

Illinois Sales & Use Taxes

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§ 14-000. INTRODUCTION. Illinois' tax system pertaining to the sale and use of tangible personal property codifies four separate taxes: The Retailers' Occupation Tax (ROT), The Use Tax (UT), the Service Occupation Tax (SOT), and the Service Use Tax (SUT). The ROT is imposed on all persons engaged in the business of selling tangible personal property at retail, while the complementary and statutorily interlocking UT is imposed on the privilege of using, in Illinois, tangible personal property that is purchased anywhere at retail from a retailer. In the event that tangible personal property is transferred by a serviceperson as an incident to the provision of a service, either SOT liability or SUT liability will result, depending on the activities of the serviceperson. The taxes are administered by the Illinois Department of Revenue (Department). *See generally*, -Illinois Department of Revenue Publication 113, Retailer's Overview of Sales and Use Tax (9/1/2010).

The Department also administers and enforces local home rule and non-home rule Retailers' Occupation and Use Taxes, and Service Occupation and Use Taxes. Illinois also has various other taxes, which are referred to below.

§ 14-010. Key Definitions.

§ 14-011. Gross Receipts. "[T]he total selling price or amount of such sales." 35 ILCS 120/1; *see* § 14-714 below. *See also* ROT Reg. § 130.401.

§ 14-012. Purchaser. "[A]nyone who, through a sale at retail, acquires the ownership of or title to tangible personal property for a valuable consideration." 35 ILCS 120/1; ROT Reg. § 150.201(c).

§ 14-013. Retailer. "Any person who habitually engages in selling tangible personal property for use or consumption or who, in any manner or at any time, advertises, solicits, offers for sale or holds himself out to the public to be a seller of tangible personal property for use or consumption other than in the course of engaging in a service occupation is engaged in a retail occupation." 35 ILCS 120/1; ROT Reg. § 130.115.

The owner of an adult entertainment club was deemed a retailer because the owner charged a fee for drinks not included in the price of admission and did not present any evidence which would distinguish those drinks that were transferred to customers as part of the admission fee (and consequently were nontaxable) from those drinks which were served to customers for an additional fee and would therefore be subject to tax. *Soho Club, Inc. v. Department of Revenue*, 269 Ill. App. 3d 220, 645 N.E.2d 1060 (1995).

§ 14-014. Retailer Maintaining a Place of Business in this State. See § 14-210 below.

§ 14-015. Sale at Retail. Generally, “[A]ny transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration.” 35 ILCS 120/1; ROT Reg. § 150.201(d).

§ 14-016. Selling Price. Generally, “[m]eans the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever.” 35 ILCS 120/1; ROT Reg. §§ 150.201(e), 310.410.

§ 14-017. Tangible Personal Property. Prewritten or canned computer software and photographs, negatives, and positives that are the product of photoprocessing are expressly considered tangible personal property for purposes of the ROT Act, as are prepaid telephone calling arrangements. 35 ILCS 120/2; 35 ILCS 120/2-25. However, effective January 1, 2014, purchases of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under the Use Tax Act. 35 ILCS 105/3.

§ 14-018. Use. Generally, “[m]eans the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.” 35 ILCS 105/2; ROT Reg. § 150.201.

§ 14-020. Authority and Citations.

- Illinois Compiled Statutes (1996) (ILCS)
- Retailers’ Occupation Tax Regulations (ROT Reg. 86 Ill. Adm. Code 130.101 et seq.)
- Service Occupation Tax Regulations (SOT Reg. 86 Ill. Adm. Code 140.101 et seq.)
- Use Tax Regulations (UT Reg. 86 Ill. Adm. Code 150.101 et seq.)
- Service Use Tax Regulations (SUT Reg. 86 Ill. Adm. Code 160.101 et seq.)
- Metro East Mass Transit District Retailers’ Occupation Tax, Service Occupation Tax and Use Tax Regulations (MEMTD-ROT Reg.; MEMTD-SOT Reg.; MEMTD-UT Reg.)
- Bulletins issued by Illinois Department of Revenue (Bulletins)
- Illinois Reports (Ill., Ill. 2d)

- Illinois Appellate Reports (Ill. App., Ill. App. 2d, Ill. App. 3d)

§ 14-100. NATURE OF TAXES.

§ 14-110. Retailers' Occupation Tax.

§ 14-111. Incident. The ROT is imposed on all persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/2.

§ 14-112. Sale at Retail Defined.

§ 14-112.01. Generally. Tax applies to all sales of tangible personal property to a purchaser for use or consumption and not for the purpose of resale. 35 ILCS 120/1; ROT Reg. § 130.201. This includes sales where title remains with the seller as security for payment. ROT Reg. § 130.201(1).

§ 14-112.02. Services with Respect to Personal Property. Although persons engaged primarily in the business of making sales of service are not liable for ROT, such persons may be liable for SOT. 35 ILCS 115/1. *et seq.*; SOT Reg. § 140.101 through 140.109. *See* § 14-150 below.

In *Honeywell International, Inc. v. Department of Revenue*, 366 Ill. App. 3d 187, 851 N.E. 2d 79 (2006), the Illinois Appellate Court held that the plaintiff's sale of aircraft parts in conjunction with a maintenance service agreement was exempt from the SOT under the interstate commerce exemption. Although the aircraft were serviced in Illinois, delivery and possession of the aircraft and the parts occurred outside Illinois.

§ 14-112.03. Installation, Alteration, and Special Service Charges. Generally, the value of a warranty when included in the gross selling price of tangible personal property, is included in the base on which tax is calculated. If, however, a purchaser and seller make a contract for an extended warranty or service agreement separately from the sale of tangible personal property, the selling price of such extended warranty or service agreement is not generally included in the base on which tax is calculated. ROT Reg. 130.450.

Tangible personal property when purchased by a serviceperson for transfer incidental to completion of a maintenance agreement is subject to ROT and UT. 35 ILCS 120/2-55 & 105/3-75. SOT Reg. § 140.141.

§ 14-112.04. Services with Respect to Real Property. *See* § 14-112.02 above and § 14-520 below.

§ 14-112.05. Amusements. Operators of places of public amusement, such as motion picture theaters, dance halls, or baseball parks are engaged primarily in the provision of a service and, to the extent of the operation of that service, are not required to remit ROT. ROT Reg. § 130.2030(b). However, if in conjunction with the operation of such places of public amusement, refreshments, beverages, or other items of tangible personal property are sold to purchasers for use or consumption, such operators will be required to remit ROT. ROT Reg. § 130.2030(a).

§ 14-112.06. Sales of Food. *See* § 14-455 below.

