**Section 160.101 Nature of the Tax**

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

b) *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.* [35 ILCS 110/3] *"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.* [35 ILCS 110/3-27]

c) *Evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State.*  [35 ILCS 110/4]

d) Rate

Unless otherwise provided in this Section 160.101, the rate of tax 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, but, in no event shall the selling price be less than the cost price of the property to the serviceman. See 86 Ill. Adm. Code 160.115 for more information on Service Use Tax computation.

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

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

3) *With respect to majority blended ethanol fuel, as defined in the Use Tax 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 3-42of *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".

e) 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 represents a reasonable allowance for depreciation for the period of such prior out-of-State use. [35 ILCS 110/3-10] A "reasonable allowance for depreciation" is deemed to be the amount of depreciation as provided in 86 Ill. Adm. Code 150.110.

f) The date of the purchase of service is deemed to be the date of the delivery, to the user, of the tangible personal property which the serviceman transfers as an incident to a sale of service.

g) The Service Use Tax Act complements the Service Occupation Tax Act. That is why the Service Use Tax is restricted to cases in which the property is purchased from a serviceman as an incident to a sale of service.

h) If a serviceman incurring Service Occupation Tax Liability is required or authorized to collect the Service Use Tax (see Section 160.115 for further information), the purchaser must pay the tax to the serviceman. The Department will presume that a serviceman is required or authorized to collect the Service Use Tax if the serviceman bills tax to the service customer. Stated conversely, if an invoice from a serviceman does not show the tax, the Department will presume that the serviceman is either registered and has included the Service Use Tax in the selling price of the tangible personal property transferred or is a de minimis serviceman incurring a Use Tax liability, in which case there is no collection obligation on the part of the purchaser. This presumption will be overcome only where the Department has evidence that the serviceman and/or the service customer were both aware that the proper tax due was the Service Use Tax and that no action was taken to remit the Service Use Tax by either party to the Transaction. A serviceman need not remit that part of any Service Use Tax collected by the serviceman to the extent that the serviceman is required to pay and does pay Service Occupation Tax to the Department on the serviceman's sales of service involving the transfer by the serviceman of the same property, provided, however, that the amount paid to the Department is equal to or exceeds the amount collected from the service customer.

(Source: Amended at 48 Ill. Reg. 10710, effective July 2, 2024)