for the aged, etc.), but the service rendered to those eligible for benefits must, nevertheless, in some way relieve the public of a duty ~~that~~which it would have to such beneficiaries or otherwise confer some benefit on the public.

kj) Determination of the Purpose for which~~Which~~ an Organization or Institution is "Organized and Operated"

- 1) In the case of a corporation, the purpose for which it is "organized" will be determined by reference to its ~~charter~~Charter. For example, ~~it has been held by~~the Supreme Court has held that an Elks Lodge, whose ~~charter~~Charter stated it was incorporated for the mutual benefit and social intercourse of its members, was not "organized" exclusively for "charitable purposes", even though the corporation engaged in a considerable amount of charitable work.
- 2) In the case of an unincorporated society, association, etc., the constitution and bylaws~~Constitution and Bylaws thereof~~ will determine the purpose for which it is organized.
- 3) To qualify for total exemption, the purchaser must be "organized "and operated" exclusively for charitable, religious, or educational purposes.

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l) Examples of Exempt ~~Purchasers~~Buyers

- 1) Some examples of purchasers ~~which come~~ within this exemption are churches, Sunday Schools, Church Ladies' Aid Societies, the Salvation Army, and other nonprofit corporations, societies, associations, foundations, and institutions organized and operated exclusively for religious purposes (but not including Ministers or other individuals when making purchases from their own funds); corporations, societies, associations, foundations, and institutions organized and operated exclusively for educational purposes, whether such purchaser is organized and operated as a business enterprise or on a not-for-profit basis (but see subsection (m) below); homes for the aged that~~which~~ are not organized or operated as a business enterprise with a view to profit and that~~which~~ otherwise qualify as charitable institutions; nonprofit corporations, societies, associations, foundations, and institutions organized and operated exclusively for the purpose of conducting scientific research of a character that would be beneficial to the public (held to be a charitable purpose); the American National Red Cross, Community Fund, or United Fund organizations; the Y.M.C.A., the Y.W.C.A., Boy Scouts of America (as a corporation, but not as individuals), and Girl Scouts of America (as a corporation or association, but not as individuals); nonprofit Parent-Teacher Associations; the National Safety Council and similar organizations; ~~and~~ nonprofit societies for the prevention of cruelty to children or animals (all classified as charitable); 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); and local housing authorities.
- 2) The above~~These~~ examples are illustrative, but not exhaustive.
- 3) To come within this exemption, the purchaser (in addition to being organized and operated exclusively for charitable, religious, or educational purposes) must be a "corporation", a "society", an "association", a "foundation", or an "institution".

m) "Educational Purposes" and "School" Defined and Illustrated

- 1) Receipts received from retail sales to corporations, societies, associations, foundations, and institutions that are organized and operated exclusively for educational purposes are not taxable. There is no specific exemption in the Constitution for "educational purposes" as to any kind of tax, but Section 6 of Article IX of the Illinois Constitution authorizes the General

1843 Assembly to grant a property tax exemption for property that is used for
 1844 "school...purposes". Consequently, the Department will construe the
 1845 ~~retailers' occupation tax~~~~Retailers' Occupation Tax~~ exemption for
 1846 "educational purposes" as meaning for "school... purposes", as the phrase
 1847 "school... purposes" has been interpreted or may be interpreted by the
 1848 Supreme Court. Section 2h of the Act provides the statutory definition of
 1849 "a corporation, society, association, foundation or institution organized
 1850 and operated exclusively for educational purposes." [\[35 ILCS 120/2h\]](#)
 1851

1852 2) The Supreme Court has said that a school is a place where systematic
 1853 instruction in useful branches of learning is given by methods common to
 1854 schools and institutions of learning and does not include schools for
 1855 teaching dancing, riding, and deportment. ~~For example~~~~In that connection,~~
 1856 the Supreme Court has held that an organization ~~that~~~~which~~ conducts a
 1857 four-week training school each summer for funeral directors is not a
 1858 school because the courses given and the intensity of their instruction do
 1859 not compare favorably with those in a department of mortuary science and
 1860 mortuary practice at regular colleges and universities, but represent only a
 1861 superficial or brief instruction in courses constituting a minor part of the
 1862 study of mortuary science.
 1863

