

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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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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Section 130.311 Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products

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- a) General. With respect to prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person and insulin, urine testing utensils, syringes and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%. Beginning January 1, 2014, "prescription and nonprescription medicines and drugs" includes medical cannabis and medical cannabis infused products sold by a registered dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130]. [35 ILCS 120/2-10] Medical cannabis, including medical cannabis infused products, sold by registered dispensing organizations under the Compassionate Use of Medical Cannabis Pilot Program Act, is subject to Retailers' Occupation Tax at the 1% rate, plus applicable local taxes. See NOTE. Cannabis paraphernalia is subject to Retailers' Occupation Tax at the general merchandise rate of 6.25%. NOTE: Medical cannabis is subject to tax under both the Metro East Mass Transit District Retailers' Occupation Tax (as provided in 70 ILCS 3610/5.01) and the Regional Transportation Authority Retailers' Occupation Tax (taxed at the rate established for prescription and nonprescription medicines in Cook County and at the rate established for general merchandise in all other areas of the metropolitan region that are subject to the tax, as provided in 70 ILCS 3615/4.03).
- b) Medicines and Drugs. Except for grooming and hygiene products described in subsection (c), a medicine or drug is any pill, powder, potion, salve or other preparation for human use that purports on the label to have medicinal qualities. Medicines prescribed by veterinarians for animals are subject to the high rate of tax. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medicinal claim.
- 1) Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:
- A) "medicated";
 - B) "heals (a medical condition)";
 - C) "cures (a medical condition)";
 - D) "for relief (of a medical condition)";

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- E) "fights infection";
 - F) "stops pain";
 - G) "relief from poison ivy or poison oak";
 - H) "relieves itching, cracking, burning";
 - D) "a soaking aid for sprains and bruises";
 - J) "relieves muscular aches and pains";
 - K) "cures athlete's foot";
 - L) "relieves skin irritation, chafing, heat rash and diaper rash";
 - M) "relief from the pain of sunburn";
 - N) "soothes pain".
- 2) The use of the terms "antiseptic", "antibacterial" or "kills germs" may or may not constitute a medicinal claim.
- A) The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim.
 - B) However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim.
- 3) Examples of claims that do not constitute medicinal claims include, but are not limited to:
- A) "cools";
 - B) "absorbs wetness that can breed fungus";
 - C) "deodorant" or "destroys odors";
 - D) "moisturizes";
 - E) "freshens breath";

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- F) "antiperspirant";
 - G) "sunscreen";
 - H) "prevents";
 - I) "protects".
- c) Grooming and Hygiene Products. *Beginning September 1, 2009, "nonprescription medicines and drugs" does not include grooming and hygiene products. "Grooming and hygiene products" includes, but is not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and sun screens, unless those products are available by prescription only, regardless of whether the products meet the definition of "over-the-counter drugs". "Over-the-counter drug" means a drug for human use that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter drug" label includes a "Drug Facts" panel or a statement of the "active ingredients" with a list of those ingredients contained in the compound, substance or preparation. [35 ILCS 120/2-10]*
- 1) As a result, on or after September 1, 2009:
 - A) nonprescription medicines and drugs that are grooming and hygiene products do not qualify for the 1% rate of tax for medicines and drugs under subsection (b). Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims or meet the definition of over-the-counter drugs. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%.
 - B) products available only with a prescription are not "grooming and hygiene products".
 - 2) Examples of products that are grooming and hygiene products include, but are not limited to:
 - A) all shampoos, hair conditioners and hair care products;
 - B) shaving creams or lotions;
 - C) deodorants;

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- D) moisturizers;
 - E) breath spray;
 - F) all condoms, with and without spermicide;
 - G) baby diapers and adult diapers, pantliners and pads;
 - H) baby powder;
 - I) contact lens solutions;
 - J) hand sanitizers;
 - K) acne products;
 - L) skin creams, lotions, ointments and conditioners;
 - M) foot powders;
 - N) foot wear insoles that are intended to eliminate odor;
 - O) feminine hygiene products; and
 - P) lip balms.
- 3) The following products are not grooming and hygiene products and may qualify for the 1% rate if they meet the requirements of subsection (b):
- A) hydrocortisone creams or ointments;
 - B) anti-itch creams or ointments;
 - C) vaginal creams or ointments;
 - D) nasal sprays;
 - E) eye drops;
 - F) topical pain relievers;
 - G) ice/heat creams;

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- H) rubbing alcohol;
 - I) denture creams or adhesives; and
 - J) styptic pencils.
- 4) Nonprescription medicines and drugs and products that are not grooming and hygiene products do not qualify for the 1% rate of tax unless they meet the requirements of subsection (b) of this Section.
- 5) Products that are taken orally and ingested, such as vitamins, supplements and weight gain or weight loss products, are not grooming and hygiene products.
- d) Medical Appliances: A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body.
- 1) For purposes of this Section, an item that becomes part of the human body by substituting for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease is considered a medical appliance. Examples of medical appliances that will qualify the product for the low rate of tax include, but are not limited to:
- A) breast implants that restore breasts after loss due to cancer;
 - B) heart pacemakers;
 - C) artificial limbs;
 - D) dental prosthetics;
 - E) crutches and orthopedic braces;
 - F) dialysis machines (including the dialyzer);
 - G) wheelchairs; and
 - ~~H) artificial limbs; and~~
 - H) mastectomy forms and bras.