§ 14-112.07. Leases and Rentals. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. As such, lessors owe UT on their cost price of such property. ROT Reg. § 130.220. Purchases of tangible personal property which qualify under ROT Reg. § 130.2011 (computers, communications equipment, and equipment used in diagnosis, analysis, or treatment that are leased to exempt hospitals) or which qualify under ROT Reg. § 130.2012 (tangible personal property leased to a governmental body) are exempt from ROT. ROT Reg. § 130.220(d). For the tax period beginning September 1, 2007, and ending January 10, 2008, the ROT exemption for vehicles sold to purchasers that will use the vehicle for automobile renting as defined in the Automobile Renting and Occupation Use Tax Act was eliminated. The exemption was reinstated by Public Act 95-707 (SB 783), effective January 11, 2008. 35 ILCS 120/2-5(5); *see also* Illinois Dept. of Rev. Info. Bulletin No. FY 2008-12 (02/01/2008). Lessees incur no tax liability because Illinois imposes no tax on rental receipts. If, however, a lease is a conditional sale, then all receipts are subject to ROT. ROT Reg. § 130.2010(a). The Appellate Court of Illinois held that hazardous materials (“HAZMAT”) fees charged with nontaxable rentals of high-pressure gas cylinders are not subject to ROT because they are connected with nontaxable rentals rather than with taxable sales. *ILMO Products Company v. Department of Revenue et al.*, 2013 Ill. App. 4th 120973-U (September 5, 2013).

§ 14-112.08. Seminar Materials. The distribution of seminar materials to persons attending a seminar, as part of their attendance at the seminar, is a taxable service transaction that results in a SOT or UT liability. Additionally, a seminar provider will incur ROT liability for the sale of non-seminar materials to persons attending the seminar or for transactions where seminar materials are offered to persons who do not attend the seminar. SOT Reg. § 140.129(c).

§ 14-113. Measure of Tax.

§ 14-113.01. Generally. The ROT is based on the taxable “gross receipts” of the retailer. “Gross receipts” means the total “selling price” and includes “the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property, but not including the value of or credit given for traded-in tangible personal property where the item that is traded in is of like kind and character as that which is being sold. . . .” 35 ILCS 120/1.

§ 14-113.02. Traded-In Property. *See* § 14-113.01 above; *see also* ROT Reg. § 130.425. In addition, lessors of vehicles for more than one year, prior to January 1, 2015, could receive a trade-in credit for vehicles that were traded in with respect to the tax that should be collected on leased vehicles. After January 1, 2015, however, no trade-in credit is allowed. The removal of the credit was precipitated by a change in the taxable base of leased vehicles. Previously, the tax was collected on the entire value of the vehicle that would be leased. If the lessor received a traded in vehicle to offset the price of the vehicle, that trade-in value would be subtracted from the value of the vehicle upon which the lessor paid use tax. Under the current law, however, the tax is computed by adding up all monthly or other regular payments that will be charged over the term of the lease with no allowance for trade-in credit. 35 ILCS 120/1. The tax is still due at the outset of the agreement. In the case of a dealer receiving a trade-in and paying cash back to the purchaser, the trade-in credit is equal to the actual credit given for the vehicle. Cash back payments are explicitly excluded in the calculation of a

trade-in credit. See *Motor Werks of Hoffman Estates, Inc., v. Dep't of Revenue*, 14 TT 222; 16 TT 158; *Motor Werks of Barrington Inc., v. Dep't of Revenue*, 15 TT 37; 16 TT 159 (Ill. Tax Tribunal 2017).

§ 14-113.03. Discounts. Cash discounts are deducted from gross receipts and are not subject to ROT. ROT Reg. § 130.420(c); *Martin Oil Service, Inc. v. Department of Revenue*, 30 Ill. App. 3d 927, 334 N.E.2d 227 (1975). Coupon discounts are not included in gross receipts if there is no reimbursement to the retailer by a manufacturer, distributor, or other third party. ROT Reg. § 130.2125 (b)(1); *Saxon-Western Corp. v. Mahin*, 81 Ill. 2d 559, 411 N.E.2d 242 (1980). However, if a third party will reimburse the retailer for the face value of the coupon, that value is included in gross receipts. Identifiable amounts for reimbursement for handling expenses are not part of gross receipts. ROT Reg. § 130.2125(b)(2). *But see, Aliano v. Sears, Roebuck & Co.*, 2015 IL App (1st) 143367, P1 (Ill. App. Ct. 1st Dist. 2015) (affirming the Circuit Court's finding that the taxpayer violated the Illinois Consumer Fraud and Deceptive Practices Act by applying sales tax to the original cost of an item, rather than reducing the selling price for the coupon amount reimbursed by a government agency).

Payments made by a manufacturer to a dealership to reduce the dealer's cost of goods sold for an employee/retiree new vehicle purchase/lease program are subject to ROT. *Ogden Chrysler Plymouth, Inc. v. Bower*, 348/ Ill. App. 3d 944, 809 N.E.2d 792 (2004).

§ 14-113.04. Freight. Freight charges paid by a retailer are not deductible from his gross receipts if they are included as part of the selling price. If the freight charges are separately contracted for by the purchaser and seller, however, the charges are not included in gross receipts. ROT Reg. § 130.415.

In *Bruce Nagel d/b/a Nagel Trucking v. Wagner*, 285 Ill. App. 3d 908, 675 N.E.2d 233 (1996), the Illinois Appellate Court held that charges for transportation services were included in the taxpayer's taxable gross receipts because the taxpayer failed to show that the sale of materials and the transportation of the materials were separate transactions.

86 Ill. Admin Code Sections 130.410 and 130.415 were amended on April 1, 2016 to implement the decision in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E. 2d 926 (2009). The amendments clarify that outgoing transportation and delivery charges are part of gross receipts and subject to Retailers' Occupation Tax when there is an inseparable link between the sale of the tangible personal property and the outgoing transportation and delivery of the property. An inseparable link exists when the transportation charges are not separately stated on the invoice or when the transportation charges are separately identified but the seller does not offer the purchaser the option to receive the tangible personal property in any manner except by the payment of such charges (i.e., in store pickup is not an option). In *Kean*, the Illinois Supreme Court was asked to decide, "whether, under ROTA and the Use Tax Act, Wal-Mart properly assessed sales tax on the shipping charges for plaintiffs' purchases from Wal-Mart's internet store." More specifically, the Court was asked to determine, "whether the shipping charges plaintiff incurred [were] properly considered part of the 'selling price' of the [goods purchased.]" The Court held that, "the 'selling price' for the [goods purchased] could never be the dollar amount reflected in the subtotal; it could only be that amount, plus shipping, because without shipping, the sale and purchase could not be completed. Thus, the 'selling price' include[d] the cost of shipping." (*Id.* at 367).

§ 14-113.05. Finance Charges. Interest and finance charges (if clearly identified in a retailer's books and records) on installment sales contracts are not considered to be part of the "selling price" and therefore need not be included in "gross receipts" for ROT calculation. ROT Reg. § 130.420(a). For "penalties" payable to a seller due to a purchaser's late payment, *see* § 14-113.10 below.