1864 3) Consequently, flying schools, driving schools, art association schools,
 1865 modeling schools, charm schools, and the like are not organized and
 1866 operated exclusively for educational purposes because they do not offer
 1867 courses ~~that~~~~which~~ constitute systematic instruction in useful branches by
 1868 methods common to public schools and ~~that~~~~which~~ compare favorably in
 1869 their scope and intensity with the course of study presented in tax-
 1870 supported schools within the meaning of the ~~Retailers' Occupation Tax~~
 1871 Act.
 1872

1873 4) However, the exemption for educational purposes includes private schools
 1874 (such as parochial grade and high schools, private colleges, and the like)
 1875 as well as government-owned, tax-supported schools so long as the
 1876 institution qualifies as a school as ~~above~~~~hereinabove~~ described.
 1877

1878 5) Also, the ~~Retailers' Occupation Tax~~ "educational purposes" exemption is
 1879 not limited by the statute to nonprofit institutions. The exemption includes
 1880 vocational or technical schools or institutions organized and operated
 1881 exclusively to provide a course of study of not less than 6 weeks duration
 1882 and designed to prepare individuals to follow a trade or to pursue a
 1883 manual, technical, mechanical, industrial, business or commercial
 1884 occupation~~would include vocational or technical schools or institutions~~
 1885 ~~organized and operated exclusively to provide a course of study of not less~~

1886 ~~than 6 weeks duration and designed to prepare individuals to follow a~~
1887 ~~trade or to pursue a manual, technical, mechanical, industrial, business or~~
1888 ~~commercial occupation~~ (such as a business-operated law school) as long
1889 as the institution otherwise qualifies as a school within the meaning of this
1890 subsection and the Act. [35 ILCS 120/2h] (See also subsection (r) of
1891 this Section) ~~and Section 2(h) of the Act.)~~

1892
1893 6) In addition, for Property Tax purposes, the Supreme Court has held that an
1894 association ~~that, which~~ is not itself a school in the ordinary sense, but
1895 ~~that~~which provides a substantial service in improving the educational
1896 standards of schools (such as the Association of American Medical
1897 Colleges); is within the "school purposes" exemption, so the Department
1898 will consider such an organization to be "organized and operated"
1899 exclusively for "educational purposes" under the Act ~~for Retailers'~~
1900 ~~Occupation Tax purposes.~~

1901
1902 7) Literary societies, though somewhat educational, are mainly for the
1903 benefit of their own members as a hobby or pastime and do not relieve the
1904 public of a duty nor contribute sufficiently to the public to qualify for an
1905 exemption, and they are not places where systematic instruction in useful
1906 branches of learning is given by methods common to schools and
1907 institutions of learning in the ordinary or commonly accepted meanings of
1908 those terms.

1909
1910 nm) Nonprofit Hospitals and Sanitaria

1911
1912 1) In the case of a privately-owned hospital ~~hospitals~~, in addition to the fact
1913 that the hospital must be organized and operated as a nonprofit enterprise
1914 (with proceeds, if any, over expenses being put into the expansion of the
1915 hospital's services, equipment, and physical plant), ~~some of the tests which~~
1916 the Supreme Court has required the following tests to be met before the
1917 hospital can qualify as being organized and operated exclusively for
1918 charitable purposes:

1919
1920 A) the hospital must not discriminate against patients or doctors
1921 because of race, color, creed, or religion; and

1922
1923 B) the hospital must not refuse admittance to any patient because of
1924 the patient's inability to pay for hospital services.

1925
1926 ~~are that the hospital must not discriminate against patients or~~
1927 ~~doctors because of race, color, creed or religion, and that the~~
1928 ~~hospital must not refuse admittance to any patient because of his~~

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~~inability to pay for hospital service.~~

