

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 160
SERVICE USE TAX

Section

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AUTHORITY: Implementing the Service Use Tax Act [35 ILCS 110] and authorized by Section 2505-100 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505/2505-100].

SOURCE: Adopted May 21, 1962; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 8619, effective June 5, 1984; amended at 11 Ill. Reg. 5322, effective March 17, 1987; amended at 11 Ill. Reg. 9963, effective May 8, 1987; amended at 13 Ill. Reg. 9399, effective June 6, 1989; amended at 15 Ill. Reg. 5845, effective April 5, 1991; amended at 18 Ill. Reg. 1557, effective January 13, 1994; amended at 20 Ill. Reg. 7015, effective May 7, 1996; amended at 20 Ill. Reg. 16219, effective December 16, 1996; amended at 24 Ill. Reg. 8135, effective May 26, 2000; amended at 25 Ill. Reg. 5015, effective March 23, 2001; amended at 26 Ill. Reg. 4929, effective March 15, 2002; amended at 27 Ill. Reg. 822, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11216, effective July 1, 2003, for a maximum of 150 days; emergency expired

44 November 27, 2003; emergency amendment at 28 Ill. Reg. 15275, effective November 3, 2004,
 45 for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7088,
 46 effective April 26, 2005; amended at 38 Ill. Reg. 20034, effective October 1, 2014; amended at
 47 46 Ill. Reg. 18861, effective November 1, 2022; amended at 48 Ill. Reg. _____, effective
 48 _____.

49

50 **Section 160.101 Nature of the Tax**

51

52 a) The Service Use Tax is a privilege tax imposed on the privilege of using, in this
 53 State, tangible personal property that is received anywhere as an incident to a
 54 purchase of service from a serviceman, as "serviceman" is defined in the Act.
 55 However, if the serviceman would not be taxable under the Service Occupation
 56 Tax Act [35 ILCS 115] despite all elements of the sale of service occurring in
 57 Illinois, then the tax imposed by the Service Use Tax Act does not apply to the
 58 use of such property in this State. [35 ILCS 110/3-55] Transfers of tangible
 59 personal property by de minimis servicemen who incur Use Tax as described in
 60 86 Ill. Adm. Code 140.108 do not constitute sales of service under Section 2(g) of
 61 the Service Occupation Tax Act. As a result, customers of such de minimis
 62 servicemen do not incur Service Use Tax liability on such transfers.

63

64 b) On and after January 1, 2001, prepaid telephone calling arrangements shall be
 65 considered tangible personal property subject to the tax imposed under the Act
 66 regardless of the form in which those arrangements may be embodied,
 67 transmitted, or fixed by any method now known or hereafter developed. [35 ILCS
 68 110/3] "Prepaid telephone calling arrangements" means the right to exclusively
 69 purchase telephone or telecommunications services that must be paid for in
 70 advance and enable the origination of one or more intrastate, interstate, or
 71 international telephone calls or other telecommunications using an access
 72 number, an authorization code, or both, whether manually or electronically
 73 dialed, for which payment to a retailer must be made in advance, provided that,
 74 unless recharged, no further service is provided once that prepaid amount of
 75 service has been consumed. Prepaid telephone calling arrangements include the
 76 recharge of a prepaid calling arrangement. For purposes of this Section,
 77 "recharge" means the purchase of additional prepaid telephone or
 78 telecommunications services whether or not the purchaser acquires a different
 79 access number or authorization code. For purposes of this Section,
 80 "telecommunications" means that term as defined in Section 2 of the
 81 Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling
 82 arrangement" does not include an arrangement whereby the service provider
 83 reflects the amount of the purchase as a credit on an account for a customer
 84 under an existing subscription plan. [35 ILCS 110/3-27]

85

86 c) Evidence that property was sold by any person for delivery to a person residing in

87 or engaged in business in this State shall be prima facie evidence that such
88 property was sold for use in this State. [35 ILCS 110/4]~~Any evidence that~~
89 ~~property was sold by any person for delivery to a person residing in or engaged in~~
90 ~~business in this State shall be prima facie evidence that such property was sold for~~
91 ~~use in this State.~~

92
93 de) Rate

94 Unless otherwise provided in this Section, the rate of tax is 6.25% of the
95 serviceman's selling price of the tangible personal property transferred by the
96 serviceman as an incident to a sale of service, but, in no event shall the selling
97 price be less than the cost price of the property to the serviceman. See 86 Ill.
98 Adm. Code 160.115 for more information on Service Use Tax computation.

100 1) Effective January 1, 1990, and prior to July 1, 2003, sales of gasohol are
101 subject to tax, based upon 70% of the selling price of gasohol transferred
102 as an incident to a sale of service. On and after July 1, 2003 and on or
103 before July 1, 2017, tax shall be based upon 80% of the selling price of
104 gasohol transferred as an incident to the sale of service. After July 1,
105 2017, and prior to January 1, 2024, tax shall be based upon 100% of the
106 selling price of gasohol transferred as an incident to the sale of service.
107 On and after January 1, 2024, and prior to January 1, 2029, tax shall be
108 based upon 90% of the proceeds of the selling price of gasohol transferred
109 as an incident to the sale of service. On and after January 1, 2029, tax
110 shall be based upon 100% of the selling price of gasohol transferred as an
111 incident to the sale of service. Effective July 1, 2003, if at any time, the
112 tax under the Act on sales of gasohol as defined by the Use Tax Act, is
113 imposed at the rate of 1.25%, then the tax imposed by the Act applies to
114 100% of the proceeds of sales of gasohol made during that time. [35
115 ILCS 110/3-10]

116
117 2) With respect to mid-range ethanol blends, as defined in Section 3-44.3 of
118 the Use Tax Act, the tax imposed by the Act applies to 80% of the selling
119 price of property transferred as an incident to the sale of service on or
120 after January 1, 2024 and on or before December 31, 2028 and 100% of
121 the selling price of property transferred as an incident to the sale of
122 service after December 31, 2028. If, at any time, however, the tax under
123 the Act on sales of mid-range ethanol blends is imposed at the rate of
124 1.25%, then the tax imposed by the Act applies to 100% of the selling
125 price of mid-range ethanol blends transferred as an incident to the sale of
126 service during that time. [35 ILCS 110/3-10]

127
128 3) With respect to majority blended ethanol fuel, as defined in the Use Tax
129 Act, the tax imposed by the Act does not apply to the selling price of

property transferred as an incident to the sale of service on or after July 1, 2003 and on or before December 31, 2028, but applies to 100% of the selling price thereafter. [35 ILCS 110/3-10]

4) With respect to biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with no less than 1% and no more than 10% biodiesel, the tax imposed by the Act applies to 80% of the selling price of property transferred as an incident to the sale of service on or after July 1, 2003 and on or before December 31, 2018 and 100% of the proceeds of the selling price after December 31, 2018 and before January 1, 2024. On and after January 1, 2024 and on or before December 31, 2030, the taxation of biodiesel, renewable diesel, as defined in Section 3-42.5 of the Use Tax Act, and biodiesel blends shall be as provided in Section 3-5.1 of the Use Tax Act. If, at any time, however, the tax under the Act on sales of biodiesel blends, as defined in the Use Tax Act, with no less than 1% and no more than 10% biodiesel is imposed at the rate of 1.25%, then the tax imposed by the Act applies to 100% of the proceeds of sales of biodiesel blends with no less than 1% and no more than 10% biodiesel made during that time.

5) With respect to biodiesel as defined in Section 3-41 of the Use Tax Act, and biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with more than 10% but no more than 99% biodiesel, the tax imposed by the Act does not apply to the proceeds of the selling price of property transferred as an incident to the sale of service on or after July 1, 2003 and on or before December 31, 2023. On and after January 1, 2024 and on or before December 31, 2030, the taxation of biodiesel, renewable diesel, and biodiesel blends shall be as provided in Section 3-5.1 of the Use Tax Act.

6) The tax shall be imposed at the rate of 1% on food prepared for immediate consumption and transferred incident to a sale of service subject to this Act or the Service Occupation Tax Act by an entity licensed under the Hospital Licensing Act, the Nursing Home Care Act, the Assisted Living and Shared Housing Act, the ID/DD Community Care Act, the MC/DD Act, the Specialized Mental Health Rehabilitation Act of 2013, or the Child Care Act of 1969, or an entity that holds a permit issued pursuant to the Life Care Facilities Act. The tax shall also be imposed at the rate of 1% on food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, and food that has been prepared for immediate consumption and is not otherwise included in this paragraph) and prescription and nonprescription medicines, drugs,

medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, blood sugar testing materials, syringes, and needles used by human diabetics. [35 ILCS 110/3-10] See 86 Ill. Adm. Code 130.310 for the definitions of "food for consumption that is to be consumed off the premises where sold", "candy", soft drinks", and "prescription and non-prescription medicines and drugs".

- 1) ~~The rate of the Service Use Tax after December 31, 1989, is 6.25% of the serviceman's selling price of the tangible personal property transferred by the serviceman as an incident to a sale of service.~~
- 2) ~~On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. (Section 3 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 3-27 of the Act)~~

ed) If the property that is purchased from a serviceman as an incident to a sale of service is acquired outside Illinois and used outside Illinois before being brought to Illinois for use here and is nevertheless taxable under the Service Use Tax Act, the tax base on which the tax is computed shall be reduced by an amount which

216 represents a reasonable allowance for depreciation for the period of such prior
 217 out-of-State use. [\[35 ILCS 110/3-10\]](#) A "reasonable allowance for depreciation"
 218 is deemed ~~by the Department~~ to be the amount of depreciation [as provided in 86](#)
 219 [Ill. Adm. Code 150.110](#)~~determined by use of the straight line method of~~
 220 ~~depreciation.~~

221
 222 [fe\)](#) The date of the purchase of service is deemed to be the date of the delivery, to the
 223 user, of the tangible personal property which the serviceman transfers as an
 224 incident to a sale of service.

225
 226 [gf\)](#) The Service Use Tax Act complements the Service Occupation Tax Act. That is
 227 why the Service Use Tax is restricted to cases in which the property is purchased
 228 from a serviceman as an incident to a sale of service.