§ 14-113.06. Installation Charges. If a charge for alteration, installation, or other special service in connection with the transfer of tangible personal property is included in the selling price, then it must be included in gross receipts. As with freight, however, if such a charge is separately contracted for, such charge need not be included in gross receipts. ROT Reg. § 130.450.

§ 14-113.07. Gratuities. Voluntary gratuities are not included in taxable gross receipts. Mandatory "gratuity" charges or service charges are excluded from taxable gross receipts if they are separately stated and turned over to the employees who would have normally received tips. 35 ILCS 120/2-5(15); *Fontana D'Or, Inc. v. Department of Revenue*, 44 Ill. App. 3d 1064, 358 N.E.2d 1283 (1976); *Cohen v. Playboy Clubs Int'l, Inc.*, 19 Ill. App. 3d 215, 311 N.E.2d 336 (1974).

§ 14-113.08. Seller Absorbing Tax. *See* § 14-144 below.

§ 14-113.09. Bad Debts. For taxpayers filing on a "gross sales" basis (i.e., retailers who report and pay ROT up front on the total selling price of tangible personal property even though all gross receipts have not yet been received from the purchaser,) a bad debt deduction may be taken from the sales tax base when a portion of the selling price on which tax has been paid becomes uncollectible and is charged off the books for federal income tax purposes. Illinois Dept. of Rev. General Info. Letter No. ST 09-0162-GIL (12/21/2009). *See also* ROT Reg. § 130.960(d).

A retailer is relieved from liability for any tax that is represented by amounts that are worthless or uncollectible, have been charged off as bad debt in accordance with GAAP, and have been claimed as a deduction pursuant to Section 166 of the Internal Revenue Code on the taxpayer's federal income tax return. 35 ILCS 120/6d.

§ 14-113.10. Penalties. If a "penalty" is added to the base retail price because the purchaser does not timely pay the selling price and the penalty is paid to the seller, such penalty is a part of the gross receipts and is included in the selling price. ROT Reg. § 130.420(b).

§ 14-113.11. Federal Taxes. The Department has enacted a regulation identifying when federal taxes in general are, and are not, included in gross receipts for ROT purposes. ROT Reg. § 130.445.

§ 14-120. Use Tax.

§ 14-121. Incident. UT is considered to be the complement of ROT. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E. 2d 926 (2009). The tax is imposed on the privilege of using, in Illinois, tangible personal property that is purchased anywhere at retail from a retailer. 35 ILCS 105/3; UT Reg. § 150.101.

In *American River Transportation Company v. Department of Revenue*, 351 Ill. App. 3d 208, 813 N.E.2d 1090 (2nd Dist. 2004), the Illinois Appellate Court held that river tugboats that never docked in Illinois had insufficient contact with the state to justify an Illinois use tax on fuel purchased and

loaded outside the state, because the use tax was not fairly related to the services provided by the state.

§ 14-122. Measure of Tax. The tax is based on the selling price or the fair market value of the item used. If property is purchased at retail from a retailer outside Illinois, and used outside Illinois before being brought into Illinois for use, a reasonable allowance for depreciation for the period of use outside Illinois is allowed. 35 ILCS 105/3-10. *See also* § 14-134 below.

§ 14-130. Rates.

§ 14-131. State Rate. ROT and UT are generally imposed at a 6.25% rate. The rate is 1% for food for human consumption off-premises, prescription and nonprescription medication, and medical appliances. 35 ILCS 120/2-10, 105/3-10.

§ 14-132. Local Retailers/Use Tax Rates.

§ 14-132.01. Generally. Certain home rule municipalities and counties are authorized to impose their own state administered and collected home rule ROT in increments of 1/4%. 65 ILCS 5/8-11-1. Home rule municipalities and counties cannot impose taxes on sales of medicines, medical appliances or sales of food prepared for human consumption that is to be consumed off the premises. Home rule municipalities and counties are authorized to impose a locally administered and collected UT in increments of 1/4% on property purchased from a retailer which is registered or titled with an agency of the state to a person residing within the home rule county or municipality. 65 ILCS 5/8-11-6. Municipalities with populations in excess of 25,000 are home-rule units. Other municipalities may elect to become home-rule units. Illinois Constitution, Article VII, Sec. 6. Nonhome rule municipalities are authorized to impose their own state administered and collected ROT at a rate of not more than 1%. 65 ILCS 5/8-11-1.1.

Effective March 8, 2013, a home rule municipality with a population of more than two million is not precluded by the home rule tax preemption provision of Illinois law from imposing a tax, however measured, on the use of a parking lot, garage or other parking facility. 65 ILCS 5/8-11-6a.

A county board or the corporate authorities of a municipality may not enter into any agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales of tangible personal property if: (1) the tax on those retail sales, absent the agreement, would have been paid to another unit of local government; and (2) the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers. 55 ILCS 5/5-1014.3, 65 ILCS 5/8-11-21.

Prior to November 21, 2013, a taxpayer was subject to the local tax rate where the acceptance of an order occurred. However, in *Hartney Fuel Oil Company v. Hamer*, 376 Ill. Dec. 294 (2013), the Illinois Supreme Court declared the Illinois Department of Revenue's regulations establishing the order acceptance test invalid. According to the court, Illinois statute requires a broader inquiry than mere order acceptance. However, because the regulations specifically permitted taxpayers to use the order acceptance test, all taxpayers that sourced sales to where order acceptance occurred prior to

the court's decision were entitled to rely on their treatment. Prospectively, however, the order acceptance test was struck down. Under the Department's newly promulgated regulations, effective June 25, 2014, a taxpayer is subject to the local tax rate based on its "primary selling activities," as described in 86 Ill. Admin. Code 220.115(c). If a retailer's activities in a jurisdiction are characterized by three or more of any of the following characteristics in a particular jurisdiction, that jurisdiction's local rate will apply: (A) location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale; (B) location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale; (C) the location where payment is tendered and received, or from which invoices are issued with respect to each sale; (D) location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery; and (E) the location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed (in general, this is the place at which the offices of the principal executives are located; when executive authority is located in multiple jurisdictions, the place of operational decision making is the headquarters). If three or more of these activities are outside Illinois, the seller will not be subject to a local sales tax collection obligation. 86 Ill. Admin. Code 220.115(c)(2). If the primary selling activities listed above occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, the following characteristics are to be considered: (A) location where marketing and solicitation occur; (B) location where the seller engages in activities necessary to procure goods for sale; (C) location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in (c)(1)(A); location where purchase orders or other contractual documents are received when purchase orders are accepted, processed or fulfilled in a location or locations different from where they are received; (E) location where title passes; and (F) location where the retailer displays goods to prospective customers, such as a showroom. 86 Ill. Admin. Code 220.115(c)(4).