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- 2) Corrective medical appliances such as hearing aids, eyeglasses, contact lens and orthodontic braces qualify as medical appliances subject to the low rate of tax.
 - 3) Sterile band-aids, dressings, bandages and gauze qualify for the low rate because they serve as a substitute for skin.
 - 4) Items transferred incident to cosmetic procedures are not considered medical appliances. For purposes of this Section, a cosmetic procedure means any procedure performed on an individual that is directed at improving the individual's appearance and that does not prevent or treat illness or disease, promote the proper function of the body or substitute for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease. Cosmetic procedures include, but are not limited to, elective breast, pectoral or buttock augmentation.
 - 5) Diagnostic equipment shall not be deemed to be a medical appliance, except as provided in Section ~~130.310(d)~~ 130.311(e). Other medical tools, devices and equipment such as x-ray machines, laboratory equipment and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as medical appliances. Sometimes a kit of items is sold where the purchaser will use the kit items to perform treatment upon himself or herself. The kit will contain paraphernalia and sometimes medicines. An example is a kit sold for the removal of ear wax. Because the paraphernalia hardware is for treatment, it generally does not qualify as a medical appliance. However, the Department will consider the selling price of the entire kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.
 - 6) Supplies, such as cotton swabs, disposable diapers, toilet paper, tissues and toiletries and cosmetics, such as lipsticks, perfume and hair tonics, do not qualify for the reduced rate.
 - 7) Medical appliances may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients or purchased directly by individuals. Purchases of medical appliances by lessors that will be leased to others for human use also qualify for the reduced rate of tax.
- e) *Insulin, urine testing materials, syringes and needles used in treating diabetes in human beings qualify for the reduced rate of tax. (Section 2-10 of the Act)*

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- f) Modifications Made to a Motor Vehicle for the Purpose of Rendering It Usable by a Disabled Person
- 1) Effective August 17, 1995, *modifications made to a motor vehicle, as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146], for the purpose of rendering it usable by a disabled person, qualify for the reduced rate of tax* (Section 2-10 of the Act). The low rate applies to modifications that enable a disabled person to drive a vehicle or that assist in the transportation of disabled persons. Examples of such modifications include, but are not limited to, special steering, braking, shifting or acceleration equipment or equipment that modifies the vehicle for accessibility, such as a chair lift.
 - 2) For purposes of this subsection (f), the term "disabled person" has the same meaning as a "person with disabilities" in Section 1-159.1 of the Illinois Vehicle Code [625 ILCS 5/1-159.1].
- g) Reporting
- 1) The retailer must keep an actual record of all sales and must report tax at the applicable rates, based on sales as reflected in the retailer's records. Books and records must be maintained in sufficient detail so that all receipts reported with respect to drugs, medicines and medical appliances can be supported.
 - 2) Suppliers that sell items to health professionals must collect tax based on the actual use of the items. Health professionals that purchase items that may or may not qualify for the low rate, depending upon the ultimate use of the items by the health professionals, may provide their suppliers with certificates that identify the percentage of items being purchased that qualify for the low rate, e.g., that are purchased to be used to replace a malfunctioning part of the body. (For example, cosmetic versus reconstructive procedures.)
 - A) The certificate should contain the following information:
 - i) The seller's name and address;
 - ii) the purchaser's name and address;
 - iii) a description of the medical appliances being purchased;

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- iv) the percentage of the medical appliances being purchased that qualify for the low rate;
 - v) the purchaser's signature or the signature of an authorized employee or agent of the purchaser and date of signing; and
 - vi) if the purchaser is registered with the Department, the purchaser's Registration Number or Resale Number.
- B) A supplier that obtains a certificate from a health professional that complies with subsection (g)(2)(A) will not be liable for additional Retailers' Occupation Tax in the event the actual percentage of items purchased by the health professional that qualify for the low rate is less than the percentage claimed in the certificate if it remitted Retailers' Occupation Tax to the Department based on the information contained in the certificate received from the health professional.

(Source: amended at 38 Ill. Reg. _____, effective _____)

Section 130.745 Revocation of Certificate

- a) The Department, after notice and hearing as provided under Section 2505-380 of the Civil Administrative Code [20 ILCS 2505/2505-380] and Section 2b of the Act, shall revoke the certificate of registration (including all sub-certificates of registration, if any, issued there under) of any person who violates any of the provisions of the Act. Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90 day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.
- b) Upon revocation of the certificate of registration (including all sub-certificates of registration, if any, issued under the certificate), the Department shall post notice at the place or places of business, at the front entrance and on the front windows, to which the revoked certificate applied, stating that the certificate of registration has been revoked and that it is unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration issued by the Department (see Illustration B).

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- c) The Department shall notify the Department of Financial and Professional Regulation and the Department of Public Health upon revocation of, or a decision not to renew, a certificate of registration issued to a medical cannabis dispensing organization operated under the Compassionate Use of Medical Cannabis Pilot Program.

(Source: Amended at 29 Ill. Reg. 7004, effective April 26, 2005)

Section 130.801 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, 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) 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 with Section 130.805(b)(5).
- e) Such books and records must be kept in the English language.

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- f) Such 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 such 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.
- h) All books and records kept by a medical cannabis dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130/10(o)] pursuant to rules adopted by the Illinois Department of Financial and Professional Regulation to implement the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130] shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

(Source: Amended at 24 Ill. Reg. 15104, effective October 2, 2000)