229
 230 [hg\)](#) If a serviceman incurring Service Occupation Tax Liability is required or
 231 authorized to collect the Service Use Tax (see Section 160.115 for further
 232 information), the purchaser must pay the tax to the serviceman. The Department
 233 will presume that a serviceman is required or authorized to collect the Service Use
 234 Tax if [the serviceman](#)~~he~~ bills tax to the service customer. Stated conversely, if an
 235 invoice from a serviceman does not show the tax, the Department will presume
 236 that the serviceman is either registered and has included the Service Use Tax in
 237 the selling price of the tangible personal property transferred or is a de minimis
 238 serviceman incurring a Use Tax liability, in which case there is no collection
 239 obligation on the part of the purchaser. This presumption will be overcome only
 240 where the Department has evidence that the serviceman and/or the service
 241 customer were both aware that the proper tax due was the Service Use Tax and
 242 that no action was taken to remit the Service Use Tax by either party to the
 243 Transaction. A serviceman need not remit that part of any Service Use Tax
 244 collected by [the serviceman](#)~~him~~ to the extent that [the serviceman](#)~~he~~ is required to
 245 pay and does pay Service Occupation Tax to the Department on [the](#)
 246 [serviceman's](#)~~his~~ sales of service involving the transfer by [the serviceman](#)~~him~~ of
 247 the same property, provided, however, that the amount paid to the Department is
 248 equal to or exceeds the amount collected from the service customer.

249
 250 (Source: Amended at 48 Ill. Reg. _____, effective _____)

251
 252 **Section 160.105 Definitions**

253
 254 For definitions of terms other than "Use", "Purchased from a Serviceman", "Purchaser", "[Sale of](#)
 255 [Service](#)", "Selling Price", and "Serviceman maintaining a place of business in this State", see
 256 Section 140.201 of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140.201).

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 258 "Act" means the Service Use Tax Act [35 ILCS 110].

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"Purchased from a serviceman" means the acquisition of the ownership of, or title to, tangible personal property through a sale of service. ~~"Purchased from a serviceman" means the acquisition of the ownership of, or title to, tangible personal property through a sale of service.~~

"Purchaser" means any person who, through a sale of service, acquires the ownership of, or title to, any tangible personal property. ~~"Purchaser" means any person who, through a sale of service, acquires the ownership of, or title to, any tangible personal property.~~

"Sale of service" means any transaction except:

a retail sale of tangible personal property taxable under the Retailers' Occupation Tax Act or under the Use Tax Act;

a sale of tangible personal property for the purpose of resale made in compliance with Section 2c of the Retailers' Occupation Tax Act;

except as hereinafter provided, a sale or transfer of tangible personal property as an incident to the rendering of service for or by any governmental body, or for or by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older that has an active exemption identification number issued by the Department. A limited liability company may qualify under this exception only if the limited liability company is organized and operated exclusively for educational purposes;

a sale or transfer of tangible personal property as an incident to the rendering of service for owners, lessors, or shippers of tangible personal property which is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce so long as so used by interstate carriers for hire, and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce;

a sale or transfer of machinery and equipment used primarily in the process of the manufacturing or assembling, either in an existing, an

302 expanded or a new manufacturing facility, of tangible personal property
303 for wholesale or retail sale or lease. (See Section 160.110(h));

304
305 the repairing, reconditioning or remodeling, for a common carrier by rail,
306 of tangible personal property which belongs to such carrier for hire, and
307 as to which such carrier receives the physical possession of the repaired,
308 reconditioned or remodeled item of tangible personal property in Illinois,
309 and which such carrier transports, or shares with another common carrier
310 in the transportation of such property, out of Illinois on a standard
311 uniform bill of lading showing the person who repaired, reconditioned or
312 remodeled the property to a destination outside Illinois, for use outside
313 Illinois;

314
315 a sale or transfer of tangible personal property which is produced by the
316 seller thereof on special order in such a way as to have made the
317 applicable tax the Service Occupation Tax or the Service Use Tax, rather
318 than the Retailers' Occupation Tax or the Use Tax, for an interstate
319 carrier by rail which receives the physical possession of such property in
320 Illinois, and which transports such property, or shares with another
321 common carrier in the transportation of such property, out of Illinois on a
322 standard uniform bill of lading showing the seller of the property as the
323 shipper or consignor of such property to a destination outside Illinois, for
324 use outside Illinois;

325
326 at the election of any serviceman not required to be otherwise registered
327 as a retailer under Section 2a of the Retailers' Occupation Tax Act, made
328 for each fiscal year sales of service in which the aggregate annual cost
329 price of tangible personal property transferred as an incident to the sales
330 of service is less than 35%, or 75% in the case of servicemen transferring
331 prescription drugs or servicemen engaged in graphic arts production, of
332 the aggregate annual total gross receipts from all sales of service. The
333 purchase of such tangible personal property by the serviceman shall be
334 subject to tax under the Retailers' Occupation Tax Act and the Use Tax
335 Act. However, if a primary serviceman who has made the election
336 described in this paragraph subcontracts service work to a secondary
337 serviceman who has also made the election described in this paragraph,
338 the primary serviceman does not incur a Use Tax liability if the secondary
339 serviceman:

340
341 has paid or will pay Use Tax on the secondary serviceman's cost
342 price of any tangible personal property transferred to the primary
343 serviceman; and

344

345 certifies that fact in writing to the primary serviceman;
346
347 tangible personal property transferred incident to the completion of a
348 maintenance agreement; and
349
350 the purchase, employment and transfer of such tangible personal property
351 as newsprint and ink for the primary purpose of conveying news (with or
352 without other information).

353
354 "Selling price" means the consideration for a sale valued in money whether
355 received in money or otherwise, including cash, credits and service, and shall be
356 determined without any deduction on account of the serviceman's cost of the
357 property sold, the cost of materials used, labor or service cost or any other
358 expense whatsoever, but does not include interest or finance charges which
359 appear as separate items on the bill of sale or sales contract nor charges that are
360 added to prices by sellers on account of the seller's duty to collect, from the
361 purchaser, the tax that is imposed by this Act. ~~"Selling price" means the~~
362 ~~consideration for a sale valued in money whether received in money or otherwise,~~
363 ~~including cash, credits and service, and shall be determined without any deduction~~
364 ~~on account of the serviceman's cost of the property sold, the cost of materials~~
365 ~~used, labor or service cost or any other expense whatsoever, but does not include~~
366 ~~interest or finance charges that appear as separate items on the bill of sale or sales~~
367 ~~contract nor charges that are added to prices by sellers on account of the seller's~~
368 ~~duty to collect, from the purchaser, the tax that is imposed by the Act.~~ For
369 purposes of calculating the serviceman's tax base, the selling price shall not be
370 less than the cost price to the serviceman of the tangible personal property
371 transferred to the service customer.

372
373 "Serviceman maintaining a place of business in this State", or any like term,
374 means and includes any serviceman:

375
376 having or maintaining within this State, directly or by a subsidiary, an
377 office, distribution house, sales house, warehouse or other place of
378 business, or any agent or other representative operating within this State
379 under the authority of the serviceman or its subsidiary, irrespective of
380 whether such place of business or agent or other representative is located
381 here permanently or temporarily, or whether such serviceman or
382 subsidiary is licensed to do business in this State;

383
384 having a contract with a person located in this State under which the
385 person, for a commission or other consideration based on the sale of
386 service by the serviceman, directly or indirectly refers potential customers
387 to the serviceman by providing to the potential customers a promotional

388 code or other mechanism that allows the serviceman to track purchases
389 referred by such persons. Examples of mechanisms that allow the
390 serviceman to track purchases referred by such persons include, but are
391 not limited to, the use of a link on the person's Internet website,
392 promotional codes distributed through the person's hand-delivered or
393 mailed material, and promotional codes distributed by the person through
394 radio or other broadcast media. The provisions of this paragraph shall
395 apply only if the cumulative gross receipts from sales of service by the
396 serviceman to customers who are referred to the serviceman by all
397 persons in this State under such contracts exceed \$10,000 during the
398 preceding 4 quarterly periods ending on the last day of March, June,
399 September, and December; a serviceman meeting the requirements of this
400 paragraph shall be presumed to be maintaining a place of business in this
401 State but may rebut this presumption by submitting proof that the referrals
402 or other activities pursued within this State by such persons were not
403 sufficient to meet the nexus standards of the United States Constitution
404 during the preceding 4 quarterly periods;

405
406 beginning July 1, 2011, having a contract with a person located in this
407 State under which:

408
409 the serviceman sells the same or substantially similar line of
410 services as the person located in this State and does so using an
411 identical or substantially similar name, trade name, or trademark
412 as the person located in this State;

413
414 the serviceman provides a commission or other consideration to
415 the person located in this State based upon the sale of services by
416 the serviceman; and

417
418 the cumulative gross receipts from sales of service by the
419 serviceman to customers in this State under all such contracts
420 exceed \$10,000 during the preceding 4 quarterly periods ending
421 on the last day of March, June, September, and December;

422
423 soliciting orders for tangible personal property by means of a
424 telecommunication or television shopping system (which utilizes toll free
425 numbers) which is intended by the retailer to be broadcast by cable
426 television or other means of broadcasting, to consumers located in this
427 State;

428
429 pursuant to a contract with a broadcaster or publisher located in this
430 State, soliciting orders for tangible personal property by means of

431 advertising which is disseminated primarily to consumers located in this
432 State and only secondarily to bordering jurisdictions;

433
434 soliciting orders for tangible personal property by mail if the solicitations
435 are substantial and recurring and if the retailer benefits from any banking,
436 financing, debt collection, telecommunication, or marketing activities
437 occurring in this State or benefits from the location in this State of
438 authorized installation, servicing, or repair facilities;

439
440 being owned or controlled by the same interests which own or control any
441 retailer engaging in business in the same or similar line of business in this
442 State;

443
444 having a franchisee or licensee operating under its trade name if the
445 franchisee or licensee is required to collect the tax under this Section;

446
447 pursuant to a contract with a cable television operator located in this
448 State, soliciting orders for tangible personal property by means of
449 advertising which is transmitted or distributed over a cable television
450 system in this State;

451
452 engaging in activities in Illinois, which activities in the state in which the
453 supply business engaging in such activities is located would constitute
454 maintaining a place of business in that state; or

455
456 beginning October 1, 2018, making sales of service to purchasers in
457 Illinois from outside of Illinois if:

458
459 the cumulative gross receipts from sales of service to purchasers in
460 Illinois are \$100,000 or more; or

461
462 the serviceman enters into 200 or more separate transactions for
463 sales of service to purchasers in Illinois; and

464
465 beginning January 1, 2020, a marketplace facilitator, as defined in
466 Section 2d of the Act.

