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INTRODUCTION

The *Illinois Register* is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register.

The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings.

The *Illinois Register* is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2019

Issue#	Rules Due Date	Date of Issue
1	December 26, 2018	January 4, 2019
2	December 31, 2018	January 11, 2019
3	January 7, 2019	January 18, 2019
4	January 14, 2019	January 25, 2019
5	January 22, 2019	February 1, 2019
6	January 28, 2019	February 8, 2019
7	February 4, 2019	February 15, 2019
8	February 11, 2019	February 22, 2019
9	February 19, 2019	March 1, 2019
10	February 25, 2019	March 8, 2019
11	March 4, 2019	March 15, 2019
12	March 11, 2019	March 22, 2019
13	March 18, 2019	March 29, 2019
14	March 25, 2019	April 5, 2019
15	April 1, 2019	April 12, 2019
16	April 8, 2019	April 19, 2019
17	April 15, 2019	April 26, 2019
18	April 22, 2019	May 3, 2019
19	April 29, 2019	May 10, 2019
20	May 6, 2019	May 17, 2019
21	May 13, 2019	May 24, 2019
22	May 20, 2019	May 31, 2019

23	May 28, 2019	June 7, 2019
24	June 3, 2019	June 14, 2019
25	June 10, 2019	June 21, 2019
26	June 17, 2019	June 28, 2019
27	June 24, 2019	July 5, 2019
28	July 1, 2019	July 12, 2019
29	July 8, 2019	July 19, 2019
30	July 15, 2019	July 26, 2019
31	July 22, 2019	August 2, 2019
32	July 29, 2019	August 9, 2019
33	August 5, 2019	August 16, 2019
34	August 12, 2019	August 23, 2019
35	August 19, 2019	August 30, 2019
36	August 26, 2019	September 6, 2019
37	September 3, 2019	September 13, 2019
38	September 9, 2019	September 20, 2019
39	September 16, 2019	September 27, 2019
40	September 23, 2019	October 4, 2019
41	September 30, 2019	October 11, 2019
42	October 7, 2019	October 18, 2019
43	October 15, 2019	October 25, 2019
44	October 21, 2019	November 1, 2019
45	October 28, 2019	November 8, 2019
46	November 4, 2019	November 15, 2019
47	November 12, 2019	November 22, 2019
48	November 18, 2019	December 2, 2019
49	November 25, 2019	December 6, 2019
50	December 2, 2019	December 13, 2019
51	December 9, 2019	December 20, 2019
52	December 16, 2019	December 27, 2019

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: General Administrative Provisions
- 2) Code Citation: 89 Ill. Adm. Code 10
- 3) Section Number: 10.280 Proposed Action:
Amendment
- 4) Statutory Authority: Implementing Articles I through IX and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IX and 12-13].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking updates language regarding the right to appeal. It also adds language regarding the ways a client may request a hearing.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this amendment within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield IL 62762

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

217/785-9772

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: This rulemaking will not have an adverse impact on small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized on either of the two most recent regulatory agendas because the need for it was not anticipated.

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER a: GENERAL PROGRAM PROVISIONSPART 10
GENERAL ADMINISTRATIVE PROVISIONS

SUBPART A: APPLICABILITY AND DEFINITIONS

Section	
10.101	Incorporation by Reference
10.110	Applicability
10.120	Definitions
10.130	Assistance Programs
10.140	Assistance Program Restrictions

SUBPART B: RIGHTS AND RESPONSIBILITIES

Section	
10.210	Rights of Clients
10.220	Nondiscrimination
10.225	Grievance Rights of Clients
10.230	Confidentiality of Case Information
10.235	Case Records
10.250	Reporting Change of Circumstances
10.263	Reporting Child Abuse/Neglect
10.268	Reporting Elder Abuse/Neglect
10.270	Notice to Client
10.280	Right to Appeal
10.281	Continuation of Assistance Pending Appeal
10.282	Time Limit for Filing an Appeal
10.283	Examining Department Records
10.284	Child Care
10.290	Voluntary Repayment of Assistance
10.295	Correction of Underpayments
10.300	Recovery of Assistance
10.310	Estate Claims
10.320	Real Property Liens
10.330	Filing and Renewal of Liens

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

- 10.340 Foreclosure of Liens
- 10.350 Release of Liens
- 10.360 Personal Injury Claims
- 10.370 Convictions of Fraud – Eligibility
- 10.380 Single Conviction of Fraud – Administrative Review Board
- 10.390 Request for Case Transfer

SUBPART C: APPLICATION PROCESS

Section

- 10.410 Application for Assistance
- 10.415 Local Office Action on Application for Public Assistance
- 10.420 Time Limitations on the Disposition of an Application
- 10.430 Approval of an Application and Initial Authorization of Financial Assistance
- 10.438 General Assistance Approval Provisions
- 10.440 Denial of an Application

AUTHORITY: Implementing Articles I through IX and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IX and 12-13].

SOURCE: Emergency rules adopted at 21 Ill. Reg. 9515, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 15515, effective November 26, 1997; amended at 22 Ill. Reg. 19816, effective November 1, 1998; amended at 23 Ill. Reg. 6944, effective June 1, 1999; amended at 24 Ill. Reg. 7856, effective May 16, 2000; amended at 24 Ill. Reg. 18153, effective November 30, 2000; amended at 25 Ill. Reg. 7170, effective May 24, 2001; amended at 28 Ill. Reg. 1083, effective December 31, 2003; amended at 28 Ill. Reg. 5650, effective March 22, 2004; amended at 29 Ill. Reg. 8148, effective May 18, 2005; amended at 31 Ill. Reg. 6962, effective April 30, 2007; amended at 31 Ill. Reg. 7638, effective May 15, 2007; amended at 32 Ill. Reg. 4375, effective March 12, 2008; amended at 33 Ill. Reg. 16814, effective November 30, 2009; amended at 33 Ill. Reg. 17345, effective December 14, 2009; amended at 34 Ill. Reg. 10079, effective July 1, 2010; amended at 35 Ill. Reg. 7670, effective April 29, 2011; emergency amendment at 36 Ill. Reg. 10421, effective July 1, 2012, for a maximum of 150 days; emergency amendment at 36 Ill. Reg. 11486, effective July 1, 2012, for a maximum of 150 days; emergency expired November 27, 2012; amended at 37 Ill. Reg. 1865, effective February 4, 2013; amended at 37 Ill. Reg. 3402, effective March 8, 2013; emergency amendment at 37 Ill. Reg. 16838, effective October 1, 2013, for a maximum of 150 days; amended at 38 Ill. Reg. 5375, effective February 7, 2014; amended at 43 Ill. Reg. _____, effective _____.

SUBPART B: RIGHTS AND RESPONSIBILITIES

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENT

Section 10.280 Right to Appeal

- a) Any individual who applies for or receives financial ~~assistance~~, or medical assistance, social services or ~~SNAP food stamp~~ benefits shall have the right to appeal any of the following:
- 1) Refusal to accept an application or reapplication;
 - 2) Failure to act on an application within the mandated time period;
 - 3) A decision to deny an application;
 - 4) A decision to reduce, suspend, terminate or in any way change the amount of assistance/~~SNAP benefits food stamps~~ or manner in which it is provided;
 - 5) Failure to make a decision or take appropriate action on any request that the client makes;
 - 6) A decision affecting the basis of issuance of ~~SNAP benefits food stamps~~ with which the client disagrees; or
 - 7) An issue of Department policy, if the client is aggrieved by its application.
- b) The appeal may be filed by the client or the client's authorized representative. ~~The~~~~For food stamp clients, the~~ request for a hearing ~~shall~~~~may~~ be made ~~orally or~~ in writing, except when seeking review of a decision relating to benefits issued pursuant to the Supplemental Nutrition Assistance Program (SNAP), which may also be requested orally. The appeal may be submitted via the Department's online ABE Appeals Portal, via facsimile transmission (fax), or in person at the Bureau of Hearings or at any Family Community Resource Center. The~~and the~~ appeal process is initiated effective with the date of the request.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Aid to the Aged, Blind or Disabled
- 2) Code Citation: 89 Ill. Adm. Code 113
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
113.253	Amendment
113.260	Amendment
- 4) Statutory Authority: Implementing Article III and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. III and 12-13] and 20 CFR 416.2096.
- 5) A Complete Description of the Subjects and Issues Involved: Federal regulations require the State to pass along an increase in SSI benefits to clients who receive AABD cash (State Supplemental payments). This rulemaking increases the AABD Grant Adjustment Allowance and Sheltered Care/Personal or Nursing Care rates by \$21, the amount of the January 2019 SSI benefit increase.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking? None
- 7) Will this rulemaking replace an emergency rule 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 rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these amendments within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield IL 62762

217/785-9772

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: This rulemaking will not have an adverse impact on small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: January 2019

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 113
AID TO THE AGED, BLIND OR DISABLED

SUBPART A: GENERAL PROVISIONS

Section

- 113.1 Description of the Assistance Program
- 113.5 Incorporation By Reference

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section

- 113.9 Client Cooperation
- 113.10 Citizenship
- 113.20 Residence
- 113.30 Age
- 113.40 Blind
- 113.50 Disabled
- 113.60 Living Arrangement
- 113.70 Institutional Status
- 113.80 Social Security Number

SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section

- 113.100 Unearned Income
- 113.101 Budgeting Unearned Income
- 113.102 Budgeting Unearned Income of Applicants Receiving Income on Date of Application And/Or Date of Decision
- 113.103 Initial Receipt of Unearned Income
- 113.104 Termination of Unearned Income
- 113.105 Unearned Income In-Kind
- 113.106 Earmarked Income
- 113.107 Lump Sum Payments and Income Tax Refunds
- 113.108 Protected Income (Repealed)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

- 113.109 Earned Income (Repealed)
- 113.110 Budgeting Earned Income (Repealed)
- 113.111 Protected Income
- 113.112 Earned Income
- 113.113 Exempt Unearned Income
- 113.114 Budgeting Earned Income of Applicants Receiving Income On Date of Application And/Or Date of Decision
- 113.115 Initial Employment
- 113.116 Budgeting Earned Income For Contractual Employees
- 113.117 Budgeting Earned Income For Non-contractual School Employees
- 113.118 Termination of Employment
- 113.120 Exempt Earned Income
- 113.125 Recognized Employment Expenses
- 113.130 Income From Work/Study/Training Programs
- 113.131 Earned Income From Self-Employment
- 113.132 Earned Income From Roomer and Boarder
- 113.133 Earned Income From Rental Property
- 113.134 Earned Income In-Kind
- 113.139 Payments from the Illinois Department of Children and Family Services
- 113.140 Assets
- 113.141 Exempt Assets
- 113.142 Asset Disregard
- 113.143 Deferral of Consideration of Assets
- 113.154 Property Transfers For Applications Filed Prior To October 1, 1989 (Repealed)
- 113.155 Property Transfers For Applications Filed On Or After October 1, 1989 (Repealed)
- 113.156 Court Ordered Child Support Payments of Parent/Step-Parent
- 113.157 Responsibility of Sponsors of Non-citizens Entering the Country Prior to 8/22/96
- 113.158 Responsibility of Sponsors of Non-citizens Entering the Country On or After 08/22/96
- 113.160 Assignment of Medical Support Rights

SUBPART D: PAYMENT AMOUNTS

- Section
- 113.245 Payment Levels for AABD
- 113.246 Personal Allowance
- 113.247 Personal Allowance Amounts
- 113.248 Shelter

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

113.249	Utilities and Heating Fuel
113.250	Laundry
113.251	Telephone
113.252	Transportation, Lunches, Special Fees
113.253	Allowances for Increase in SSI Benefits
113.254	Nursing Care or Personal Care in Home Not Subject to Licensing
113.255	Sheltered Care/Personal or Nursing Care in a Licensed Group Care Facility
113.256	Shopping Allowance
113.257	Special Allowances for Blind and Partially Sighted (Blind Only)
113.258	Home Delivered Meals
113.259	AABD Fuel and Utility Allowances By Area
113.260	Sheltered Care, Personal Care or Nursing Care Rates
113.261	Cases in Licensed Intermediate Care Facilities, Licensed Skilled Nursing Facilities, DMHDD Facilities and All Other Licensed Medical Facilities
113.262	Meeting the Needs of an Ineligible Dependent with Client's Income
113.263	Service Animals
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113.305	Budgeting Schedule
113.306	Purchase and Repair of Household Furniture (Repealed)
113.307	Property Repairs and Maintenance
113.308	Excess Shelter Allowance
113.309	Limitation on Amount of AABD Assistance to Recipients from Other States (Repealed)
113.320	Redetermination of Eligibility
113.330	Attorney's Fees for VA Appellants (Repealed)

SUBPART F: INTERIM ASSISTANCE

Section	
113.400	Description of the Interim Assistance Program

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

- 113.405 Pending SSI Application (Repealed)
- 113.410 More Likely Than Not Eligible for SSI (Repealed)
- 113.415 Non-Financial Factors of Eligibility (Repealed)
- 113.420 Financial Factors of Eligibility (Repealed)
- 113.425 Payment Levels for Chicago Interim Assistance Cases (Repealed)
- 113.430 Payment Levels for all Interim Assistance Cases Outside Chicago (Repealed)
- 113.435 Medical Eligibility (Repealed)
- 113.440 Attorney's Fees for SSI Applicants (Repealed)
- 113.445 Advocacy Program for Persons Receiving Interim Assistance (Repealed)
- 113.450 Limitation on Amount of Interim Assistance to Recipients from Other States (Repealed)
- 113.500 Attorney's Fees for SSI Appellants (Renumbered)

AUTHORITY: Implementing Article III and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. III and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; emergency expired January 28, 1979; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amendment at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

October 1, 1981; preemptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; preemptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; preemptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; preemptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; preemptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; rules repealed, new rules adopted and codified at 7 Ill. Reg. 907, effective January 10, 1983; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 9367, effective August 1, 1983; amended at 7 Ill. Reg. 17351, effective December 21, 1983; amended at 8 Ill. Reg. 537, effective December 30, 1983; amended at 8 Ill. Reg. 5225, effective April 9, 1984; amended at 8 Ill. Reg. 6746, effective April 27, 1984; amended at 8 Ill. Reg. 11414, effective June 27, 1984; amended at 8 Ill. Reg. 13273, effective July 16, 1984; amended (by Sections being codified with no substantive change) at 8 Ill. Reg. 17895; amended at 8 Ill. Reg. 18896, effective September 26, 1984; amended at 9 Ill. Reg. 5335, effective April 5, 1985; amended at 9 Ill. Reg. 8166, effective May 17, 1985; amended at 9 Ill. Reg. 8657, effective May 25, 1985; amended at 9 Ill. Reg. 11302, effective July 5, 1985; amended at 9 Ill. Reg. 11636, effective July 8, 1985; amended at 9 Ill. Reg. 11991, effective July 12, 1985; amended at 9 Ill. Reg. 12806, effective August 9, 1985; amended at 9 Ill. Reg. 15896, effective October 4, 1985; amended at 9 Ill. Reg. 16291, effective October 10, 1985; emergency amendment at 10 Ill. Reg. 364, effective January 1, 1986; amended at 10 Ill. Reg. 1183, effective January 10, 1986; amended at 10 Ill. Reg. 6956, effective April 16, 1986; amended at 10 Ill. Reg. 8794, effective May 12, 1986; amended at 10 Ill. Reg. 10628, effective June 3, 1986; amended at 10 Ill. Reg. 11920, effective July 3, 1986; amended at 10 Ill. Reg. 15110, effective September 5, 1986; amended at 10 Ill. Reg. 15631, effective September 19, 1986; amended at 11 Ill. Reg. 3150, effective February 6, 1987; amended at 11 Ill. Reg. 8712, effective April 20, 1987; amended at 11 Ill. Reg. 9919, effective May 15, 1987; emergency amendment at 11 Ill. Reg. 12441, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20880, effective December 14, 1987; amended at 12 Ill. Reg. 867,