- 2) It is immaterial that most of the hospital's patients may be paying patients if the hospital does not adopt any policy ~~that~~which is calculated to prevent persons who cannot pay from seeking and obtaining admittance to the hospital.
- 3) Delaying the admittance of nonemergency cases while the hospital makes an investigation to try to find someone who will give the prospective patient financial help has been held not to be an obstacle to admittance if the hospital does not engage in such delaying tactics in the case of emergency patients and if the hospital ultimately admits destitute patients notwithstanding the fact that they cannot pay for services and cannot procure financial help.
- 4) A hospital does not lose its character as a charitable organization because ~~of the fact that~~ it refuses admittance to patients who are suffering from dangerously contagious diseases.
- 5) Government-owned hospitals are deemed by the Department to be organized and operated exclusively for charitable purposes within the meaning of this Section.
- 6) The principles stated in this subsection with respect to hospitals apply also to sanitarium and clinics.

on) Meaning of "Exclusively"

- 1) Although the provision of the ~~Retailers' Occupation Tax~~ Act under discussion, in excluding receipts from all sales to certain kinds of purchasers, refers to them as being organized and operated "exclusively" for charitable, religious, or educational purposes, the Supreme Court has not given the word "exclusively" its most literal interpretation under similar circumstances because of the virtual impossibility of anyone being engaged "exclusively" in anything, and so the Department will follow a similar policy in applying the word "exclusively", as used in the ~~Retailers' Occupation Tax~~ Act and in this Section, in order to carry out the manifest intention of the General Assembly.
- 2) However, if a substantial purpose or activity of the purchaser is not charitable, religious, or educational, the Department will not consider the purchaser to be organized and operated exclusively for charitable, religious, or educational purposes within the meaning of the Act.

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pe) Educational, Scientific, and Similar Institutions, Associations, and Organizations Operated as "Business" Enterprises – When Liable ~~for~~ For Tax
 Persons engaged habitually, for livelihood or gain, in hospital, educational, religious, scientific, social, or cultural enterprises are among those who are engaged in a service occupation ~~that~~ which is nevertheless a "business" within the meaning of the Act. When persons who operate businesses of the type described in the preceding sentence sell tangible personal property to purchasers for use or consumption apart from their rendering of service, such persons incur retailers' occupation tax ~~Retailers' Occupation Tax~~ liability. This is the case, for example, where hospitals ~~that~~ which are conducted as "business" enterprises operate public dining rooms, public pharmaceutical dispensaries, or otherwise sell tangible personal property at retail to the general public, or where schools ~~that~~ which are operated as "business" enterprises sell tangible personal property at retail to the general public or make retail sales to students of clothing, dormitory supplies, or other items ~~that~~ which cannot be said to be used "primarily for the purposes of" the school. Also, business-operated schools incur retailers' occupation tax ~~Retailers' Occupation Tax~~ liability on their retail sales of schoolbooks ~~school books~~ and school supplies to their students and faculty members.

qp) Educational, Scientific, and Similar Institutions, Associations, and Organizations Operated as "Business" Enterprises – When Not Liable ~~for~~ For Tax

- 1) Persons of the type described in the preceding paragraph are engaged primarily in rendering service, and, to this extent, they are engaged in a service occupation. To the extent to which they engage in such service occupation, they are not required to remit retailers' occupation tax ~~Retailers' Occupation Tax~~ measured by any of their receipts, which they realize from their rendering of service, including those receipts ~~that~~ which represent the price of tangible personal property ~~transferred~~ ~~which they transfer to others as a necessary~~ incident to their rendering of service. The sale of meals to patients and the furnishing of medicine for a consideration to patients in the course of treatment by business-operated hospitals and business-operated, licensed nursing homes come within this service occupation exemption for retailers' occupation tax ~~Retailers' Occupation Tax~~ purposes. However, the tax liability of the person engaged in such service occupation is governed by the Service Occupation Tax Act [35 ILCS 115] (See also ~~see~~ Subpart A of the Service Occupation Tax Regulations, 86 Ill. Adm. Code 140).
- 2) Business-operated schools do not incur retailers' occupation tax ~~Retailers' Occupation Tax~~ liability on their sales of meals in a dining facility ~~that~~ which is located on the premises of the school and ~~whose use is~~

2015 confined to the students and employees of the school. [For more](#)
 2016 [information about dining facilities, see subsection \(c\)\(1\) above.](#)

2017
 2018 **(g)** Suppliers of Educational, Scientific, and Similar Institutions, Associations, and
 2019 Organizations Operated as "Business" Enterprises
 2020