467
468 ~~*"Serviceman maintaining a place of business in this State", or any like term,*~~
469 ~~*means and includes any serviceman having or maintaining within this State,*~~
470 ~~*directly or by a subsidiary, an office, distribution house, sales house, warehouse*~~
471 ~~*or other place of business, or any agent or other representative operating within*~~
472 ~~*this State under the authority of the serviceman or its subsidiary, irrespective of*~~
473 ~~*whether such place of business or agent or other representative is located here*~~

474 ~~permanently or temporarily, or whether such serviceman or subsidiary is licensed~~
 475 ~~to do business in this State; soliciting orders for tangible personal property by~~
 476 ~~means of a telecommunication or television shopping system (which utilizes toll~~
 477 ~~free numbers) which is intended by the retailer to be broadcast by cable television~~
 478 ~~or other means of broadcasting, to consumers located in this State; pursuant to a~~
 479 ~~contract with a broadcaster or publisher located in this state, soliciting orders for~~
 480 ~~tangible personal property by means of advertising which is disseminated~~
 481 ~~primarily to consumers located in this State and only secondarily to bordering~~
 482 ~~jurisdictions; soliciting orders for tangible personal property by mail if the~~
 483 ~~solicitations are substantial and recurring and if the retailer benefits from any~~
 484 ~~banking, financing, debt collection, telecommunication, or marketing activities~~
 485 ~~occurring in this state or benefits from the location in this State of authorized~~
 486 ~~installation, servicing, or repair facilities; being owned or controlled by the same~~
 487 ~~interests which own or control any retailer engaging in business in the same or~~
 488 ~~similar line of business in this State; having a franchisee or licensee operating~~
 489 ~~under its trade name if the franchisee or licensee is required to collect the tax~~
 490 ~~under this Section; pursuant to a contract with a cable television operator located~~
 491 ~~in this State, soliciting orders for tangible personal property by means of~~
 492 ~~advertising which is transmitted or distributed over a cable television system in~~
 493 ~~this State, or engaging in activities in Illinois that would, in the state in which the~~
 494 ~~service business engaging in these activities is located, constitute maintaining a~~
 495 ~~place of business in that state [35 ILCS 110/2]. For the purpose of determining~~
 496 ~~the state of location, the Department will look to the place at which the selling~~
 497 ~~activity takes place.~~

498
 499 "Use" means the exercise by any person of any right or power over tangible
 500 personal property incident to the ownership of that property, but does not include
 501 the sale or use for demonstration by the person of that property in any form as
 502 tangible personal property in the regular course of business. "Use" does not
 503 mean the interim use of tangible personal property nor the physical incorporation
 504 of tangible personal property, as an ingredient or constituent, into other tangible
 505 personal property:

506
 507 which is sold in the regular course of business; or

508
 509 which the person incorporating such ingredient or constituent therein has
 510 undertaken at the time of such purchase to cause to be transported in
 511 interstate commerce to destinations outside the State of Illinois. [35 ILCS
 512 110/2]

513
 514 ~~"Use" means the exercise by any person of any right or power over tangible~~
 515 ~~personal property incident to the ownership of that property, but does not include~~
 516 ~~the sale or use for demonstration by him or her of that property in any form as~~

517 ~~tangible personal property in the regular course of business. "Use" does not mean~~
518 ~~the interim use of tangible personal property nor the physical incorporation of~~
519 ~~tangible personal property, as an ingredient or constituent, into other tangible~~
520 ~~personal property:~~

521
522 ~~that is sold in the regular course of business; or~~

523
524 ~~that the person incorporating the ingredient or constituent has undertaken~~
525 ~~at the time of purchase to cause to be transported in interstate commerce to~~
526 ~~destinations outside the State of Illinois.~~

527
528 (Source: Amended at 48 Ill. Reg. _____, effective _____)

529
530 **Section 160.110 Kinds of Uses And Users Not Taxed**

531
532 a) *To prevent actual or likely multistate taxation, the tax ~~does~~shall not apply to the*
533 *use of tangible personal property in this State under the following circumstances:*

- 534
535 1) ~~the~~The use, in this State, of property acquired outside this State by a
536 nonresident individual and brought into this State by ~~the~~such individual
537 for ~~that individual's~~his or her own use while temporarily within this State
538 or while passing through this State;
- 539
540 2) *the use, in this State, of property ~~that~~which is acquired outside this State*
541 *and caused to be brought into this State by a person who has already paid*
542 *a tax in another state in respect to the sale, purchase or use of ~~that~~such*
543 *property, to the extent of the amount of ~~the~~such tax properly due and paid*
544 *in ~~the~~such other state;*
- 545
546 3) *the temporary storage, in this State, of property ~~that~~which is acquired*
547 *outside this State and ~~that after~~which, subsequent to being brought into*
548 *this State and stored here temporarily, is used solely outside this State or*
549 *is physically attached to or incorporated into other property that is used*
550 *solely outside this State, or is altered by converting, fabricating,*
551 *manufacturing, printing, processing or shaping, and, as altered, is used*
552 *solely outside this State; ~~-(Section 3-45 of the Act)~~*
- 553
554 4) the use, in this State, of property that is acquired outside this State and
555 that is moved into this State for use as rolling stock moving in interstate
556 commerce; and
- 557
558 5) the use, in this State, of fuel acquired outside this State and brought into
559 this State in the fuel supply tanks of locomotives engaged in freight

560 hauling and passenger service for interstate commerce. [35 ILCS 110/3-
 561 45]
 562

563 b) Since the exemptions in subsections (a)(1) ~~through (5), (2) and (3)~~, immediately
 564 above, do not exist as far as the Service Occupation Tax is concerned, and since it
 565 would therefore serve no purpose to say that the exemptions exist for Service Use
 566 Tax purposes insofar as the serviceman is merely collecting Service Use Tax to
 567 reimburse himself for Service Occupation Tax on the same property, the
 568 Department believes that the legislative intention in these references to the
 569 acquisition of tangible personal property outside this State was to make the
 570 references apply to cases in which the only tax liability that could be involved is
 571 Service Use Tax liability. Therefore, the exemptions in subsections (a)(1)
 572 ~~through (5), (2) and (3)~~ above would not apply except when the tangible personal
 573 property is acquired outside Illinois by the purchaser in such a way that there is no
 574 Service Occupation Tax liability on the part of the serviceman in the same
 575 transaction.
 576

577 c) The Service Use Tax *does not apply to the use, in this State, of property which is*
 578 *acquired outside this State by a nonresident individual who then brings the*
 579 *property to this State for use here, and who ~~has shall have~~ used the property*
 580 *outside this State for at least 3 months before bringing the property to this State.*
 581 [35 ILCS 110/3-60]~~(Section 3-60 of the Act)~~
 582

583 d) *Where a business that is not operated in Illinois, but is operated~~which does~~*
 584 *~~operate~~ in another state, is moved to Illinois or opens up an office, plant or other*
 585 *business facility in Illinois, ~~that such~~ business shall not be taxed on its use, in*
 586 *Illinois, of used property ~~that the~~~~which such~~ business bought outside Illinois and*
 587 *used outside Illinois in the operation of ~~the such~~ business for at least 3 months*
 588 *before moving such used property to Illinois for use in this State~~here~~.* [35 ILCS
 589 110/3-60]~~(Section 3-60 of the Act)~~
 590

591 e) The Service Use Tax will not apply to the following entities as long as such
 592 entities have an active exemption identification number issued by the Department.
 593 "Sale of service" does not include: ~~The Service Use Tax does not apply to the use~~
 594 ~~of tangible personal property by any corporation, society, association, foundation~~
 595 ~~or institution, organized and operated exclusively for charitable, religious or~~
 596 ~~educational purposes, or by any not for profit corporation, society, association,~~
 597 ~~foundation, institution or organization which has no compensated officers and~~
 598 ~~employees and which is organized and operated primarily for the recreation of~~
 599 ~~persons 55 years of age or older, when purchased from a serviceman as an~~
 600 ~~incident to a sale of service. However, effective July 1, 1987, the Service Use Tax~~
 601 ~~will apply to the entities noted above unless such entities have an active~~
 602 ~~exemption identification number issued by the Department.~~ (Section 2(3) of the

~~Act) Effective March 17, 1965, purchases by State chartered banks and by Federal and State savings and loan associations for use, when the purchase is made from a serviceman as an incident to his sale of service, are subject to the Service Use Tax. Effective February 1, 1970, purchases by national banks for use, when the purchase is made from a serviceman as an incident to his sale of service, are also subject to the Service Use Tax, provided that such tax does not apply to property which is the subject matter of a written contract of purchase entered into by a national bank prior to September 1, 1969.~~

1) a sale or transfer of tangible personal property as an incident to the rendering of service for or by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, in accordance with the provisions of 86 Ill. Adm. Code 130.2005, which is effective as if fully set forth in this subsection (e)(1). A limited liability company may qualify for the exemption under this paragraph only if the limited liability company is organized and operated exclusively for educational purposes;

2) a sale or transfer of tangible personal property as an incident to the rendering of service for or by any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers and employees and which is organized and operated primarily for the recreation of persons 55 years of age or older, in accordance with the provisions of 86 Ill. Adm. Code 130.2005, which is effective as if fully set forth in this subsection (e)(2); and

3) a sale or transfer of tangible personal property as an incident to the rendering of service for or by any governmental body, in accordance with the provisions of 86 Ill. Adm. Code 130.2055 and 130.2080, which are effective as if fully set forth in this subsection (e)(3). [35 ILCS 110/2(3)]

f) The Service Use Tax does not apply to the use of game or game birds purchased at a "game breeding and hunting preserve area" as that term is used in the Wildlife Code [520 ILCS 5/3.27]. [35 ILCS 110/3-5(19)]

~~Beginning July 1, 1999, the Service Use Tax does not apply to the use, in this State, of game or game birds purchased incident to a sale of service at:~~

~~1) a game breeding and hunting preserve area licensed by the Department of Natural Resources (see Section 3.27 of the Wildlife Code [520 ILCS 5/3.27]);~~

