

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Numbers: 130.605 Proposed Action: Amendment
- 4) Statutory Authority: 20 ILCS 2505/2505-25
- 5)
- 6) This rulemaking amends Section 130.605 to clarify the documentation that a retailer is required to keep beginning July 1, 2008, in order to properly claim the drive-away permit exemption provided for sales of motor vehicles to nonresidents and to remove language that limited the exemption to vehicles taken to a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect: No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
130.120	Amendment	32 Ill. Reg. 4155, March 21, 2008
130.330	Amendment	
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers of automobiles and out-of-State residents who purchase automobiles and other vehicles in this State.
 - B) Reporting, bookkeeping or other procedures required for compliance: Minimal record keeping requirements, such as an automobile dealer keeping a copy of an out-of-State purchaser's driver's license.
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was included on the January 2008 Regulatory Agenda.

The full text of the Proposed Amendment(s) begins on the next page:

SUBPART F: INTERSTATE COMMERCE

Section 130.605 Sales of Property Originating in Illinois

- a) Where tangible personal property is located in this State at the time of its sale (or is subsequently produced in Illinois), and then delivered in Illinois to the purchaser, the seller is taxable if the sale is at retail.
 - 1) The sale is not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in this State.

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- 2) This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of interstate commerce.
 - 3) The place at which the contract of sale or contract to sell is negotiated and executed and the place at which title to the property passes to the purchaser are immaterial. The place at which the purchaser resides is also immaterial. It likewise makes no difference that the purchaser is a carrier when that happens to be the case.
- b) There are ~~three~~ ~~two~~ exceptions to the rule that the sale is not deemed to be a sale in interstate commerce if the purchaser or his representative receives physical possession of the property in Illinois.
- 1) ~~Effective July 23, 1971, except~~ Except as otherwise provided in subsection ~~(b)(1)(C) (b)(1)(A)~~, *the tax is not imposed upon the sale of a motor vehicle in this State, even though the motor vehicle is delivered in this State, if all of the following conditions are met: (i) the motor vehicle is sold to a nonresident ~~even though the motor vehicle is delivered to the nonresident in this State,~~ (ii) if the motor vehicle is not to be titled in this State, and (iii) either if a drive-away permit for purposes of transporting the motor vehicle to a destination outside of Illinois ~~the other state~~ is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code [625 ILCS 5/3-603] or ~~if the nonresident purchaser has non-Illinois vehicle registration plates to transfer to the motor vehicle upon transporting the vehicle outside of Illinois returning to his or her home state.~~ The issuance of the drive-away permit or having the out-of-state registration plates to be transferred is shall be prima facie evidence that the motor vehicle will not be titled in this State. [35 ILCS 120/2-5(25)]*
 - A) Documentation of nonresidency. The exemption under subsection (b)(1) is available only to nonresidents. A vehicle purchased by an Illinois resident is not eligible for the exemption (even if the purchaser is only a part-time Illinois resident or has dual residency in both Illinois and another

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state and, in the case of more than one purchaser, even if only one of the purchasers is an Illinois resident). Effective July 1, 2008, if a retailer claims the exemption under subsection (b)(1), the retailer must keep evidence that the purchaser is not a resident of Illinois with the records related to the sale (e.g., in the deal jacket).

- i) When the purchaser is a natural person, the best evidence of nonresidence is a non-Illinois driver's license. Retention of a copy of the purchaser's permanent non-Illinois driver's license in the records related to the sale is prima facie evidence that the purchaser is a nonresident eligible for the exemption under subsection (b)(1). In addition, the retailer must also obtain and keep in the records related to the sale a certification from the purchaser in substantially the following form:

"I, [purchaser], under applicable penalties, including penalties for perjury and fraud, state that I am not an Illinois resident. I understand that if I am a resident of Illinois, I am also liable for tax, penalty, and interest on this purchase."