2021 1) Suppliers of educational, scientific, and similar institutions, associations,
 2022 and organizations operated as "business" enterprises do not incur [retailers'](#)
 2023 [occupation tax](#)~~Retailers' Occupation Tax~~ liability when they sell tangible
 2024 personal property to any such purchaser for resale either in connection
 2025 with or apart from the purchaser's rendering of service to others.
 2026 However, for information concerning the fact that purchases of food,
 2027 medicine, and other tangible personal property by business-operated
 2028 hospitals or business-operated, licensed nursing homes for retransfer to
 2029 patients as an incident to service are subject to the Service Occupation Tax
 2030 [Act](#), see Subpart A of the Service Occupation Tax Regulations. [\(86 Ill.](#)
 2031 [Adm. Code 140\)](#). Suppliers of purchasers of the kind referred to in the
 2032 first sentence of this paragraph incur [retailers' occupation tax](#)~~Retailers'~~
 2033 ~~Occupation Tax~~ liability when they sell tangible personal property to any
 2034 such purchaser at retail (i.e., for use or consumption by the purchaser or to
 2035 be given away by the purchaser, and not for resale in any form as tangible
 2036 personal property), provided that the tax does not apply to receipts
 2037 received by the ~~supplier~~[seller](#) from sales of any kind made to any
 2038 purchaser of this character who is able to qualify as a school. In
 2039 excluding, from the measure of the tax, receipts received by the
 2040 ~~supplier~~[seller](#) from sales of any kind to a school, the Act does not
 2041 distinguish between business and nonprofit schools.

2042
 2043 2) Nevertheless, while the Department recognizes that a purchaser may
 2044 qualify as a school for exemption purposes notwithstanding the fact that
 2045 the purchaser is organized and operated as a business enterprise, the
 2046 Department takes the position that such a purchaser cannot be organized
 2047 and operated exclusively for charitable or religious purposes if such
 2048 purchaser is organized and operated as a business enterprise with a view to
 2049 profit.

2050
 2051 **(h)** Reporting – Records – Burden of Proof

2052
 2053 1) When a seller claims [an](#) exemption from the [retailers' occupation](#)
 2054 [tax](#)~~Retailers' Occupation Tax~~ for receipts received by the seller from
 2055 ~~sales~~[his sale](#) of tangible personal property to a corporation, society,
 2056 association, foundation, or institution organized and operated exclusively
 2057 for charitable, religious, or educational purposes, the seller should include

2058 such receipts in ~~the seller's tax~~ ~~his Retailers' Occupation Tax~~ return form,
 2059 but then should deduct such receipts on the line provided for that purpose
 2060 in the return form. ~~(See~~ ~~see~~ Subpart E of this Part).
 2061

2062 2) The seller must maintain adequate books and records to sustain such
 2063 deductions. ~~(See~~ ~~see~~ Subpart H of this Part).
 2064

2065 3) Sellers claiming the benefit of this exemption are cautioned against laxity
 2066 in claiming ~~the benefit of~~ this exemption without verifying the status of
 2067 the purchaser since the ~~sellers~~ ~~seller~~ will have the burden of proof in
 2068 establishing ~~their~~ ~~his~~ right to any such claimed exemption. The
 2069 ~~courts~~ ~~Courts~~ have held repeatedly that the burden of sustaining a right to ~~a~~
 2070 tax exemption is on the person claiming such exemption. Tax exemption
 2071 provisions in statutes are strictly construed against the taxpayer, although
 2072 the words employed in such provisions will be given their commonly
 2073 accepted and understood meanings.
 2074

2075 (Source: Amended at 48 Ill. Reg. _____, effective _____)
 2076

2077 **Section 130.2020 Physicians and Surgeons**
 2078

2079 a) When Liable ~~for~~ ~~For~~ Tax
 2080 When physicians or surgeons sell items of tangible personal property such as
 2081 medical bracelets, crutches, wheelchairs, first-aid kits, and the like, to purchasers
 2082 for use or consumption apart from their rendering of service as physicians or
 2083 surgeons, they incur ~~retailers' occupation tax~~ ~~Retailers' Occupation Tax~~ liability.
 2084 For information about whether these items qualify as medical appliances, see ~~86~~
 2085 ~~Ill. Adm. Code 130.311. Food, Drugs, Medicines and Medical Appliances, 86 Ill.~~
 2086 ~~Adm. Code 130.310.~~
 2087