~~2) an exotic game hunting area licensed by the Department of Natural~~

- 646 ~~Resources (see Section 3.34 of the Wildlife Code [520 ILCS 5/3.34]), or~~
647
648 3) ~~a hunting enclosure approved through rules adopted by the Department of~~
649 ~~Natural Resources. (Section 3-5 of the Act)~~
650
651 g) ~~Beginning July 1, 1999, the Service Use Tax does not apply to the use, in this~~
652 ~~State, of fuel acquired outside of this State and brought into this State in the fuel~~
653 ~~supply tanks of locomotives engaged in freight hauling and passenger service for~~
654 ~~interstate commerce. (Section 3-5 of the Act)~~
655
656 gh) Since transfers of tangible personal property by de minimis servicemen who incur
657 Use Tax as described in 86 Ill. Adm. Code 140.108 do not constitute sales of
658 service under Section 2(g) of the Service Occupation Tax Act, customers of such
659 de minimis servicemen do not incur Service Use Tax liability on such transfers.
660
661 h) The Service Use Tax does not apply to a sale or transfer of machinery and
662 equipment used primarily in the process of the manufacturing or assembling,
663 either in an existing, an expanded or a new manufacturing facility, of tangible
664 personal property for wholesale or retail sale or lease, whether such sale or lease
665 is made directly by the manufacturer or by some other person, whether the
666 materials used in the process are owned by the manufacturer or some other
667 person, or whether such sale or lease is made apart from or as an incident to the
668 seller's engaging in a service occupation and the applicable tax is a Service Use
669 Tax or Service Occupation Tax, rather than Use Tax or Retailers' Occupation
670 Tax, and includes production related tangible personal property, as defined in
671 Section 3-50 of the Use Tax Act, purchased on or after July 1, 2019; but does not
672 include machinery and equipment used in the generation of electricity for
673 wholesale or retail sale; the generation or treatment of natural or artificial gas
674 for wholesale or retail sale that is delivered to customers through pipes, pipelines,
675 or mains; or the treatment of water for wholesale or retail sale that is delivered to
676 customers through pipes, pipelines, or mains.
677
678 1) The exemption in subsection (h) also includes machinery and equipment
679 used in the general maintenance or repair of such exempt machinery and
680 equipment or for in-house manufacture of exempt machinery and
681 equipment. On and after July 1, 2017, the exemption also includes
682 graphic arts machinery and equipment, as defined in 35 ILCS 110/3-5(5).
683
684 2) For the purposes of the exemption in subsection (h), each of these terms
685 shall have the following meanings:
686
687 A) "manufacturing process" shall mean the production of any article
688 of tangible personal property, whether such article is a finished

689 product or an article for use in the process of manufacturing or
 690 assembling a different article of tangible personal property, by
 691 procedures commonly regarded as manufacturing, processing,
 692 fabricating, or refining which changes some existing material or
 693 materials into a material with a different form, use or name. In
 694 relation to a recognized integrated business composed of a series
 695 of operations which collectively constitute manufacturing, or
 696 individually constitute manufacturing operations, the
 697 manufacturing process shall be deemed to commence with the first
 698 operation or stage of production in the series, and shall not be
 699 deemed to end until the completion of the final product in the last
 700 operation or stage of production in the series; and further, for
 701 purposes this exemption, photoprocessing is deemed to be a
 702 manufacturing process of tangible personal property for wholesale
 703 or retail sale;

704
 705 B) "assembling process" shall mean the production of any article of
 706 tangible personal property, whether such article is a finished
 707 product or an article for use in the process of manufacturing or
 708 assembling a different article of tangible personal property, by the
 709 combination of existing materials in a manner commonly regarded
 710 as assembling which results in a material of a different form, use
 711 or name;

712
 713 C) "machinery" shall mean major mechanical machines or major
 714 components of such machines contributing to a manufacturing or
 715 assembling process; and

716
 717 D) "equipment" shall include any independent device or tool separate
 718 from any machinery but essential to an integrated manufacturing
 719 or assembly process; including computers used primarily in a
 720 manufacturer's computer assisted design, computer assisted
 721 manufacturing (CAD/CAM) system; or any subunit or assembly
 722 comprising a component of any machinery or auxiliary, adjunct or
 723 attachment parts of machinery, such as tools, dies, jigs, fixtures,
 724 patterns and molds; or any parts which require periodic
 725 replacement in the course of normal operation; but shall not
 726 include hand tools. Equipment includes chemicals or chemicals
 727 acting as catalysts but only if the chemicals or chemicals acting as
 728 catalysts effect a direct and immediate change upon a product
 729 being manufactured or assembled for wholesale or retail sale or
 730 lease.

731

732 3) The purchaser of such machinery and equipment who has an active resale
733 registration number shall furnish such number to the seller at the time of
734 purchase. The purchaser of such machinery and equipment and tools
735 without an active resale registration number shall prepare a certificate of
736 exemption stating facts establishing the exemption, which certificate shall
737 be available to the Department for inspection or audit. The Department
738 shall prescribe the form of the certificate. [35 ILCS 110/2]
739

740 4) For more information on the Manufacturing, Machinery, and Equipment
741 Exemption, see 86 Ill. Adm. Code 130.330.
742

743 i) The Service Use Tax does not apply to farm machinery and equipment, both new
744 and used, including that manufactured on special order, certified by the
745 purchaser to be used primarily for production agriculture or State or federal
746 agricultural programs, including individual replacement parts for the machinery
747 and equipment, including machinery and equipment purchased for lease, and
748 including implements of husbandry defined in Section 1-130 of the Illinois Vehicle
749 Code, farm machinery and agricultural chemical and fertilizer spreaders, and
750 nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle
751 Code, but excluding other motor vehicles required to be registered under the
752 Illinois Vehicle Code. Farm machinery and equipment shall include the
753 following:
754

755 1) horticultural polyhouses or hoop houses used for propagating, growing,
756 or overwintering plants shall be considered farm machinery and
757 equipment;
758

759 2) agricultural chemical tender tanks and dry boxes including units sold
760 separately from a motor vehicle required to be licensed and units sold
761 mounted on a motor vehicle required to be licensed if the selling price of
762 the tender is separately stated;
763

764 3) precision farming equipment that is installed or purchased to be installed
765 on farm machinery and equipment including, but not limited to, tractors,
766 harvesters, sprayers, planters, seeders, or spreaders. Precision farming
767 equipment includes, but is not limited to, soil testing sensors, computers,
768 monitors, software, global positioning and mapping systems, and other
769 such equipment;
770

771 4) computers, sensors, software, and related equipment used primarily in the
772 computer-assisted operation of production agriculture facilities,
773 equipment, and activities such as, but not limited to, the collection,

- 774 monitoring, and correlation of animal and crop data for the purpose of
775 formulating animal diets and agricultural chemicals; and
776
- 777 5) beginning on January 1, 2024, farm machinery and equipment also
778 includes electrical power generation equipment used primarily for
779 production agriculture. [35 ILCS 110/3-5(7)]
780
- 781 j) The Service Use Tax does not apply to semen used for artificial insemination of
782 livestock for direct agricultural production. [35 ILCS 3-5(13)]
783
- 784 k) The Service Use Tax does not apply to horses, or interests in horses, registered
785 with and meeting the requirements of any of the Arabian Horse Club Registry of
786 America, Appaloosa Horse Club, American Quarter Horse Association, United
787 States Trotting Association, or Jockey Club, as appropriate, used for purposes of
788 breeding or racing for prizes. [35 ILCS 110/3-5(14)]
789
- 790 l) The Service Use Tax does not apply to computers and communications equipment
791 utilized for any hospital purpose and equipment used in the diagnosis, analysis, or
792 treatment of hospital patients purchased by a lessor who leases the equipment,
793 under a lease of one year or longer executed or in effect at the time the lessor
794 would otherwise be subject to the tax imposed by the Act, to a hospital that has
795 been issued an active tax exemption identification number by the Department
796 under Section 1g of the Retailers' Occupation Tax Act. [35 ILCS 110/3-5(24)]
797
- 798 m) The Service Use Tax does not apply to personal property purchased by a lessor
799 who leases the property, under a lease of one year or longer executed or in effect
800 at the time the lessor would otherwise be subject to the tax imposed by the Act, to
801 a governmental body that has been issued an active tax exemption identification
802 number by the Department under Section 1g of the Retailers' Occupation Tax Act.
803 [35 ILCS 110/3-5(25)]
804
- 805 n) The Service Use Tax does not apply to tangible personal property used in the
806 construction or maintenance of a community water supply, as defined under
807 Section 3.145 of the Environmental Protection Act, that is operated by a not-for-
808 profit corporation that holds a valid water supply permit issued under Title IV of
809 the Environmental Protection Act. [35 ILCS 110/3-5(26)]
810
- 811 o) Beginning January 1, 2010 and continuing through December 31, 2029,
812 materials, parts, equipment, components, and furnishings incorporated into or
813 upon an aircraft as part of the modification, refurbishment, completion,
814 replacement, repair, or maintenance of the aircraft. The exemption includes
815 consumable supplies used in the modification, refurbishment, completion,
816 replacement, repair, and maintenance of aircraft. However, until January 1,

817 2024, the exemption excludes any materials, parts, equipment, components, and
818 consumable supplies used in the modification, replacement, repair, and
819 maintenance of aircraft engines or power plants, whether such engines or power
820 plants are installed or uninstalled upon any such aircraft. "Consumable
821 supplies" include, but are not limited to, adhesive, tape, sandpaper, general
822 purpose lubricants, cleaning solution, latex gloves, and protective films.

823
824 1) Beginning January 1, 2010 and continuing through December 31, 2023,
825 the exemption applies only to the use of qualifying tangible personal
826 property transferred incident to the modification, refurbishment,
827 completion, replacement, repair, or maintenance of aircraft by persons
828 who hold an Air Agency Certificate and are empowered to operate an
829 approved repair station by the Federal Aviation Administration, have a
830 Class IV Rating, and conduct operations in accordance with Part 145 of
831 the Federal Aviation Regulations. The exemption does not include
832 aircraft operated by a commercial air carrier providing scheduled
833 passenger air service pursuant to authority issued under Part 121 or Part
834 129 of the Federal Aviation Regulations.

835
836 2) From January 1, 2024 through December 31, 2029, the exemption applies
837 only to the use of qualifying tangible personal property by:

838
839 A) persons who modify, refurbish, complete, repair, replace, or
840 maintain aircraft and who:

841
842 i) hold an Air Agency Certificate and are empowered to
843 operate an approved repair station by the Federal Aviation
844 Administration;

845
846 ii) have a Class IV Rating; and

847
848 iii) conduct operations in accordance with Part 145 of the
849 Federal Aviation Regulations; and

850
851 B) persons who engage in the modification, replacement, repair, and
852 maintenance of aircraft engines or power plants without regard to
853 whether or not those persons meet the qualifications of subsection
854 (o)(2)(A).