In addition to the above tests, Illinois establishes a series of presumptions applying to certain selling operations. If a retailer's selling activities take place in taxing jurisdictions outside this State, except that the tangible personal property that is sold in an inventory in the possession of the retailer located within a jurisdiction in Illinois at the time of its sale (or is subsequently produced by the retailer in the jurisdiction), then delivered in Illinois to the purchaser, the jurisdiction where the property is located at the time of the sale or when it is subsequently produced by the retailer will determine where the retailer is engaged in business with respect to that sale. 86 Ill. Admin. Code 220.115(d)(2). When a customer places an order for property through a website, the Department will presume that the retailer's predominant selling activities take place outside Illinois. 86 Ill. Admin. Code 220.115(d)(3).

§ 14-132.02. Regional Transportation Authority. The Regional Transportation Authority is comprised of Cook, DuPage, Kane, Lake, McHenry, and Will counties. The RTA tax is imposed in Cook County at the rate of 1.25% of the provider's cost of food prepared for immediate consumption and transferred as an incident to the sale of a taxable service by an entity licensed under the Hospital Licensing Act or the Nursing Care Act. 70 ILCS 3615/4.03 (f). 86 Ill. Adm. Code § 330.101. The RTA

also levies a 1.25% ROT on sales in Cook County of medicines or medical appliances or food which is to be consumed away from the premises where it is sold (other than alcoholic beverages, soft drinks, and food prepared for immediate consumption). The RTA-ROT rate for sales of other items in Cook County is limited to 1%, and the rate for all taxable sales in DuPage, Kane, Lake McHenry, and Will Counties is limited to 0.75%. 70 ILCS 3615/4.03. 86 Ill. Adm. Code § 320.101. The RTA is also authorized to levy and has levied a UT of 0.75% on the use of tangible personal property in Cook County and a 0.75% tax on the use by a resident of tangible personal property in DuPage, Kane, Lake McHenry, and Will Counties which is purchased outside the metropolitan areas, that is titled or registered with a state agency. Cars, planes, and boats are typical of the property that is subject to this UT. 86 Ill. Adm. Code § 340.101.

§ 14-132.03. Cook County Sales and Use Tax. Cook County (which includes Chicago) currently imposes a 0.75% county sales tax on the sale of titled and non-titled tangible personal property. The County may not impose a use tax on non-titled tangible personal property. *Reed Smith LLP, v Ali et al.*, and *Horwood Marcus & Berk, Chtd., v. The Cook County Department of Revenue et al.*, 2014 IL App (1st) 132646-U (Aug. 4, 2014). Cook County also imposes a Service Occupation Tax at the rate of 0.75%. Sec. 74-191.

§ 14.132.04. Chicago Sales and Use Tax. The city of Chicago imposes a 1.25% sales tax on sales of certain tangible personal property. Chicago Municipal Code § 3-40-010. In addition, the City of Chicago imposes a Service Occupation Tax on persons “engaged in the City of Chicago in the business of making sales of service” at the rate of 1.25% 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.” Chicago Municipal Code § 3-40-430. The City of Chicago imposes a tax on the privilege of using in Chicago titled personal property purchased at retail from a retailer. The tax is 1.25% of the titled personal property’s selling price. Chicago, Illinois Code of Ordinances § 3-28-030. The City also imposes a tax on the privilege of using in the city nontitled personal property which is purchased at retail from a retailer located outside the City. The tax is 1% of the property’s selling price. Chicago, Illinois Code of Ordinances § 3-27-030.

§ 14.132.05 Metropolitan Pier and Exposition Authority Tax. Within specially delineated areas in the city of Chicago, there is imposed a 1% tax on the sale of food, alcoholic beverages and soft drinks for consumption on the premises where sold, and where sold off-premises, consumption by retailer whose principal source of revenue is from sale of such items for on-premises consumption. There is also imposed, within the city of Chicago, a 2.5% tax on the gross receipts from rental of hotel rooms and, within Cook County, a 6% automobile rental occupation tax, a 6% automobile use tax, and a varying tax on taxis, vans and buses departing with passengers from “commercial service airports.” 70 ILCS 210/13.

§ 14-132.07. Soft Drink Tax. The city of Chicago imposes a 3% tax on gross receipts from the retail sale of soft drinks. This tax is collected by the Department on behalf of the city. A “soft drink” is any ready to use non-alcoholic drink, but does not include milk, fountain drinks, or drinks containing 50% more natural fruit or vegetable juice. Chicago Municipal Code § 3-45-020 et seq.; 35 ILCS 120/2-10. Retail sellers of fountain drinks are taxed at 9% of their cost price for the purchase of soft drink syrup or concentrate.

§ 14-132.08. Chicago Restaurant Tax. The tax imposed under Chicago, Illinois Code of Ordinances § 3-30-010 et seq., is a tax on each place for eating located in the city of Chicago. The rate of tax is 0.025% of the selling price of all food and beverages sold at retail by the place for eating. Sec. 3-30-030; *see also* Chicago Department of Revenue Info. Bulletin Vol. 2009 No. 2 (3/1/2009).

§ 14-132.09. Chicago Bottled Water Tax. This tax is imposed on the retail sale of bottled water in the city of Chicago. The tax is to be paid by the purchaser and levied at the rate of \$0.05 per bottle. Chicago, Illinois Code of Ordinances § 3-43-010 et seq. The tax was challenged as an unconstitutional occupation tax and a tax in violation of the Illinois Constitution's uniformity clause in *American Beverage Association v. City of Chicago*, 404 Ill. App. 3d 682 (2010), but the Illinois Court of Appeals, First District rejected the challenges and found the tax constitutional.

§ 14-132.10. Chicago Checkout Bag Tax. Tax is imposed at a rate of \$0.07 on the retail sale or use of checkout bags in Chicago. Chicago, Illinois Code of Ordinances § 3-50-010 et seq. A "checkout bag" means a paper carryout bag or a plastic carryout bag. The tax does not apply to bags that are intended to: (1) package loose bulk items, such as fruit, vegetables, or packaged meat; (2) contain prescription drugs; or (3) carry-out bags from dine-in or take-out restaurants.

§ 14-132.11. Chicago Personal Property Lease Transaction Tax. The tax is imposed at a rate of 9 percent of receipts or charges for leases of personal property in Chicago, other than charges for the non-possessory lease of a computer to input, modify, or retrieve data supplied by the customer.

See Hertz Corp. v. City of Chicago, 2017 IL 119945 (Ill. Jan. 20, 2017) (holding the City of Chicago's Rule 11, which required lessors located outside of Chicago to collect Chicago sales tax on leased vehicles when the lessee was a Chicago resident, violated principles of extraterritorial taxation by improperly extending its home rule authority to tax beyond its borders).

§ 14-132.12. Chicago Amusement Tax. The tax is imposed upon the patrons of every amusement within the city at a rate of 9%. The amusement tax, as it applies to certain electronically delivered amusements, was held by the Cook County Circuit Court to be constitutional in *Labell v. City of Chicago*, Case No. 15 CH 13399 (Cook Cnty. Cir. Ct. May 24, 2018).