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

effective January 1, 1988; amended at 12 Ill. Reg. 2137, effective January 11, 1988; amended at 12 Ill. Reg. 3497, effective January 22, 1988; amended at 12 Ill. Reg. 5642, effective March 15, 1988; amended at 12 Ill. Reg. 6151, effective March 22, 1988; amended at 12 Ill. Reg. 7687, effective April 22, 1988; amended at 12 Ill. Reg. 8662, effective May 13, 1988; amended at 12 Ill. Reg. 9023, effective May 20, 1988; amended at 12 Ill. Reg. 9669, effective May 24, 1988; emergency amendment at 12 Ill. Reg. 11828, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 14162, effective August 30, 1988; amended at 12 Ill. Reg. 17849, effective October 25, 1988; amended at 13 Ill. Reg. 63, effective January 1, 1989; emergency amendment at 13 Ill. Reg. 3402, effective March 3, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 6007, effective April 14, 1989; amended at 13 Ill. Reg. 12553, effective July 12, 1989; amended at 13 Ill. Reg. 13609, effective August 11, 1989; emergency amendment at 13 Ill. Reg. 14467, effective September 1, 1989, for a maximum of 150 days; emergency amendment at 13 Ill. Reg. 16154, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 14 Ill. Reg. 720, effective January 1, 1990; amended at 14 Ill. Reg. 6321, effective April 16, 1990; amended at 14 Ill. Reg. 13187, effective August 6, 1990; amended at 14 Ill. Reg. 14806, effective September 3, 1990; amended at 14 Ill. Reg. 16957, effective September 30, 1990; amended at 15 Ill. Reg. 277, effective January 1, 1991; emergency amendment at 15 Ill. Reg. 1111, effective January 10, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5291, effective April 1, 1991; amended at 15 Ill. Reg. 5698, effective April 10, 1991; amended at 15 Ill. Reg. 7104, effective April 30, 1991; amended at 15 Ill. Reg. 11142, effective July 22, 1991; amended at 15 Ill. Reg. 11948, effective August 12, 1991; amended at 15 Ill. Reg. 14073, effective September 11, 1991; emergency amendment at 15 Ill. Reg. 15119, effective October 7, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 16709, effective November 1, 1991; amended at 16 Ill. Reg. 3468, effective February 20, 1992; amended at 16 Ill. Reg. 9986, effective June 15, 1992; amended at 16 Ill. Reg. 11565, effective July 15, 1992; emergency amendment at 16 Ill. Reg. 13641, effective September 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14722, effective September 15, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 17154, effective November 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 17764, effective November 13, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 827, effective January 15, 1993; amended at 17 Ill. Reg. 2263, effective February 15, 1993; amended at 17 Ill. Reg. 3202, effective February 26, 1993; amended at 17 Ill. Reg. 4322, effective March 22, 1993; amended at 17 Ill. Reg. 6804, effective April 21, 1993; amended at 17 Ill. Reg. 14612, effective August 26, 1993; amended at 18 Ill. Reg. 2018, effective January 21, 1994; amended at 18 Ill. Reg. 7759, effective May 5, 1994; amended at 18 Ill. Reg. 12818, effective August 5, 1994; amended at 19 Ill. Reg. 1052, effective January 26, 1995; amended at 19 Ill. Reg. 2875, effective February 24, 1995; amended at 19 Ill. Reg. 6639, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 8409, effective June 9, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15034, effective October 17, 1995; amended at 20 Ill. Reg. 858, effective December 29, 1995;

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emergency amendment at 21 Ill. Reg. 673, effective January 1, 1997, for a maximum of a 150 days; amended at 21 Ill. Reg. 7404, effective May 31, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 22 Ill. Reg. 13642, effective July 15, 1998; emergency amendment at 22 Ill. Reg. 16348, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 18931, effective October 1, 1998; emergency amendment at 22 Ill. Reg. 21750, effective November 24, 1998, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 579, effective January 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 1607, effective January 20, 1999; amended at 23 Ill. Reg. 5548, effective April 23, 1999; amended at 23 Ill. Reg. 6052, effective May 4, 1999; amended at 23 Ill. Reg. 6425, effective May 15, 1999; amended at 23 Ill. Reg. 6935, effective May 30, 1999; amended at 23 Ill. Reg. 7887, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8650, effective July 13, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10161, effective August 3, 1999; amended at 23 Ill. Reg. 13852, effective November 19, 1999; amended at 24 Ill. Reg. 2328, effective February 1, 2000; amended at 24 Ill. Reg. 11622, effective July 18, 2000; amended at 24 Ill. Reg. 13394, effective August 18, 2000; amended at 25 Ill. Reg. 5326, effective March 30, 2001; amended at 26 Ill. Reg. 179, effective January 1, 2002; amended at 26 Ill. Reg. 8532, effective May 31, 2002; amended at 26 Ill. Reg. 13521, effective September 3, 2002; amended at 27 Ill. Reg. 7252, effective April 7, 2003; amended at 28 Ill. Reg. 11139, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 11366, effective July 21, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 12469, effective August 20, 2004, for a maximum of 150 days; emergency expired January 16, 2005; amended at 29 Ill. Reg. 648, effective December 16, 2004; amended at 29 Ill. Reg. 5703, effective April 11, 2005; amended at 29 Ill. Reg. 10176, effective July 5, 2005; amended at 30 Ill. Reg. 16065, effective September 21, 2006; amended at 31 Ill. Reg. 6981, effective April 30, 2007; amended at 31 Ill. Reg. 11306, effective July 19, 2007; amended at 32 Ill. Reg. 17187, effective October 16, 2008; peremptory amendment at 32 Ill. Reg. 18065, effective November 15, 2008; emergency amendment at 33 Ill. Reg. 4993, effective March 19, 2009, for a maximum of 150 days; emergency expired August 15, 2009; emergency amendment at 33 Ill. Reg. 7337, effective May 21, 2009, for a maximum of 150 days; emergency expired October 17, 2009; amended at 33 Ill. Reg. 12775, effective September 8, 2009; emergency amendment at 33 Ill. Reg. 12850, effective September 4, 2009, for a maximum of 150 days; emergency expired January 31, 2010; amended at 33 Ill. Reg. 13846, effective September 17, 2009; amended at 33 Ill. Reg. 15033, effective October 22, 2009; amended at 33 Ill. Reg. 16845, effective November 30, 2009; emergency amendment at 34 Ill. Reg. 6944, effective May 1, 2010, for a maximum of 150 days; emergency expired September 27, 2010; amended at 34 Ill. Reg. 7255, effective May 10, 2010; amended at 35 Ill. Reg. 1012, effective December 28, 2010; emergency amendment at 35 Ill. Reg. 6951, effective April 6, 2011, for a maximum of 150 days; emergency expired September 2, 2011; amended at 35 Ill. Reg. 17096, effective October 5, 2011; amended at 35 Ill. Reg. 18756, effective October 28, 2011; amended at 36 Ill. Reg. 15195, effective October 5, 2012; emergency

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amendment at 36 Ill. Reg. 17567, effective December 1, 2012 through June 30, 2013; amended at 37 Ill. Reg. 8728, effective June 11, 2013; amended at 37 Ill. Reg. 14876, effective August 27, 2013; amended at 38 Ill. Reg. 16229, effective July 18, 2014; emergency amendment at 38 Ill. Reg. 17470, effective July 30, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 22654, effective November 20, 2014; amended at 39 Ill. Reg. 13260, effective September 21, 2015; amended at 41 Ill. Reg. 10331, effective July 21, 2017; amended at 42 Ill. Reg. 16195, effective August 7, 2018; amended at 43 Ill. Reg. 343, effective December 20, 2018; amended at 43 Ill. Reg. _____, effective _____.

SUBPART D: PAYMENT AMOUNTS

Section 113.253 Allowances for Increase in SSI Benefits

- a) An allowance for ~~\$592.90~~~~571.90~~ is authorized for all AABD cases as a "grant adjustment". A grant adjustment is an allowance that ensures that the amount of the SSI increase from July 1977 and later will be available to clients.
- b) EXCEPTIONS: For clients whose assistance payments include an allowance for Sheltered Care or Care Not Subject to Licensing a "grant adjustment" of \$10 is authorized. Individuals residing in long term group care facilities do not receive any "grant adjustment".

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 113.260 Sheltered Care, Personal Care or Nursing Care Rates

Group A Counties	Needs Assessment	Group B Counties
1271 1250	0-7	1286 1265
1277 1256	8	1293 1272
1284 1263	9	1300 1279
1289 1268	10	1308 1287
1296 1275	11	1315 1294

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<u>13014280</u>	12	<u>13224304</u>
<u>13084287</u>	13	<u>13304309</u>
<u>13134292</u>	14	<u>13364315</u>
<u>13204299</u>	15	<u>13444323</u>
<u>13254304</u>	16	<u>13524331</u>
<u>13324311</u>	17	<u>13584337</u>
<u>13374316</u>	18	<u>13664345</u>
<u>13444323</u>	19	<u>13734352</u>
<u>13504329</u>	20	<u>13804359</u>
<u>13564335</u>	21	<u>13884367</u>
<u>13624341</u>	22	<u>13954374</u>
<u>13684347</u>	23	<u>14024381</u>
<u>13744353</u>	24	<u>14094388</u>

- a) Group A Counties are counties other than Cook, DuPage, Kane, Lake and Will.
- b) Group B Counties are Cook, DuPage, Kane, Lake and Will.
- c) Rate includes shelter factor and approved activity and social rehabilitation programs.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Numbers: Proposed Actions:
 130.801 Amendment
 130.901 Amendment
- 4) Statutory Authority: 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: The amendments to Sections 130.801 and 130.901 implement PA 100-940. Pursuant to the public act, any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 7 of the Retailers' Occupation Tax Act, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination. The penalty will not apply if the taxpayer shows that he or she acted with ordinary business care and prudence.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
130.101	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.111	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.310	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.321	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.325	Repealed	42 Ill. Reg. 5172; March 23, 2018
130.331	Repealed	42 Ill. Reg. 5172; March 23, 2018

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130.332	Repealed	42 Ill. Reg. 5172; March 23, 2018
130.335	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.341	Repealed	42 Ill. Reg. 5172; March 23, 2018
130.345	Repealed	42 Ill. Reg. 5172; March 23, 2018
130.415	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.535	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.551	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.552	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.701	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.901	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.905	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.1951	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.1952	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.1954	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.1980	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.1990	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2000	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2005	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2011	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2012	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2020	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2035	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2060	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.2095	Repealed	42 Ill. Reg. 5172; March 23, 2018
130.2135	Amendment	42 Ill. Reg. 5172; March 23, 2018
130. Illustration A	Amendment	42 Ill. Reg. 5172; March 23, 2018
130.320	Amendment	42 Ill. Reg. 8404; May 25, 2018
130.330	Amendment	42 Ill. Reg. 8404; May 25, 2018
130.501	Amendment	42 Ill. Reg. 8404; May 25, 2018
130.701	Amendment	42 Ill. Reg. 8404; May 25, 2018
130.120	Amendment	42 Ill. Reg. 18780; October 19, 2018
130.321	Amendment	42 Ill. Reg. 18780; October 19, 2018
130.350	Amendment	42 Ill. Reg. 18780; October 19, 2018
130.351	Amendment	42 Ill. Reg. 18780; October 19, 2018

- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

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- 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:

Richard S. Wolters
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

217/782-2844

- 13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: All small businesses making retail sales of tangible personal property are affected.
- B) Reporting, bookkeeping or other procedures required for compliance: The amendments do not add any reporting or recordkeeping requirements.
- C) Types of professional skills necessary for compliance: Simple bookkeeping and computer skills

- 14) Small Business Impact Analysis:

Determine whether the rulemaking has an impact on small business (fewer than 50 full-time employees or less than \$4,000,000 in gross annual sales).

- A) Types of businesses subject to the proposed amendments:

44-45 Retail Trade

- B) Categories that the Agency reasonably believes the rulemaking will impact, including:

- ii) regulatory requirements; and
- iii) record keeping

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15) Regulatory Agenda on which this rulemaking was summarized: January 2018

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 130
RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section	
130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles, Aircraft, or Watercraft by Leasing or Rental Business
130.115	Habitual Sales
130.120	Nontaxable Transactions

SUBPART B: SALE AT RETAIL

Section	
130.201	The Test of a Sale at Retail
130.205	Sales for Transfer Incident to Service
130.210	Sales of Tangible Personal Property to Purchasers for Resale
130.215	Further Illustrations of Sales for Use or Consumption Versus Sales for Resale
130.220	Sales to Lessors of Tangible Personal Property
130.225	Drop Shipments

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section	
130.305	Farm Machinery and Equipment
130.310	Food, Soft Drinks and Candy
130.311	Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products
130.315	Fuel Sold for Use in Vessels on Rivers Bordering Illinois
130.320	Gasohol, Majority Blended Ethanol, Biodiesel Blends, and 100% Biodiesel
130.321	Fuel Used by Air Common Carriers in Flights Engaged in Foreign Trade or Engaged in Trade Between the United States and any of its Possessions
130.325	Graphic Arts Machinery and Equipment Exemption
130.330	Manufacturing Machinery and Equipment

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130.331	Manufacturer's Purchase Credit
130.332	Automatic Vending Machines
130.335	Pollution Control Facilities and Low Sulfur Dioxide Emission Coal-Fueled Devices
130.340	Rolling Stock
130.341	Commercial Distribution Fee Sales Tax Exemption
130.345	Oil Field Exploration, Drilling and Production Equipment
130.350	Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
130.351	Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

SUBPART D: GROSS RECEIPTS

Section

130.401	Meaning of Gross Receipts
130.405	How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser
130.410	Cost of Doing Business Not Deductible
130.415	Transportation and Delivery Charges
130.420	Finance or Interest Charges – Penalties – Discounts
130.425	Traded-In Property
130.430	Deposit or Prepayment on Purchase Price
130.435	State and Local Taxes Other Than Retailers' Occupation Tax
130.440	Penalties
130.445	Federal Taxes
130.450	Installation, Alteration and Special Service Charges
130.455	Motor Vehicle Leasing and Trade-In Allowances

SUBPART E: RETURNS

Section

130.501	Monthly Tax Returns – When Due – Contents
130.502	Quarterly Tax Returns
130.505	Returns and How to Prepare
130.510	Annual Tax Returns
130.515	First Return
130.520	Final Returns When Business is Discontinued
130.525	Who May Sign Returns
130.530	Returns Covering More Than One Location Under Same Registration – Separate

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	Returns for Separately Registered Locations
130.535	Payment of the Tax, Including Quarter Monthly Payments in Certain Instances
130.540	Returns on a Transaction by Transaction Basis
130.545	Registrants Must File a Return for Every Return Period
130.550	Filing of Returns for Retailers by Suppliers Under Certain Circumstances
130.551	Prepayment of Retailers' Occupation Tax on Motor Fuel
130.552	Alcoholic Liquor Reporting
130.555	Vending Machine Information Returns
130.560	Verification of Returns

SUBPART F: INTERSTATE COMMERCE

Section	
130.601	Preliminary Comments (Repealed)
130.605	Sales of Property Originating in Illinois; Questions of Interstate Commerce
130.610	Sales of Property Originating in Other States (Repealed)

SUBPART G: CERTIFICATE OF REGISTRATION

Section	
130.701	General Information on Obtaining a Certificate of Registration
130.705	Procedure in Disputed Cases Involving Financial Responsibility Requirements
130.710	Procedure When Security Must be Forfeited
130.715	Sub-Certificates of Registration
130.720	Separate Registrations for Different Places of Business of Same Taxpayer Under Some Circumstances
130.725	Display
130.730	Replacement of Certificate
130.735	Certificate Not Transferable
130.740	Certificate Required For Mobile Vending Units
130.745	Revocation of Certificate

SUBPART H: BOOKS AND RECORDS

Section	
130.801	Books and Records – General Requirements
130.805	What Records Constitute Minimum Requirement
130.810	Records Required to Support Deductions
130.815	Preservation and Retention of Records

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- 130.820 Preservation of Books During Pendency of Assessment Proceedings
130.825 Department Authorization to Destroy Records Sooner Than Would Otherwise be Permissible

SUBPART I: PENALTIES AND INTEREST

- Section
130.901 Civil Penalties
130.905 Interest
130.910 Criminal Penalties

SUBPART J: BINDING OPINIONS

- Section
130.1001 When Opinions from the Department are Binding

SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

- Section
130.1101 Definition of Federal Area
130.1105 When Deliveries on Federal Areas Are Taxable
130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries Outside Federal Areas

SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

- Section
130.1201 General Information
130.1205 Due Date that Falls on Saturday, Sunday or a Holiday

SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

- Section
130.1301 When Lessee of Premises Must File Return for Leased Department
130.1305 When Lessor of Premises Should File Return for Business Operated on Leased Premises
130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART N: SALES FOR RESALE

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Section

- 130.1401 Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale
- 130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale
- 130.1410 Requirements for Certificates of Resale (Repealed)
- 130.1415 Resale Number – When Required and How Obtained
- 130.1420 Blanket Certificate of Resale (Repealed)

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section

- 130.1501 Claims for Credit – Limitations – Procedure
- 130.1505 Disposition of Credit Memoranda by Holders Thereof
- 130.1510 Refunds
- 130.1515 Interest

SUBPART P: PROCEDURE TO BE FOLLOWED UPON
SELLING OUT OR DISCONTINUING BUSINESS

Section

- 130.1601 When Returns are Required After a Business is Discontinued
- 130.1605 When Returns Are Not Required After Discontinuation of a Business
- 130.1610 Cross Reference to Bulk Sales Regulation

SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section

- 130.1701 Bulk Sales: Notices of Sales of Business Assets

SUBPART R: POWER OF ATTORNEY

Section

- 130.1801 When Powers of Attorney May be Given
- 130.1805 Filing of Power of Attorney With Department
- 130.1810 Filing of Papers by Agent Under Power of Attorney

