

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Home Rule Municipal Service Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 280
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
280.101	Amendment
280.105	Amendment
- 4) Statutory Authority: Implementing the Home Rule Municipal Service Occupation Tax Act [65 ILCS 5/8-11-5] and authorized by Section 39b1 of the Civil Administrative Code of Illinois. (Department of Revenue Law) [20 ILCS 2505].
- 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 Service 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:

Kimberly Rossini

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Illinois Department of Revenue
Legal Services Office
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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Persons transferring aviation fuel as incident to a sale of service 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 280.101 Nature of the Home Rule Municipal Service Occupation Tax

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a) Authority to Impose Tax

- 1) Pursuant to Section 8-11-5 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 such municipality, in the business of making sales of service at the same rate of tax imposed pursuant to Section 8-11-1 of the Illinois Municipal Code [65 ILCS 5/8-11-1], of the selling price of all tangible personal property transferred by such servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service. If imposed, such 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 Service Occupation Tax Act [35 ILCS 115]. [65 ILCS 5/8-11-5] 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 may not be 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 shall be excluded from 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 5/8-11-5] "Aviation fuel" means jet fuel and aviation gasoline. [35 ILCS 115/9] "Airport-related purposes" has the meaning ascribed in Section 6z-20.2 of the State Finance Act [30 ILCS 105]. This exception 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 State.
- 4) The tax imposed by a home rule municipality pursuant to this Section and all civil penalties that may be assessed as an incident thereof shall be collected and enforce by the Department of Revenue. [65 ILCS 5/8-11-5]

Municipalities, as defined in Section 8-11-5 of the Illinois Municipal Code (Home Rule Municipal Service Occupation Tax Act (the Act) (Ill. Rev. Stat.

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~~1989, ch. 24, par. 8-11-5) are authorized to impose a tax on persons engaged in the business of making sales of service within such municipality, at the same rate of tax imposed pursuant to Section 8-11-1 on the selling price of tangible personal property transferred by such serviceman either in the form of tangible personal property or in the form of real estate as an incident to such sale of service. If imposed, such tax shall only be imposed in ¼ % increments. On and after September 1, 1991, this additional tax shall 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).~~

b) **Passing on the Tax**

~~Service men are required to collect the Home Rule Municipal Service Occupation Tax (when applicable) from purchasing servicemen except when they can appropriately assume the accountability for self-assessing the tax under Subpart m purchasers of service in conformance with the requirements of the Service Occupation Tax (86 Ill. Adm. Code 140). The legal incidence of the Home Rule Municipal Service Occupation Tax is on the serviceman. Nevertheless, the General Assembly has authorized persons subject to this tax to reimburse themselves for their serviceman's tax 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 servicemen are authorized to collect under the Service Use Tax Act [35 ILCS 115], pursuant to such bracket schedules as the Department has prescribed. [65 ILCS 5/8-11-5] ~~persons subject to any tax imposed pursuant to the authority granted in the Home Rule Municipal Service Occupation Tax Act to reimburse themselves for their serviceman's Home Rule Municipal Service Occupation Tax 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 servicemen are authorized to collect under the Service Use Tax Act (Ill. Rev. Stat. 1989, ch. 120, pars. 439.31 et seq.), pursuant to such bracket schedules as the Department has prescribed. (See 86 Ill. Adm. Code 150. Table A).~~~~

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- c) Exclusion from "~~Selling Price~~Cost Prices"
Any amount added by a serviceman to the selling price of tangible personal property ~~sold to a serviceman for retransfer~~ as an incident to service because of a Home Rule Municipal Service Occupation Tax, ~~or because of the Service Occupation Tax-~~ the Service Use Tax, or any other local occupation tax administered by the Department and collected from the purchasing serviceman, shall not be regarded as a part of the selling ~~price that is~~prices which are subject to such Home Rule Municipal Service Occupation Tax.

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

Section 280.105 Registration and Returns

- a) A serviceman's registration under the Service Occupation Tax Act [~~35 ILCS 115~~](~~Ill. Rev. Stat. 1989, ch. 120, pars. 439.101 et seq.~~) or the 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 Service Occupation Tax Act. No special registration for a Home Rule Municipal Service Occupation Tax~~any municipality's Home Rule Service Occupation Tax~~ is required.
- b) The information required for the Home Rule Municipal Service Occupation ~~Tax~~Taxes shall be furnished on the taxpayer's ~~Illinois~~ Service Occupation Tax return form.
- c) If applicable, aviation fuel tax returns shall be filed in accordance with Section 9 of the Service 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 5/8-11-5] (See also 86 Ill. Adm. Code 280.101(a)(3)).

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