**Section 140.126 Taxation** **of Food, Drugs and Medical Appliances**

a) Food for human consumption which is sold or transferred by a serviceman as an incident to a sale of service is generally subject to the high rate of tax (6.25%) if it is prepared for immediate consumption or is sold for consumption on the premises of the sale. However, effective January 1, 1993, except for the period beginning July 1, 2022 and until July 1, 2023 as provided in Section 140.101(b)(1)(D), food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Hospital Licensing Act or the Nursing Home Care Act shall be subject to tax at the rate of 1%. In addition, effective August 13, 1999, except for the period beginning July 1, 2022 and until July 1, 2023 as provided in Section 140.101(b)(1)(D), the 1% rate applies to food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Child Care Act of 1969. Effective July 1, 2010 and through December 31, 2011, the 1% rate shall also apply to food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the MR/DD Community Care Act. Effective January 1, 2012, except for the period beginning July 1, 2022 and until July 1, 2023 as provided in Section 140.101(b)(1)(D), the 1% rate shall also apply to food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the ID/DD Community Care Act. Effective June 28, 2011, except for the period beginning July 1, 2022 and until July 1, 2023 as provided in Section 140.101(b)(1)(D), the 1% rate shall also apply to food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Specialized Mental Health Rehabilitation Act of 2013. Effective July 29, 2015, except for the period beginning July 1, 2022 and until July 1, 2023 as provided in Section 140.101(b)(1)(D), the 1% rate shall also apply to food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the MC/DD Act. Effective June 17, 2021, except for the period beginning July 1, 2022 and until July 1, 2023 as provided in Section 140.101(b)(1)(D), the 1% rate shall also apply to food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Assisted Living and Shared Housing Act or an entity that holds a permit issued pursuant to the Life Care Facilities Act. (See Section 3-10 of the Act)

b) Food for human consumption off the premises where sold, medicines, drugs and medical appliances.

1) *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,* candy, *and food that has been prepared for immediate consumption* *and is not otherwise included in* subsection (a). For purposes of this subsection, the provisions of 86 Ill. Adm. Code 130.310 are effective as if fully set forth in this subsection (b)(1).

2) *The tax shall be imposed at the rate of 1% on* *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.* For purposes of this subsection, the provisions of 86 Ill. Adm. Code 130.311 are effective as if fully set forth in this subsection (b)(2). (Section 3-10 of the Act)*.*

c) If a serviceman purchases tangible personal property at retail from an unregistered out-of-State supplier that the serviceman does not transfer to service customers, but that the serviceman instead uses or consumes, the serviceman must self-assess Use Tax on that tangible personal property and remit Use Tax to the Department. The rate is 6.25% for general merchandise and 1% for food, drugs and medical appliances. (See Part 150, Use Tax.) Similarly, if a de minimis serviceman paying Use Tax (see Section 140.108) makes purchases of tangible personal property that the de minimis serviceman will transfer to service customers from suppliers who do not charge Illinois tax, the de minimis serviceman must register to self-assess and remit Use Tax directly to the Department. This would be the case, for example, when purchases were made from out-of-State suppliers not registered to collect Illinois tax.

1) Example: A doctor purchases tongue depressors from an out-of-State supplier who does not collect Illinois tax. Since tongue depressors are not medical appliances, but rather are supplies used by the doctor, they are subject to Use Tax (6.25% rate), which must be self-assessed and remitted to the Department. The same would be true if the items were purchased from an Illinois retailer who did not charge tax for some reason.

2) Example: A dentist purchases gold for dental fillings. If the dentist is at or above the 35% threshold, the dentist should purchase the gold with a resale certificate and pay Service Occupation Tax on the dentist’s selling price at a 1% rate (Section 140.106). If the dentist is below the 35% threshold, the dentist may, as appropriate, pay either Use Tax or Service Occupation Tax at the 1% rate on the dentist’s cost price as described in Section 140.108 or 140.109. If the dentist is a de minimis serviceman incurring a Use Tax liability on the dentist’s cost price and purchases gold from out-of-State suppliers, the dentist must self-assess and remit the Use Tax to the Department. If the dentist is a de minimis serviceman incurring Service Occupation Tax liability on the dentist’s cost price, the dentist should provide the dentist’s suppliers with Certificates of Resale.

3) Example: An optometrist makes sales of prescription glasses and non-prescription sunglasses. The sales of the non-prescription sunglasses are retail sales of general merchandise subject to Retailers' Occupation Tax at the 6.25% rate on the selling price. The prescription eyeglasses, however, are medical appliances subject to the 1% rate. If the optometrist is at or above the 35% threshold, the optometrist should purchase the eyeglass components with a resale certificate and pay Service Occupation Tax on the optometrist’s selling price at a 1% rate (see Section 140.106). If the optometrist is below the 35% threshold, the optometrist may pay Service Occupation Tax at the 1% rate on either the optometrist’s cost price as described in Section 140.109, or on the optometrist’s selling price as described in Section 140.106. If the optometrist is a de minimis serviceman incurring Service Occupation Tax liability on the optometrist’s cost price, the optometrist should provide the optometrist’s suppliers with Certificates of Resale. If the optometrist purchased the lenses from an optical lab which ground the lenses to the optometrist’s special order prescription, a multi-service situation would exist. See Section 140.145 for further information.

(Source: Amended at 47 Ill. Reg. 5251, effective March 21, 2023)