- ii) When the purchaser is a natural person, failure to keep a copy of the purchaser's non-Illinois driver's license or the presence of a copy of the purchaser's Illinois driver's license in the records related to the sale creates a rebuttable presumption that the purchaser is an Illinois resident ineligible for the exemption under subsection (b)(1). To rebut this presumption, the retailer must keep evidence of the nonresidency of the purchaser in the records related to the sale, such as a voter registration card listing a non-Illinois address, a copy of a purchase contract or lease agreement for a new residence outside of Illinois, a copy of a tax return from another state that declares residency in that other state, a credit report listing the primary address as out-of-state, property

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tax records claiming a homestead exemption for an out-of-state residence, or any other documentation that clearly shows that the purchaser is not an Illinois resident. In addition, the retailer must also obtain and keep in the records related to the sale a certification from the purchaser in substantially the following form:

“I, [purchaser], under applicable penalties, including penalties for perjury and fraud, state that I am not an Illinois resident. I understand that if I am a resident of Illinois or use the motor vehicle in Illinois for 30 or more days in a calendar year as provided in 86 Ill. Adm. Code 150.310(a)(7), I am also liable for tax, penalty, and interest on this purchase.”

- iii) When the purchaser is not a natural person (e.g., corporation, partnership, limited liability company, trust, etc.), then the purchaser shall be deemed a resident of the state or foreign country under whose laws the purchaser was incorporated, created or organized, as well as the state or foreign country of such purchaser’s commercial domicile, if different. When the purchaser is a grantor trust or other entity that claims it has no state or foreign country of incorporation, creation, organization and commercial domicile, then the purchaser’s state or foreign country of residence shall be deemed to be the place of residency of the principal user of the vehicle and a copy of such user’s non-Illinois driver’s license or other evidence of such non-Illinois residency must be kept by the retailer in the records related to the sale. When the purchaser is not a natural person, the retailer must obtain and keep in the records related to the sale a certificate from the purchaser that states substantially the following:

“[purchaser] states, under applicable penalties, including penalties for perjury and fraud, that it is a [corporation, partnership, LLC, trust, etc.],

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incorporated, organized or created under the laws of [state or foreign country] and has its commercial domicile in [state or foreign country], or alternatively that it has no state or foreign country of incorporation, creation, organization and commercial domicile, but the principal user's state or foreign country of residence is [State]. The undersigned has authority to sign this certification on behalf of the purchaser herein, and understands that in doing so, if the purchaser is a resident of Illinois or uses the motor vehicle in Illinois for 30 or more days in a calendar year as provided in 86 Ill. Adm. Code 150.310(a)(7), that it will be liable for tax, penalty and interest on this purchase."

iv) If the retailer meets the requirements of subsections (b)(1)(A)(i), (b)(1)(A)(ii), or (b)(1)(A)(iii) to document the exemption then, absent fraud, the Department shall pursue any claim that the exemption does not apply solely against the vehicle purchaser. If, however, the retailer does not meet the requirements of subsections (b)(1)(A)(i), (b)(1)(A)(ii), or (b)(1)(A)(iii) to document the exemption, then the exemption claimed by the retailer shall be disallowed subject to further review by the Department.

B) When the motor vehicle is purchased for lease and delivery to a lessee, the provisions of subsection (b)(1) shall apply to the lessee as if the lessee is the purchaser of such motor vehicle.

C A) The exemption under subsection (b)(1) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois. The tax collected under the Retailers' Occupation Tax Act on the sale of a motor vehicle in this State to a resident of another state that does not allow a reciprocal exemption shall be imposed at a rate equal to the state's rate of tax on taxable

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property in the state in which the purchaser is a resident, except that the tax shall not exceed the tax that would otherwise be imposed under the Retailers' Occupation Tax Act. [\[35 ILCS 120/2-5\(25-5\)\]](#)

