

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Automobile Renting Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 180
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
180.101	Amendment
180.120	Amendment
180.125	Amendment
180.130	Amendment
180.150	New Section
- 4) Statutory Authority: Implementing the Automobile Renting Occupation and Use Tax Act [35 ILCS 155] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505/2505-25].
- 5) A Complete Description of the Subjects and Issues Involved: The rulemaking amends 86 Ill. Adm. Code 180, the Automobile Renting Occupation Tax rules, to reflect changes to the Act enacted by Public Act 103-520. Public Act 103-520 excludes peer-to-peer car sharing, as defined in Section 5 of the Car-Sharing Program Act (815 ILCS 312), from the Automobile Renting Occupation Tax if tax due on the automobile under the Retailers' Occupation Tax or Use Tax Act was paid upon the purchase of the automobile or when the automobile was brought into Illinois. This rulemaking also clarifies existing text, updates citations, and adds a new section on administration and enforcement of the Act.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

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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:

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- 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: Simple accounting, computer, and bookkeeping skills.
 - C) Types of professional skills necessary for compliance: Simple accounting, computer, and bookkeeping skills.
- 14) Small Business Impact Analysis: There is no adverse impact on small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2024

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

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 180
AUTOMOBILE RENTING OCCUPATION TAX

SUBPART A: NATURE OF THE TAX

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180.101	Character And Rate Of The Tax
180.105	Responsibility Of Trustees, Receivers, Executors Or Administrators
180.110	Occasional Rental Transactions
180.115	Habitual Rental Transactions

SUBPART B: GROSS RECEIPTS, AUTHORIZED DEDUCTIONS AND NON-TAXABLE TRANSACTIONS

Section	
180.120	The Meaning of Gross Receipts
180.125	Authorized Deductions from Gross Receipts
180.130	Nontaxable Transactions
180.135	Rentals for Re-rental

SUBPART C: RETURNS

Section	
180.140	Monthly Tax Returns – When Due – Contents

SUBPART D: INCORPORATION BY REFERENCE

Section	
180.145	Incorporation of Certain Retailers' Occupation Tax Regulations

SUBPART E: ADMINISTRATION AND ENFORCEMENT

<u>Section</u>	
<u>180.150</u>	<u>Administration and Enforcement</u>

AUTHORITY: Implementing the Automobile Renting Occupation and Use Tax Act [35 ILCS 155] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505/2505-25].

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SOURCE: Adopted and codified at 7 Ill. Reg. 9397, effective July 25, 1983; amended at 13 Ill. Reg. 9332, effective June 6, 1989; amended at 16 Ill. Reg. 4859, effective March 12, 1992; amended at 24 Ill. Reg. 12063, effective July 28, 2000; amended at 25 Ill. Reg. 8323, effective June 22, 2001; amended at 26 Ill. Reg. 4935, effective March 15, 2002; amended at 38 Ill. Reg. 12934, effective June 9, 2014; amended at 48 Ill. Reg. 10757, effective July 2, 2024; amended at 48 Ill. Reg. _____, effective _____.

SUBPART A: NATURE OF THE TAX

Section 180.101 Character And Rate Of The Tax

- a) The Automobile Renting Occupation and Use Tax Act [35 ILCS 155] (the Act) *imposes a tax upon persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less at the rate of 5% of the gross receipts from such business.* [35 ILCS 155/3](Section 3 of the Act)
- b) "Automobile" means any motor vehicle of the first division that is used for automobile renting, as defined in the Act,~~that is used for automobile renting, as defined in the Act,~~ or a motor vehicle of the second division that is used for automobile renting, as defined in the Act,~~that is used for automobile renting, as defined in the Act,~~ ~~and~~ which is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat; is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers, as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146]; or, beginning January 1, 2014,~~beginning January 1, 2014,~~ has a Gross Vehicle Weight Rating, as defined in Section 1-124.5 of the Illinois Vehicle Code, of 8,000 pounds or less. [35 ILCS 155/2](Section 2 of the Act) This includes motorcycles and motor driven cycles.
- 1) Under Section 1-146 of the Illinois Vehicle Code, a motor vehicle is defined as every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power, ~~and~~ motorized wheelchairs, low-speed electric bicycles, as defined in Section 140.10 of the Illinois Vehicle Code [625 ILCS 5/140.10], and low-speed gas bicycles, as defined in

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Section 1-140.15 of the Illinois Vehicle Code [625 ILCS 5/140.15].
[625 ILCS 5/1-146]