2088 b) When Not Liable ~~for~~ ~~For~~ Tax
 2089 Physicians and surgeons are engaged in professions and primarily render service.
 2090 To the extent ~~to which~~ they engage in such professions, they are not engaged in
 2091 the business of selling tangible personal property to purchasers for use or
 2092 consumption within the meaning of the ~~Retailers' Occupation Tax~~ Act.
 2093 Consequently, they are not required to remit ~~retailers' occupation tax~~ ~~Retailers'~~
 2094 ~~Occupation Tax~~ measured by their receipts from engaging in such professions,
 2095 including receipts from both services and tangible personal property transferred
 2096 incident to those services. ~~However, to the extent tangible personal property is~~
 2097 ~~transferred incident to service, physicians and surgeons may be liable for service~~
 2098 ~~occupation tax.~~
 2099

2100 c) Liability Under the Service Occupation Tax Act

2101 For information concerning the application of the service occupation tax~~Service~~
 2102 ~~Occupation Tax~~ to sales by physicians and surgeons of tangible personal property
 2103 that they transfer as an incident to rendering service, see ~~the Service Occupation~~
 2104 ~~Tax regulations at~~ 86 Ill. Adm. Code 140.

2105
 2106 (Source: Amended at 48 Ill. Reg. _____, effective _____)
 2107

2108 **Section 130.2145 Vendors of Meals**

2109 a) Vendors of Meals – When Liable for~~For~~ Tax

2110
 2111
 2112 1) Persons engaged in the business of selling meals to purchasers for use or
 2113 consumption incur retailers' occupation tax~~Retailers' Occupation Tax~~
 2114 liability on their receipts from those sales. It is immaterial that no profit is
 2115 realized from the operation of this type of business if the seller is engaged
 2116 in a commercial enterprise, or if the seller engages in activities that make
 2117 it~~him/her~~ taxable under the terms of Section 130.2005 of this Part. It is
 2118 also immaterial that the class of purchasers may be a limited one, such as
 2119 the employees of a particular employer who operates a cafeteria or other
 2120 dining facilities for the benefit of its~~his/her~~ employees.

2121
 2122 2) Subsection (a)(1) includes, but is not limited to, the following types of
 2123 vendors:

2124 A) hotels;

2125 B) restaurants;

2126 C) caterers;

2127 D) boarding houses;

2128 E) concessionaires;

2129 F) nonprofit service organizations and institutions to the extent
 2130 indicated in Section 130.2005(a), (b), and (d)~~(e)~~ of this Part, and
 2131 similar enterprises when conducted with a view to profit to the
 2132 extent indicated in Section 130.2005(p~~o~~) of this Part;

2133 G) employers who operate dining facilities for the benefit of their
 2134 employees, except to the extent noted in Section 130.2005(b) of
 2135 this Part; and
 2136
 2137
 2138
 2139
 2140
 2141
 2142
 2143

2144 H) sellers of food and beverages, delivered in Illinois to airlines, for
2145 use in serving passengers on aircraft without a separate charge for
2146 the food or beverages being made by the airline, regardless of
2147 whether the airline may serve the food and beverages in Illinois or
2148 outside Illinois; sales of meals to airlines for use on their aircraft in
2149 serving crews, where the cost is deducted from a food allowance,
2150 are nontaxable sales for resale, but if the meals are delivered to the
2151 airline in Illinois, the airline incurs retailers' occupation
2152 tax~~Retailers' Occupation Tax~~ liability on its receipts (consideration
2153 in the form of compensation for service rendered) from reselling
2154 the meals to crews, regardless of whether the aircraft is in Illinois
2155 or outside Illinois when it serves the meals to its crew.
2156