855
856 3) The exemption applies continuously from January 1, 2010 through
857 December 31, 2024; however, no claim for credit or refund is allowed for
858 taxes paid as a result of the disallowance of this exemption on or after

859 January 1, 2015 and prior to February 5, 2020, the effective date of Public
860 Act 101-629. [35 ILCS 110/3-5(27)]

861
862 p) Tangible personal property purchased by a public-facilities corporation, as
863 described in Section 11-65-10 of the Illinois Municipal Code, for purposes of
864 constructing or furnishing a municipal convention hall, but only if the legal title
865 to the municipal convention hall is transferred to the municipality without any
866 further consideration by or on behalf of the municipality at the time of the
867 completion of the municipal convention hall or upon the retirement or redemption
868 of any bonds or other debt instruments issued by the public-facilities corporation
869 in connection with the development of the municipal convention hall. This
870 exemption includes existing public-facilities corporations as provided in Section
871 11-65-25 of the Illinois Municipal Code. [35 ILCS 110/3-5(28)]

872
873 q) Beginning January 1, 2017 and through December 31, 2026, menstrual pads,
874 tampons, and menstrual cups. [35 ILCS 10/3-5(29)]

875
876 r) The Service Use Tax does not apply to tangible personal property transferred to a
877 purchaser who is exempt from the tax imposed by the Act by operation of federal
878 law. [35 ILCS 110/3-5(30)]

879
880 s) The Service Use Tax does not apply to qualified tangible personal property used
881 in the construction or operation of a data center that has been granted a
882 certificate of exemption by the Department of Commerce and Economic
883 Opportunity, whether that tangible personal property is purchased by the owner,
884 operator, or tenant of the data center or by a contractor or subcontractor of the
885 owner, operator, or tenant. Data centers that would have qualified for a
886 certificate of exemption prior to January 1, 2020, had P.A. 101-31 been in effect,
887 may apply for and obtain an exemption for subsequent purchases of computer
888 equipment or enabling software purchased or leased to upgrade, supplement, or
889 replace computer equipment or enabling software purchased or leased in the
890 original investment that would have qualified. For the purposes of this
891 subsection:

892
893 1) "Data center" means a building or a series of buildings rehabilitated or
894 constructed to house working servers in one physical location or multiple
895 sites within the State of Illinois.

896
897 2) "Qualified tangible personal property" means:

898
899 A) Electrical systems and equipment; climate control and chilling
900 equipment and systems; mechanical systems and equipment;
901 monitoring and secure systems; emergency generators; hardware;

902 computers; servers; data storage devices; network connectivity
903 equipment; racks; cabinets; telecommunications cabling
904 infrastructure; raised floor systems; peripheral components or
905 systems; software; mechanical, electrical, or plumbing systems;
906 battery systems; cooling systems and towers; temperature control
907 systems; other cabling; and other data center infrastructure
908 equipment and systems necessary to operate qualified tangible
909 personal property, including fixtures; and component parts of any
910 of the foregoing, including installation, maintenance, repair,
911 refurbishment, and replacement of qualified tangible personal
912 property to generate, transform, transmit, distribute, or manage
913 electricity necessary to operate qualified tangible personal
914 property; and all other tangible personal property that is essential
915 to the operations of a computer data center.

916
917 B) The term "qualified tangible personal property" also includes
918 building materials physically incorporated into the qualifying data
919 center.

920
921 3) To document the exemption allowed under this subsection, the retailer
922 must obtain from the purchaser a copy of the certificate of eligibility
923 issued by the Department of Commerce and Economic Opportunity, the
924 agency responsible for granting certificates of exemption to qualified data
925 centers pursuant to Section 605-1025 of the Department of Commerce and
926 Economic Opportunity Law of the Civil Administrative Code of Illinois
927 [20 ILCS 605/605-1025]. [35 ILCS 110/3-5(31)]

928
929 t) Beginning July 1, 2022, breast pumps, breast pump collection and storage
930 supplies, and breast pump kits. As used in this subsection (u):

931
932 1) "Breast pump" means an electrically controlled or manually controlled
933 pump device designed or marketed to be used to express milk from a
934 human breast during lactation, including the pump device and any battery,
935 AC adapter, or other power supply unit that is used to power the pump
936 device and is packaged and sold with the pump device at the time of sale.

937
938 2) "Breast pump collection and storage supplies" means items of tangible
939 personal property designed or marketed to be used in conjunction with a
940 breast pump to collect milk expressed from a human breast and to store
941 collected milk until it is ready for consumption.

942
943 3) "Breast pump collection and storage supplies" includes, but is not limited
944 to: breast shields and breast shield connectors; breast pump tubes and

945 tubing adapters; breast pump valves and membranes; backflow protectors
946 and backflow protector adaptors; bottles and bottle caps specific to the
947 operation of the breast pump; and breast milk storage bags.

948
949 4) "Breast pump collection and storage supplies" does not include: bottles
950 and bottle caps not specific to the operation of the breast pump; breast
951 pump travel bags and other similar carrying accessories, including ice
952 packs, labels, and other similar products; breast pump cleaning supplies;
953 nursing bras, bra pads, breast shells, and other similar products; and
954 creams, ointments, and other similar products that relieve breastfeeding-
955 related symptoms or conditions of the breasts or nipples, unless sold as
956 part of a breast pump kit that is pre-packaged by the breast pump
957 manufacturer or distributor.

958
959 5) "Breast pump kit" means a kit that: contains no more than a breast pump,
960 breast pump collection and storage supplies, a rechargeable battery for
961 operating the breast pump, a breastmilk cooler, bottle stands, ice packs,
962 and a breast pump carrying case; and is pre-packaged as a breast pump
963 kit by the breast pump manufacturer or distributor. [35 ILCS 110/3-
964 5(32)]

965
966 u) Tangible personal property sold by or on behalf of the State Treasurer pursuant
967 to the Revised Uniform Unclaimed Property Act. [35 ILCS 110/3-5(33)]

968
969 v) If the serviceman would not be taxable under the Service Occupation Tax Act
970 despite all elements of his sale of service occurring in Illinois, then the tax
971 imposed by the Act does not apply to the use in this State of the property
972 transferred as a necessary incident to the sale of service. [35 ILCS 110/3-55]

973
974 i) ~~food for human consumption that is to be consumed off the premises where it is~~
975 ~~sold (other than alcoholic beverages, soft drinks, and food that has been prepared~~
976 ~~for immediate consumption) and prescription and nonprescription medicines,~~
977 ~~drugs, medical appliances, and insulin, urine testing materials, syringes, and~~
978 ~~needles used by diabetics, for human use, when purchased for use by a person~~
979 ~~receiving medical assistance under Article 5 of the Illinois Public Aid Code who~~
980 ~~resides in a licensed long-term care facility, as defined in the Nursing Home Care~~
981 ~~Act [35 ILCS 110/3-5].~~

982
983 (Source: Amended at 48 Ill. Reg. _____, effective _____)

984
985 **Section 160.111 Commercial Distribution Fee Sales Tax Exemption (Repealed)**

986

- 987 a) ~~Qualifications for exemption through June 30, 2004. Beginning on July 1, 2003~~
988 ~~through June 30, 2004, sales of certain motor vehicles are not subject to the tax~~
989 ~~imposed under this Part if they meet all of the following tests:~~
990
- 991 1) ~~The motor vehicle qualifies as a second division motor vehicle under~~
992 ~~Section 1-146 of the Illinois Vehicle Code. First division motor vehicles,~~
993 ~~such as those motor vehicles that are designed for the carrying of not more~~
994 ~~than 10 persons, do not qualify for the exemption (See 625 ILCS 5/1-~~
995 ~~146.);~~
996
- 997 2) ~~The motor vehicle has a gross vehicle weight in excess of 8,000 pounds;~~
998 ~~and~~
999
- 1000 3) ~~The motor vehicle is subject to the Commercial Distribution Fee imposed~~
1001 ~~under Section 3-815.1 of the Illinois Vehicle Code. [35 ILCS 110/2] The~~
1002 ~~motor vehicle must be registered and remain registered in such a manner~~
1003 ~~whereby it is subject to payment of the Commercial Distribution Fee~~
1004 ~~imposed under Section 3-815.1 of the Illinois Vehicle Code [625 ILCS~~
1005 ~~5/3-815.1] and such fee is actually paid for any period in which the fee is~~
1006 ~~in effect.~~
1007
- 1008 b) ~~Qualifications for exemption beginning July 1, 2004. Beginning on July 1, 2004~~
1009 ~~through June 30, 2005, sales of certain motor vehicles are not subject to the tax~~
1010 ~~imposed under this Part if they meet all of the following tests:~~
1011
- 1012 1) ~~The motor vehicle is a second division motor vehicle. First division motor~~
1013 ~~vehicles, such as those motor vehicles that are designed for the carrying of~~
1014 ~~not more than 10 persons, do not qualify for the exemption (See 625~~
1015 ~~ILCS 5/1-146.);~~
1016
- 1017 2) ~~The motor vehicle must have a gross vehicle weight rating in excess of~~
1018 ~~8,000 pounds. For purposes of this Section, Gross Vehicle Weight Rating~~
1019 ~~means the value specified by the manufacturer or manufacturers as the~~
1020 ~~maximum loaded weight of a single vehicle (See 625 ILCS 5/1-124.5.);~~
1021
- 1022 3) ~~The motor vehicle is subject to the Commercial Distribution Fee imposed~~
1023 ~~under Section 3-815.1 of the Illinois Vehicle Code. [35 ILCS 110/2] The~~
1024 ~~motor vehicle must be registered and remain registered in such a manner~~
1025 ~~whereby it is subject to payment of the Commercial Distribution Fee~~
1026 ~~imposed under Section 3-815.1 of the Illinois Vehicle Code [625 ILCS~~
1027 ~~5/3-815.1] and such fee is actually paid for any period in which the fee is~~
1028 ~~in effect; and~~
1029

1030 4) ~~The motor vehicle is used primarily for commercial purposes. [35 ILCS~~
1031 ~~110/2] For purposes of this Section, a motor vehicle used for commercial~~
1032 ~~purposes means any motor vehicle used to transport persons or property in~~
1033 ~~the furtherance of any commercial or industrial enterprise, whether for-~~
1034 ~~hire or not for hire.~~

1035
1036 ~~COMMERCIAL PURPOSE EXAMPLE: A motor vehicle that is used for~~
1037 ~~transportation to work, school, or recreational activities would not be used~~
1038 ~~for commercial purposes.~~

1039
1040 e) ~~Documentation of exemption. To properly document the exemption, the seller~~
1041 ~~must obtain a written certificate from the purchaser stating the following:~~

1042
1043 1) ~~the name, address, and telephone number of purchaser;~~

1044
1045 2) ~~the description and Vehicle Identification Number of the motor vehicle or~~
1046 ~~motor vehicles being purchased;~~

1047
1048 3) ~~the name and address of seller;~~

1049
1050 4) ~~the date of purchase;~~

1051
1052 5) ~~a statement that the motor vehicle will be used primarily for commercial~~
1053 ~~purposes and will be registered under Section 3-815(a) or 3-818(a) of the~~
1054 ~~Illinois Vehicle Code or in such other manner whereby the registration of~~
1055 ~~that motor vehicle will require the payment of the Commercial~~
1056 ~~Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle~~
1057 ~~Code and that such vehicle will remain validly registered in such a manner~~
1058 ~~for subsequent registration years;~~