§ 14-133. Other Local Rates. The Board of Trustees of any Metro East Mass Transit District may impose a ROT of 0.25% on the gross receipts of all sales of tangible personal property made in the district. A UT of 0.25% may also be imposed on the privilege of using in the district, tangible personal property which was purchased outside the district and which is titled or registered with a state agency. 70 ILCS 3610/5.01. The County Water Commissions can also impose a 0.25% ROT on all persons engaged in the business of selling tangible personal property at retail, and a UT on the privilege of using in the territory tangible personal property purchased outside the territory and which is registered with a state agency. 70 ILCS 3720/4.

§ 14-134. Tax Paid to Another State. Property which is acquired outside of Illinois and then brought into the state is exempt from the use tax and service use tax to the extent that the owner has already paid tax to another state on either the sale, purchase or use of that property. *See* Illinois Multistate Exemption. 35 ILCS 105/3-55, 110/3-45. *See also* § 14-122 above.

§ 14-135. Sales to High Impact Business. A deduction is allowed in computing the state and local ROT for the amount of gross receipts from sales of building materials to a “high impact business.” 35 ILCS 120/5l. A high impact business is one that intends to invest at least \$12 million into placing qualified property in service and to create 500 full-time equivalent jobs, or one that intends to invest at least \$30 million into placing qualified property in service and to retain 1,500 full-time jobs. The taxpayer must also establish that the investments would not be made and that the jobs would not be created or retained without the tax credits. 20 ILCS 655/5.5. Retailers may also claim a deduction for gross receipts from building materials used in enterprise zones. 35 ILCS 120/5k. However, a retailer eligible to claim this deduction may not claim the high impact business deduction. 35 ILCS 120/5l.

§ 14-136. Erroneous Payments. Retailers, servicemen, suppliers, and purchasers who erroneously pay sales and use tax, penalty or interest may file a claim for credit. The erroneous payment may be based on either a mistake of fact or an error in law. 35 ILCS 120/6 (retailer), 115/17 (serviceman), 110/17 (purchaser as distinguished from serviceman), 105/19 (purchaser as distinguished from retailer).

§ 14-140. Payment and Collection Obligations.

§ 14-141. Buyer/User. Purchasers are responsible for payment of the UT. 35 ILCS 105/3. If a seller does not collect the tax, the buyer must pay the tax directly to the state. 35 ILCS 105/10; UT Reg. § 150.130, UT Reg. § 150.701(a). If the tax is not stated separately from the selling price of the taxable item, it is assumed that no UT was collected. UT Reg. § 150.401(c).

§ 14-142. Seller. Illinois retailers of taxable items are responsible for collection of UT. UT Reg. § 150.801(c). Once collected, the UT constitutes a debt owed by the retailer to the state. 35 ILCS 105/8. A retailer is relieved of liability for the UT remittance if it pays ROT to the state based upon the gross receipts from the same transaction. 35 ILCS 105/8.

§ 14-143. Seller’s Representative. Every auctioneer and agent, acting for an unknown or undisclosed principal, is deemed to be the owner thereof, and upon the sale of such property, is required to file a return and pay ROT measured by receipts from the sale. The same rule applies to lienors such as storagemen and pawnbrokers. ROT Reg. § 130.1915; *McLean v. Department of Revenue*, 184 Ill. 2d 341, 704 N.E.2d 352 (1998).

§ 14-144. Absorption, Reimbursement, or Refund of Tax By Seller. It is a misdemeanor for a seller to absorb or pay UT (or to advertise that he will do so). The UT must be separately stated from the selling price except where it is not possible (*e.g.*, vending machines or sales of liquor by the drink, in which case the purchaser must be notified by a sign that the tax is included in the selling price.). 35 ILCS 105/7 & 105/3a.

§ 14-145. Retailers’ Occupation Tax and Use Tax. Retailers are required to remit ROT directly to the Department. To the extent a retailer remits such tax on a transaction, he is allowed to retain the complementary UT collected from the retail purchaser. 35 ILCS 105/9. Each retail sale therefore involves one tax remitted to the Department, and the ultimate incidence of the tax may be considered to be on the consumer. A purchaser who uses in Illinois tangible personal property purchased at retail is required to self-remit UT, if tax has not been paid to the seller. 35 ILCS 105/10.

The Department may force the collection of ROT or UT, but it may not collect both taxes on the same transaction. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E. 2d 926 (2009); *Klein Town Builders, Inc. v. Department of Revenue*, 36 Ill. 2d 301, 222 N.E.2d 482 (1966). Beginning October 1, 2010, any taxpayer (except an individual taxpayer) that has an average monthly Illinois ROT, SOT, UT, or SUT liability of \$20,000 or more must make all tax payments by electronic funds transfer. 35 ILCS 120/3; 20 ILCS 2505/2505-210.

Purchasers are not statutorily obligated to pay local ROT taxes. Retailers are permitted to reimburse themselves for local ROT liability by collecting the tax from purchasers. 65 ILCS 5/8-11-1; 70 ILCS 3720/4, 3610/5.01 & 3615/4.03.

Purchasers are liable for local use taxes imposed on the privilege of using tangible personal property purchased from a retailer and which is titled and registered with a state agency. 65 ILCS 5/8-11-4; 70 ILCS 3720/4, 3610/5.02 & 3615/4.03.

§ 14-150. Service Occupation Tax and Service Use Tax. At the annual election of any registered service provider, sales of services in which the aggregate annual cost price of tangible personal property transferred as an incident to the sale of a service is less than 35% (or 75% in case of the transfer of prescription drugs or service providers engaged in graphics arts production) of the aggregate annual total gross receipts from all sales of services, the SOT and SUT may be based on the service provider's cost price of tangible personal property transferred as an incident to the sale of the services. 35 ILCS 110/3-10, 115/3-10. In the case of a service provider not required to be registered as a retailer under 2a of the ROT, an election may be made that the SOT or SUT not apply at all. In that case, the *purchase* of the property would be subject to either ROT or UT. 35 ILCS 110/2(7) and 115/2(g).

SUT is imposed upon the privilege of using in Illinois real or tangible personal property acquired as an incident to the purchase of a service from a serviceman. 35 ILCS 110/3, SUT Reg. § 160.101.

The Department has given the following guidance for the calculation of tax payable by servicemen:

Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on the cost price if they are registered de minimis servicemen; or, (4) Use Tax on the cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. *See* 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). *See* 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. *See* 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen do not have the option of determining whether they are de minimis using a transaction-by-transaction basis. *See* 86 Ill. Adm. Code 140.109.