- 2) Under Section 1-146 of the Illinois Vehicle Code, motor vehicles are classified as either first or second division motor vehicles. The manner in which a vehicle is classified generally reflects the purpose for which it is primarily used. As a result of this classification, a motor vehicle will be registered as either a first or second division vehicle, and will receive a plate reflecting such registration. The following examples are illustrative:
- A) Under Section 1-146 of the Illinois Vehicle Code, first division motor vehicles are defined as *motor vehicles which are designed for carrying not more than 10 persons.* [625 ILCS 5/1-146] Under Section 2 of the Act, all motor vehicles registered with the Secretary of State as first division motor vehicles qualify as automobiles subject to tax under the Act. Consequently, passenger cars and motorcycles are "automobiles" subject to tax under the Act.
- B) Second division motor vehicles generally include motor vehicles serving purposes other than or in addition to serving as passenger cars. Second division vehicles include *motor vehicles which are designed for carrying more than 10 persons, those vehicles designed or used for living quarters, those motor vehicles designed for pulling or carrying freight, cargo or implements of husbandry, ~~motor vehicles designed for carrying more than 10 persons; motor vehicles designed or used for living quarters; and those motor vehicles of the First Division remodeled first division remodeled for use and used as motor vehicles of the Second Division~~ second division.* [625 ILCS 5/1-146] A pick-up truck is a second division vehicle because it is designed for pulling or carrying freight. Section 2 of the Act provides that the only types of second division vehicles subject to tax include:
- i) self-contained motor vehicles designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat;

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- ii) motor vehicles which are of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers; and
- iii) beginning January 1, 2014, a motor vehicle that has a Gross Vehicle Weight Rating, as defined in Section 1-124.5 of the Illinois Vehicle Code, of 8,000 pounds or less.

C) Pick-up Trucks

- i) ~~Through~~ ~~Until~~ December 31, 2013, pick-up trucks are not subject to tax under the Act because they are not one of the types of second division motor vehicles specified as automobiles under the terms of the Act.
- ii) Beginning January 1, 2014, pick-up trucks are subject to tax under the Act only if they are one of the types of second division motor vehicles specified as automobiles under subsection (b)(2)(B)(iii).

D) SUVs

- i) Multipurpose passenger vehicles, commonly referred to as "sport utility vehicles (SUVs)", may be registered as either first or second division motor vehicles. If an SUV is registered as a first division motor vehicle, it is an automobile subject to tax under the Act.
~~Through~~ ~~Until~~ December 31, 2013, if an SUV is registered as a second division motor vehicle, it is not an automobile subject to tax under the Act because it is not one of the types of second division motor vehicles specified as automobiles under the terms of the Act.
- ii) Beginning January 1, 2014, if an SUV is registered as a second division motor vehicle, it is an automobile subject to tax only if it is one of the types of second division motor vehicles specified as automobiles under subsection (b)(2)(B)(iii).

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- 3) Lessors engaged in the business of leasing motor vehicles that are not subject to tax under the Act generally incur a Use Tax liability on the cost price of motor vehicles purchased for leasing purposes. For more information on the liability of lessors, see the provisions of 86 Ill. Adm. Code 130.220 and 130.2010.
- c) **How To Determine Effective Rate**
Automobile Renting Occupation Tax liability shall be computed by applying to the gross receipts from taxable rental transactions, the tax rate in effect during the rentee's possession of the rented automobile. Where a rate change takes effect during a rentee's possession, all rental receipts received from that rentee after the effective date of the rate change are subject to the new rate. If a rentee takes possession after a rate change in a rental transaction in which the rentor received rental receipts before the date of the rate change and the tax was paid on such receipts when received by the rentor at the rate in effect when the rentor received those receipts, no additional tax will be due or credit allowed because the rentee took possession after the effective date of the rate change.
 - d) **Effective Date of New Taxes**
When something that has been exempted becomes taxable as to rental transactions that are made on and after some particular date, the date of rental for this purpose shall be deemed to be the date of possession or right to possession of the automobile. This is true even if such possession is taken under a contract that was entered into before the effective date of the new tax.
 - e) **Relation of Automobile Renting Occupation Tax To The Automobile Renting Use Tax**
 - 1) The Automobile Renting Occupation Tax is an occupation tax, the legal incidence of which is on the rentor rather than on the rentee.
 - 2) However, the rentor becomes a tax collector under the Automobile Renting Use Tax and is required to collect that tax from rentees. In making that collection, rentors may rely on the tax collection schedules prescribed in the Department's Use Tax Regulations for the collection of the Use Tax by retailers from users. Consequently, the tax collection schedules set out in 86 Ill. Adm. Code 150. Table A are incorporated by reference herein.

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(Source: Amended at 48 Ill. Reg. _____, effective _____.)