2157 b) Vendors of Meals to Organizations or Their Members
2158

- 2159 1) Effective August 1, 1961, when members of an organization meet at a
2160 hotel, restaurant, or other place of business where food or drinks are sold
2161 and pay for those items, the hotel, or other vendor of meals, is considered
2162 to be selling such tangible personal property directly to members as users
2163 or consumers, and the sales shall be considered to be taxable. This is true
2164 even if the organization collects from the members and makes payment to
2165 the vendor, and even if the organization is permitted to retain a portion of
2166 what it collects for its own purposes.
2167
- 2168 2) In this situation, the organization is deemed to be acting for the
2169 accommodation of all concerned and is not deemed to be standing in the
2170 role of a purchaser and reseller.
2171
- 2172 3) The measure of the tax is the amount received by the hotel, etc., for the
2173 tangible personal property that it furnishes.
2174
- 2175 4) The principles stated in this Section apply also when the tangible personal
2176 property that is being sold is something other than food and drinks, but
2177 this Section is concerned primarily with vendors of food and drinks.
2178

2179 c) Cover Charges and Minimum Charges
2180

2181 1) Cover Charges
2182

- 2183 A) Cover charges are not included in the taxable receipts of persons
2184 operating restaurants, hotels and other places of business that come
2185 within the Retailers' Occupation Tax Act ("Act"), when cover
2186 charges are made exclusively for the privilege of occupying space

2187 within the eating place, and when the payment of a cover charge
 2188 by a patron does not entitle the patron to use or consume any food
 2189 or beverage or other tangible personal property.
 2190

2191 B) In such an instance, the cover charge is a receipt on account of a
 2192 service rendered, whether the service be entertainment or
 2193 otherwise, and does not accrue on account of the sale of tangible
 2194 personal property at retail.
 2195

2196 2) Minimum Charges
 2197

2198 A) The provisions regarding cover charges do not apply to so-called
 2199 "minimum charges" that are made by night clubs, public eating
 2200 places, private clubs or other retailers of food or beverages or both,
 2201 and that entitle the persons paying the charge to use or consume
 2202 some tangible personal property, such as food or beverages,
 2203 without additional payment. The retailer's receipts from these
 2204 charges are subject to retailers' occupation tax~~Retailers' Occupation~~
 2205 ~~Tax~~.
 2206

2207 B) Similarly, when a single charge is made for both entertainment and
 2208 food and the charge for food is not separately stated on the
 2209 customer's bill, the entire charge is subject to tax. For example,
 2210 when a dinner theater charges \$50 for a show and includes food
 2211 and beverages, the entire \$50 is subject to tax unless a separate
 2212 charge is made for the food and beverages.
 2213

2214 C) However, minimum charges imposed by country clubs that must
 2215 be paid regardless of whether the member purchases food or
 2216 beverages are subject to tax only to the extent they are incurred for
 2217 actual food or beverage purchases. (See *Aurora Country Club, Inc.*
 2218 *v. Department of Revenue*, 50 Ill.App.3d 756, 365 N.E.2d 229 (2d
 2219 Dist. 1977).)
 2220

2221 d) Mandatory Service Charges

2222 Mandatory gratuities are not included in the taxable receipts of persons operating
 2223 restaurants, hotels and other places of business that come under the Act, if the
 2224 mandatory gratuity is added to banquet or dinner checks in the form of a
 2225 percentage of the total bill, or as a flat rate, to the extent that *the proceeds of the*
 2226 *service charge are in fact turned over as tips or as a substitute for tips to the*
 2227 *employees who participate directly in preparing, serving, hosting or cleaning up*
 2228 *the food or beverage function with respect to which the service charge is imposed.*
 2229 [35 ILCS 120/2-5(15)]~~(Section 2-5(15) of the Act)~~ If any part of the service

2230 charges are used to fund or pay wages, labor costs, employee benefits or employer
 2231 costs of doing business, that part of the service charge is includable in gross
 2232 receipts.
 2233

2234 e) Rentals of Banquet, Meeting and Conference Rooms – True-object Test

2235 The taxation of charges for the rental of a banquet, meeting, conference, or similar
 2236 room in conjunction with the providing of food or beverages will depend upon the
 2237 nature of the transaction. The Department uses a "true-object" test to characterize
 2238 the nature of these transactions.
 2239