§ 14-151. Cigarette Machine Operators' Occupation Tax. Effective June 14, 2012, Illinois imposes a Cigarette Machine Operators' Occupation Tax at a rate of 99 mills per cigarette manufactured or fabricated by a cigarette machine possessed by a cigarette machine operator. Such operators may reimburse themselves for their tax liability by separately stating the tax, less any credit the machine operator claims on tobacco sold to and used by users of a cigarette machine to make or fabricate cigarettes, as an additional charge to users of cigarette machines. 35 ILCS 128/1-1, *et seq.*

§ 14-200. JURISDICTION TO TAX.

§ 14-210. "Nexus"—Jurisdiction Over the Taxpayer/Collector. The Retailers' Occupation Tax Act asserts jurisdiction over and requires registration of "persons engaged in the business of selling tangible personal property at retail in this State." 35 ILCS 120/2. The UT asserts jurisdiction over and requires registration of each 'retailer maintaining a place of business in this State[.]' 35 ILCS 105/2 & 105/6.

Public Act 100-0587 broadened the definition of "retailer maintaining a place of business" contained in 35 ILCS 105/2. Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside Illinois is considered to be maintaining a place of business in

Illinois and is required to remit tax if cumulative gross receipts from the sales of tangible personal property to purchasers in Illinois are \$100,000 or more or the retailer enters in 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

Public Act 96-1544, signed by the governor on February 10, 2011, and applicable beginning July 1, 2011, expanded the state's nexus reach by amending the definitions of retailers and servicemen maintaining places of business in Illinois. The so-called "Amazon law" created nexus for retailers and servicemen who had contracts with persons in Illinois under which the person, for a commission, would refer customers to the retailer or serviceman by a link on the person's website. Illinois Dept. of Revenue Info. Bulletin FY 2011-14 (6/1/2011). The Illinois Supreme Court held that Illinois' "Amazon law" was preempted and made void and unenforceable by the federal Internet Tax Freedom Act, which the court characterized as serving as a federal moratorium against discriminatory state taxes on electronic commerce. *Performance Marketing Association v. Hamer*, 2013 IL 114496, 998 N.E.2d 54 (October 18, 2013). However, effective January 1, 2015, the Illinois General Assembly adopted PA 98-1089, which instituted a new "Amazon law," which the state contends remedies the problems outlined by the Illinois Supreme Court in *Performance Marketing*.

Public Act 100-0587 broadened the definition of "retailer maintaining a place of business" contained in 35 ILCS 105/2 to include an economic nexus threshold. Beginning October 1, 2018, the definition of a retailer maintaining a place of business in Illinois includes any of the following retailers:

1.1. A retailer having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer by providing to the potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons. Examples of mechanisms that allow the retailer to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. The provisions of this paragraph 1.1 shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers who are referred to the retailer by all persons in this State under such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. A retailer meeting the requirements of this paragraph 1.1 shall be presumed to be maintaining a place of business in this State but may rebut this presumption by submitting proof that the referrals or other activities pursued within this State by such persons were not sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods.

1.2. Beginning July 1, 2011, a retailer having a contract with a person located in this State under which:

- A. The retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and

- B. The retailer provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the retailer.

The provisions of this paragraph 1.2 shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers in this State under all such contracts exceed \$10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December.

2. A retailer soliciting orders for tangible personal property by means of a telecommunication or television shopping system (which utilizes toll free numbers) which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this State.

3. A retailer, pursuant to a contract with a broadcaster or publisher located in this State, soliciting orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this State and only secondarily to bordering jurisdictions.

4. A retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this State or benefits from the location in this State of authorized installation, servicing, or repair facilities.

5. A retailer that is owned or controlled by the same interests that own or control any retailer engaging in business in the same or similar line of business in this State.

6. A retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this Section.

7. A retailer, pursuant to a contract with a cable television operator located in this State, soliciting orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this State.

8. A retailer engaging in activities in Illinois, which activities in the state in which the retail business engaging in such activities is located would constitute maintaining a place of business in that state. 35 ILCS 105/2.

9. Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois if:

- A. The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B. The retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

The retailer shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either subparagraph (A) or (B) of this

paragraph (9) for the preceding 12-month period. If the retailer meets the criteria of either subparagraph (A) or (B) for a 12-month period, he or she is considered a retailer maintaining a place of business in this State and is required to collect and remit the tax imposed under this Act and file returns for one year. At the end of that one-year period, the retailer shall determine whether the retailer met the criteria of either subparagraph (A) or (B) during the preceding 12-month period. If the retailer met the criteria in either subparagraph (A) or (B) for the preceding 12-month period, he or she is considered a retailer maintaining a place of business in this State and is required to collect and remit the tax imposed under this Act and file returns for the subsequent year. If at the end of a one-year period a retailer that was required to collect and remit the tax imposed under this Act determines that he or she did not meet the criteria in either subparagraph (A) or (B) during the preceding 12-month period, the retailer shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either subparagraph (A) or (B) for the preceding 12-month period. 35 ILCS 105/2.

The Department amended 86 Ill. Admin. Code 150.201 to account for the click-through nexus provision enacted by PA 98-1089. Additionally, the Regulations set forth that the retailer must provide the following documentation to rebut the presumption: (1) an agreement with an in-state person that prohibits those persons from engaging in any solicitation activities in Illinois that refer potential customers to the retailer, including, but not limited to distributing flyers, newsletters, promotional materials, telephone calls or emails; and (2) an annual certification, completed on forms prescribed by the Department, that persons operating under the agreement have not engaged in any prohibited solicitation activities in Illinois at any time during the previous year.

Under the Service Use Tax Act, any “serviceman maintaining a place of business in this State” is required to register under the ROT, UT, SOT or under the SUT. 35 ILCS 110/6; 35 ILCS 110/2. The definition of serviceman maintaining a place of business in Illinois tracks the language in Section 105/2 defining a retailer maintaining a place of business in Illinois, and was likewise amended by Public Act 96-1544 to reflect Illinois’ new sales and use tax nexus requirements. 35 ILCS 110/2.

§ 14-211. Activities Requiring Collection by Seller. A “retailer maintaining a place of business in this State” (§ 14-210) must collect and remit UT on all retail sales for use in Illinois, even if the sale takes place outside of Illinois (and even if the retailer is not liable for ROT on the transaction).

Prior to the U.S. Supreme Court’s June 21, 2018 decision in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) limited the Department’s jurisdiction to impose collection and remittance responsibilities and required a physical presence for substantial nexus. See § 14-210 above. However, the Supreme Court found the physical presence rule affirmed by the Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and over 25 years prior to be “unsound” and not necessary to meet the “substantial nexus” prong of the four-part test set forth in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). Instead, the Court explained that nexus is established when the taxpayer “avails itself of the substantial privilege of carrying on business in that jurisdiction.” *Wayfair, Inc.*, 138 S. Ct. 2080 at 2099. Following *Wayfair, Inc.*, a physical presence is no longer required, and nexus can be established on the basis of both “economic and virtual contacts”

with a state. *Id.* Accordingly, the case law addressed below, which was decided prior to the U.S. Supreme Court's June 2018 decision in *Wayfair, Inc.*, has limited precedential value.