SUBPART B: GROSS RECEIPTS, AUTHORIZED DEDUCTIONS AND NON-
TAXABLE TRANSACTIONS

Section 180.120 The Meaning of Gross Receipts

- a) "Gross receipts" or "rent" means all consideration received by a rentor from the rentee or someone else as the rental price for the rental of automobiles under lease terms of one year or less. Where a rentor receives the rental price in installment payments, the rentor shall include the amounts of such payments only as and when the payments are received by the rentor from the rentee or someone else.
- b) All consideration received as the rental price must be included in gross receipts *whether received in money or otherwise, including cash, credits, property and services*. [35 ILCS 155/2](Ill. Rev. Stat. 1981, ch. 120, par. 1702.)
- c) There is no deduction from gross receipts on account of the cost of the property rented, the cost of materials used, labor or service cost or any other expense whatever.
- d) "Rental price" does not include consideration paid for peer-to-peer car sharing to a shared-vehicle owner or a car-sharing program, as those terms are defined in Section 5 of the Car-Sharing Program Act [815 ILCS 312], if tax due on the automobile under the Retailers' Occupation Tax Act or Use Tax Act was paid upon the purchase of the automobile or when the automobile was brought into Illinois.
- e) "Rentor" means any person, firm, corporation or association engaged in the business of renting or leasing automobiles to users. For this purpose, the objective of making a profit is not necessary to make the renting activity a business. "Rentor" does not include a car-sharing program or a shared-vehicle owner, as defined in Section 5 of the Car-Sharing Program Act [815 ILCS 312], if tax due on the automobile under the Retailers' Occupation Tax Act or Use Tax Act was paid upon the purchase of the automobile or when the automobile was brought into Illinois.

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- f) "Rentee" means any user to whom the possession, or the right to possession, of an automobile is transferred for a valuable consideration for a period of one year or less, whether paid for by the "rentee" or by someone else. "Rentee" does not include a shared-vehicle driver, as defined in Section 5 of the Car-Sharing Program Act [815 ILCS 312], if tax due on the automobile under the Retailers' Occupation Tax Act or Use Tax Act was paid upon the purchase of the automobile or when the automobile was brought into Illinois. [35 ILCS 155/2]

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 180.125 Authorized Deductions from Gross Receipts

- a) "Gross receipts" on which the Automobile Renting Occupation Tax must be computed do not include receipts from the following separately stated charges added to renters' billings:
- 1) charges added on account of the rentor's duty to collect the Automobile Renting Use Tax from renters or passed on because of the rentor's liability under the Automobile Renting Occupation Tax or passed on because of the rentor's liability under Municipal, County, Metropolitan Pier and Exposition Authority, Regional Transportation Authority, or Metro East Mass Transit District Automobile Renting Occupation Taxes;
 - 2) receipts from renters in consideration of waivers of claims for loss or damage to automobiles rented;
 - 3) receipts from separately stated charges for insurance;
 - 4) receipts from separately stated charges for recovery of refueling costs;
 - 5) receipts from any other separately stated charges which are not for the use of tangible personal property. [35 ILCS 155/2]
- b) Effective July 20, 1999, Effective July 20, 1999, "gross receipts" does not include receipts received by an automobile dealer from a manufacturer or service contract provider for the use of an automobile by a person while that person's automobile is being repaired by that automobile dealer and the repair is made pursuant to a manufacturer's warranty or a service

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contract where a manufacturer or service contract provider reimburses that automobile dealer pursuant to a manufacturer's warranty or a service contract and the reimbursement is merely made to recover the costs of operating the automobile as a loaner vehicle. [35 ILCS 155/2]

- 1) For example, an automobile dealer makes repairs for an automobile owner under the terms of a manufacturer's warranty. The manufacturer's warranty provides that the manufacturer will provide the owner with another automobile to drive while the owner's automobile is being repaired. Pursuant to the terms of an agreement between the manufacturer and the dealer, the dealer provides the owner with a replacement automobile either from its sales inventory or from its rental inventory. In exchange, the manufacturer compensates the dealer for that replacement automobile. However, under the terms of the agreement between the manufacturer and the dealer, that compensation is limited to an amount intended only to reimburse the dealer for the dealer's costs of operating the replacement automobile as a loaner vehicle. Compensation paid to a dealer by a manufacturer or service contract provider under these circumstances that merely reimburses the dealer for the dealer's cost of operating the replacement automobile as a loaner vehicle is not subject to the tax. However, if the dealer charges a customer amounts that exceed the compensation paid to the dealer by the manufacturer or service contract provider as reimbursement for the cost of operating the replacement vehicle as a loaner vehicle, the excess receipts are subject to the tax.
 - A) Costs of operating the replacement automobile as a loaner vehicle may include the cost of paperwork to issue the loaner vehicle or to receive reimbursement from the manufacturer; time needed by the dealership employee to fill out the paperwork; preparing the loaner; giving keys to the customer; instructing the customer on use and when to return the loaner; depreciation of the loaner vehicle; cost of insurance on the loaner vehicle; needed time and materials used to clean the loaner vehicle when returned; and fueling and servicing the loaner vehicle.
 - B) In order to exclude receipts from a manufacturer or service contract provider that merely reimburse him for his costs of

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operating the replacement automobile as a loaner vehicle, a dealer must maintain books and records documenting such costs.