1059
1060 6) ~~the commercial purpose for which the vehicle will be used along with the~~
1061 ~~purchaser's Illinois Business Tax (IBT) number or other business~~
1062 ~~registration number; and~~

1063
1064 7) ~~the signature of purchaser.~~

1065
1066 d) ~~Liability for tax. If a purchaser claims the exemption provided in this Section and~~
1067 ~~the vehicle is not considered subject to the Commercial Distribution Fee as~~
1068 ~~described in subsection (a)(3) or (b)(3) of this Section or otherwise does not~~
1069 ~~qualify for this exemption, the purchaser will be liable for the tax based upon the~~
1070 ~~purchase price of that vehicle and any applicable penalties and interest from the~~
1071 ~~date of purchase.~~

1072

1073 e) ~~Repair and replacement parts. The exemption provided in this Section may not be~~
 1074 ~~claimed for any repair part, replacement part, or other item attached or~~
 1075 ~~incorporated into the motor vehicle after the purchase of the motor vehicle. Such~~
 1076 ~~items may qualify for exemption from sales tax if the motor vehicle or trailer is~~
 1077 ~~used in a manner that qualifies for the rolling stock exemption. See 86 Ill. Adm.~~
 1078 ~~Code 130.340.~~

1079
 1080 f) ~~Trailers. For purposes of this Section, a trailer that is subject to the Commercial~~
 1081 ~~Distribution Fee imposed under Section 3-815.1 of the Illinois Vehicle Code will~~
 1082 ~~qualify as a second division motor vehicle under subsection (a)(1) or (b)(1) of this~~
 1083 ~~Section. The term "trailer" includes a trailer as defined in Section 1-209 of the~~
 1084 ~~Illinois Vehicle Code, a semitrailer as defined in Section 1-187 of the Illinois~~
 1085 ~~Vehicle Code, and a pole trailer as defined in Section 1-161 of the Illinois Vehicle~~
 1086 ~~Code.~~

1087
 1088 (Source: Repealed at 48 Ill. Reg. _____, effective _____)

1089
 1090 **Section 160.115 Collection Of The Service Use Tax By Servicemen**

1091
 1092 a) Servicemen who incur and remit Service Occupation Tax to the Department; or
 1093 servicemen who come within the definition of a "Serviceman maintaining a place
 1094 of business in this State" (as set out in Section 160.105(~~f~~) of this Part and in
 1095 Section 2 of the Service Use Tax Act) and who have a Service Use Tax collection
 1096 obligation; or other servicemen who are authorized to voluntarily collect the
 1097 Service Use Tax, shall collect the tax from users at the time of purchase. The
 1098 Service Use Tax shall be based on the selling price of the tangible personal
 1099 property transferred incident to the sale of service if stated separately on the
 1100 invoice from the serviceman. If not stated separately, then the tax will be imposed
 1101 on 50% of the entire billing from the serviceman. However, the Service Use Tax
 1102 which is collected by a de minimis serviceman who incurs Service Occupation
 1103 Tax on the serviceman'shis cost price of tangible personal property transferred
 1104 incident to service, as provided at 86 Ill. Adm. Code 140.109, shall be based upon
 1105 the serviceman'shis cost price of tangible personal property transferred incident to
 1106 the serviceman'shis sales of service. For purposes of this Part, "cost price" is
 1107 defined as provided in 86 Ill. Adm. Code 140.201. When a serviceman contracts
 1108 to design, develop and produce special order machinery or equipment, the tax
 1109 imposed by the Act shall be based on the serviceman's cost price of the tangible
 1110 personal property transferred incident to the completion of the contract. [35
 1111 ILCS 110/3d]

1112
 1113 b) Although not required unless requested by the service customer, the Service Use
 1114 Tax may be separately stated as a distinct item on the service bill. [35 ILCS
 1115 110/3a](Section 3a of the Act).

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c) If the serviceman collects the Service Use Tax as a separate item, he shall use the tax collection brackets prescribed in the Use Tax rules (86 Ill. Adm. Code 150.Table A) with respect to the 6.25% rate when it is impracticable to collect exactly 6.25% of the selling or cost price.

d) Every serviceman maintaining a place of business in this State and making sales of service involving the incidental transfer of property for use in this State (whether those sales are made within or without this State) shall, when collecting the tax as provided in Section 3-40 of the Act from the purchaser, give to the purchaser (if demanded by the purchaser) a receipt for the tax in the manner and form prescribed by the Department. The receipt shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt may refer. [35 ILCS 110/5]

e) If a serviceman collects Service Use Tax measured by receipts or selling prices that are not subject to Service Use Tax, or if a serviceman, in collecting Service Use Tax measured by receipts or selling prices that are subject to tax under the Act, collects more from the purchaser than the required amount of the Service Use Tax on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the serviceman. If, however, that amount is not refunded to the purchaser for any reason, the serviceman is liable to pay that amount to the Department. [35 ILCS 110/3-40]

f) Any serviceman required to collect the tax imposed by the Act shall be liable to the Department for the tax, whether or not the tax has been collected by the serviceman, except when the serviceman is relieved of the duty of remitting the tax to the Department by virtue of having paid a tax imposed by the Service Occupation Tax Act upon the serviceman's sale of service involving the incidental transfer by the serviceman of the same property. To the extent that a serviceman required to collect the tax imposed by the Act has actually collected that tax, the tax is held in trust for the benefit of the Department. [35 ILCS 110/8]

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

Section 160.116 Persons Who Lease Tangible Personal Property to Exempt Hospitals

a) Effective January 1, 1996, through December 31, 2000, and on and after August 2, 2001, computers and communications equipment utilized for any hospital purpose and equipment used in the diagnosis, analysis, or treatment of hospital patients that are transferred incident to the sale of service to persons who lease those items to exempt hospitals are not subject to Service Use Tax providing:

- 1159 1) the computers and communications equipment described above must be
1160 leased to a tax-exempt~~tax-exempt~~ hospital under a lease that has been
1161 executed or is in effect at the time of purchase;
1162
1163 2) the lease must be for a period of one year or longer; and
1164
1165 3) the lease must be to a hospital that has an active tax exemption
1166 identification number issued by the Department under Section 1g of the
1167 Retailers' Occupation Tax Act (see 86 Ill. Adm. Code 130.2007).
1168

1169 ~~b) Effective January 1, 1996, equipment, other than that specified in subsection (a),
1170 used in the diagnosis, analysis, or treatment of hospital patients that is transferred
1171 incident to the sale of service to persons who lease that equipment to exempt
1172 hospitals is not subject to Service Use Tax providing:~~

- 1173
1174 ~~1) the equipment described above must all be purchased for lease to a tax
1175 exempt hospital under a lease that has been executed or is in effect at the
1176 time of purchase;~~
1177
1178 ~~2) the lease must be for a period of one year or longer; and~~
1179
1180 ~~3) the lease must be to a hospital that has an active tax exemption
1181 identification number issued by the Department under Section 1g of the
1182 Retailers' Occupation Tax Act (see 86 Ill. Adm. Code 130.2007).~~
1183

1184 be) The service customer must provide the ~~certification described below to the~~
1185 serviceman a certification that contains the following information:-

- 1186
1187 ~~1) When this exemption may be properly claimed for computer or other
1188 communications equipment, the service customer must give the
1189 serviceman a certification stating that the computer or other
1190 communications equipment is for lease to a tax exempt hospital under a
1191 lease for a period of one year or longer executed or in effect at the time of
1192 the purchase.~~
1193
1194 ~~2) When this exemption may be properly claimed for equipment used in the
1195 diagnosis, analysis, or treatment of hospital patients, the service customer
1196 must give the serviceman a certification stating that the equipment is for
1197 lease to a tax exempt hospital under a lease for a period of one year or
1198 longer executed or in effect at the time of the purchase, and that the
1199 equipment is for use in the diagnosis, analysis, or treatment of hospital
1200 patients.~~
1201

- 1202 ~~3)~~ ~~The certification described in subsections (e)(1) and (e)(2) of this Section~~
1203 ~~must also contain all of the following:~~
- 1204
- 1205 ~~1A)~~ ~~the~~The serviceman's name and address;
- 1206
- 1207 ~~2B)~~ ~~the~~The service customer's name and address;
- 1208
- 1209 ~~3C)~~ ~~a~~A description of the tangible personal property;
- 1210
- 1211 ~~4D)~~ ~~the~~The service customer's signature and date of signing;
- 1212
- 1213 ~~5E)~~ ~~the~~The name and address of the hospital and its tax exemption
1214 identification number issued by the Department; ~~and~~
- 1215
- 1216 ~~6F)~~ ~~the~~The date the lease was executed and the lease period; ~~and~~;
- 1217
- 1218 ~~7)~~ a statement that the computer or other communications equipment or
1219 equipment used in the diagnosis, analysis, or treatment of hospital patients
1220 is for lease to a tax-exempt hospital under a lease for a period of one year
1221 or longer executed or in effect at the time of the purchase.
- 1222
- 1223 ~~c~~d) For purposes of this Section, "hospital patients" means persons who seek any
1224 form of medical care including, but not limited to, medical treatment, testing,
1225 diagnosis, or therapy at a hospital or at another location under the control and
1226 supervision of a hospital. For example, persons who are sent by doctors for X-
1227 rays or other tests at qualifying hospitals, even though those persons are not
1228 admitted to those hospitals, are considered hospital patients.
- 1229
- 1230 ~~d~~e) If the equipment is leased in a manner that does not qualify for this exemption or
1231 is used in any other nonexempt manner, the lessor shall be liable for the tax
1232 imposed under the Act or the Use Tax Act, as the case may be, based on the fair
1233 market value of the property at the time the nonqualifying use occurs.~~If the~~
1234 ~~computers or other equipment is used in a manner that does not qualify for the~~
1235 ~~exemption or is used in any other non-exempt manner, the lessor is liable for the~~
1236 ~~appropriate tax imposed under the Service Use Tax Act. In that event, the amount~~
1237 ~~of Service Use Tax liability incurred is based on the fair market value of the~~
1238 ~~computers or other equipment at the time the non-qualifying use occurred.~~
- 1239
- 1240 e) No lessor shall collect or attempt to collect an amount (however designated) that
1241 purports to reimburse that lessor for the tax imposed by the Act or the Use Tax
1242 Act, as the case may be, if the tax has not been paid by the lessor. If a lessor
1243 improperly collects any such amount from the lessee, the lessee shall have a legal
1244 right to claim a refund of that amount from the lessor. If, however, that amount is

not refunded to the lessee for any reason, the lessor is liable to pay that amount to the Department. [35 ILCS 110/3-5(15) and 3-5(24)]

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

Section 160.117 Persons Who Lease Tangible Personal Property to Governmental Bodies

- a) Effective January 1, 1996, through December 31, 2000, and on and after August 2, 2001, tangible personal property transferred incident to a sale of service to a lessor who leases that property to a governmental body is not subject to Service Use Tax provided that:
- 1) the property must be leased to a governmental body under a lease that has been executed or is in effect at the time of purchase;
 - 2) the lease must be for a period of one year or longer; and
 - 3) the lease must be to a governmental body that has an active tax exemption identification number issued by the Department under Section 1g of the Retailers' Occupation Tax Act (see 86 Ill. Adm. Code 130.2007).
- b) When this exemption may be properly claimed, the service customer must give the serviceman a certification that contains the following information: ~~stating that the property is for lease to a governmental body, under a lease of one year or longer executed or in effect at the time of the purchase, and containing all of the following:~~
- 1) ~~the~~The serviceman's name and address;
 - 2) ~~the~~The service customer's name and address;
 - 3) ~~a~~A description of the tangible personal property being purchased;
 - 4) ~~the~~The service customer's signature and date of signing;
 - 5) ~~the~~The name of the governmental body and its tax exemption identification number issued by the Department; ~~and~~
 - 6) ~~the~~The date the lease was executed and the lease period; ~~and~~;
 - 7) a statement that the property is for a lease to a governmental body under a lease for a period of one year or longer executed or in effect at the time of the purchase.