SUBPART S: SPECIFIC APPLICATIONS

DEPARTMENT OF REVENUE

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Section

- 130.1901 Addition Agents to Plating Baths
- 130.1905 Agricultural Producers
- 130.1910 Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles
- 130.1915 Auctioneers and Agents
- 130.1920 Barbers and Beauty Shop Operators
- 130.1925 Blacksmiths
- 130.1930 Chiropodists, Osteopaths and Chiropractors
- 130.1934 Community Water Supply
- 130.1935 Computer Software
- 130.1940 Construction Contractors and Real Estate Developers
- 130.1945 Co-operative Associations
- 130.1946 Tangible Personal Property Used or Consumed in Graphic Arts Production within Enterprise Zones Located in a County of more than 4,000 Persons and less than 45,000 Persons
- 130.1947 Tangible Personal Property Used or Consumed in the Process of Manufacturing and Assembly within Enterprise Zones or by High Impact Businesses
- 130.1948 Tangible Personal Property Used or Consumed in the Operation of Pollution Control Facilities Located within Enterprises Zones
- 130.1949 Sales of Building Materials Incorporated into the South Suburban Airport
- 130.1950 Sales of Building Materials Incorporated into the Illiana Expressway
- 130.1951 Sales of Building Materials Incorporated into Real Estate within Enterprise Zones
- 130.1952 Sales of Building Materials to a High Impact Business
- 130.1953 Sales of Building Materials to be Incorporated into a Redevelopment Project Area within an Intermodal Terminal Facility Area
- 130.1954 Sales of Building Materials Incorporated into Real Estate within River Edge Redevelopment Zones
- 130.1955 Farm Chemicals
- 130.1956 Dentists
- 130.1960 Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts
- 130.1965 Florists and Nurserymen
- 130.1970 Hatcheries
- 130.1971 Sellers of Pets and the Like
- 130.1975 Operators of Games of Chance and Their Suppliers
- 130.1980 Optometrists and Opticians
- 130.1985 Pawnbrokers

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130.1990	Peddlers, Hawkers and Itinerant Vendors
130.1995	Personalizing Tangible Personal Property
130.2000	Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers
130.2004	Sales to Nonprofit Arts or Cultural Organizations
130.2005	Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons
130.2006	Sales by Teacher-Sponsored Student Organizations
130.2007	Exemption Identification Numbers
130.2008	Sales by Nonprofit Service Enterprises
130.2009	Personal Property Purchased Through Certain Fundraising Events for the Benefit of Certain Schools
130.2010	Persons Who Rent or Lease the Use of Tangible Personal Property to Others
130.2011	Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals
130.2012	Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies
130.2013	Persons in the Business of Both Renting and Selling Tangible Personal Property – Tax Liabilities, Credit
130.2015	Persons Who Repair or Otherwise Service Tangible Personal Property
130.2020	Physicians and Surgeons
130.2025	Picture-Framers
130.2030	Public Amusement Places
130.2035	Registered Pharmacists and Druggists
130.2040	Retailers of Clothing
130.2045	Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
130.2050	Sales and Gifts By Employers to Employees
130.2055	Sales by Governmental Bodies
130.2060	Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
130.2065	Sales of Automobiles for Use In Demonstration (Repealed)
130.2070	Sales of Containers, Wrapping and Packing Materials and Related Products
130.2075	Sales To Construction Contractors, Real Estate Developers and Speculative Builders
130.2076	Sales to Purchasers Performing Contracts with Governmental Bodies
130.2080	Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
130.2085	Sales to or by Banks, Savings and Loan Associations and Credit Unions
130.2090	Sales to Railroad Companies
130.2095	Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
130.2100	Sellers of Feeds and Breeding Livestock
130.2101	Sellers of Floor Coverings

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130.2105	Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings, and Their Suppliers; Transfer of Data Downloaded Electronically
130.2110	Sellers of Seeds and Fertilizer
130.2115	Sellers of Machinery, Tools and Special Order Items
130.2120	Suppliers of Persons Engaged in Service Occupations and Professions
130.2125	Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives
130.2130	Undertakers and Funeral Directors
130.2135	Vending Machines
130.2140	Vendors of Curtains, Slip Covers and Other Similar Items Made to Order
130.2145	Vendors of Meals
130.2150	Vendors of Memorial Stones and Monuments
130.2155	Tax Liability of Sign Vendors
130.2156	Vendors of Steam
130.2160	Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
130.2165	Veterinarians
130.2170	Warehousemen

SUBPART T: DIRECT PAYMENT PROGRAM

Section

130.2500	Direct Payment Program
130.2505	Qualifying Transactions, Non-transferability of Permit
130.2510	Permit Holder's Payment of Tax
130.2515	Application for Permit
130.2520	Qualification Process and Requirements
130.2525	Application Review
130.2530	Recordkeeping Requirements
130.2535	Revocation and Withdrawal
130.ILLUSTRATION A	Examples of Tax Exemption Cards
130.ILLUSTRATION B	Example of Notice of Revocation of Certificate of Registration
130.ILLUSTRATION C	Food Flow Chart

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].

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SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874,

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effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; emergency expired December 3, 2003; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; emergency expired April 23, 2004; amended at 28 Ill. Reg. 9121, effective June 18, 2004; amended at 28 Ill. Reg. 11268, effective July 21, 2004; emergency amendment at 28 Ill. Reg. 15193, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 7004, effective April 26, 2005; amended at 31 Ill. Reg. 3574, effective February 16, 2007; amended at 31 Ill. Reg. 5621, effective March 23, 2007; amended at 31 Ill. Reg. 13004, effective August 21, 2007; amended at 31 Ill. Reg. 14091, effective September 21, 2007; amended at 32 Ill. Reg. 4226, effective March 6, 2008; emergency amendment at 32 Ill. Reg. 8785, effective May 29, 2008, for a maximum of 150 days; emergency expired October 25, 2008; amended at 32 Ill. Reg. 10207, effective June 24, 2008; amended at 32 Ill. Reg. 17228, effective October 15, 2008; amended at 32 Ill. Reg. 17519, effective October 24, 2008; amended at 32 Ill. Reg. 19128, effective December 1, 2008; amended at 33 Ill. Reg. 1762, effective January 13, 2009; amended at 33 Ill. Reg. 2345, effective January 23, 2009; amended at 33 Ill. Reg. 3999, effective February 23, 2009; amended at 33 Ill. Reg. 15781, effective October 27, 2009; amended at 33 Ill. Reg. 16711, effective November 20, 2009; amended at 34 Ill. Reg. 9405, effective June 23, 2010; amended at 34 Ill. Reg. 12935, effective August 19, 2010; amended at 35 Ill. Reg. 2169, effective January 24, 2011; amended at 36 Ill. Reg. 6662, effective April 12, 2012; amended at 38 Ill. Reg. 12909, effective June 9, 2014; amended at 38 Ill. Reg. 17060, effective July 25, 2014; amended at 38 Ill. Reg. 17421, effective July 31, 2014; amended at 38 Ill. Reg. 17756, effective August 6, 2014; amended at 38

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Ill. Reg. 19998, effective October 1, 2014; amended at 39 Ill. Reg. 1793, effective January 12, 2015; amended at 39 Ill. Reg. 12597, effective August 26, 2015; amended at 39 Ill. Reg. 14616, effective October 22, 2015; amended at 40 Ill. Reg. 6130, effective April 1, 2016; amended at 40 Ill. Reg. 13448, effective September 9, 2016; amended at 41 Ill. Reg. 10721, effective August 1, 2017; amended at 42 Ill. Reg. 2850, effective January 26, 2018; amended at 43 Ill. Reg. _____, effective _____.

SUBPART H: BOOKS AND RECORDS

Section 130.801 Books and Records – General Requirements

- a) *Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales and purchases of tangible personal property, including all sales and purchase invoices, purchase orders, merchandise records and requisitions, inventory records prepared as of December 31 of each year or otherwise annually, as has been the custom in the specific trade [35 ILCS 120/7], credit memos, debit memos, bills of lading, shipping records, and all other records pertaining to any and all purchases and sales of goods whether or not the retailer believes them to be taxable under the Act; and the retailer shall also keep summaries, recapitulations, totals, journal entries, ledger accounts, accounts receivable records, accounts payable records, statements, tax returns with all schedules or pertinent working papers used in connection with the preparation of such returns, and other documents listing, summarizing or pertaining to such sales, purchases, inventory changes, shipments or other transactions. For a description of what records constitute the minimum required, including the use of machine-sensible records and electronic data interchange, see Section 130.805 of this Part.*
- b) Retailers must maintain complete books and records covering receipts from all sales and distinguishing taxable from nontaxable receipts.
- c) ~~The~~ Such books and records must clearly indicate and explain all the information (deductions as well as gross receipts) required for tax returns ~~and shall, at all times during business hours of the day, be subject to inspection and audit by the Department or its duly authorized agents and employees.~~
- d) If a taxpayer retains records required to be retained under this Section in both machine-sensible and hard-copy formats, the taxpayer shall, upon request, make the records available to the Department in machine-sensible format in accordance

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with Section 130.805(b)(5).

- e) TheSueh books and records must be kept in the English language *and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.* [35 ILCS 120/7]
- f) TheSueh books and records must be kept within Illinois except in instances where a business has several branches, with the head office being located outside Illinois, and where all books and records have been regularly kept outside the State at such head office. Under such circumstances, upon written permission from the Department, books and records may be kept outside Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at some point within Illinois for the purpose of thesueh inspection and audit as the Department may deem necessary.
- g) *It shall be presumed that all sales of tangible personal property are subject to tax under the Act until the contrary is established, and the burden of proving that a transaction is not taxable shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax, the Department is authorized to notify the taxpayer in writing to produce such evidence, and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection and audit, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable.* [35 ILCS 120/7]

EXAMPLE: The auditor requests all the resale certificates and exemption certificates for all tax-exempt sales. The retailer has 60 days to produce the certificates. If the retailer fails to produce the certificates, the retailer is subject to the penalty in subsection (i).

- h) All books and records kept by a medical cannabis dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act pursuant to rules

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adopted by the Illinois Department of Financial and Professional Regulation to implement the Compassionate Use of Medical Cannabis Pilot Program Act shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

- i) Any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 7 of the Act and this Part, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by Section 7 of the Act and this Part. The penalties imposed under Section 7 of the Act and this subsection (i) shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. [35 ILCS 120/7]
- 1) The Act imposes two requirements on retailers: retailers must maintain books and records (see subsection (a)) and they must produce the books and records for inspection and examination by the Department upon request (see subsection (e)). A retailer may be subject to the penalty in this subsection (i) if it maintains books and records but fails or refuses to produce the records upon request of the Department. A retailer also may be subject to the penalty in this subsection (i) if it does not maintain books and records and therefore cannot produce the books and records to the Department upon request. In the latter case, the retailer may be subject to either a penalty for the failure to maintain books and records or the failure to produce books and records; the Department cannot impose two penalties in this case.
- 2) The most common circumstances when the Department will require retailers to produce books and records for inspection are:
- A) during scheduled audits by duly authorized agents and employees of the Department; and
- B) during unscheduled visits by duly authorized agents and employees of the Department at the retailer's place of business during business hours.

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- 3) Retailers must have a person at their place of business at all times during the usual business hours of the day who is authorized to produce books and records for inspection by the Department. If a retail establishment has only one employee working at the time of the request for the books and records who has no ownership interest in the establishment and is not authorized to produce books and records, the Department will not issue a notice of penalty for failure to produce books and records if a person who is authorized to produce the books and records can be contacted and arrives at the place of business within 2 hours and produces the books and records. The Department may extend the period either on written request for good cause shown or on its own motion.

EXAMPLE 1: An authorized agent of the Department attempts to inspect the books and records of a retailer. The person at the store states the records are at the store but refuses to provide access to the books and records because the owner of the store told him not to allow anyone to have access to the records. The person states that the owner is unavailable and cannot be contacted. The Department issues a notice of penalty.

EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a retailer. The person at the store states the records are at the store but refuses to provide access to the books and records because the owner of the store told him not to allow anyone to have access to the records. The person states he can call a person responsible for making the records available to the agent. The employee calls the person, and the person arrives at the store in less than 2 hours and makes the records available to the agent. The Department does not issue a notice of penalty.

- 4) If a person fails to produce books and records for examination or inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (i).

EXAMPLE: An authorized agent of the Department enters a convenience store and requests to see all the invoices for items purchased by the store during the last 60 days and all cash register receipts for sales made during the last 60 days. The person at the store produces the cash register

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receipts but states that they have no invoices for items purchased in the last 60 days. The agent completes a written document request, provides a copy of the document request to the person, and provides the person 20 business days to produce the invoices. The agent returns 20 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department issues a notice of penalty.

5) Except as otherwise provided by subsections (i)(10) and (i)(11)(A), if a request has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing.

A) The written document request must contain:

- i) the name of the person receiving the request;
- ii) the name of the business;
- iii) the date of the request or requests;
- iv) the books and records requested;
- v) the books and records that the person failed to produce;
- vi) the number of days the person has to produce the books and records; and
- vii) the name of the Department agent or employee.

B) The Department agent or employee shall sign and date the form and provide a copy of the form to the person either in person or by mail. Except as otherwise provided in subsection (g), the person shall have no less than 10 business days to produce the books and records the person has failed to produce. The Department may extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department may issue a notice of penalty pursuant to this subsection (i).

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- 6) Any person receiving a notice of penalty may, within 20 days after the date on the notice of penalty, protest and request a hearing in writing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act, and then issue its final administrative decision in the matter to that person. The Department shall postpone the hearing until completion of the inspection or audit. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.
- 7) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: In April, an authorized agent of the Department inspects a retailer and requests all purchase invoices for tangible personal property purchased in March. The purchase invoices are not provided by the retailer and the Department issues a notice of penalty in the amount of \$1,000. The agent returns in May and requests to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the purchase invoices for March.

EXAMPLE 3: An authorized agent of the Department is auditing a telecommunications retailer. The agent is auditing the retailer to determine if the retailer is in compliance with the Act and the Telecommunications Excise Tax Act. The agent has made multiple requests for records during for the month of June. The taxpayer has not supplied all the records requested. Some of the records are necessary to determine compliance with the Act, and some of the records are necessary to determine compliance with the Telecommunications Excise Tax Act. Because the agent is simultaneously auditing the retailer for compliance

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with the Act and the Telecommunications Excise Tax Act, the agent can issue only one notice of penalty for the month of June.

- 8) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period.

EXAMPLE: An auditor requests the books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The auditor fills out a written document request, provides a copy to the person, and provides the person 30 business days for the person to produce the books and records. After the 30-day period expires, the retailer does not produce the books and records. The Department issues a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.

- 9) *The penalties imposed under this subsection (i) shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. [35 ILCS 120/7] When determining whether a taxpayer has acted with ordinary business care and prudence, the Department will consider the size of the business, the amount of gross receipts, the volume of sales, the nature of the business, the type and number of items sold by the business, the types of books and records requested, and whether the books and records constitute the minimum records required by Section 130.805. (In other words, would a taxpayer that exercised ordinary business care and prudence be able to produce the books and records requested by the Department?) "Ordinary care has been defined to be that degree of care which is exercised by ordinarily prudent persons under same or similar circumstances." Swenson v. City of Rockford, 9 Ill.2d 122, 127 (1956).*

- 10) Requests for Books and Records During Unscheduled Visits by Duly Authorized Agents and Employees of the Department
All books and records and other papers and documents required to be kept by the Act shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. (See subsection (e).) A retailer that prohibits a duly authorized agent or employee of the Department from inspecting the retailer's location and the books and records at the location during usual business hours of the day has failed to produce books and records to the

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Department for inspection as required by the Act and this Section. The Department may immediately issue a notice of penalty to the retailer pursuant to this subsection (i). The Department is not required to provide the retailer with a document request or provide additional time for the retailer to allow the inspection of the premises and the books and records at the location.