- 2) Sometimes, the dealer does not provide the owner with a replacement automobile from its own inventory. Rather, the automobile dealer rents an automobile from a separate automobile rentor and then provides that automobile to the owner whose automobile is being repaired pursuant to the manufacturer's warranty. In this situation, the dealer's rental from the automobile rentor is a non-taxable rental so long as all the requirements of Section 180.135 of this Part are satisfied. The dealer's subsequent provision of an automobile to the owner is non-taxable so long as the requirements of this subsection (b) are satisfied.
- 3) If an owner rents an automobile from an automobile rentor that is not the dealer making the repairs to his automobile, the exclusion set out in this subsection (b) is not available. In addition:
 - A) The exclusion does not apply even though the dealer reimburses the owner for the rental.
 - B) The exclusion does not apply even though the automobile rentor is a separate entity related to the automobile dealer. For example, if one person operates an automobile dealership as one corporation and an automobile rental business as a separate corporation, the procedure set out in subsection (b)(2) must be followed in order for the exclusion to apply.

(Source: Amended at 48 Ill. Reg. _____, effective _____.)

Section 180.130 Nontaxable Transactions

The tax does not apply to rental receipts from the following transactions:

- a) *The renting of automobiles to any governmental body, nor to any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, nor to any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and*

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which is organized and operated primarily for the recreation of persons 55 years or older [35 ILCS 155/3]~~(Section 3 of the Act)~~;

- b) isolated or occasional automobile renting transactions;
- c) the renting of automobiles under lease terms of more than one year;
- d) the renting of motor vehicles which do not fall within the definition of automobile as set forth in Section~~Subsection~~ 180.101(b);
- e) transactions protected by the Commerce Clause of the United States Constitution (U.S. Const. art. 1, sec. 8, cl. 3);
- f) transactions in which the rentor furnishes the service of operating the automobile, so that the rentor or the rentor's agent remains in possession of the automobile [35 ILCS 155/2];
- g) transactions in which an automobile dealer makes a charge for the use of an automobile as a demonstrator in connection with that dealer's business of selling automobiles so long as the charge is made only to recover the costs of operating the automobile as a demonstrator and is not intended as a rental or a leasing charge in the ordinary sense; nor
- h) the renting of automobiles under lease terms of one year or less to persons who will re-rent those automobiles to others under lease terms of one year or less.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

SUBPART E: ADMINISTRATION AND ENFORCEMENT

Section 180.150 Administration and Enforcement

- a) *The Department shall have full power to administer and enforce Section 3 of the Act, to collect all taxes and penalties due, to dispose of taxes and penalties so collected in the manner provided, and to determine all rights to credit memoranda, arising on account of the erroneous payment of tax or penalty. In the administration of, and compliance with, Section 3 of the Act, the Department and persons who are subject to Section 3 of the Act shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations.*

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penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 1, 1a, 2 through 2-65 (in respect to all provisions therein other than the State rate of tax), 2a, 2b, 2c, 3 (except provisions relating to transaction returns, electronic filing of returns, and quarter monthly payments), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12 and 13 of the Retailers' Occupation Tax Act and Section 3-7 of the Uniform Penalty and Interest Act as fully as if those provisions were set forth herein. [35 ILCS 155/3]

- b) The tax imposed by Section 3 of the Act does not apply to any amounts paid or received for peer-to-peer car sharing, as defined in Section 5 of the Car-Sharing Program Act [815 ILCS 312], or the privilege of sharing a shared vehicle through a car-sharing program, as defined in Section 5 of the Car-Sharing Program Act, if the shared vehicle owner paid applicable taxes upon the purchase of the automobile. As used in this Section, "applicable taxes" means, with respect to vehicles purchased in Illinois, the retailers' occupation tax levied under the Retailers' Occupation Tax Act or the use tax levied under the Use Tax Act. "Applicable taxes", with respect to vehicles not purchased in Illinois, refers to the sales, use, excise, or other generally applicable tax that is due upon the purchase of a vehicle in the jurisdiction in which the vehicle was purchased. Notwithstanding any law to the contrary, the car-sharing program shall have the right to rely on the shared vehicle owner's response and to be held legally harmless for such reliance. [35 ILCS 155/6]

(Source: Added at 48 Ill. Reg. _____, effective _____)