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- c) *If the property is leased in a manner that does not qualify for this exemption or is used in any other nonexempt manner, the lessor shall be liable for the tax imposed under the Act or the Use Tax Act, as the case may be, based on the fair market value of the property at the time the nonqualifying use occurs.* ~~*If the property is used in a manner that does not qualify for the exemption or is used in any other non-exempt manner, the lessor is liable for the appropriate tax imposed under the Service Use Tax Act. In that event, the amount of Service Use Tax liability incurred is based on the fair market value of the property at the time the non-qualifying use occurred.*~~

- d) *No lessor shall collect or attempt to collect an amount (however designated) that purports to reimburse that lessor for the tax imposed by the Act or the Use Tax Act, as the case may be, if the tax has not been paid by the lessor. If a lessor improperly collects any such amount from the lessee, the lessee shall have a legal right to claim a refund of that amount from the lessor. If, however, that amount is not refunded to the lessee for any reason, the lessor is liable to pay that amount to the Department. [35 ILCS 110/3-5(16) and 3-5(25)]*

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

Section 160.125 Special Information For Users

- a) Purchasers incurring Service Use Tax liability that is not paid to a serviceman authorized or required to collect the tax (see Section 160.101(g) of this Part) shall pay the Service Use Tax directly to the Department. Such remittance to the Department shall be made by the last day of the month following the month in which the user makes any payment to the serviceman and shall be accompanied by a return which shall be made on a return form that the Department will provide on request. On receipt of the tax, the Department will provide the user with a receipt if demanded by the user, but not otherwise. [35 ILCS 110/10].

- b) In general, the provisions of Subpart D of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140) (including the authorization, under some circumstances, for quarterly tax returns and annual tax returns, but not the requirement of an annual information return) shall apply to returns of registered users under the Service Use Tax Act.

- c) Also, registered users under the Service Use Tax Act are subject to the provisions of Subpart F of the Service Occupation Tax Regulations.

- d) If the user who must remit the Service Use Tax to the Department is registered either under the Retailers' Occupation Tax Act [35 ILCS 120], the Use Tax Act

1331 [35 ILCS 105], the Service Occupation Tax Act [35 ILCS 115], and the Service
1332 Use Tax Act [35 ILCS 110], ~~the user~~he shall report the Service Use Tax
1333 information in the space provided for that purpose on the return which ~~the user~~he
1334 files under any such registration.
1335

- 1336 e) Since transfers of tangible personal property by de minimis servicemen who incur
1337 Use Tax as described in 86 Ill. Adm. Code 140.108 do not constitute sale of
1338 service under Section 2(g) of the Service Occupation Tax Act, customers of such
1339 de minimis servicemen do not incur Service Use Tax liability on such transfers.
1340

1341 (Source: Amended at 48 Ill. Reg. _____, effective _____)
1342

1343 Section 160.130 Registration Of Servicemen

- 1344
1345 a) A serviceman maintaining a place of business in this State, if required to register
1346 under the Retailers' Occupation Tax Act, or under the Use Tax Act, or under the
1347 Service Occupation Tax Act, need not obtain an additional Certificate of
1348 Registration under this Act, but shall be deemed to be sufficiently registered by
1349 virtue of the serviceman being registered under the Retailers' Occupation Tax
1350 Act, or under the Use Tax Act, or under the Service Occupation Tax Act. [35
1351 ILCS 110/6]~~A serviceman who is registered under the Retailers' Occupation Tax~~
1352 ~~Act, Use Tax Act or Service Occupation Tax Act need not obtain a separate~~
1353 ~~Certificate of Registration under the Service Use Tax Act.~~ However, any out-of-
1354 State serviceman maintaining a place of business in this State, if not required to
1355 register ~~registered~~ under the Retailers' Occupation Tax Act, the Use Tax Act or
1356 the Service Occupation Tax Act, must apply to the Department for a Certificate of
1357 Registration on an application form furnished by the Department. ~~Each such~~
1358 ~~serviceman shall list with the Department the names and addresses of all his~~
1359 ~~agents operating in this State and the location of any and all of his distribution or~~
1360 ~~sales houses, offices or other places of business in this State. In general, the~~
1361 ~~provisions of Subpart F of the Service Occupation Tax Regulations (86 Ill. Adm.~~
1362 ~~Code 140) shall apply to such registration under the Service Use Tax Act.~~
1363

1364 1) Each such application shall be signed and verified and shall state:

1365 A) the name and social security number of the applicant;

1366 B) the address of the applicant's principal place of business;

1367 C) the address of the principal place of business from which he
1371 engages in the business of selling tangible personal property at
1372 retail in this State and the addresses of all other places of business,
1373 if any (enumerating such addresses, if any, in a separate list

1374 attached to and made a part of the application), from which he
1375 engages in the business of selling tangible personal property at
1376 retail in this State;

1377
1378 D) the name and address of the person or persons who will be
1379 responsible for filing returns and payment of taxes due under this
1380 Act;

1381
1382 E) in the case of a publicly traded corporation, the name and title of
1383 the Chief Financial Officer, Chief Operating Officer, and any
1384 other officer or employee with responsibility for preparing tax
1385 returns under the Act, and, in the case of all other corporations,
1386 the name, title, and social security number of each corporate
1387 officer;

1388
1389 F) in the case of a limited liability company, the name, social security
1390 number, and FEIN number of each manager and member; and

1391
1392 G) such other information as the Department may reasonably require
1393 on form furnished by the Department.

1394
1395 2) The application shall contain an acceptance of responsibility signed by the
1396 person or persons who will be responsible for filing returns and payment
1397 of the taxes due under the Act. [35 ILCS 120/2a]

1398
1399 3) In general, the provisions of Subpart G of the Retailers' Occupation Tax
1400 Regulations (86 Ill. Adm. Code 130) shall apply to such registration under
1401 the Service Use Tax Act.

1402
1403 b) For a definition of "Serviceman maintaining a place of business in this State", see
1404 Section 160.105 of this Part.

1405
1406 c) Every out-of-State serviceman maintaining a place of business in this State must
1407 register and collect Service Use Tax from service customers, unless such
1408 serviceman is authorized to pay Use Tax as provided in 86 Ill. Adm. Code
1409 140.108.

1410
1411 d) The Department may, in its discretion, upon application, authorize the collection
1412 of the Service Use Tax by any serviceman not maintaining a place of business
1413 within this State within the meaning of the Service Use Tax Act and Section
1414 160.105 of this Part. Such serviceman shall be issued, without charge, a permit to
1415 collect such tax. When so authorized, it shall be the duty of such serviceman to
1416 collect the tax upon all tangible personal property sold, to the serviceman'shis

1417 knowledge, as an incident to a sale of service for use within this State, in the same
 1418 manner and subject to the same requirements, as a serviceman maintaining a place
 1419 of business within this State. [35 ILCS 110/7]

1420
 1421 e) No Certificate of Registration shall be issued to any person who is in default to
 1422 the State of Illinois for moneys due hereunder. [35 ILCS 110/6]

1423
 1424 f) The Department has the power, after notice and an opportunity for a hearing, to
 1425 revoke a certificate of registration issued by the Department if the holder of the
 1426 certificate of registration fails to file a return, or to pay the tax, fee, penalty, or
 1427 interest shown in a filed return, or to pay any final assessment of tax, fee, penalty,
 1428 or interest, as required by the Act or any other tax or fee Act administered by the
 1429 Department.

1430
 1431 g) The Department may refuse to issue, reissue, or renew a certificate of registration
 1432 if a person who is named as the owner, a partner, a corporate officer, or, in the
 1433 case of a limited liability company, a manager or member, of the applicant on the
 1434 application for the certificate of registration is or has been named as the owner, a
 1435 partner, a corporate officer, or in the case of a limited liability company, a
 1436 manager or member, on the application for the certificate of registration of a
 1437 person that is in default for moneys due under the Act or any other tax or fee Act
 1438 administered by the Department. For purposes of this subsection, "person"
 1439 means any natural individual, firm, partnership, association, joint stock company,
 1440 joint adventure, public or private corporation, limited liability company, or a
 1441 receiver, executor, trustee, guardian or other representative appointed by order
 1442 of any court. [20 ILCS 2505/2505/380]

1443
 1444 (Source: Amended at 48 Ill. Reg. _____, effective _____)

1445
 1446 **Section 160.135 Serviceman's Return**

1447
 1448 a) Every serviceman required or authorized to collect the Service Use Tax must file
 1449 a return each month by the twentieth day of the month covering the preceding
 1450 calendar month except when the serviceman is authorized to file tax returns on a
 1451 quarterly or annual basis as hereinafter provided. The Department has combined
 1452 the Service Use Tax return form, the Service Occupation Tax return form and the
 1453 Use Tax return with the Retailers' Occupation Tax return form. On and after
 1454 January 1, 2018, with respect to servicemen whose annual gross receipts average
 1455 \$20,000 or more, all returns required to be filed pursuant to the Act shall be filed
 1456 electronically. Servicemen who demonstrate that they do not have access to the
 1457 Internet or demonstrate hardship in filing electronically may petition the
 1458 Department to waive the electronic filing requirement. Beginning on October 1,
 1459 2002, a taxpayer who has a tax liability in the amount set forth in subsection (b)

of Section 2505-210 of the Department of Revenue Law shall make all payments required by rules of the Department by electronic funds transfer. [35 ILCS 110/9]