11) Requests for Books and Records During Scheduled Audits

- A) When the Department determines it will audit a taxpayer's books and records, it shall notify the taxpayer of the audit and schedule a time to commence the audit that is satisfactory to the Department and the taxpayer. In no event can this time be later than 6 months after the date of the notice, unless the Department agrees to extend the 6-month period. If the taxpayer refuses to schedule the commencement of the audit within 6 months after the date of the notice, the taxpayer is subject to a penalty for refusal to produce books and records for every month subject to the audit. After the 6-month period has expired, the Department may issue a notice of penalty to the taxpayer pursuant to this subsection (i). The Department is not required to provide the taxpayer with a document request or allow additional time to schedule an audit of the person's books and records.
- B) During the course of an audit, the auditor may issue multiple requests for specific books and records. Prior to issuing the first notice of penalty during an audit, the auditor shall complete a written document request in accordance with subsection (i)(5)(A) that identifies all books and records that have not been provided pursuant to all earlier requests for the production of documents.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

SUBPART I: PENALTIES AND INTEREST

Section 130.901 Civil Penalties

Beginning January 1, 1994, the Uniform Penalty and Interest Act [35 ILCS 735] applies to civil penalties imposed for violations of the Retailers' Occupation Tax Act or of any regulation of the

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Department issued pursuant to that Act. (See 86 Ill. Adm. Code 700 for explanations and examples of the application of these penalties.) The Retailers' Occupation Tax Act provided the following penalties for violations of the Act or of any Regulation of the Department issued pursuant thereto prior to January 1, 1994:

- a) **Filing an Incorrect Return**
If the tax computed upon the basis of the gross receipts as fixed by the Department is greater than the amount of tax due under the return or returns as filed, the Department shall (or if the tax or any part thereof that is admitted to be due by a return or returns, whether filed on time or not, is not paid, the Department may) issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 10% thereof: Provided, that if the incorrectness of any return or returns as determined by the Department is due to fraud, said penalty shall be 30% of the tax due (Section 4 of the Act). The above-quoted penalties apply on or after January 1, 1988 through December 31, 1993.
- b) **Failure to File Return When Required, but Payment Prior to Notice of Tax Liability**
In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return and pays the tax, he shall also pay a penalty of 10% of the amount of the tax. (Section 5 of the Act)
 - 1) The above-quoted penalty applies January 1, 1988 through December 31, 1993.
 - A) **EXAMPLE:** The taxpayer's return for November 1987, is required to be filed on or before December 31, 1987. The taxpayer files the return on January 10, 1988. Because the return is filed late in January 1988, it is subject to the 10% penalty rate that went into effect January 1, 1988.
 - B) **EXAMPLE:** The taxpayer's return for October 1987, is required to be filed on or before November 30, 1987. The taxpayer files the return on December 12, 1987. Because the return is filed late during December 1987, it is subject to the 7.5% penalty rate that was in effect during December 1987.

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- 2) As to tax liability incurred before November 1, 1987, but on or after December 1, 1984, the penalty in this situation is 7.5%.
- c) **Filing Return at Required Time but Failure to Pay Tax**
In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by the Act but fails to pay the tax, or any part thereof, when due, a penalty of 10% of the amount of the tax unpaid when due shall be added thereto. (Section 5 of the Act)
- 1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.
 - 2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.
- d) **Filing Late Return Without Payment of Entire Tax**
In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return but fails to pay the entire tax, a penalty of 10% of the full amount of tax shown by such return shall be added thereto. (Section 5 of the Act)
- 1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.
 - 2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.
- e) **Failure to File Return When Required, and Failure to Pay Prior to Notice by Department**
In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination.... The Department shall issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 30% thereof. (Section 5 of the Act)

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- 1) The above-quoted penalty applies to tax liability incurred on or after December 1, 1984 through December 31, 1993.
 - 2) As to tax liability incurred before December 1, 1984, but after July 1, 1965, the penalty in this situation is 20%.
- f) **Effect of a Taxpayer's Bankruptcy Filing Upon a Notice of Tax Liability**
Generally, if a protest to a notice of tax liability and a request for hearing is not filed within 60 days after issuance of a Notice of Tax Liability (NTL), such NTL shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment. (See Section 5 of the Act) However, if prior to the issuance of the NTL, a taxpayer has filed a petition in U.S. Bankruptcy Court and the automatic stay is still in effect, or if a taxpayer files such a petition within 60 days after the issuance of an NTL, the automatic stay prevents any pre-petition liability included in the NTL from becoming final even though not protested within 60 days after the issuance of the NTL. If any pre-petition tax included in the NTL is not paid to the Department through the bankruptcy proceeding, adjudicated by the bankruptcy court, or discharged by the bankruptcy court, the taxpayer has 60 days after termination of the automatic stay to protest the pre-petition liability and request an administrative hearing pursuant to 86 Ill. Adm. Code 200.
- g) **Over-Collection of Tax, or Collection of Tax on Nontaxable Receipts**
If a seller collects an amount (however designated) that purports to reimburse the seller for Retailers' Occupation Tax liability measured by receipts that are not subject to retailers' occupation tax, or if a seller, in collecting an amount (however designated) that purports to reimburse the seller for Retailers' Occupation Tax liability measured by receipts that are subject to tax under the Act, collects more from the purchaser than the seller's Retailers' Occupation Tax liability on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department. This subsection (g) does not apply to an amount collected by the seller as reimbursement for the seller's Retailers' Occupation Tax liability on receipts that are subject to tax under the Act as long as such collection is made in compliance with the tax collection brackets prescribed by the Department at 86 Ill. Adm. Code 150.Table A. (Section 2-40 of the Act)

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For example, a lessor of tangible personal property who paid Use Tax up front upon acquisition of the rental property collects an amount described in the rental statements as a "tax" from lessees. Because the lease contract payment amounts do not generate a tax, the amounts collected as a "tax" are a collection of tax on nontaxable receipts and the lessee has a legal right to claim a refund of that amount. If the amount is not refunded, the taxpayer must pay the amount to the Department. (See *John Nottoli, Inc. v. Department of Revenue* (Fourth Dist. 1995, 272 Ill.App.3d 822).)

- h) Filing Late Return Due to "Reasonable Cause"
- 1) The penalties imposed under Sections 3-3, 3-4 and 3-5 of the Uniform Penalty and Interest Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause.
 - 2) The Department will decide whether to abate a penalty by considering the extent to which the taxpayer made a good faith effort to determine his proper tax liability and pay his proper liability in a timely fashion. In making this determination the Department will use the standards set out in the Reasonable Cause Section (86 Ill. Adm. Code 700.400) of the Uniform Penalty and Interest Act regulations.
- i) [Failure to Maintain Books and Records and Failure to Produce Books and Records for Examination](#)
[Section 7 of the Act imposes a penalty of \\$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \\$3,000 for each subsequent failure to keep books and records or produce books and records for examination. \[35 ILCS 120/7\] \(See 35 ILCS 120/7 and Section 130.801\(i\).\)](#)

(Source: Amended at 43 Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Service Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 140
- 3) Section Number: 140.701 Proposed Action: Amendment
- 4) Statutory Authority: 35 ILCS 115/11; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: Section 140.701 is amended in response to PA 100-940. Pursuant to the public act, any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 11 of the Service Occupation Tax Act, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
140.101	Amendment	42 Ill. Reg. 6245; April 6, 2018
140.124	Repealed	42 Ill. Reg. 6245; April 6, 2018
140.125	Amendment	42 Ill. Reg. 6245; April 6, 2018
140.126	Amendment	42 Ill. Reg. 6245; April 6, 2018
140.301	Amendment	42 Ill. Reg. 6245; April 6, 2018
140.701	Amendment	42 Ill. Reg. 6245; April 6, 2018
140.1020	Amendment	42 Ill. Reg. 6245; April 6, 2018
140.1415	Repealed	42 Ill. Reg. 6245; April 6, 2018
140.1601	Amendment	42 Ill. Reg. 6245; April 6, 2018

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- 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:

Richard S. Wolters
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: All businesses making retail sales of tangible personal property are affected.
 - B) Reporting, bookkeeping or other procedures required for compliance: The amendment does not add any reporting or recordkeeping requirements.
 - C) Types of professional skills necessary for compliance: Simple bookkeeping and computer skills
- 14) Small Business Impact Analysis:

Determine whether the rulemaking has an impact on small business (fewer than 50 full-time employees or less than \$4,000,000 in gross annual sales).

 - A) Types of businesses subject to the proposed amendment:

44-45 Retail Trade
 - B) Categories that the Agency reasonably believes the rulemaking will impact, including:

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- ii) regulatory requirements; and
- iii) record keeping

15) Regulatory Agenda on which this rulemaking was summarized: January 2018

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

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NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 140
SERVICE OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section	
140.101	Basis and Rate of the Service Occupation Tax
140.105	Calculation of Tax Incurred by Servicemen – Threshold Determination of Cost Ratio
140.106	When Cost Ratio is 35% or Greater, Service Occupation Tax Liability Is Incurred by Servicemen on Their Selling Price
140.108	"De Minimis" Servicemen Who Incur Use Tax on Their Cost Price
140.109	"De Minimis" Servicemen Who Incur Service Occupation Tax on Their Cost Price
140.110	Example of Methods Used by Servicemen to Determine Liability
140.115	Occasional Sales to Servicemen by Suppliers (Repealed)
140.120	Meaning of Serviceman
140.124	Commercial Distribution Fee Sales Tax Exemption
140.125	Examples of Nontaxability
140.126	Taxation of Food, Drugs and Medical Appliances
140.127	Service Provided to Persons Who Lease Tangible Personal Property to Exempt Hospitals
140.128	Persons Who Lease Tangible Personal Property to Governmental Bodies
140.129	Taxation of Seminar Materials
140.130	Suppliers of Printers (Repealed)
140.135	Sales of Drugs and Related Items, to or by Pharmacists (Repealed)
140.140	Other Examples of Taxable Transactions
140.141	Warranty Repairs
140.145	Multi-Service Situations

SUBPART B: DEFINITIONS

Section	
140.201	General Definitions

SUBPART C: BASE OF THE TAX

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- Section
- 140.301 Cost Price
- 140.305 Refunds by Supplier or Serviceman

SUBPART D: TAX RETURNS

- Section
- 140.401 Monthly Returns When Due – Contents of Returns
- 140.405 Annual Tax Returns
- 140.410 Final Return
- 140.415 Taxpayer's Duty to Obtain Form
- 140.420 Annual Information Returns by Servicemen
- 140.425 Filing of Returns for Serviceman Suppliers by their Suppliers Under Certain Circumstances
- 140.430 Incorporation by Reference

SUBPART E: INTERSTATE COMMERCE

- Section
- 140.501 Sales of Service Involving Property Originating in Illinois
- 140.505 Sales of Service Involving Property Originating Outside of Illinois (Repealed)

SUBPART F: REGISTRATION UNDER THE SERVICE OCCUPATION TAX ACT

- Section
- 140.601 General Information

SUBPART G: BOOKS AND RECORDS

- Section
- 140.701 [Books and Records – Requirements](#)

SUBPART H: PENALTIES, INTEREST AND PROCEDURES

- Section
- 140.801 General Information

SUBPART I: WHEN OPINIONS FROM THE DEPARTMENT ARE BINDING

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Section
140.901 Written Opinions

SUBPART J: COLLECTION OF THE TAX

Section
140.1001 Payment of Tax
140.1005 Receipt to be Obtained for Tax Payments
140.1010 Payment of Tax Directly to the Department (Repealed)
140.1015 Itemization of the Tax by Suppliers (Repealed)
140.1020 Use of Bracket Chart
140.1025 Advertising in Regard to the Tax

SUBPART K: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING –
MEANING OF DUE DATE WHICH FALLS ON
SATURDAY, SUNDAY OR A HOLIDAY

Section
140.1101 Filing of Documents with the Department

SUBPART L: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

Section
140.1201 When Lessee of Premises May File Return for Leased Department
140.1205 When Lessor of Premises Should File Return for Leased Department
140.1210 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART M: USE OF EXEMPTION CERTIFICATES

Section
140.1301 When Purpose of Serviceman's Purchase is Known (Repealed)
140.1305 When Purpose of Serviceman's Purchase is Unknown
140.1310 Blanket Percentage Exemption Certificates (Repealed)

SUBPART N: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section
140.1401 Claims for Credit – Limitations – Procedure
140.1405 Disposition of Credit Memoranda by Holders Thereof

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140.1410 Refunds
140.1415 Interest

SUBPART O: DISCONTINUATION OF A BUSINESS

Section
140.1501 Procedures

SUBPART P: NOTICE OF SALES OF GOODS IN BULK

Section
140.1601 Requirements and Procedures

SUBPART Q: POWER OF ATTORNEY

Section
140.1701 General Information

AUTHORITY: Implementing the Service Occupation Tax Act [35 ILCS 115] and authorized by Section 2505-100 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-100].

SOURCE: Adopted May 21, 1962; amended at 3 Ill. Reg. 23, p. 161, effective June 3, 1979; amended at 3 Ill. Reg. 44, p. 198, effective October 19, 1979; amended at 4 Ill. Reg. 24, pp. 526, 536 and 550, effective June 1, 1980; amended at 5 Ill. Reg. 822, effective January 2, 1981; amended at 6 Ill. Reg. 2879, 2883, 2886, 2892, 2895 and 2897, effective March 3, 1982; codified at 6 Ill. Reg. 9326; amended at 9 Ill. Reg. 7941, effective May 14, 1985; amended at 11 Ill. Reg. 14090, effective August 11, 1987; emergency amendment at 12 Ill. Reg. 14419, effective September 1, 1988, for a maximum of 150 days; emergency expired January 29, 1989; amended at 13 Ill. Reg. 9388, effective June 6, 1989; amended at 14 Ill. Reg. 262, effective January 1, 1990; amended at 14 Ill. Reg. 15480, effective September 10, 1990; amended at 15 Ill. Reg. 5834, effective April 5, 1991; amended at 18 Ill. Reg. 1550, effective January 13, 1994; amended at 20 Ill. Reg. 5379, effective March 26, 1996; amended at 20 Ill. Reg. 7008, effective May 7, 1996; amended at 20 Ill. Reg. 16211, effective December 16, 1996; amended at 24 Ill. Reg. 8125, effective May 26, 2000; emergency amendment at 25 Ill. Reg. 1811, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4971, effective March 23, 2001; amended at 25 Ill. Reg. 6531, effective May 3, 2001; amended at 26 Ill. Reg. 4905, effective March 15, 2002; amended at 27 Ill. Reg. 812, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11187, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; emergency amendment at 28 Ill. Reg. 15257, effective November 3, 2004,

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for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 1940, effective January 24, 2005; amended at 29 Ill. Reg. 7070, effective April 26, 2005; amended at 32 Ill. Reg. 13845, effective August 11, 2008; amended at 42 Ill. Reg. 19034, effective October 4, 2018; amended at 43 Ill. Reg. _____, effective _____.

SUBPART G: BOOKS AND RECORDS

Section 140.701 Books and Records – Requirements

- a) Every supplier required or authorized to collect the tax imposed under the Act, and every serviceman making sales or transactions ~~that~~which are subject to the Act, shall keep all sales invoices, purchase orders, merchandise records and requisitions, inventory records, credit memos, debit memos, bills of lading, shipping records, and all other records pertaining to any and all purchases and sales of goods whether or not the supplier or serviceman believes them to be taxable under the Act; and the supplier or serviceman shall also keep summaries, recapitulations, totals, journal entries, ledger accounts, accounts receivable records, accounts payable records, statements, tax returns, and other documents listing, summarizing or pertaining to ~~thosesueh~~ sales, purchases, inventory changes, shipments or other transactions.
- 1) ~~When the~~Where ~~sueh~~ records are voluminous, ~~thesueh~~ records must be kept in chronological order, or in some systematic order ~~that~~which is in accordance with the taxpayer's regular bookkeeping system.
 - 2) Records kept on punched cards, magnetic tape, and other mechanical or electronic record keeping methods ~~are permitted, will be considered permissible;~~ provided that the taxpayer makes available all necessary codes and equipment to enable the Department to audit ~~thosesueh~~ records, or provides a written transcript of those parts of ~~thesueh~~ records ~~that~~which the Department wishes to examine.
- b) ~~The~~Sueh books and records must clearly indicate and explain the complete information (deductions as well as cost price) ~~that~~which provide the basis for the information required for tax returns and shall, at all times during business hours of the day, be subject to inspection and audit by the Department or its duly authorized agents and employees. ~~The~~Sueh books and records must be kept in the American language. ~~The~~Sueh books and records must be kept in Illinois except in instances where a business has several branches, with the head office being

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located outside Illinois, and where all books and records have been regularly kept outside the State at ~~the~~~~such~~ head office. The taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at some point within Illinois for the purpose of ~~such~~ inspection and audit as the Department may deem necessary.