- D B)** For purposes of subsection (b)(1) , the term "motor vehicle" does not include (list not exhaustive):
- i) "watercraft" or "personal watercraft" as defined in the Boat Registration and Safety Act [625 ILCS 45] or any boat equipped with an inboard motor, regardless of whether the watercraft, personal watercraft, or boat is sold individually or included with the sale of a trailer. If the watercraft, personal watercraft, or boat is included with the sale of a trailer, the trailer may be an exempt "motor vehicle" under subsection (b)(1), but the watercraft, personal watercraft, or boat is not an exempt motor vehicle and tax is still owed on it. If the two items are sold together for one non-itemized price, and the trailer is exempt under subsection (b)(1), only the gross receipts representing the selling price of the trailer are exempt. Please note that Section 130.540 requires separate transaction returns to be filed with the Department for each item of property sold by the retailer that is required to be titled or registered with an agency of Illinois government;
 - ii) "all-terrain vehicles" as defined in Section 1-101.8 of the Illinois Vehicle Code;
 - iii) "motorcycles", as defined in Section 1-147 of the Illinois Vehicle Code, that are not eligible for vehicle registration because they are not properly manufactured or equipped for general highway use;
 - iv) "motor driven cycles", as defined in Section 1-145.001 of the Illinois Vehicle Code, that are not eligible for vehicle registration because they are not properly manufactured or equipped for general highway use;

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- v) “off-highway motorcycles” as defined in Section 1-153.1 of the Illinois Vehicle Code; or
 - vi) “snowmobiles” as defined in Section 1-2.15 of the Snowmobile Registration and Safety Act [625 ILCS 40/1-2.15].
- ~~G) For purposes of subsection (b)(1), the term "state" is limited to a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada (see 625 ILCS 5/1-195).~~
- 2) The seller does not incur Retailers' Occupation Tax liability with respect to *the proceeds from the sale of an item of tangible personal property to a common carrier by rail or motor that receives physical possession of property in Illinois and that transports the property, or shares with another common carrier in transporting the property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of the property to a destination outside Illinois, for use outside Illinois.* [35 ILCS 120/2-5(17)]
 - 3) The exception for sales to common carriers by rail or motor, which is described in subsection (b)(2), is also applicable to local occupation taxes administered by the Department.
- c) The tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that the delivery is actually made.
 - d) Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common

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carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply.

- e) The place at which title to the property passes to the purchaser is immaterial. The place at which the contract of sale or contract to sell is negotiated and executed and the place at which the purchaser resides are also immaterial. Sales of the type described in subsections (c) and (d) are deemed to be within the protection of the Commerce Clause of the Constitution of the United States.

- f) To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this State to a point outside this State under the terms of an agreement with the purchaser, the seller will be required to retain in his records, to support deductions taken on his tax returns proof that satisfies the Department that there was an agreement and a bona fide delivery outside this State of the property that is sold. The most acceptable proof of this fact will be:
 - 1) If shipped by common carrier, a waybill or bill of lading requiring delivery outside this State;

 - 2) if sent by mail, an authorized receipt from the United States Post Office Department for articles sent by registered mail, parcel post, ordinary mail or otherwise, showing the name of the addressee, the point outside Illinois to which the property is mailed and the date of the mailing; if the receipt does not comply with these requirements, other supporting evidence will be required;

 - 3) if sent by seller's own transportation equipment, a trip sheet signed by the person making delivery for the seller and showing the name, address and signature of the person to whom the goods were delivered outside this State; or, in lieu thereof, an affidavit signed by the purchaser or his representative, showing the name and address of the seller, the name and address of the purchaser and the time and place of the delivery outside Illinois by the seller; together with

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other supporting data as required by Section 130.810 of this Part and by Section 7 of the Act.

- g) Retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. However, there is no exemption for property delivered in Illinois to foreign vessels. If foreign vessels purchase items of tangible personal property from Illinois retailers and have those items delivered to the vessels in an Illinois port, the sale is made in Illinois, the purchaser takes possession of the items in Illinois, and therefore, the sale is taxable.

(Source: Amended at 32 Ill. Reg. _____, effective _____)