- b) Where the sale of service is made under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended beyond the close of the return period for which the return is filed, the serviceman, in collecting the tax, may collect, for each return period, only the tax applicable to that part of the selling price actually received during such return period.
- c) In the serviceman's regular return, each serviceman shall also include the total amount of Service Use Tax due upon the selling price or cost price of tangible personal property transferred by him as an incident to a sale of service. Such serviceman shall remit the amount of such tax to the Department when filing such return.
- d) In general, the provisions of Subpart D of the Service Occupation Tax (86 Ill. Adm. Code 140) (including the provisions pertaining to quarterly and annual tax returns, but not the provisions pertaining to annual information returns) shall apply to returns of servicemen under the Service Use Tax Act.
- e) The serviceman who collects the Service Use Tax from a purchaser and who remits, as Service Use Tax, the amount so collected is allowed to deduct the 1.75% collection allowance or \$5 per calendar year, whichever is greater, in the same manner as ~~the serviceman~~ is allowed ~~to do~~ under 86 Ill. Adm. Code 150.905, Subpart D of the Service Occupation Tax. (86 Ill. Adm. Code 150, Subpart D). The discount under this subsection is not allowed for the 1.25% portion of taxes paid on aviation fuel that is subject to the revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133. The discount allowed under this subsection is allowed only for returns that are filed in the manner required by the Act. [35 ILCS 110/9] Where a purchaser from a serviceman, however, does not pay the Service Use Tax to the serviceman, but pays it to the Department, that purchaser is not allowed to deduct any amount as a collection allowance.

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

Section 160.136 Books and Records

- a) Every serviceman required or authorized to collect taxes under the Act and every user who is subject to the tax imposed by the Act shall keep such records, receipts, invoices and other pertinent books, documents, memoranda and papers

1503 as the Department shall require, in such form as the Department shall require.
 1504 For purposes of this Part, "records" means all data maintained by the taxpayer,
 1505 including data on paper, microfilm, microfiche or any type of machine-sensible
 1506 data compilation. For the purpose of administering and enforcing the provisions
 1507 of the Act, the Department, or any officer or employee of the Department
 1508 designated, in writing, by the Director of the Department, may hold investigations
 1509 and hearings concerning any matters covered by the Act and not otherwise
 1510 delegated to the Illinois Independent Tax Tribunal and may examine any relevant
 1511 books, papers, records, documents or memoranda of any serviceman or any
 1512 taxable purchaser for use hereunder, and may require the attendance of the
 1513 person or any officer or employee of the person, or of any person having
 1514 knowledge of the facts, and may take testimony and require proof for its
 1515 information.

1516
 1517 b) Any person who fails to keep books and records or fails to produce books and
 1518 records for examination, as required by Section 11 of the Act and this subsection,
 1519 is liable to pay to the Department a penalty of \$1,000 for the first failure to keep
 1520 books and records or produce books and records for examination and a penalty
 1521 of \$3,000 for each subsequent failure to keep books and records or produce books
 1522 and records for examination as required by Section 11 of the Act and this
 1523 subsection. The penalties imposed under this Section shall not apply if the
 1524 taxpayer shows that the taxpayer acted with ordinary business care and prudence.
 1525 [35 ILCS 110/11]

1526
 1527 c) The provisions of Subpart G of the rules promulgated under the Retailers'
 1528 Occupation Tax (86 Ill. Adm. Code 130) shall apply to returns of servicemen
 1529 under the Service Use Tax Act.

1530
 1531 (Source: Added at 48 Ill. Reg. _____, effective _____)

1532
 1533 **Section 160.160 Refunds**

1534
 1535 In case the Department determines that the claimant is entitled to a refund, such refund shall be
 1536 made only from the Aviation Fuel Sales Tax Refund Fund or from such appropriation as may be
 1537 available for that purpose, as appropriate. If it appears unlikely that the amount available would
 1538 permit everyone having a claim allowed during the period covered by such appropriation or
 1539 from the Aviation Fuel Sales Tax Refund Fund, as appropriate, to elect to receive a cash refund,
 1540 the Department will make such refunds only in hardship cases (i.e., in cases in which the
 1541 claimant cannot use a credit memorandum). Money from the Aviation Fuel Sales Tax Refund
 1542 Fund may only be used to make cash refunds for claims of overpayment of tax on aviation fuel
 1543 paid into the Aviation Fuel Sales Tax Refund Fund.
 1544 ~~In case the Department determines that the~~
 1545 ~~claimant is entitled to a refund, such refund shall be made only from such appropriation as may~~
~~be available for that purpose. If it appears unlikely that the amount appropriated would permit~~

1546 ~~everyone having a claim allowed during the period covered by such appropriation to elect to~~
 1547 ~~receive a cash refund, the Department will make such refunds only in hardship cases (i.e., in~~
 1548 ~~cases in which the claimant cannot use a credit memorandum).~~ The two most likely situations
 1549 where this would be the case are the situation in which the claimant has discontinued business
 1550 and the situation in which the claimant will have a small volume of liability to the Department in
 1551 the foreseeable future, but receives a large credit memorandum which it therefore might take the
 1552 claimant a long time to liquidate by using it to pay current taxes. In these instances, the claimant
 1553 probably would have to sell the credit memorandum at a loss in order to realize anything from it
 1554 within any reasonable period of time.

1555
 1556 (Source: Amended at 48 Ill. Reg. _____, effective _____)
 1557

1558 **Section 160.165 Interest**

- 1559
- 1560 a) *Interest paid by the Department to taxpayers and interest charged to taxpayers by*
 1561 *the Department shall be at the rate set forth in Section 3-2 of the Uniform Penalty*
 1562 *and Interest Act. [35 ILCS 735/3-2] See 86 Ill. Adm. Code 700, Uniform Penalty*
 1563 *and Interest Act. Any credit or refund that is allowed under the Act shall bear*
 1564 *interest at the rate of 1% per month or fraction thereof from the date when the*
 1565 *erroneous payment for which the credit or refund is being allowed was made to*
 1566 *the Department until the credit memorandum is issued or the refund is paid until*
 1567 *January 1, 1994. Interest shall not be paid on claims filed after the effective date*
 1568 *of the Uniform Penalty and Interest Act and 86 Ill. Adm. Code 700 except such*
 1569 *interest which is paid in accordance with the Act. (Section 3-9 of the Uniform*
 1570 *Penalty and Interest Act) [35 ILCS 735/3-9]*

1571
 1572 ~~EXAMPLE: A taxpayer files a claim for credit with the Department on January~~
 1573 ~~15, 1994 for an overpayment of Service Use Tax. The overpayment occurred in~~
 1574 ~~October 1992 when the taxpayer, an out-of-state registered serviceman, made a~~
 1575 ~~sale of service to an Illinois service customer, collected Service Use Tax on 50%~~
 1576 ~~of the total bill to the service customer and remitted the tax to the Department.~~
 1577 ~~The sale of service involved the repair of a piece of graphic arts machinery and~~
 1578 ~~equipment. The serviceman determined that the repair should have been made~~
 1579 ~~tax-free, refunded the tax to the service customer and filed a claim for credit with~~
 1580 ~~the Department. The credit memorandum is issued on June 15, 1994. Interest~~
 1581 ~~shall be paid at the rate of 1% per month for the period from October 1992~~
 1582 ~~through December 31, 1993; and at the semiannually adjusted interest rate~~
 1583 ~~imposed pursuant to the Uniform Penalty and Interest Act from January 1, 1994~~
 1584 ~~until June 15, 1994, the date on which the credit memorandum was issued by the~~
 1585 ~~Department.~~

- 1586
- 1587 b) No interest will be allowed if the overpayment is found by the Department to have
 1588 been made deliberately for the purpose of drawing interest, or if the overpayment

1589 is ascertained not to have been bona fide for some other reason.

- 1590
- 1591 c) When a claim that is allowed is paid by means of a credit memorandum instead of
- 1592 by means of a cash refund, the claim will be considered to have been paid when
- 1593 the credit memorandum is issued by the Department to the claimant, and no
- 1594 interest will be allowed or paid by the Department for any period subsequent to
- 1595 that, even if the claimant does not use or assign the credit memorandum
- 1596 immediately after it is issued.

1597

1598 (Source: Amended at 48 Ill. Reg. _____, effective _____)

1599

1600 **Section 160.170 Applicability of Regulations By Reference**

1601

1602 To avoid needless repetition, the substance and provisions of 86 Ill. Adm. Code 150.803

1603 (excluding the provisions limiting the applicability of Section 150.803 to the period October 1,

1604 2018, through December 31, 2020) and 150.804 (excluding the provisions limiting the

1605 applicability of Section 150.804 to the period January 1, 2020, through December 31, 2020)

1606 which are not incompatible with the Service Use Tax Act or this Part, shall apply, as far as

1607 practicable, to the subject matter of this Part.

1608

1609 (Source: Added at 48 Ill. Reg. _____, effective _____)

1610

1611 **Section 160.175 Applicability of Retailers' Occupation Tax Act and Uniform Penalty and**

1612 **Interest Act**

1613

1614 All of the provisions of Sections 1d, 1e, 1f, 1i, 1j, 1j.1, 1k, 1m, 1n, 1o, 2-6, 2-12, 2-54, 2a, 2b, 2c,

1615 3 (except as to the disposition by the Department of the money collected under the Act), 4

1616 (except that the time limitation provisions shall run from the date when gross receipts are

1617 received), 5 (except that the time limitation provisions on the issuance of notices of tax liability

1618 shall run from the date when the tax is due rather than from the date when gross receipts are

1619 received and except that in the case of a failure to file a return required by the Act, no notice of

1620 tax liability shall be issued on and after July 1 and January 1 covering tax due with that return

1621 during any month or period more than 6 years before that July 1 or January 1, respectively), 5a,

1622 5b, 5c, 5d, 5e, 5f, 5g, 5j, 5k, 5l, 5n, 6d, 7, 8, 9, 10, 11 and 12 of the Retailers' Occupation Tax Act

1623 which are not inconsistent with the Act, and Section 3-7 of the Uniform Penalty and Interest Act

1624 [35 ILCS 735], shall apply, as far as practicable, to the subject matter of the Act to the same

1625 extent as if such provisions were included in the Act. [35 ILCS 110/12]

1626

1627 (Source: Added at 48 Ill. Reg. _____, effective _____)