- c) ~~When~~~~Where~~ the nature of a business is such that a portion of sales are nontaxable for any reason, ~~the~~~~then~~~~such~~ records as will clearly indicate the information required in filing tax returns must be kept. Entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the name and address of each purchaser to whom a sale is made, the character of every such transaction (i.e., whether it is a sale for resale other than as an incident to a sale of service, a sale made within the protection of the Commerce Clause of the Constitution of the United States, etc.), the date of every such transaction and the amount of cost price involved in every such transaction.
- d) Books and records and other papers reflecting transactions during any period with respect to which the Department is authorized to issue Notices of Tax Liability as provided by Section 12 of the Act shall be preserved until the expiration of ~~that~~~~such~~ period unless the Department, in writing, should authorize their destruction or disposal prior to ~~such~~ expiration. This means that, in the absence of fraudulent returns or the willful refusal to file returns as to which there is no limitation, books for a given 6-month period from January through June, or from July through December, as the case may be, must be preserved for 3 years after the end of ~~the~~~~such~~ 6-month period (e.g., books for January through June, 1962, must be preserved through June 30, 1965, etc.). However, if a Notice of Tax Liability has been issued, and if the questions raised thereby have not been completely disposed of, books and records reflecting information relevant to transactions ~~that~~~~which~~ took place during the period covered by ~~the~~~~such~~ Notice of Tax Liability must be preserved until the termination of all proceedings before the Department and before any court upon review.
- e) In all cases the Department may, in writing, authorize the destruction of books and records and other papers prior to the expiration of the periods of time during which the taxpayer, except for ~~such~~ written authorization from the Department, is required to keep his ~~or~~ ~~her~~ books and records. (See 86 Ill. Adm. Code 130.825 (Retailers' Occupation Tax Regulations), ~~Section 130.825~~.)

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- f) Any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 11 of the Act and this Part, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination, as required by Section 11 of the Act and this Part. The penalties imposed under Section 11 of the Act shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. [35 ILCS 115/11] The provisions of 86 Ill. Adm. Code 130.801(i) that are not inconsistent with the Service Occupation Tax Act shall apply, as far as practicable, to the subject matter of this Part to the same extent as if those provisions were included in this Part.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Cigarette Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 440
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
440.75	New Section
440.110	Amendment
- 4) Statutory Authority: 35 ILCS 130/11, 11a, 11b, and 11c; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: Section 440.110 is amended to implement PA 100-940. Pursuant to the public act, any person who fails to keep books and records or fails to produce books and records for examination, as required by Sections 11, 11a, 11b and 11c of the Cigarette Tax Act, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination. In response to PA 100-940, a new Section 440.75 is added. The public act requires that cigarettes only be sold in packages of 20 or 25 cigarettes; the sale of individual or loose cigarettes is prohibited. Any person who violates this prohibition is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. In addition, Section 440.110 is updated by adding the recordkeeping requirements for secondary distributors, manufacturer representatives, and retailers enacted by PA 98-1055 and PA 99-152; by adding statutory requirements imposed on distributors relating to the issuance of invoices; and by adding the existing statutory penalties for failure to maintain books and records.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 rulemakings pending on this Part? No

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- 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:
- Richard S. Wolters
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794
- 217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: All small businesses that sell cigarettes at retail are required to maintain books and records and are affected by the penalties imposed by PA 100-940 for selling loose cigarettes or failing to maintain books and records.
- B) Reporting, bookkeeping or other procedures required for compliance: Simple bookkeeping and accounting procedures
- C) Types of professional skills necessary for compliance: Simple bookkeeping and computer skills
- 14) Small Business Impact Analysis:
- Determine whether the rulemaking has an impact on small business (fewer than 50 full-time employees or less than \$4,000,000 in gross annual sales).
- A) Types of businesses subject to the proposed amendments:
- 44-45 Retail Trade
- B) Categories that the Agency reasonably believes the rulemaking will impact, including:

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- ii) regulatory requirements; and
- iii) record keeping

15) Regulatory Agenda on which this rulemaking was summarized: January 2018

The full text of the Proposed Amendments begins on the next page:

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 440
CIGARETTE TAX ACT

Section	
440.10	Nature and Rate of Tax
440.20	Tax – How Paid
440.30	Tax – Who Liable For
440.40	Design
440.50	Tax Stamps – When and By Whom Affixed: License or Permit Required
440.60	Tax Stamps – How Affixed
440.70	Tax Stamps – Affixed Out of State
<u>440.75</u>	<u>Cigarette Package Sizes; Sale of Individual or Loose Cigarettes Prohibited; Penalties</u>
440.80	Transporter Permits
440.90	Tax Stamps – Purchase of: Cost: Discount
440.100	Returns Required: When Filed
440.110	Books and Records; Invoices; Penalties <u>Examination: Preservation</u>
440.120	Unused Stamps: Sale of: Notice to Department
440.130	Mutilated Stamps
440.140	Tax Meters (Repealed)
440.150	Tax Meter Machine Settings (Repealed)
440.160	Vending Machines
440.170	Sales Out of Illinois
440.180	Sales to Governmental Bodies
440.190	Sample Packages of Cigarettes: Stamps or Other Evidence of Tax Payment Affixed
440.200	Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
440.210	Sale of Forfeited Cigarettes and Vending Machines
440.220	Tax-Free Sales of Cigarettes for Use Aboard Ships Operating in Foreign Commerce Outside The Continental Limits of the United States
440.230	Claims for Credit or Refund
440.240	Protest Procedures

AUTHORITY: Implementing and authorized by the Cigarette Tax Act [35 ILCS 130].

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SOURCE: Filed and effective June 17, 1958; amended at 6 Ill. Reg. 2831 and 2834, effective March 3, 1982; codified at 8 Ill. Reg. 17912; amended at 13 Ill. Reg. 10678, effective June 16, 1989; amended at 14 Ill. Reg. 6794, effective April 19, 1990; amended at 15 Ill. Reg. 117, effective December 24, 1990; emergency amendment at 23 Ill. Reg. 9541, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14748, effective December 8, 1999; amended at 24 Ill. Reg. 9903, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10752, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17793, effective November 28, 2000; amended at 25 Ill. Reg. 933, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9021, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1618, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10524, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3906, effective February 13, 2004; amended at 32 Ill. Reg. 17575, effective October 27, 2008; amended at 39 Ill. Reg. 14719, effective October 22, 2015; amended at 42 Ill. Reg. 23174, effective November 29, 2018; amended at 43 Ill. Reg. _____, effective _____.

Section 440.75 Cigarette Package Sizes; Sale of Individual or Loose Cigarettes Prohibited; Penalties

- a) *Cigarettes may only be sold in packages of 20 or 25 cigarettes. The sale of individual or loose cigarettes is prohibited. If an authorized agent of the Department finds open packages of cigarettes and empty packages of cigarettes at or behind the sales counter, a prima facie presumption shall arise that the person is selling individual or loose cigarettes in violation of the Act. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this Section.*
- b) *Any person who violates subsection (a) is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. The Department cannot assess more than one penalty under this Section on a person in a 24-hour period.*
- c) *Any person who violates subsection (a) shall be guilty of a Class 4 felony. [35 ILCS 130/18d]*

(Source: Added at 43 Ill. Reg. _____, effective _____)

Section 440.110 Books and Records; ~~Invoices; Penalties~~ Examination; Preservation

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a) Books and Records

- 1) Distributors. Every distributor of cigarettes, who is required to procure a license under the Act, shall keep within Illinois, at his or her licensed address, complete and accurate records of cigarettes held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold or otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a return is required of all cigarettes on hand and of all cigarette revenue stamps, both affixed and unaffixed, and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes. A distributor's records of a particular purchase from a manufacturer or distributor shall include:
 - A) A copy of the distributor's purchase order (if any) to the manufacturer or distributor;
 - B) the manufacturer's or distributor's invoice to the distributor in duplicate (see subsection (b)(1));
 - C) a bill of lading or waybill pertaining to the shipment covered by the invoice;
 - D) the receiving record showing the date when the cigarettes were received by the distributor; and
 - E) evidence of payment by the distributor to the manufacturer or distributor.
- 2) Secondary Distributors. *Every secondary distributor of cigarettes who is required to procure a license under the Act shall keep within Illinois, at his or her licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at his or her licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents*

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relating to the purchase, sale, or disposition of cigarettes. [35 ILCS 130/11a]

- 3) Manufacturers with Manufacturer Representatives. Every manufacturer with authority to maintain manufacturer representatives under Section 4f of the Act shall keep within Illinois, at his or her business address identified under Section 4f of the Act, complete and accurate records of cigarettes purchased, sold, or otherwise disposed of, and shall preserve and keep within Illinois at his or her business address all invoices, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the manufacturers with authority to maintain manufacturer representatives under Section 4f of the Act and their manufacturer representatives, or inspect any motor vehicle used by a manufacturer representative in the course of business, without a search warrant and may inspect the premises, motor vehicle, and any packages of cigarettes therein contained to determine whether any of the provisions of the Act are being violated. [35 ILCS 130/11b]

- 4) Retailers. Every retailer who is required to procure a license under the Act shall keep within Illinois complete and accurate records of cigarettes purchased, sold, or otherwise disposed of. It shall be the duty of every retail licensee to make sales records, copies of bills of sale, and inventory at the close of each period for which a report is required of all cigarettes on hand available upon reasonable notice for the purpose of investigation and control by the Department. These records need not be maintained on the licensed premises but must be maintained in the State of Illinois; however, if access is available electronically, the records may be maintained out of state. However, all original invoices or copies of invoices covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after the purchase, unless the Department has granted a waiver in response to a written request in cases in which records are kept at a central business location within the State of Illinois or in cases in which records that are available electronically are maintained out of state. [35 ILCS 130/11c] The Department will grant a

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written waiver when the retailer submits a letter to the Department containing:

- A) the retailer's license number and FEIN;
- B) the address or addresses of the licensed premises where records are currently maintained;
- C) the address of the out-of-state location where the retailer intends to maintain the records;
- D) an explanation of the process and system that will enable the Department or its duly authorized agents or employees to electronically access the records from the licensed premises on demand; and
- E) an acknowledgement by the retailer that the Department, upon 30 days written notice, may revoke the waiver of the retailer for one or more licensed premises if the retailer fails to provide electronic access in accordance with the requirements of the written waiver, transfers or sells the licensed premises to another person, or changes the process or system for providing access to the records electronically.

5b) *For purposes of this Section, "records" means all data maintained by distributors, secondary distributors, manufacturers with manufacturer representatives, and retailers, including data on paper, microfilm, microfiche or any type of machine sensible data compilation. [35 ILCS 130/11, 11a, 11b and 11c] Among other things, a distributor's records of a particular purchase from a manufacturer shall include:*

- 1) A copy of the distributor's purchase order (if any) to the manufacturer;
- 2) the manufacturer's invoice to the distributor in duplicate (see subsection (e));
- 3) bill of lading or waybill pertaining to the shipment covered by such invoice;

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- 4) ~~receiving record (the receiving record should show the date when the cigarettes were received by the distributor); and~~
- 5) ~~other records as the Department may reasonably require.~~
- 6e) All books and records and other papers and documents which are required by the Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the distributor, secondary distributor, manufacturer with authority to maintain a manufacturer representative, manufacturer representative's vehicle, or retailer without a search warrant and inspect the premises and the stock or packages of cigarettes and any vending devices in the premises to determine whether any of the provisions of the Act are being violated. If the agent or employee is denied free access or is hindered or interfered with in making the examination, the license of the distributor, secondary distributor, manufacturer representative or retailer shall be subject to revocation by the Department. [35 ILCS 130/11, 11a, 11b and 11c]
- 7d) *The books, records, papers and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, whichever is later, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. [35 ILCS 130/11, 11a, 11b and 11c]*
- be) Invoices:
- 1) Every distributor who is required to procure a license under the Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each shipment, shall make the invoices available for inspection upon demand by a duly authorized agent or employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department upon request.

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- 2) Every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's cigarette distributor license number unless the distributor has been granted a waiver by the Department in response to a written request when:
- A) the distributor sells cigarettes only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor;
- B) the licensed retailer obtains cigarettes only from the distributor requesting the waiver; and
- C) the distributor affixes the tax stamps to the original packages of cigarettes sold to the licensed retailer. The distributor shall file a written request with the Department, and, if the Department determines that the distributor meets the conditions for a waiver, the Department shall grant the waiver. [35 ILCS 130/11]
- 3) Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this subsection (b)(3) shall not be construed as to impose any requirement or liability upon any common or contract carrier. [35 ILCS 130/3]
- 4~~f~~) Each Illinois manufacturer of cigarettes in original packages that are contained inside a sealed transparent wrapper shall keep a copy of each invoice rendered by the manufacturer to any purchaser to whom the manufacturer delivered cigarettes (or caused cigarettes to be delivered) during the period covered by the manufacturer's return. Copies of invoices must be furnished to the Department upon request.
- 5~~g~~) Each manufacturer who holds a permit under Section 4b of the Act shall keep a copy of each invoice rendered by the permittee to any purchaser to whom the permittee delivered cigarettes of the type covered by the permit (or caused cigarettes of the type covered by the permit to be delivered) in

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Illinois during the period covered by the return. Copies of invoices must be furnished to the Department upon request.

- 6h) When a distributor who is licensed or has a permit under the Cigarette Tax Act sells cigarettes to a ~~federal~~Federal or foreign government agency or instrumentality under circumstances causing Illinois cigarette tax liability to be incurred (see Section 440.180 ~~of this Part~~), the distributor shall print, stamp or otherwise write substantially the following legend on the original and all copies of the invoice covering the cigarettes: "Illinois cigarette tax paid".
- 7i) When a distributor who is licensed or has a permit under the Cigarette Tax Act sells Illinois tax-stamped or tax-imprinted original packages of cigarettes to any purchaser other than a ~~federal~~Federal or foreign government agency or instrumentality, the distributor's invoice not only shall state that the cigarette tax has been paid by the distributor, but also shall state the amount of the tax to the purchaser as a separate item from the selling price of the cigarettes.
- 8j) When a permit holder or licensee under the Cigarette Use Tax Act (as distinguished from a licensee or permit holder under the Cigarette Tax Act) sells Illinois tax-stamped or tax-imprinted cigarettes to anyone other than a ~~federal~~Federal or foreign government agency or instrumentality, the distributor's invoice shall state the amount of the cigarette use tax to the purchaser as a separate item from the selling price of the cigarettes. (See Section 440.50 ~~of this Part~~.) However, when a person sells cigarettes to a ~~federal~~Federal or foreign government agency or instrumentality, ~~the~~his invoice should omit any reference to the cigarette use tax.

c) Penalties

- 1) *Any person required by the Act to keep records of any kind whatsoever, who shall fail to keep the records so required or who shall falsify those records, shall be guilty of a Class 4 felony. If a person fails to produce the records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this subsection (c).* [35 ILCS 130/14].

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- 2) Any person who shall fail to safely maintain and preserve the records required by Sections 11, 11a, 11b, and 11c of the Act for a period of 3 years, as required in the Act, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to \$5,000. [35 ILCS 130/15] (See subsection (a) for the requirements to maintain books and records.)
- 3) The Department may, after notice and hearing as provided for by the Act, revoke, cancel or suspend the license of any distributor, secondary distributor, or retailer for any noncompliance with this subsection (c). No license so revoked, as aforesaid, shall be reissued to any such distributor, secondary distributor, or retailer within a period of 6 months after the date of the final determination of the revocation. Any distributor, secondary distributor, or retailer aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the distributor, secondary distributor, or retailer requesting the hearing of the time and place fixed for the hearing. If a distributor, secondary distributor, or retailer protests the revocation, cancellation or suspension of a license and requests a hearing, the notice also shall contain a statement of the charges preferred against the distributor, secondary distributor or retailer. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the distributor, secondary distributor, or retailer. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given. [35 ILCS 130/6]
- 4) Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c of the Act, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Sections 11,

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11a, 11b, and 11c. [35 ILCS 130/15a] (See subsections (a) and (b) for the requirements to maintain books and records.)

- A) All books and records and other papers and documents that are required to be kept by the Act shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. (See subsection (a)(6).) A person that prohibits a duly authorized agent of the Department from inspecting books and records during usual business hours of the day has failed to produce books and records to the Department for inspection as required by this Section. The Department may issue a notice of penalty to that person pursuant to this subsection (c)(4). The Department is not required to provide the retailer with a written document request pursuant to this subsection (c)(4)(A) or provide additional time for the retailer to allow the inspection of the premises and the books and records at the location.
- B) Distributors, secondary distributors, manufacturers with manufacturer representatives, and retailers must have a person at their place of business at all times during the usual business hours of the day who is authorized to produce books and records for inspection by the Department. However, if a retail establishment has only one employee working at the time of the request for the books and records who has no ownership interest in the establishment and is not authorized to produce books and records, the Department will not issue a notice of penalty for failure to produce books and records if a person who is authorized to produce the books and records can be contacted and arrives at the place of business within 2 hours and produces the books and records. The Department may extend the period either on written request for good cause shown or on its own motion.

EXAMPLE 1: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The

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person states the owner is unavailable and cannot be contacted. The Department issues a notice of penalty.

EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states he can call a person responsible for making the records available to the agent. The employee calls the person and the person arrives at the store in less than 2 hours and makes the books and records available to the agent. The Department will not issue a notice of penalty.

- C) If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (c)(4). Except as otherwise provided by subsection (c)(4)(A), if a request has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing. The written document request must contain:
- i) the name of the person receiving the request;
 - ii) the name of the business;
 - iii) the date of the request or requests;
 - iv) the books and records requested;
 - v) the books and records that the person failed to produce;
 - vi) the number of days the person has to produce the books and records; and

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vii) the name of the Department agent or employee.

