



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: October 4, 2024, Issue 40, 48 Ill. Reg. 14233
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period: See attached.
- 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 comments in writing from Rob Karr, President and CEO, on behalf of the Illinois Retail Merchants Association, 216 Broadway, Springfield, IL 62701, by email on November 12, 2024, from Brynne Scott.

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. "At an absolute minimum, extend the 30-day taxpayer response limit in the proposed rules to a minimum of 60-days and retain the additional 15-days if needed;
2. Regardless of the suggestion in #1 which would act as a safeguard for IDOR, in the event the taxpayer does not believe the time provisions outlined in #1 are adequate, the auditor and taxpayer must attempt to agree upon a reasonable audit plan noting what records will be provided and when. Please note that IDOR would still have the safeguard suggested in #1.

As it relates to the suggestions in #1 and #2, the 'minimum records' the proposed rules calls for would be voluminous for a business of any meaningful size. It is hard to imagine IDOR will not want the flexibility the suggestions in #1 and #1 working together provide.

3. 130.805(a)(9) does not need the "but not limited to" phrase as the list provided in the rules covers the field; and,
4. 130.805(a)(11): decades can pass between audits. There should not be a need for the taxpayer to keep this record after a set period of time (i.e. 3 years). An audit after three years will likely have little utility. Further, IDOR should have a copy of this audit readily available after three years and this should not be incumbent upon the taxpayer."

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

1. After consideration and discussion, the Department has extended the time to comply with the second Information Document Request to 30 days, where a taxpayer will have a minimum 60-days before a Demand for Records will be issued.

Currently, the Department issues the Information Document Request, EDA-70, to make its initial records request. It is usually issued within a few days of the auditor initiating the audit. The initial request typically includes high level documents that the auditor uses to develop an audit plan. The auditor then sends another Information Document Request, EDA-70, requesting more specific information.

Each document request consists of an initial 30-day Information Document Request (EDA-70), a second 30-day Information Document Request (EDA-70), if the taxpayer does not provide what is needed with a first request, and then a Demand for Records, EDA-11-A, if the taxpayer still has not provided the documents after the second EDA-70 is issued. This process occurs for each specific document requested. If an auditor requests a new document, they will issue the first Information Document Request (EDA-70) for that document even if other document requests are at the Demand for Records (EDA-11-A) stage.

These periods are commonly extended when the taxpayer provides a reasonable justification for an extension. The Department understands that large retailers often need extra time to gather the needed records. While the Department does a good job of working with taxpayers to give them the time needed to provide records, it still needs rules for the small group of taxpayers who are simply trying to delay and will not comply.

Despite the 30-day time period for the second request, the Department also allows an extension for the second request. The reasons for allowing an extension are evaluated on a case-by-case basis, but the main factor is whether a delay is likely to result in a more accurate and efficient audit.

2. The expanded list of minimum records is to put all retailers on notice of what documents and records will be expected during an audit. These are the documents that are routinely used in audits. The prior list was not all encompassing to include what would reasonably be requested during an audit. The Department has a statutory duty to inform all taxpayers what records constitute "minimum records". As stated above, the Department is flexible when requesting documentation from taxpayers during an audit.
 3. As requested, the phrase "but not limited to" has been removed from the 130.805(a)(9).
 4. After reviewing the comment regarding 130.805(a)(11), it was evident that the meaning was not clearly stated, so it has been revised. This requirement was not intended for a taxpayer to retain documents from a prior audit, but to keep records identified by the Department, in a prior audit, as necessary for any future audits.
- 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.
 - 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 records requests 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: None.
 - B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: Section 130.801 is being amended to specify the timeframe for a taxpayer to respond to a second Information Document Request. This section is also being amended to provide that failing to take reasonable steps to safeguard books and records against the elements shall be considered a failure to produce books and records.

Section 130.805 is being amended to update the minimum requirements for recordkeeping that are expected to be retained by a retailer, and to update language consistent with modern technology for recordkeeping.

Section 130.810 is being amended to be more understandable in outlining what is required for documenting deductions.

Sections 130.820 and 130.825 are being amended to provide technical changes and to update language consistent with modern technology for recordkeeping.
 - C. Relationship to any relevant federal rules, regulations, or funding requirements: None.
 - D. Court orders or rulings which are related to the rulemaking: None.
 - E. A complete explanation of any other reasons for the proposed rulemaking: None.
- 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:

Second Notice of Proposed Rulemaking

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