2240 1) If the true object of the transaction is the rental of the room and if food or
 2241 beverages are provided incidentally to the rental of the room, no tax is
 2242 incurred on the charges for the rental of the room. If no separate charge is
 2243 made under the contract for the incidental amount of food or beverages
 2244 provided, the rentor is considered the user of the food or beverages and
 2245 incurs use tax~~Use Tax~~ on its cost price of the food or beverages transferred
 2246 incidentally to the rental of the room. If a separate charge is made for any
 2247 food and beverages transferred incidentally to the rental of the room, the
 2248 rentor incurs retailers' occupation tax~~Retailers' Occupation Tax~~ on the
 2249 selling price of the food or beverages. See Section 130.310 of this Part
 2250 regarding the appropriate tax rate for sales of food.
 2251

2252 2) If the true object of the transaction is the sale of food or beverages, any
 2253 room rental charges are part of the seller's costs of doing business and are
 2254 includable in the seller's taxable gross receipts even if the charges for the
 2255 room rental are separately stated on the agreement or bill between the
 2256 seller and its customers. See Section 130.410 of this Part. The rental of
 2257 the room is considered an inseparable link in the sale of the food and
 2258 beverages to the customer and is not merely incidental to the seller's
 2259 business of selling food or beverages.
 2260

2261 3) If the rental contract requires that alcoholic beverages or food and other
 2262 beverages be provided or sold by a specific third party or from a choice of
 2263 providers specified by the rentor, the rentor shall be deemed to be the
 2264 provider of the alcoholic beverages, food, and other beverages for
 2265 purposes of determining the taxation of the room rental charge.
 2266

2267 4) This subsection (e) is applicable to rentals of rooms in situations in which
 2268 those rentals are not subject to tax under the Hotel Operators' Occupation
 2269 Tax Act.
 2270

2271 f) True Object – Rental of Room

2272 The Department deems an incidental provision of food or beverages to include the
 2273 providing of non-alcoholic beverages, such as coffee, tea, and soft drinks, and the
 2274 providing of snacks, such as cookies, popcorn, candy, doughnuts, fruits, and raw
 2275 vegetables.

2276
 2277 EXAMPLE 1: A person contracts for the rental of a meeting room at a hotel for a
 2278 business meeting. As part of the contract, the hotel agrees to provide coffee, tea,
 2279 soft drinks, and cookies at no extra charge to the participants of the meeting. The
 2280 true object of this transaction is deemed to be the rental of the room and any food
 2281 and beverages provided are incidental to the renting of the room. The hotel does
 2282 not incur retailers' occupation tax~~Retailers' Occupation Tax~~ on the charges for the
 2283 rental of the room and the incidental providing of food and beverages. The hotel
 2284 does incur Use Tax on its cost price of the coffee, tea, soft drinks, and cookies
 2285 provided incidental to the rental of the room.

2286
 2287 EXAMPLE 2: A person contracts for the rental of a meeting room at a hotel for a
 2288 business meeting. The hotel agrees to provide coffee, tea, soft drinks, and cookies
 2289 at the meeting for a separately stated charge as part of the contract. The true
 2290 object of this transaction is deemed to be the rental of the room and any food and
 2291 beverages provided are incidental to the renting of the room. In this transaction,
 2292 the hotel incurs retailers' occupation tax~~Retailers' Occupation Tax~~ on the charge
 2293 for sale of the coffee, tea, soft drinks, and cookies. The gross receipts subject to
 2294 retailers' occupation tax~~Retailers' Occupation Tax~~ do not include the separate
 2295 charge for the rental of the room.

2296
 2297 EXAMPLE 3: A person rents a room for a wedding reception from a hotel, but
 2298 that person separately contracts for the food and beverages with a caterer instead
 2299 of the hotel. The contract between the hotel and the customer did not specify any
 2300 particular caterers. The true object of the transaction is deemed to be the rental of
 2301 the room since the caterer and not the hotel provides the food and beverages. No
 2302 retailers' occupation tax~~Retailers' Occupation Tax~~ is incurred on the hotel's rental
 2303 charges in this instance.