In *Brown's Furniture, Inc. v. Wagner*, 171 Ill. 2d 410, 665 N.E. 2d 795 (Ill. 1996), *petition for cert. denied*, the Illinois Supreme Court held that an out-of-state retailer that delivered goods in its own trucks to its Illinois customers and that advertised extensively in Illinois was required to collect Illinois UT. In so holding, the court ruled that an out-of-state vendor's physical presence in Illinois need not be substantial to subject it to UT collection responsibilities. Rather, as long as a nondomiciliary vendor displays anything more than "a slight physical presence" in Illinois, it will be subject to UT collection obligations.

In *State v. Lush Internet, Inc.*, 2017 IL App (1st) 161601-U, the Illinois Appellate Court affirmed the lower court's decision, holding that the taxpayer did not have substantial Commerce Clause nexus for sales and use tax purposes. The taxpayer was a Nevada Corporation that sold cosmetics products over the internet and delivered catalogs to residents in Illinois. The Appellate Court ruled that the online business did not have a physical presence in Illinois, and its act of sending catalogs into Illinois did not give sufficient rise to nexus with the state.

The Illinois Appellate Court rejected an out-of-state taxpayer's claim that a use tax collection obligation may be imposed only if the taxpayer solicits business in the state. The court ruled that the taxpayer's delivery of its goods in Illinois in its own trucks, and its infrequent installation activity in Illinois, satisfied the nexus requirements of the Commerce and Due Process Clauses of the United States Constitution. *Town Crier, Inc. v. Department of Revenue*, 315 Ill. App. 3d 286, 733 N.E.2d 780 (1st Dist. 2000). Cf. *Am. River Transp. Co. v. Bower*, 351 Ill. App. 3d 208, 813 N.E. 2d 1091 (2d Dist. 2004).

The Court's ruling analyzes the plaintiff's commerce clause challenge to Illinois' imposition of a use tax obligation by addressing both the substantial nexus and fair apportionment prongs of the test articulated in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076 (1977). In finding substantial nexus, the Court noted the fact that, "the flight log establishes that 36.9% of the total flight segments for the airplane were logged on flights to and/or from Illinois," and that, "the airplane was present overnight at one of Illinois' airports on 25 occasions." As to the fair apportionment prong, the Court adopted the reasoning of several other jurisdictions in finding that, "use taxes [are] fairly apportioned where a system of credits is in place." Accordingly, the use tax obligation imposed based on the full purchase price of the airplane was fairly apportioned, "because no tax has been paid on the airplane to any other state, and even if it had been, the Use Tax Act provides an exemption for sales or use taxes paid to other states."

In August 2018, the Department added a new section to the use tax regulations providing that the presence of an out-of-state retailer or its representative in Illinois for the purpose of engaging in trade show activities establishes nexus for the retailer and requires collection of use tax on all sales into Illinois. 86 Ill. Admin. Code 150.802(a). "Trade show activity" means any activity, traditionally conducted at conventions, trade shows or similar meetings, whose purpose is, in whole or part, to create, maintain or enhance a business market in Illinois. "Trade show activity" includes activities to attract persons in an industry generally, as well as members of the public, to the trade show for the

purpose of displaying industry products or to stimulate interest in and demand for industry products or services, or to educate persons engaged in the industry in the development of new products and services. 86 Ill. Admin. Code 150.802(d).

However, § 150.802 also creates a “safe harbor” for retailers at trade shows. If a retailer meets the following three conditions, the retailer’s presence at a trade show will not trigger collection of use tax on sales into Illinois: (1) the retailer attends no more than two trade shows per calendar year; (2) the retailer is physically present at those two trade shows for an aggregate total of no more than eight days during any calendar year; and (3) combined gross receipts from sales made at the two trade shows during any single calendar year do not exceed \$10,000. 86 Ill. Admin. Code 150.802(b). Days during which a retailer is present in Illinois but is not engaged in activity related to the trade show do not count toward the eight-day limit. Also, regardless of whether the retailer has multiple representatives at the trade show, each day of the trade show only counts as one of the eight days. A portion of a day counts as a whole day. *Id.*

No person shall enter into a contract with a State agency or enter into a subcontract unless the person and all affiliates of the person collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act regardless of whether the person or affiliate is a “retailer maintaining a place of business within this State” as defined in Section 2 of the Use Tax Act. 35 ILCS 500/50-12.

§ 14-212. Activities Not Requiring Collection by Seller. See § 14-211 above.

§ 14-220. Jurisdiction over the Subject of the Tax. A retailer is required to collect UT and remit the complementary ROT if the retailer makes a retail sale in Illinois. 35 ILCS 105/8.

§ 14-221. Sales of Property Originating in Illinois. The Department takes the position that an Illinois retailer must remit ROT on retail sales to out-of-state purchasers unless the retailer:

“... is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside of this State, not to be returned to a point within this State, provided that such delivery is actually made. . . [or]

... by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State.” ROT Reg. § 130.605(c) and (d).

See *Union Electric v. Department of Revenue*, 136 Ill.2d 385, 556 N.E.2d 236 (1990) for discussion of ROT Reg. § 130.605.

§ 14-222. Sales of Property Originating Outside Illinois. The Department has promulgated a regulation (ROT Reg. § 130.610) identifying those situations involving multi-state transactions with Illinois as the state of destination wherein the retailer is required to remit ROT.

§ 14-222.01. Out-of-State Deliveries by Local Sellers to Local Buyers. [Reserved]

§ 14-222.02. Voluntary Collection By Sellers. The Department may, in its discretion, authorize the collection of UT, SOT, or SUT by any retailer, supplier, or serviceperson not maintaining a place of business within Illinois. Any such retailer must furnish adequate security to insure collection and payment of the tax. 35 ILCS 105/6, 115/6, 110/7.

§ 14-300. IMPORTS AND EXPORTS. Illinois has no specific statutes or regulations governing the application of ROT and UT to transactions involving foreign imports and exports. These taxes do not, however, extend to sales which are not taxable under the United States Constitution and statutes. 35 ILCS 120/2-60. Accordingly, the Retailer's Occupation Tax Act, Use Tax Act, and older Illinois case law must be interpreted in conformity with the import-export clause (U.S. Const. Art. 1, § 10, cl. 2) and in light of such leading cases as *Richfield Oil Corp. v. California State Bd. of Equal.*, 329 U.S. 69(1946); *Limbach v. Hoover & Allison Co.*, 466 U.S. 353 (1984); *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979); and *Michelin Tire Corp. v. Wages*, 423 U.S. 276 (1976). See *Bradford Exchange A.G. v. Department of Revenue*, 155 Ill. App. 3d 674, 508 N.E.2d 316 (1987).

§§ 14-310 - 320. [Reserved]

§ 14-400. EXCLUSIONS AND EXEMPTIONS.