D) The Department agent or employee shall sign and date the written document request and personally provide or mail a copy of the written document request to the person. The person shall have no less than 10 business days to produce the books and records the person has failed to produce. The Department may extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department may issue a notice of penalty pursuant to this subsection (c)(4).

EXAMPLE: An authorized agent of the Department enters a convenience store and requests to see all the invoices for cigarettes purchased by the store in the last 60 days and all cash register receipts for sales made in the last 60 days. The person at the store produces the cash register receipts but states that they have no invoices for cigarettes purchased in the last 60 days. The agent completes a written document request, provides a copy to the person, and provides the person 20 business days to produce the invoices. The agent returns 20 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department issues a notice of penalty.

E) Any person receiving a notice of penalty may, within 20 days after the date on the notice, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to that person. The Department shall postpone the hearing until completion of the inspection. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

F) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.

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EXAMPLE 1: An authorized agent of the Department inspects a cigarette retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: An authorized agent of the Department inspects a cigarette retailer and requests all purchase invoices for cigarettes for March. The invoices are not provided by the retailer and the Department issues a notice of penalty. The agent returns in May and ask to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts for March. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the invoices for March.

- G) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period.

EXAMPLE: An authorized agent of the Department inspects a cigarette retailer and requests the books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The agent fills out a written document request, provides a copy of the document request to the person, and provides the person 30 business days to produce the invoices. The agent returns 30 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department issues a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Cigarette Use Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 450
- 3) Section Number: 450.50 Proposed Action: Amendment
- 4) Statutory Authority: 35 ILCS 135/15a, 15b, 21 and 23a; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: Section 445.50 is amended to implement PA 100-940. Pursuant to the public act, any person who fails to keep books and records or fails to produce books and records for examination, as required by Sections 15 and 15a of the Cigarette Use Tax Act, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination. In addition, Section 450.50 is updated by adding the recordkeeping requirements for secondary distributors enacted by PA 98-1055; by adding a statutory requirement imposed on distributors relating to the issuance of invoices; and by adding the existing statutory penalties for failure to maintain books and records.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 rulemakings pending on this Part? No
- 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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Richard S. Wolters
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794

217/782-2844

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: All small businesses that sell cigarettes at retail are required to maintain books and records and are affected by the penalties imposed by PA 100-940 failing to maintain books and records.
- B) Reporting, bookkeeping or other procedures required for compliance: Simple bookkeeping and accounting procedures
- C) Types of professional skills necessary for compliance: Simple bookkeeping and computer skills

14) Small Business Impact Analysis:

Determine whether the rulemaking has an impact on small business (fewer than 50 full-time employees or less than \$4,000,000 in gross annual sales).

- A) Types of businesses subject to the proposed amendment:
44-45 Retail Trade
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
 - ii) regulatory requirements; and
 - iii) record keeping

15) Regulatory Agenda on which this rulemaking was summarized: January 2018

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 450
CIGARETTE USE TAX ACT

Section	
450.10	Nature and Rate of Tax
450.20	Tax Stamps – Affixed Out of State
450.30	Licenses and Permits – Bonds
450.40	Reports and Returns
450.50	Books and Records; Invoices ; Penalties
450.60	Unused Stamps – Sale of – Notice to Department – Mutilated Stamps
450.70	Cigarettes Used Outside Illinois
450.80	Purchase of Cigarettes by Governmental Bodies for Use
450.90	Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
450.100	Sample Packages of Cigarettes – Stamps or Other Evidence of Tax Collection Affixed
450.110	Forfeited Cigarettes and Vending Machines
450.120	Claims for Credit or Refund
450.130	Protest Procedures

AUTHORITY: Implementing and authorized by the Cigarette Use Tax Act [35 ILCS 135].

SOURCE: Filed and effective June 17, 1958; codified at 8 Ill. Reg. 13838; amended at 13 Ill. Reg. 10687, effective June 16, 1989; amended at 14 Ill. Reg. 6804, effective April 19, 1990; amended at 15 Ill. Reg. 122, effective December 24, 1990; amended by emergency rulemaking at 23 Ill. Reg. 9546, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14753, effective December 8, 1999; amended at 24 Ill. Reg. 9909, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10759, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17800, effective November 28, 2000; amended at 25 Ill. Reg. 937, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9027, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1647, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10529, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3911, effective February 13, 2004; amended at 32 Ill. Reg. 17580, effective October 27, 2008; amended at 42 Ill. Reg. 23186, effective November 29, 2018; amended at 43 Ill. Reg. _____, effective _____.

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Section 450.50 Books and Records; Invoices; Penaltiesa) Books and Records

1) Distributors and Persons that Have Not Paid the Tax Due Under the Act. Every distributor required or authorized to collect taxes imposed by the Cigarette Use Tax Act and every person using, in this State, cigarettes purchased on or after the effective date of this Act without Illinois cigarette tax stamps affixed to the original packages and without authorized tax imprints placed underneath the sealed transparent wrapper of the original packages, shall keep the records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in a form as the Department shall require. The books, records, papers, memoranda and documents of a distributor pertaining to business done by him or her at or from a licensed place of business, or at or from a place of business for which he or she holds a permit issued by the Department, shall be kept by the distributor at the place of business. ~~b) Among other things,~~ a distributor's records of a particular purchase from a manufacturer or other distributor shall, at a minimum, include:

- A1) a copy of the distributor's purchase order (if any) to the manufacturer or other distributor;
- B2) the manufacturer's or other distributor's invoice to the distributor in duplicate (see subsection (b4));
- C3) bill of lading or waybill pertaining to the shipment covered by ~~the~~ such invoice;
- D4) receiving record (the receiving record should show the date when the cigarettes were received by the distributor); ~~and~~
- E) evidence of payment by the other distributor to the manufacturer;
and
- F5) other records as the Department may reasonably require.

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- 2) Secondary Distributors. Every secondary distributor of cigarettes who is required to procure, or is allowed to procure, a license under the Act shall keep, at his or her licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at his or her licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale or disposition of cigarettes. [35 ILCS 135/15a]
- 3) For purposes of this Section, "records" means all data maintained by the secondary distributors, including data on paper, microfilm, microfiche or any type of machine sensible data compilation. (See 35 ILCS 135/15 and 15a.)
- 4e) All books, records, papers, memoranda and documents that are required to be kept under the Act shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the secondary distributor without a search warrant and may inspect the premises and the stock or packages of cigarettes in those premises to determine whether any of the provisions of the Act are being violated. If the agent or employee is denied free access or is hindered or interfered with in making the examination, the license of the secondary distributor at the premises shall be subject to revocation by the Department. [35 ILCS 135/15 and 15a]~~The books, records, papers, memoranda and documents of a distributor pertaining to business done by him at or from a licensed place of business, or at or from a place of business for which he holds a permit issued by the Department, shall be kept by the distributor at the place of business.~~
- 51) The books, records, papers, memoranda and documents ~~that, which~~ are required to be kept, shall be preserved for a period of at least 3 years after the date of the documents or the date of the entries appearing in the records, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. (See 35 ILCS 135/15 and 15a.)

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6z) It is not the purpose of this subsection (a)regulation to require distributors to keep duplicate sets of books and records. Consequently, to the extent to which a distributor is required by the Cigarette Tax Act and by the Cigarette Use Tax Act to keep the same books and records, the distributor's compliance with the requirement under the Cigarette Tax Act shall be deemed to be a compliance with the same requirement under the Cigarette Use Tax Act.

bd) Invoices:

- 1) Every person who purchases cigarettes for shipment into Illinois from a point outside this State, and who is required to file a return with the Department with respect to the cigarettes, shall procure invoices covering each shipment and shall furnish one copy of each invoice to the Department upon request.
- 2) Each Illinois manufacturer of cigarettes in original packages that are contained inside a sealed transparent wrapper shall keep a copy of each invoice rendered by the manufacturer to any purchaser to whom the manufacturer delivered cigarettes (or caused cigarettes to be delivered) during the period covered by the manufacturer's return. Copies must be furnished to the Department upon request.
- 3) Each manufacturer who holds a permit under Section 7 of the Cigarette Use Tax Act shall keep a copy of each invoice rendered by the permittee to any purchaser to whom the permittee delivered cigarettes of the type covered by the permit (or caused cigarettes of the type covered by the permit to be delivered) in Illinois during the period covered by the return. Copies must be furnished to the Department upon request. Subsections (a)(1) through (a)(3)~~This subsection~~ shall not apply to a transaction in which the same requirement applies by virtue of the provisions of 86 Ill. Adm. Code 440.110 (Cigarette Tax Act rules).
- 4) *Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or*

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purchaser, and the quantity by brand style of the cigarettes so transported, provided that this Section shall not be construed as to impose any requirement or liability upon any common or contract carrier. [35 ILCS 135/3]

- 5e) When a permit holder or licensee under the Cigarette Use Tax Act (as distinguished from a licensee or permit holder under the Cigarette Tax Act) sells Illinois tax-stamped or tax-imprinted cigarettes to anyone other than a ~~federal~~Federal or foreign government agency or instrumentality, distributor's invoice shall state the amount of the cigarette use tax to the purchaser as a separate item from the selling price of the cigarettes. However, when a person sells cigarettes to a ~~federal~~Federal or foreign government agency or instrumentality, ~~the~~his invoice should omit any reference to the cigarette use tax.

c) Penalties

- 1) *Any person required by the Act to maintain or keep records of any kind whatsoever who shall fail to keep the records so required, or who shall falsify those records, shall be guilty of a Class 4 felony. If a person fails to produce the records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this Section. This subsection (c)(1) shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act. [35 ILCS 135/22]*
- 2) *Any person who shall fail to safely preserve the records required by Sections 15 and 15a of the Act for the period of 3 years, as required in those Sections, in such manner as to insure permanency and accessibility for inspection by the Department shall be guilty of a business offense and may be fined up to \$5,000. This subsection (c)(2) shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act. [35 ILCS 135/23]*
- 3) *The Department may, after notice and hearing as provided for by the Act, revoke, cancel or suspend the license of any distributor or secondary distributor for any noncompliance with this Section. No license so*

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revoked, as aforesaid, shall be reissued to any such distributor or secondary distributor within a period of 6 months after the date of the final determination of the revocation. (See 35 ILCS 135/6.) Any distributor or secondary distributor aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the distributor or secondary distributor requesting the hearing of the time and place fixed for the hearing. If a distributor or secondary distributor protests the revocation, cancellation or suspension of a license and requests a hearing, the notice also shall contain a statement of the charges preferred against the distributor or secondary distributor. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the distributor or secondary distributor. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

- 4) Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 15 and 15a of the Act, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Sections 15 and 15a, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Sections 15 and 15a. [35 ILCS 135/23a] The provisions of 86 Ill. Adm. Code 440.110(c) (Cigarette Tax Act Regulations) that are not inconsistent with the Cigarette Use Tax Act shall apply, as far as practicable, to the subject matter of this Part to the same extent as if those provisions were included in this Part.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Tobacco Products Tax Act of 1995
- 2) Code Citation: 86 Ill. Adm. Code 660
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
660.20	Amendment
660.24	Amendment
660.25	Amendment
660.50	Amendment
- 4) Statutory Authority: 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved: Section 660.20 is amended to remove obsolete language. Section 660.24 is amended to add invoice requirements enacted by PA 100-940 that are imposed on retailers for tobacco products purchased by the retailers from distributors, add a requirement for invoices to state the weight of tobacco contained in little cigars, and remove obsolete language. Section 660.25 is amended to add invoice requirements enacted by PA 100-940 and imposed on distributors for tobacco products purchased or sold by distributors, add a requirement for invoices to state the weight of tobacco contained in little cigars, and removes obsolete language. Section 660.50 is amended to implement PA 100-940. Pursuant to the public act, any person who fails to keep books and records or fails to produce books and records for examination, as required by Sections 10-35 of the Tobacco Products Tax Act of 1995, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination. A number of additional amendments are made to the penalty provisions in Section 660.50 in response to PA 100-940.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

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- 10) Are there any other rulemakings pending on this Part? No
- 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:
- Richard S. Wolters
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield IL 62794
- 217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: All small businesses that sell cigarettes at retail are required to maintain books and records and are affected by the penalties imposed by PA 100-940 for failing to maintain books and records.
- B) Reporting, bookkeeping or other procedures required for compliance: Simple bookkeeping and accounting procedures'
- C) Types of professional skills necessary for compliance: Simple bookkeeping and computer skills.
- 14) Small Business Impact Analysis:
- Determine whether the rulemaking has an impact on small business (fewer than 50 full-time employees or less than \$4,000,000 in gross annual sales).
- A) Types of businesses subject to the proposed amendments:
- 44-45 Retail Trade

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B) Categories that the Agency reasonably believes the rulemaking will impact, including:

ii) regulatory requirements; and

iii) record keeping

15) Regulatory Agenda on which this rulemaking was summarized: January 2018

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 660
TOBACCO PRODUCTS TAX ACT OF 1995

Section	
660.5	Nature and Rate of Tobacco Products Tax
660.10	General Definitions
660.15	Distributor Licenses
660.16	Retailer Licenses
660.18	Stamping Distributors; Purchasing Tax Stamps; Affixing Tax Stamps to Packages of Little Cigars
660.20	Returns
660.24	Books and Records; Invoices – Retailers
660.25	Books and Records; Invoices – Distributors
660.26	Invoices Relating to Packages of Little Cigars
660.27	Manufacturers – Sale of Little Cigars
660.28	Retailers – Purchase and Possession of Tobacco Products
660.29	Wholesalers – Possession of Little Cigars
660.30	Exempt Sales
660.35	Claims for Credit
660.40	Credit for Stamps that Are Damaged, Unused, Destroyed or Affixed to Packages of Little Cigars Returned to the Manufacturer
660.45	License Actions: Revocations, Cancellations and Suspensions
660.50	Penalties, Interest and Procedures
660.55	Incorporation by Reference

AUTHORITY: Implementing the Tobacco Products Tax Act of 1995 [35 ILCS 143] and authorized by Section 2505-795 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-795].

SOURCE: Adopted at 20 Ill. Reg. 10174, effective July 16, 1996; amended at 26 Ill. Reg. 13310, effective August 23, 2002; amended at 34 Ill. Reg. 12972, effective August 19, 2010; amended at 40 Ill. Reg. 10954, effective July 29, 2016; amended at 43 Ill. Reg. _____, effective _____.

Section 660.20 Returns

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- a) *Every distributor of tobacco products shall, on or before the 15th day of each calendar month, file a return with the Department covering the preceding calendar month disclosing the following (Section 10-20 of the Act):*
- 1) The wholesale price for tobacco products, excluding little cigars and moist snuff, manufactured and then sold or otherwise disposed of.
 - 2) The wholesale price for tobacco products, excluding little cigars and moist snuff, purchased and then sold or otherwise disposed of.
 - 3) The total cost of all tobacco products, excluding little cigars and moist snuff, sold or otherwise disposed of.
 - 4) Deductions authorized by law on tobacco products, excluding little cigars and moist snuff.
 - 5) Tobacco products tax base, excluding little cigars and moist snuff.
 - 6) Total tax based on percentage of wholesale price on tobacco products, excluding little cigars and moist snuff.
 - 7) Total quantity in ounces and fractional ounces of moist snuff purchased and then sold or otherwise disposed of.
 - 8) Deductions authorized by law on moist snuff.
 - 9) Total tax on moist snuff.
 - 10) In addition to the items listed in subsections (a)(1) through (9):
 - A) The quantity of little cigars purchased and sold or otherwise disposed of.
 - B) The quantity of packages of little cigars containing 20 or 25 little cigars.
 - C) Deductions authorized by law on little cigars.
 - D) Total tax on little cigars.