2304
 2305 g) True Object – Sale of Food and Beverages
 2306 The Department deems the providing of any food other than snacks to be the true
 2307 object of the transaction and not the rental of the room. If alcoholic beverages are
 2308 either provided or sold by the rentor to the persons attending the event for which
 2309 the room is rented, the true object of the transaction will always be deemed the
 2310 sale of food or beverages and not the rental of the room. If the rental contract
 2311 requires that the alcoholic beverages or the food and other beverages be provided
 2312 or sold by a specific third party or from a choice of providers specified by the
 2313 rentor, the rentor shall be deemed to be the provider of those alcoholic beverages,

2314 food, and other beverages for purposes of determining the taxation of the room
 2315 rental charge.

2316
 2317 EXAMPLE 1: A person contracts for the rental of a meeting room at a hotel for a
 2318 business luncheon. As part of the contract, the hotel agrees to provide coffee, tea,
 2319 soda, soup, sandwiches, and various desserts to the participants of the luncheon
 2320 meeting for no extra charge. The true object of this transaction is deemed to be
 2321 the sale of food and beverages and not the rental of the room. The hotel incurs
 2322 retailers' occupation tax~~Retailers' Occupation Tax~~ on its gross receipts from the
 2323 sale of the food and beverages, including the charges for the rental of the room.

2324
 2325 EXAMPLE 2: A person contracts for the rental of a meeting room at a hotel for a
 2326 business after hours gathering with a speaker from a local business group. The
 2327 hotel provides snacks and non-alcoholic beverages for a separately stated charge
 2328 as part of the contract. The hotel provides for a bartender and agrees to sell
 2329 alcoholic beverages to the participants at the gathering. The true object of this
 2330 transaction is deemed to be the sale of food and beverages and not the rental of
 2331 the room. The hotel incurs retailers' occupation tax~~Retailers' Occupation Tax~~ on
 2332 its gross receipts from the sale of the food and beverages, including the charges
 2333 for the rental of the room.

2334
 2335 EXAMPLE 3: A person contracts with a hotel for the rental of a banquet room
 2336 for a wedding reception. As part of the contract, the hotel charges that person a
 2337 specific amount for each individual who attends the reception in exchange for
 2338 providing beverages and a buffet meal to those individuals. The true object of
 2339 this transaction is deemed to be the sale of food and beverages and not the rental
 2340 of the room. The hotel incurs retailers' occupation tax~~Retailers' Occupation Tax~~
 2341 on its gross receipts from the sale of the food and beverages, which includes the
 2342 specific charge for each individual who attends the reception, along with any
 2343 charges for the rental of the room.

2344
 2345 EXAMPLE 4: A person contracts with a hotel for a room for a cocktail reception.
 2346 The hotel's rental contract requires that all alcoholic beverages and food be
 2347 provided by a restaurant located on the hotel premises. The restaurant is a
 2348 separate legal entity from the hotel. Because the hotel's rental contract requires
 2349 this specific~~the~~ restaurant to provide the food and beverages, the hotel is
 2350 considered to be the provider of the food and beverages, for purposes of
 2351 determining taxation of the room charge. The true object of the transaction is the
 2352 provision of food and beverages, because~~since~~ alcoholic beverages and food are
 2353 provided. As a result, the hotel's charge for the room rental is subject to retailers'
 2354 occupation tax~~Retailers' Occupation Tax~~. The restaurant is subject to retailers'
 2355 occupation tax~~Retailers' Occupation Tax~~ on the sale of the alcoholic beverages
 2356 and food. If the hotel's rental contract had not required a specific third party to

2357 provide food and beverages, the charges for the room rental would not be subject
2358 to tax.

2359

2360 h) Other Charges

2361 Charges that are related to the provision of food or beverages are always part of
2362 the gross receipts from the sale of the food or beverages. The reason the charges
2363 are part of the gross receipts subject to tax is because those charges are part of a
2364 seller's costs of doing business and are not deductible from a seller's gross
2365 receipts. See Section 130.410 of this Part. Examples of charges that are related to
2366 the provision of food and beverages include, but are not limited to, fees for food
2367 serving or carving and corkage, and charges for linens, chairs, tables, dishes,
2368 glassware, flowers, and centerpieces. Examples of charges that are not related to
2369 the provision of food or beverages include, but are not limited to, charges for
2370 security, valet, coat check, entertainment, audiovisual and telecommunications
2371 services, and cancellation fees.

2372

2373 (Source: Amended at 48 Ill. Reg. _____, effective _____)