



Illinois Department of Revenue

Legal Services Office
101 W. Jefferson St. MC 5-500
Springfield, IL 62794

SECOND NOTICE OF PROPOSED RULEMAKING

- 1) Agency: Illinois Department of Revenue
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: Retailers' Occupation Tax, 86 Ill. Adm. Code 130
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: September 20, 2024, Issue 38, 48 Ill. Reg. 13979
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period: See attachment.
- 5) Final Regulatory Flexibility Analysis:
 - A. Summary of the issues raised by affected small businesses during the First Notice Period: No issues were raised by small businesses during the First Notice Period.
 - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: None.
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: The Agency's Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking is attached.
- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply with the Codification Scheme: All changes requested by the Administrative Code Division have been made.
- 8) Evaluation of the comments received by the agency from interested persons during the first notice period (but not including any questions raised by the Joint Committee in a preliminary review) including:
 - A. Date of any public hearing held during the first notice period. Name of the person or group requesting a hearing: No public hearing requested.
 - B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments: The Department received an ex parte communication via telephone on October 1, 2024, from Kevin

Semlow, Executive Director, Governmental Affairs and Commodities, on behalf of the Illinois Farm Bureau. This ex parte communication was reported to the Executive Ethics Commission by the Department's Ethics Officer on October 15, 2024. The Report of Ex Parte Communication, copies of emails documenting the communications, and a copy of the Memorandum to the Executive Ethics Commission are attached.

Additionally, the Department received comments in writing from Kevin Semlow, Executive Director, Governmental Affairs and Commodities, on behalf of the Illinois Farm Bureau, 1701 Towanda Ave., P.O. Box 2901, Bloomington, IL 61702-2901 by email on October 3, 2024.

Copies of the comments are attached as exhibits to the Department's Second Notice.

C. A list of all specific criticisms and suggestions raised in the comments:

1. "In the Section 130.305, c), 1), A) we find the current reference to "aircraft" (Page 13996). We believe that this term should be specifically defined, or specific examples be listed to include, but not be limited to, winged aircraft, helicopters, and drones. Based on the general farm machinery and equipment definition in 130.305 c) would know that winged aircraft and helicopters qualify for the exemption and therefore drones used primarily for applying farm chemicals will also qualify. We feel that a more inclusive explanation of aircraft would benefit retailers and purchasers complying with the procedures outlined in the law and administrative code."
2. "We do request that the proposed rulemaking regarding Section 130.305, c), 2) (Page 13996) have ", but not limited to" added to the phrase "Qualifying uses include:" We feel this will allow for new or updated practices to be included in future applications. We fully understand and support the inclusion of these guidelines to help better explain and capture the current application of the exemptions especially dealing with ATVs."
3. "The inclusion of the new language implementing P.A. 103-0009 is appreciated, but we do have a question of clarification with Section 130.305 c), 4) (Page 13998). In subparts A) and B) it lists qualifying and non-qualifying examples linked to lighting and heating equipment. When the language of P.A. 103-0009 was drafted the original intent was to include power generated and used in production agriculture for many purposes that are currently

exempt. For example, grain dryers currently qualify as being farm machinery and equipment necessary for growing of crops and therefore exempt. It was also the intent to cover livestock feed systems, milking equipment, and other current exempt equipment that use electricity. We are assuming that the general statement in subpart 4) includes electrical power generation equipment that supplies power to these other exempt farm machinery and equipment. We request that the current proposed amendatory language be clarified to capture the nexus of the farm machinery and equipment exemption and how that would apply not only to the use listed in subsection A)."

D. The agency's evaluation of each of the specific criticisms and suggestions:

1. After consideration and internal discussion, the Department has included drones and unmanned aerial vehicles in the rulemaking in c) 1) and c) 1) A). As such, we have also added a qualifying use that would be specific to drones in c) 2) D) as well as including drones in precision farming. We do not believe listing "helicopter" or "winged aircraft" is necessary as both those terms are encompassed in the definition of "aircraft".
2. While the word "include" is not exhaustive but merely illustrative, we have decided to add the phrase "but not limited to" in these two subsections c) 2) and c) 3).
3. Public Act 103-0009 provides, "Farm machinery and equipment also includes electrical power generation equipment used primarily for production agriculture." Section 130.305 is extensive in providing examples of what is and what is not production agriculture. As such, it should be reasoned that using electrical power generation equipment to power other farm machinery and equipment that would be considered or has been determined to be "production agriculture" would be a qualifying use.

E. A statement that the agency has considered all comments received during the first notice period: The Department has reviewed and considered all comments received during the first notice period.

9) An analysis of the expected effects of the proposed rulemaking, including:

A. Impact on the public: Persons making sales of tangible personal property at retail and for resale are affected. Persons purchasing tangible personal property for use in production agriculture are affected by the clarifications

and policy and statutory additions in this rulemaking.

- B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: None.
- C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any methods not utilized: The Retailers' Occupation Tax rules are being amended to update several outdated provisions and to reflect Department policies already in place. Affected taxpayers are already subject to these requirements, and no additional skills are required to comply. The Department is currently handling these sales as required by the statute, and therefore, the methods described in 5 ILCS 100/30 are not legal or feasible in meeting the requirements of the Retailers' Occupation Tax Act. The Department published the proposed rulemaking in the Illinois Register and on the Department's website.

10) A justification and rationale for the proposed rulemaking, including:

- A. Any changes in statutory language requiring the proposed rulemaking: Section 130.305 is being amended to reflect changes made by P.A. 103-0009, effective June 7, 2023, exempting electrical power generation equipment used primarily for production agriculture.
- B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: Section 130.305 is being amended to incorporate Department Compliance Alerts, 07-03 and 16-02, relating to ATVs and tractors. Section 130.305 is being amended to incorporate Department policies from letter rulings regarding qualifying and nonqualifying uses for farm machinery and equipment. Section 130.1415 is being amended to provide an updated resale number for farm related items. Section 130.1955 is being amended to update information from Department policies.
- C. Relationship to any relevant federal rules, regulations, or funding requirements: None.
- D. Court orders or rulings which are related to the rulemaking: Section 130.1955 is being amended to reflect decisional law set out in *Mid-American Growers, Inc v. 1015 Department of Revenue*, 143 Ill. App. 3d 600, 606 (3d Dist. 1986) regarding the farm chemical exemption's application to shading chemicals sprayed on greenhouse windows.
- E. A complete explanation of any other reasons for the proposed rulemaking:

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86 Ill. Adm. Code 130.305, 130.1415, 130.1955, 130.1970, 130.2100, and 130.2110

No other reasons exist.

- 11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No.

Agency Personnel Who Will Respond to Joint Committee Questions Regarding the Proposed Rulemaking:

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