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- b) The return shall be filed in the format and manner prescribed by the Department. Payment of the tax in the amount disclosed by the return shall accompany the return. ~~Taxpayers Effective October 1, 2002 through September 30, 2010, taxpayers whose annual liability is \$200,000 or more for the preceding calendar year are required to make payments of tax by Electronic Funds Transfer as provided in 86 Ill. Adm. Code 750. Beginning October 1, 2010, taxpayers~~ whose annual liability is \$20,000 or more for the preceding calendar year are required to make payments of tax by Electronic Funds Transfer as provided in 86 Ill. Adm. Code 750. For purposes of this subsection, *the term "annual tax liability" means, for a taxpayer that incurs a tax liability under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, or any other State or local occupation or use tax law that is administered by the Department (which includes the Act), the sum of the taxpayer's liabilities under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, and all other State and local occupation and use tax laws administered by the Department for the immediately preceding calendar year.* [20 ILCS 2505/2505-210(c)]
- c) Tobacco products "otherwise disposed of" include samples of tobacco products. Transfers of tobacco products between divisions of a corporation that have separate Illinois Business Tax numbers are required to be reported as sales under "otherwise disposed of."
- d) ~~Returns Effective January 1, 2016, returns~~, schedules, documents and data required to be filed by the Act with the Department must be filed electronically in the format required by the Department. Distributors who do not have access to the Internet may petition the Department for a waiver of this requirement.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 660.24 Books and Records; Invoices – Retailers

- a) ~~Through December 31, 2015, every retailer shall keep complete and accurate records of tobacco products held and purchased, and tobacco products sold or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale. Books, records, papers, and documents that are required by the Act to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized~~

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~~agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period. [35 ILCS 143/10-36] b) Every~~Beginning January 1, 2016, every retailer, as defined in Section 10-5 of the Act, whether or not the retailer has obtained a retailer's license pursuant to Section 4g, shall keep complete and accurate records of tobacco products held, purchased, sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, returns and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. Those records need not be maintained on the licensed premises, but must be maintained in the State of Illinois; however, if access is available electronically, the records may be maintained out of state. However, all original invoices or copies thereof covering purchases of tobacco products must be retained on the licensed premises for a period of 90 days after the purchase, unless the Department has granted a waiver in response to a written request in cases in which records are kept at a central business location within the State of Illinois or in cases in which records that are available electronically are maintained out of state. [35 ILCS 143/10-35(b)] The Department will grant a written waiver when the following requirements are met by the retailer:

- 1) The retailer submits a letter to the Department containing:
 - A) the retailer's license number and FEIN;
 - B) the address or addresses of the licensed premises where records are currently maintained;
 - C) the address of the out-of-state location where the retailer intends to maintain the records;
 - D) an explanation of the process and system that will enable the Department or its duly authorized employees to electronically access the records from the licensed premises on demand; and
 - E) an acknowledgement by the retailer that the Department, upon 30 days written notice, may revoke the waiver of the retailer for one or more licensed premises if the retailer:

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- i) fails to provide electronic access in accordance with the requirements of the written waiver;
 - ii) transfers or sells the licensed premises to another person; or
 - iii) changes the process or system for providing access to the records electronically.
 - 2) The Department is given access electronically to accurate records of tobacco products held, purchased, sold or otherwise disposed of; invoices; bills of lading; sales records; and copies of bills of sale, returns and other pertinent papers and documents relating to the purchase, sale or disposition of tobacco products kept at the licensed premises in the normal course of business at the time of the request.
 - 3) The Department has tested the process and system from the licensed premises and verified that the Department and its duly authorized employees have access electronically to the required records from the licensed premises on demand.
- be) *Books, records, papers, and documents that are required by the Act to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period. [5 ILCS 143/10-35(c)]*
- c) *Whenever any retailer obtains tobacco products from an unlicensed in-state or out-of-state distributor or person, a prima facie presumption shall arise that the tax imposed by the Act on those tobacco products has not been paid in violation of the Act. Invoices or other documents kept in the normal course of business in the possession of a person reflecting purchases of tobacco products from an unlicensed in-state or out-of-state distributor or person or invoices or other documents kept in the normal course of business obtained by the Department from in-state or out-of-state distributors or persons, are sufficient to raise the presumption that the tax imposed by the Act has not been paid. If a presumption is raised, the Department may assess tax, penalty, and interest on the tobacco products. [35 ILCS 143/10-38]*

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- d) Every retailer who purchases tobacco products for resale for shipment into Illinois from a point outside Illinois shall procure invoices in duplicate covering each shipment and shall make the invoices available for inspection upon demand by a duly authorized employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department at the time of filing the return required by the Act. [35 ILCS 143/10-40]
- e) Every retailer who purchases rolls, made wholly or in part of tobacco, when those rolls have an integrated cellulose acetate filter and a wrapper or cover that is made in whole or in part of tobacco and the rolls are contained in packages of 20 or 25, shall procure an invoice from the seller that states whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand. If a person fails to produce an invoice for inspection by the Department upon request that states whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand, a prima facie presumption shall arise that the rolls weigh less than 4 pounds per thousand. If the rolls do not contain a tax stamp in accordance with Section 10-10 of the Act, the rolls are contraband and subject to seizure and forfeiture.
- f) The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any retailer who fails to keep books and records as required under the Act, fails to make books and records available for inspection upon demand by a duly authorized employee of the Department, or violates this Section. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is based. [35 ILCS 143/10-25] Any retailer aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the retailer requesting the hearing that contains a statement of the charges preferred against the retailer and that states the time and place fixed for the hearing. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the retailer. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 660.25 Books and Records; Invoices – Distributors

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- a) Every distributor of tobacco products who is required to procure a license under the Act, including retailers who are required to procure a distributor's license under Section 660.15, shall keep within Illinois, at his or her licensed address, complete and accurate records of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold or otherwise disposed of, and shall preserve and keep within Illinois at his or her licensed address all of the following:
- 1) Invoices.
 - 2) Bills of lading.
 - 3) Sales records.
 - 4) Copies of bills of sale.
 - 5) The wholesale price for tobacco products sold or otherwise disposed of.
 - 6) An inventory of tobacco products prepared as of December 31 of each year or as of the last day of the distributor's fiscal year if he or she files federal income tax returns on the basis of a fiscal year.
 - 7) Other pertinent papers and documents relating to the manufacture, purchase, sale, or disposition of tobacco products.
 - 8) Certificates of Resale and Certificates of Exemption.
- b) All books and records and other papers and documents that are required by the Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.
- c) Such books, records, papers, and documents shall be preserved for the period during which the Department is authorized to issue Notices of Tax Liability, which is generally for a maximum of 3½ years.
- d) Every sales invoice issued by a licensed distributor for tobacco products shall contain the distributor's Tobacco Products License number. *EveryBeginning*

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~~January 1, 2016, every~~ sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's Tobacco Products License number unless the distributor has been granted a waiver by the Department in response to a written request in cases in which the distributor sells little cigars or other tobacco products only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor, the licensed retailer obtains little cigars or other tobacco products only from the distributor requesting the waiver, and the distributor affixes the tax stamps to the original packages of little cigars or has or will pay the tax on the other tobacco products sold to the licensed retailer. The distributor shall file a written request with the Department, and, if the Department determines that the distributor meets the conditions for a waiver, the Department shall grant the waiver. [35 ILCS 143/10-35(a)] Every sales invoice for packages of little cigars containing other than 20 or 25 little cigars issued by a stamping distributor to a person who is not a stamping distributor shall contain, in addition to the stamping distributor's Tobacco Products License number, the stamping distributor's Cigarette Tax Distributor's License number or Cigarette Use Tax Distributor's License number. (See Section 660.26 for additional rules regarding invoices for little cigars.)

- e) Every sales invoice issued by a licensed distributor shall state whether:
- 1) the tax imposed by the Act has been or will be paid in full; or
 - 2) the sale is exempt in whole or in part under Section 660.30 and the specific subsections under which the exemption is claimed.
 - A) If the sale is exempt in part, the invoice additionally shall state:
 - i) the amount of tax actually paid or what will be paid; or
 - ii) the percentage of tax actually paid based on the amount of the invoice before the allowance of any discount, trade allowance, rebate or other reduction, and including any added surcharges.
 - B) The distributor making an exempt sale of tobacco products shall document the exemption by obtaining a certification required by Section 660.30(g).

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- f) Whenever any sales invoice issued by a supplier to a retailer for tobacco products sold to the retailer does not comply with the requirements of subsections (d) and (e), a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and Section 660.5 has not been paid on the tobacco products listed on the sales invoice. A retailer that is unable to rebut this presumption is in violation of both the Act and this Part and is subject to the penalties provided in Section 10-50 of the Act.
- g) ~~Every~~*Beginning January 1, 2016, every* licensed distributor of tobacco products in this State is required to show proof of the tax having been paid as required by the Act by displaying its Tobacco Products License number on every sales invoice issued to a retailer in this State. [35 ILCS 143/10-37]
- h) *Every distributor who purchases tobacco products for resale for shipment into Illinois from a point outside Illinois shall procure invoices in duplicate covering each shipment and shall make the invoices available for inspection upon demand by a duly authorized employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department at the time of filing the return required by the Act.* [35 ILCS 143/10-40]
- i) Every distributor who purchases rolls, made wholly or in part of tobacco, when those rolls have an integrated cellulose acetate filter and a wrapper or cover that is made in whole or in part of tobacco and the rolls are contained in packages of 20 or 25, shall procure an invoice from the seller that states whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand. If a distributor fails to procure an invoice or produce an invoice for inspection by the Department upon request, a prima facie presumption shall arise that the rolls weigh less than 4 pounds per thousand. A distributor that sells these rolls must provide all purchasers with invoices that state whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand.
- j) Whenever any person obtains tobacco products from an unlicensed in-state or out-of-state distributor or person, a prima facie presumption shall arise that the tax imposed by the Act on those tobacco products has not been paid in violation of the Act. Invoices or other documents kept in the normal course of business in the possession of a person reflecting purchases of tobacco products from an unlicensed in-state or out-of-state distributor or person or invoices or other documents kept in the normal course of business obtained by the Department from in-state or out-of-state distributors or persons, are sufficient to raise the

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presumption that the tax imposed by the Act has not been paid. If a presumption is raised, the Department may assess tax, penalty, and interest on the tobacco products. [35 ILCS 143/10-38] See Section 660.50(r) for the penalties that may be imposed for a violation of this Section.

- k) The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any distributor who fails to keep books and records as required under the Act, fails to make books and records available for inspection upon demand by a duly authorized employee of the Department, or violates this Section. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is based. [35 ILCS 143/10-25] Any distributor aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the distributor requesting the hearing that contains a statement of the charges preferred against the distributor and that states the time and place fixed for the hearing. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the distributor. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 660.50 Penalties, Interest and Procedures

- a) The provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Act apply to the enforcement of the Act. See Section 3-1A of the Uniform Penalty and Interest Act.
- b) *When the amount due is under \$300, any distributor who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 4 felony.*

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- c) *When the amount due is under \$300, any person who accepts money that is due to the Department under the Act from a taxpayer for the purpose of acting as the taxpayer's agent to make the payment to the Department, but who fails to remit the payment to the Department when due, is guilty of a Class 4 felony.*
- d) *When the amount due is \$300 or more, any distributor who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 3 felony.*
- e) *When the amount due is \$300 or more, any person engaged in the business of distributing tobacco products to retailers and consumers located in this State who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or accepts money that is due to the Department under the Act from a taxpayer for the purpose of acting as the taxpayer's agent to make payment to the Department but fails to remit that payment to the Department when due is guilty of a Class 3 felony.*
- f) *Any person who violates any provision of Section 10-20 of the Act and, beginning January 1, 2016, Sections 10-21 and 10-22 of the Act, fails to keep books and records as required under the Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of the Act, is guilty of a Class 4 felony. A person commits a separate offense on each day that he or she engages in business in violation of Section 10-20 of the Act and, beginning January 1, 2016, Section 10-21 or 10-22 of the Act. If a person fails to produce the books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under this Act. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this Section.*
- g) *Any taxpayer or agent of a taxpayer who, with the intent to defraud, purports to make a payment due to the Department by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012.*

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- h) ~~Any~~Beginning January 1, 2016, any person who violates any provision of Sections 10-20, 10-21 and 10-22 of the Act, fails to keep books and records as required under the Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of the Act, is guilty of a business offense and may be fined up to \$5,000. If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under the Act. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this Section. A person commits a separate offense on each day that he or she engages in business in violation of Sections 10-20, 10-21 and 10-22 of the Act.
- i) ~~When~~Beginning January 1, 2016, when the amount due is under \$300, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.
- j) ~~When~~Beginning January 1, 2016, when the amount due is \$300 or more, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 4 felony.
- k) A prosecution for a violation described in subsections (b) through (j) may be commenced within 3 years after the commission of the act constituting the violation. [35 ILCS 143/10-50]
- l) ~~Any~~Beginning January 1, 2016, any person who knowingly acts as a retailer of tobacco products in this State without first having obtained a license to do so in compliance with Section 10-21 of the Act or a license in compliance with Section 4g of the Cigarette Tax Act shall be guilty of a Class A misdemeanor for the first

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offense and a Class 4 felony for a second or subsequent offense. Each day the person operates as a retailer without a license constitutes a separate offense. [35 ILCS 143/10-53]

- m) *The Beginning January 1, 2016, the Department may impose a civil penalty on distributors and retailers not to exceed \$1,000 for the first violation and \$3,000 for each subsequent violation of Section 10-37 of the Act. [35 ILCS 143/10-37]*
- n) *Any person whose principal place of business is in the State and who is charged with a violation under Section 10-50 of the Act shall be tried in the county where his or her principal place of business is located unless he or she asserts a right to be tried in another venue. If the taxpayer does not have his or her principal place of business in this State, however, the hearing must be held in Sangamon County unless the taxpayer asserts a right to be tried in another venue. [35 ILCS 143/10-50]*
- o) *Except as otherwise provided in this Part, anyAny person aggrieved by any decision of the Department under this Part may, within 60 days after notice of the decision, protest in writing and request a hearing. Upon receiving a written request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of this Part and then issue its final administrative decision in the matter to that person. In the absence of a protest and request for a hearing within 60 days, the Department's decision shall become final without any further determination being made or notice given.*
- p) *Except as provided by the Constitution of the United States, the Constitution of the State of Illinois, or any statutes of this State, including, but not limited to, the State Officers and Employees Money Disposition Act [30 ILCS 230], the Tax Tribunal established pursuant to the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010] shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under the Tobacco Products Tax Act of 1995 or the Uniform Penalty and Interest Act. Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, Notices of Claim Denial, and Notices of Penalty Liability when the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000, exclusive of penalties and interest. In notices solely asserting either an interest or penalty assessment, or*

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both, the Tax Tribunal shall have jurisdiction over cases in which the combined total of all penalties or interest assessed exceeds \$15,000. [35 ILCS 1010/1-45]

- q) Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Section 10-35, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Section 10-35, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Section 10-35. [35 ILCS 143/10-35a]
- 1) All books and records and other papers and documents that are required to be kept by the Act shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. (See Sections 660.24(b) and 660.25(b).) A person that prohibits a duly authorized agent of the Department from inspecting books and records during usual business hours of the day has failed to produce books and records to the Department for inspection as required by this Section. The Department may issue a notice of penalty to that person pursuant to this subsection (q)(1). The Department is not required to provide the retailer with a written document request pursuant to this subsection (q)(1) or provide additional time for the retailer to allow the inspection of the premises and the books and records at the location.
- 2) Distributors and retailers must have a person at their place of business at all times during the usual business hours of the day who is authorized to produce books and records for inspection by the Department. However, if a retail establishment has only one employee working at the time of the request for the books and records who has no ownership interest in the establishment and is not authorized to produce books and records, the Department will not issue a notice of penalty for failure to produce books and records if a person who is authorized to produce the books and records can be contacted and arrives at the place of business within 2 hours and produces the books and records. The Department may extend the period either on written request for good cause shown or on its own motion.
- EXAMPLE 1: An authorized agent of the Department attempts to inspect the books and records of a tobacco retailer. The person at the store states

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the records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states the owner is unavailable and cannot be contacted. The Department issues a notice of penalty.

EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a tobacco retailer. The person at the store states the records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states he can call a person responsible for making the records available to the agent. The employee calls the person and the person arrives at the store in less than 60 minutes and makes the records available to the agent. The Department will not issue a notice of penalty.

- 3) If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records as required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (q).
- 4) Except as otherwise provided by subsection (q)(1), if a request has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing. The written document request must contain:
 - A) the name of the person receiving the request;
 - B) the name of the business;
 - C) the date and time of the request or requests;
 - D) the books and records requested;
 - E) the books and records that the person failed to produce;
 - F) the number of days the person has to produce the books and records; and

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G) the name of the Department agent or employee.

- 5) The Department agent or employee shall sign and date the written document request and personally provide or mail a copy of the written document request to the person. The person shall have no less than 10 business days to produce the books and records the person has failed to produce. The Department may extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department may issue a notice of penalty pursuant to this subsection (q).

EXAMPLE: An authorized agent of the Department enters a convenience store and requests to see all the invoices for tobacco products purchased by the store in the last 60 days and all cash register receipts for sales made in the last 60 days. The person at the store produces the cash register receipts but states that they have no invoices for tobacco products purchased in the last 60 days. The agent fills out a written document request, provides a copy of the written document request to the person, and provides the person 20 business days to produce the invoices. The agent returns 20 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department issues a notice of penalty.

- 6) Any person receiving a notice of penalty may, within 20 days after the date on the notice of penalty, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to that person. The Department shall postpone the hearing until completion of the inspection. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.
- 7) The Department cannot impose more than one penalty for failing to produce books and records for a calendar month.

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EXAMPLE 1: An authorized agent of the Department inspects a tobacco retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: An authorized agent of the Department inspects a tobacco retailer and requests all purchase invoices for cigarettes for March. The invoices are not provided by the retailer and the Department issues a notice of penalty. The agent returns in May and ask to see all the tobacco sales receipts for March. The retailer fails to produce the sales receipts. The Department cannot issue a notice of penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce records for March.

