

ILLINOIS REGISTER

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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Home Rule Municipal Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 270
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
270.101	Amendment
270.105	Amendment
- 4) Statutory Authority: Implementing the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1] and authorized by Section 2505-15 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505/2505-15].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking incorporates the technical changes made by P.A. 100-117, effective January 1, 2019, related to how these rules describe the exemption of low-rate items from these local taxes. It also reflects the changes made by P.A. 101-0010, effective June 5, 2019, and P.A. 101-604, effective December 13, 2019, exempting aviation fuel from the Home Rule Municipal Retailers' Occupation Tax and providing new references regarding the low-rate items.
- 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.
- 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: Persons making sales of aviation fuel at retail are affected.
  - B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and computer skills.
  - C) Types of professional skills necessary for compliance: Basic accounting and computer skills.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
    - 42 Wholesale Trade
    - 44-45 Retail Trade
    - 48-49 Transportation and Warehousing
    - 92 Public Administration
  - B) Categories that the agency reasonably believes the rulemaking will impact, including:
    - viii. record keeping
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2024

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

**Section 270.101 Nature of the Home Rule Municipal Retailers' Occupation Tax**

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a) Authority to Impose Tax

- 1) Pursuant to Section 8-11-1 of the Illinois Municipal Code [65 ILCS 5], the corporate authorities of a home rule municipality may impose a tax upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with an agency of this State's government, at retail in the municipality on the gross receipts from these sales made in the course of such business. If imposed the tax shall only be imposed in ¼% increments.
- 2) This additional tax may not be imposed on tangible personal property taxed at the 1% rate under the Retailers' Occupation Tax Act [35 ILCS 120]. [65 ILCS 5/8-11-1] For guidance on the types of tangible personal property taxed at the 1% rate, see 86 Ill. Adm. Code 130.310 and 130.311.
- 3) Beginning December 1, 2019, this tax is not imposed on sales of aviation fuel unless the tax revenue is expended for airport-related purposes. If a municipality does not have an airport-related purpose to which it dedicates aviation fuel tax revenue, then aviation fuel is excluded from the tax. Each municipality must comply with the certification requirements for airport-related purposes under Section 2-22 of the Retailers' Occupation Tax Act [35 ILCS 120]. [65 ILCS 5/8-11-1] "Aviation fuel" means jet fuel and aviation gasoline. [35 ILCS 120/3] "Airport-related purposes" has the meaning ascribed in Section 6z-20.2 of the State Finance Act [30 ILCS 105]. This exclusion for aviation fuel only applies for so long as the revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133 are binding on the municipality.
- 4) The tax imposed by a home rule municipality under this Section and all civil penalties that may be assessed as an incident of the tax shall be collected and enforced by the Department of Revenue. [65 ILCS 5/8-11-1]

~~Home Rule Municipalities are authorized to impose a tax on persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with this State's~~

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~~government, at retail within such municipality, on the gross receipts from such sales made in the course of such business. If imposed, such tax shall only be imposed in ¼% increments. On and after September 1, 1991, this additional tax may not be imposed on the sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics. The tax imposed by a home rule municipality pursuant to the Act and this Part and all civil penalties that may be assessed as an incident thereof, shall be collected and enforced by the Illinois Department of Revenue (Department) (Ill. Rev. Stat. 1989, ch. 24, par. 8-11-1).~~

b) Passing on the Tax

The legal incidence of the Home Rule Municipal Retailers' Occupation Tax is on the seller. Nevertheless, the General Assembly has authorized persons subject to this tax to reimburse themselves for their seller's tax liability by separately stating that tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act [35 ILCS 105], pursuant to such bracket schedules as the Department has prescribed. [65 ILCS 5/8-11-1]~~persons subject to any tax imposed pursuant to the authority granted in the Home Rule Municipal Retailers' Occupation Tax Act (Ill. Rev. Stat. 1989, ch. 24, par. 8-11-1) (Home Rule Municipal ROT) to reimburse themselves for their sellers' Home Rule Municipal ROT liability by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act (Ill. Rev. Stat. 1989, ch. 120, pars. 439.1 et seq.), pursuant to such bracket schedules as the Department has prescribed. (See 86 Ill. Adm. Code 150. Table A)~~

c) Exclusion from "Gross Receipts"

Any amount added to the selling price of tangible personal property by the seller because of a Home Rule Municipal Retailers' Occupation Tax, ~~or because of the Illinois~~ Retailers' Occupation Tax, the Use Tax, or any other local occupation tax administered by the Department as Illinois Use Tax, and collected from the purchaser, shall not be regarded as a part of the seller's~~seller's~~ gross receipts that are subject to such Home Rule Municipal Retailers' Occupation Tax.

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(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 270.105 Registration and Returns**

- a) Separate Registration ~~not~~ Required  
A retailer's registration under the ~~Illinois~~ Retailers' Occupation Tax Act [35 ILCS 120](Ill. Rev. Stat. 1989, ch. 120, pars. 440 et seq.) is sufficient for the purposes of the Home Rule Municipal Retailers' Occupation Tax Act. No special registration for a Home Rule Municipal Retailers' Occupation Tax ~~any home rule municipality's Retailers' Occupation Tax~~ is required.
- b) Requirements as to Returns
- 1) The information required for the Home Rule Municipal Retailers' Occupation ~~Tax~~ Taxes shall be furnished on the taxpayer's ~~retailer's~~ Illinois Retailers' Occupation Tax return form.
  - 2) If the retailer files ~~its~~ this ~~Illinois~~ Retailers' Occupation Tax returns on the gross receipts basis, ~~the retailer~~ he must also report Home Rule Municipal Retailers' Occupation Tax information in ~~its~~ this returns on the gross receipt ~~same~~ basis. If the retailer files ~~its~~ this ~~Illinois~~ Retailers' Occupation Tax returns on the gross sales basis, ~~the retailer~~ he must also report Home Rule Municipal Retailers' Occupation Tax information in ~~its~~ this returns on the gross sales basis.
  - 3) If applicable, aviation fuel tax returns shall be filed in accordance with Section 3 of the Retailers' Occupation Tax Act and 86 Ill. Adm. Code 130.541, except that the retailer's discount is not allowed for taxes paid on aviation fuel that are subject to the revenue use requirements of 49 U.S.C. 47107(b) and 49 U.S.C. 47133. [65 ILCS 5/8-11-1] (See also 86 Ill. Adm. Code 270.101(a)(3)).

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)