- 8) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period.

EXAMPLE: An authorized agent of the Department inspects a tobacco retailer and requests the books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The agent fills out a written document request, provides a copy to the person, and provides the person 30 business days to produce the invoices. The agent returns 30 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department issues a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.

- r) Any distributor or retailer who violates Section 10-38 of the Act is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. [35 ILCS 143/10-38] (See Sections 660.24(c) and 660.25(i).)

(Source: Amended at 43 Ill. Reg. _____, effective _____)

CHIEF PROCUREMENT OFFICER FOR GENERAL SERVICES

NOTICE OF PUBLIC INFORMATION

NOTICE OF CAMPAIGN CONTRIBUTION VIOLATION OF PROCUREMENT CODE

1. Statutory Authority: Section 50-37 of the Illinois Procurement Code, 30 ILCS 500/50-37, prohibits business entities with contracts and solicitations worth in excess of \$50,000 in combined annual value pending with a given officeholder responsible for awarding the contracts from making campaign contributions to campaign committees established to promote the candidacy of the officeholder or any other declared candidate for that office. The prohibition also extends to contributions made by various affiliated persons and businesses of a business entity that is subject to the prohibition. Section 50-37 requires that notice of violation of the prohibition and the penalty imposed is to be published in the Illinois Register.
2. Name of Contributor: Maribeth Vander Weele, President of the business entity Vander Weele Group LLC.
3. Date of Violation: October 24, 2014 and December 23, 2014
4. Description of Violation: Maribeth Vander Weele, President of the business entity Vander Weele Group, LLC., made contribution(s) in the amount of \$1,500.00 and \$100.00 respectively to Taxpayers for Quinn. At the time of the contribution, Patrick Quinn was the sitting Governor and the officeholder responsible for the awarding of the contract until January 15, 2015.
5. Summary of Action Taken by the Agency: Section 50-37 provides that State contracts with a business entity that violates the campaign contribution prohibition are voidable at the discretion of the Chief Procurement Officer. The Chief Procurement Officers for General Services has notified Vander Weele Group, LLC. of the apparent violation, reviewed responsive material provided by Vander Weele Group, and have considered the value, status, and necessity of the contracts. In addition, the Officers have taken into consideration the recognition by Vander Weele Group, LLC. of the violation and their understanding of the necessity to avoid such situations in the future. We find that voiding affected contracts, bids or proposals would not be in the best interest of the State.

As required by Section 50-37(e) of the Procurement Code, Taxpayers for Quinn., is required to pay to the State an amount equal to the value of the contribution within 30 days of the publication of this notice.

DEPARTMENT OF TRANSPORTATION

NOTICE OF WITHDRAWAL OF PROPOSED REPEALER

- 1) Heading of the Part: Minimum Safety Standards for Construction of Type I School Buses
- 2) Code Citation: 92 Ill. Adm. Code 440
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
440.10	Repealed
440.20	Repealed
440.30	Repealed
440.110	Repealed
440.120	Repealed
440.130	Repealed
440.140	Repealed
440.150	Repealed
440.160	Repealed
440.205	Repealed
440.210	Repealed
440.220	Repealed
440.305	Repealed
440.310	Repealed
440.320	Repealed
440.405	Repealed
440.420	Repealed
440.505	Repealed
440.520	Repealed
440.ILLUSTRATION B	Repealed
440.ILLUSTRATION C	Repealed
- 4) Date Notice of Proposed Repealer published in the *Illinois Register*: 42 Ill. Reg. 15029; August 10, 2018
- 5) Reason for the Withdrawal: This repealer was part of a series of rulemakings proposed by the Department for the purpose of consolidating its school bus construction standards into one Part. The Department is withdrawing this repealer because it is also withdrawing the proposed rules that were to supersede these regulations.

DEPARTMENT OF TRANSPORTATION

NOTICE OF WITHDRAWAL OF PROPOSED RULES

- 1) Heading of the Part: Construction Standards for School Buses
- 2) Code Citation: 92 Ill. Adm. Code 440
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
440.1000	New Section
440.2000	New Section
440.3000	New Section
440.4000	New Section
440.5000	New Section
440.Table A	New Section
- 4) Date Notice of Proposed Rulemaking published in the *Illinois Register*: 42 Ill. Reg. 15079; August 10, 2018
- 5) Reason for the Withdrawal: The Department received valuable feedback during the first notice period of this rulemaking. Based on the feedback received, the Department will make several substantive amendments to these proposed rules. To allow the public an opportunity to review and comment on those changes, the Department is withdrawing this rulemaking and will refile at a later date.

DEPARTMENT OF TRANSPORTATION

NOTICE OF WITHDRAWAL OF PROPOSED REPEALER

- 1) Heading of the Part: Minimum Safety Standards for Construction of Type II School Buses
- 2) Code Citation: 92 Ill. Adm. Code 442
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
442.110	Repealed
442.120	Repealed
442.130	Repealed
442.205	Repealed
442.208	Repealed
442.210	Repealed
442.213	Repealed
442.214	Repealed
442.215	Repealed
442.216	Repealed
442.218	Repealed
442.220	Repealed
442.230	Repealed
442.235	Repealed
442.240	Repealed
442.245	Repealed
442.250	Repealed
442.253	Repealed
442.255	Repealed
442.258	Repealed
442.259	Repealed
442.260	Repealed
442.265	Repealed
442.270	Repealed
442.275	Repealed
442.285	Repealed
442.290	Repealed
442.295	Repealed
442.300	Repealed
442.305	Repealed
442.310	Repealed
442.315	Repealed
442.320	Repealed

DEPARTMENT OF TRANSPORTATION

NOTICE OF WITHDRAWAL OF PROPOSED REPEALER

442.325	Repealed
442.405	Repealed
442.410	Repealed
442.415	Repealed
442.420	Repealed
442.425	Repealed
442.430	Repealed
442.435	Repealed
442.440	Repealed
442.445	Repealed
442.450	Repealed
442.455	Repealed
442.460	Repealed
442.465	Repealed
442.470	Repealed
442.475	Repealed
442.480	Repealed
442.485	Repealed
442.490	Repealed
442.495	Repealed
442.605	Repealed
442.610	Repealed
442.615	Repealed
442.620	Repealed
442.705	Repealed
442.710	Repealed
442.715	Repealed
442.APPENDIX E	Repealed

- 4) Date Notice of Proposed Repealer published in the *Illinois Register*: 42 Ill. Reg. 15117; August 10, 2018
- 5) Reason for the Withdrawal: This repealer was part of a series of rulemakings proposed by the Department for the purpose of consolidating its school bus construction standards into one Part. The Department is withdrawing this repealer because it is also withdrawing the proposed rules that were to supersede these regulations.

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF HEARING ON PROPOSED AMENDMENTS

- 1) Heading of the Part: Fire Prevention and Safety
- 2) Code Citation: 41 Ill. Adm. Code 100
- 3) Register Citation to Notice of Proposed Amendments: 43 Ill. Reg. 125, January 4, 2019
- 4) Date, Time and Location of Public Hearing:

Tuesday, January 29, 2019, starting at 9:00 AM
John Logan College
Room F103
700 Logan College Road
Carterville IL 62918

Wednesday, January 30, 2019, starting at 1:00 PM
Office of the State Fire Marshal
1035 Stevenson Drive
Springfield IL 62703

Tuesday, February 5, 2019, starting at 9:00 AM
Des Plaines Facility
Lower Level Conference Room
9511 Harrison St.
Des Plaines IL 60016

- 5) Other Pertinent Information:

The hearing will be held for the purpose of gathering public comments on the Proposed Amendments. Persons interested in presenting testimony at this hearing are advised that the Office of the State Fire Marshal will adhere to the following procedures in the conduct of the hearing:

Each person presenting oral testimony shall, prior to testifying, sign in and also complete a witness slip providing his or her contact information and identifying whom they represent.

Organizations are asked to select one spokesperson to present oral testimony on behalf of the organization.

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF HEARING ON PROPOSED AMENDMENTS

The OSFM encourages each person presenting oral testimony to provide a written copy of such testimony at the time the oral testimony is presented.

Each person presenting oral testimony will be allowed to testify for up to a maximum of five minutes. Upon reaching the five-minute limit, each person will be asked to conclude his/her comments in order to allow the next person to testify.

To the extent that a presenter has accompanying documents with his/her presentation, a copy of those documents must be submitted. Those documents will be made part of the hearing transcript.

Written testimony from those choosing not to speak will also be accepted during the registration period. Any such documents will be made part of the hearing transcript.

In order to facilitate the orderly conduct of the hearing and to provide for a balanced presentation of views, the hearing officer may impose such other rules of procedure as he or she deems fit and proper, including, but not limited to, adjusting the time limit or the order of presentation.

Those individuals who are unable to attend the public hearing but wish to comment upon the proposed amendments should submit their written comments on or before Tuesday, February 19, 2019 by mail or facsimile only to the agency contact person. The public comment period will close at midnight on Tuesday, February 19, 2019. To be considered, all comments must be postmarked or received by February 19, 2019. Oral comments communicated outside of the hearing are ex parte communications and cannot be considered. Comments submitted outside of the hearing must be in writing and be timely submitted to be considered.

Individuals in need of interpreters or other special accommodations must contact the agency contact person at least one calendar week prior to the meeting in order to effectuate the request for special accommodations. Reasonable accommodations will be made free of charge.

6) Name and Address of Agency Contact Person:

Cathy Stashak
Section Chief, Division of Technical Services
Office of the State Fire Marshal
100 W. Randolph St., Suite 4-600

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF HEARING ON PROPOSED AMENDMENTS

Chicago IL 60601

fax: 312/814-3459

DEPARTMENT ON AGING

JANUARY 2019 REGULATORY AGENDA

- a) Part (Heading and Code Citation): Access to Information of the Department on Aging (2 Ill. Adm. Code 726)
- 1) Rulemaking:
- A) Description: The Department on Aging will amend Part 726 with updated provisions to reflect changes in the Freedom of Information Act. In Sections 726.110, 726.310, and Appendix A, the Department on Aging will correct the address listing for its central office location in Springfield, Illinois.
- B) Statutory Authority: 5 ILCS 100/5-15; 5 ILCS 140/3(h); and 20 ILCS 105/4.01(11)
- C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated.
- D) Date Agency anticipates First Notice: The Department on Aging anticipates filing this proposed rulemaking project during the next six months of this year.
- E) Effect on small businesses, small municipalities or not-for-profit corporations: None
- F) Agency contact person for information:
- Tracey L.F. Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271
- 217/785-3346
- G) Related rulemakings and other pertinent information: None
- b) Part (Heading and Code Citation): Americans With Disabilities Act and Civil Rights Program Grievance Procedure (4 Ill. Adm. Code 1725)

DEPARTMENT ON AGING

JANUARY 2019 REGULATORY AGENDA

- 1) Rulemaking:
 - A) Description: In Section 1725.10 and Appendix A, the Department on Aging will correct the address listings for its central office location in Springfield, Illinois.
 - B) Statutory Authority: 20 ILCS 105/4.01(11)
 - C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated.
 - D) Date Agency anticipates First Notice: The Department on Aging anticipates filing this proposed rulemaking project during the next six months of this year.
 - E) Effect on small businesses, small municipalities or not-for-profit corporations: None
 - F) Agency contact person for information:

Tracey L.F. Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271

217/785-3346
 - G) Related rulemakings and other pertinent information: None
- c) Part (Heading and Code Citation): General Grantmaking (AGE) (44 Ill. Adm. Code 7020)
 - 1) Rulemaking:
 - A) Description: The Department on Aging has reserved and will add Part 7020 to reflect Grant Accountability and Transparency Act required rulemaking unique to the Department.

DEPARTMENT ON AGING

JANUARY 2019 REGULATORY AGENDA

- B) Statutory Authority: 30 ILCS 708
 - C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated.
 - D) Date Agency anticipates First Notice: The Department on Aging anticipates filing this proposed rulemaking project during the next six months of this year.
 - E) Effect on small businesses, small municipalities or not-for-profit corporations: None
 - F) Agency contact person for information:

Tracey L.F. Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271

217/785-3346
 - G) Related rulemakings and other pertinent information: None
- d) Part (Heading and Code Citation): General Programmatic Requirements (89 Ill. Adm. Code 220)
- 1) Rulemaking:
 - A) Description: Part 220 will be amended or repealed as necessary to: (1) update outdated language or provisions to provide consistency throughout the rulemaking; and (2) correct the address listing in Section 220.503 for the central office location of the Department in Springfield, Illinois.
 - B) Statutory Authority: 20 ILCS 105/4, 4.01(4), 4.01(11), and 4.02
 - C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated.

DEPARTMENT ON AGING

JANUARY 2019 REGULATORY AGENDA

- D) Date Agency anticipates First Notice: The Department on Aging anticipates filing this proposed rulemaking project during the next six months of this year.
- E) Effect on small businesses, small municipalities or not-for-profit corporations: The Department does not anticipate an effect upon small businesses, small municipalities, or not-for-profit corporations.
- F) Agency contact person for information:
- Tracey L.F. Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271
- 217/785-3346
- G) Related rulemakings and other pertinent information: None
- e) Part (Heading and Code Citation): Older Americans Act Programs (89 Ill. Adm. Code 230)
- 1) Rulemaking:
- A) Description: Part 230 will be amended as necessary to (1) update outdated language or provisions to provide consistency throughout the rulemaking; (2) update statutory citations; and (3) update provisions to reflect changes in the federal Older Americans Act.
- B) Statutory Authority: 20 ILCS 105/4.01 and 4.13
- C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated.
- D) Date Agency anticipates First Notice: The Department on Aging anticipates filing this proposed rulemaking project during the next six months of this year.

DEPARTMENT ON AGING

JANUARY 2019 REGULATORY AGENDA

- E) Effect on small businesses, small municipalities or not-for-profit corporations: The Department does not anticipate an effect upon small businesses, small municipalities, or not-for-profit corporations.
- F) Agency contact person for information:
- Tracey L.F. Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271
- 217/785-3346
- G) Related rulemakings and other pertinent information: None
- f) Part (Heading and Code Citation): Community Care Program (89 Ill. Adm. Code 240)
- 1) Rulemaking:
- A) Description: Part 240 will be amended as necessary in order to (1) update provisions to reflect federal regulations regarding the 1915(c) Medicaid Persons who are Elderly Waiver; (2) revise provisions once the Department on Aging formally incorporates person-centered planning into the care coordination process; (3) modify certification opportunities for entities providing adult day services; (4) update provisions regarding conflicts and the appeals process to improve health, safety, and welfare of program participants; (5) add new subsections to Section 240.260 (care coordination service) that outline intensive casework and intensive monitoring to align with person-centered care coordination, and (6) review and address as needed the issues raised by commenters that were outside of the scope of the person-centered planning rulemaking process.
- B) Statutory Authority: 20 ILCS 105/4.01(11) and 4.02
- C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated.

DEPARTMENT ON AGING

JANUARY 2019 REGULATORY AGENDA

- D) Date Agency anticipates First Notice: The Department on Aging anticipates filing this proposed rulemaking project during the next six months of this year.
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Entities serving as in-home service providers, Care Coordination Units (CCUs), Adult Day Service (ADS) Provider Agencies, and the Area Agencies on Aging (AAAs) for the Department on Aging under the Community Care Program.
- F) Agency contact person for information:
- Tracey L.F. Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271
- 217/785-3346
- G) Related rulemakings and other pertinent information: None
- g) Part (Heading and Code Citation): Adult Protection and Advocacy Services (89 Ill. Adm. Code 270)
- 1) Rulemaking:
- A) Description: Part 270 will be amended as necessary to: (1) adopt amendments to update the definition of the term "eligible adult" in Sections 270.210 and 270.402 so the emergency rulemaking will become permanent and not expire.
- B) Statutory Authority: Public Act 100-0641, effective January 1, 2019, and authorized by 320 ILCS 20/2 and 10
- C) Scheduled meeting/hearing dates: No meetings or hearings are scheduled or anticipated.

DEPARTMENT ON AGING

JANUARY 2019 REGULATORY AGENDA

- D) Date Agency anticipates First Notice: The Department on Aging anticipates filing these proposed rulemaking projects during the next six months of this year.
- E) Effect on small businesses, small municipalities or not-for-profit corporations: Entities serving as provider agencies for the Department on Aging under the Adult Protective Services Program will be affected.
- F) Agency contact person for information:
- Tracey L.F. Trigillo
Deputy General Counsel
Illinois Department on Aging
One Natural Resources Way, Suite 100
Springfield IL 62702-1271
- 217/785-3346
- G) Related rulemakings and other pertinent information: Emergency rulemaking filed on December 26, 2018, effective January 1, 2019 for 150 days

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 43, Issue 3 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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