§ 14-410. Nontaxable Entities. As discussed more fully below, sales to government and nonprofit entities are exempt from ROT and UT. In some instances, sales by government or nonprofit entities may be exempt as well. 35 ILCS 120/2-5(11). Similarly, sales of materials to construction contractors for incorporation into real estate owned by exclusively charitable, religious, or educational institutions or organizations are exempt from ROT. ROT Reg. § 130.2075(d).

In order to qualify for the government/nonprofit exemption, retailers must obtain a valid exemption certificate from either the exempt customer or the contractor. In *Hess, Inc. v. Department of Revenue*, 278 Ill. App. 3d 483, 663 N.E.2d 123 (5th Dist. 1996), an Illinois Appellate Court ruled that a retailer of construction materials was not required to determine whether materials that it sold were actually incorporated into real estate related to a church, charity, school or governmental body project in order to qualify for the exemption provided by the ROT Act. Instead, merely accepting an exemption certificate from a contractor was *prima facie* proof of the exemption.

§ 14-411. Governments. Sales to federal, state, and local governmental bodies are exempt. 35 ILCS 120/2-5(11); see *Lombard Pub. Facilities Corp. v. Dep't of Revenue*, 378 Ill. App. 3d 921, 881 N.E. 2d 598 (2d Dist 2008) for analysis of term "governmental body" as used in the Retailers' Tax Act; ROT Reg. § 130.2080. Sales to construction contractors of tangible property for incorporation in real estate for governmental entities are also exempt. ROT Reg. § 130.2075. Personal property purchased by a lessor who leases property for one year or longer to a governmental body that has been issued an active sales tax exemption number is exempt from tax. 35 ILCS 120/2-5(29) and (37); ROT Reg. § 130.2012. All sales by the federal government or any foreign government, or any agency or instrumentality of any such government, are exempt, but sales by other governmental entities are exempt only when the sales are made when performing a governmental function. ROT Reg. § 130.2055.

§§ 14-411.01 - .03. [Reserved]

§ 14-412. Nonresidents. Sales to nonresidents, where delivery takes place outside of Illinois, are not subject to ROT. Sales to nonresidents of automobiles are exempt from ROT when delivery takes place in Illinois if the vehicle is not to be titled in Illinois and the proper “drive away decal permit” is issued. 35 ILCS 120/2-5(25); ROT Reg. § 130.605(b)(1)).

§§ 14-412.01 - .07. [Reserved]

§ 14-413. Nonprofit Organizations. Sales to institutions organized exclusively for charitable, educational, or religious purposes are exempt. 35 ILCS 120/2-5(11), and 120/2h. Sales by such organizations are taxable unless the sale is (1) made to the organization’s members, students, patients, or inmates primarily for the purposes of the selling organization (*e.g.*, Boy Scout uniforms); (2) an infrequent sale that is noncompetitive with business establishments and whose primary purpose is to solicit a donation (*e.g.*, Girl Scout cookies); or (3) an occasional dinner or similar activity if held not more than twice within a one-year period (*e.g.*, bake sales, carnivals). 35 ILCS 120/1; ROT Reg. § 130.2005(a). Such an organization must have an exemption identification number to be exempt. 35 ILCS 120/lg, 2-5(11); ROT Reg. § 130.2007. Exemption identification numbers are valid for five years after the first day of the month following the month of issuance. Renewal applications should be filed no later than three months prior to the expiration date. 35 ILCS 120/lg. Religious organizations are not required to submit a financial statement with an initial application for an exemption identification number. ROT Reg. § 130.2007. In *Subway Restaurants v. Topinka*, 322 Ill. App.3d 376, 751 N.E.2d 203 (4th Dist. 2001), the Illinois Appellate Court addressed the question of sales by exempt organizations and ruled that a restaurant that leased space from Illinois State University was taxable on its food and beverage sales to students and faculty because the restaurant was not the school’s agent and it was open to the public.

With limited exceptions, lessors who execute true leases (versus a lease found to be a conditional sale) with exclusively religious, educational, or charitable organizations must remit UT on their cost price of the rental property. ROT Reg. § 130.2010(b). One of the exceptions exempts from tax gross receipts from the sale of computers and communications equipment utilized for any hospital purpose and equipment used in the diagnosis, analysis, or treatment of hospital patients to a lessor who leases the equipment, under a lease of one year or longer executed or in effect at the time of the purchase, to a hospital that has been issued an active tax exemption identification number by the Department. 35 ILCS 120/2-5(28) and (36), ROT Reg. § 130.2012.

In, 2012, in response to *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368 (March 18, 2010), which held that a hospital did not qualify for a property tax exemption because it failed to generate most of its money from private and public charity, the General Assembly enacted four provisions clarifying hospital tax exemption. That legislation added a Use Tax provision (35 ILCS 105/3-8), a Service Use Tax provision (35 ILCS 110/3-8), a Service Occupation Tax provision (35 ILCS 115/3-8), and a Retailers’ Occupation Tax provision (35 ILCS 120/2-9). Under each of these provisions, a hospital owner or hospital affiliate will be exempt from each section if the value of services provided exceeds the relevant hospital entity’s estimated property tax liability without regard to any property tax exemptions.

§ 14-414. Public Utilities. Sales by utilities are exempt from ROT since the supplying of electricity, water, and gas are considered a service. 35 ILCS 105/3. *Illinois Gas, Light and Coke Co. v. Ames*, 359 Ill. 152, 194 N.E.2d 260 (1934); see §§ 14-625 below.

§§ 14-415 - 416. [Reserved]

§ 14-420. Nontaxable Goods, Transactions, and Activities.

§ 14-421. Sales for Resale. Since Illinois' ROT is collected on each "sale at retail," and by definition contained in 35 ILCS 120/1 not on sales "for the purpose of resale in any form as tangible personal property . . ." sales for resale are, where an appropriate certificate for resale is secured by the seller, not subject to tax. All sales are presumed to be "at retail" unless an appropriate certificate is secured by the seller. It is the seller's responsibility to secure a resale certificate. Resale certificates must include the seller's name and address, the purchaser's name and address, the date the purchaser signed the certificate, identification of the property sold, and the purchaser's registration or resale number issued by the Department. If all sales which a seller makes to a particular purchaser are for resale, the seller may take a blanket certificate of resale. ROT Reg. §§ 130.210, 130.1401-130.1420; 130.2070.

Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor may be treated as purchases for the purpose of resale to the governmental unit if (1) there is a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body, and (2) the contract is specific in documenting a sale of tangible personal property from the purchaser to the governmental body. An item by item listing of property transferred is not necessary; instead, a statement that title to all of the tangible personal property that is purchased shall pass to the governmental body is sufficient. A supplier claiming exemption is required to have among his records a Certificate of Resale from the purchasing government contractor. ROT Reg. § 130.2076.

Since the Act applies only to retailers, if all of a seller's sales are at wholesale, no resale certificates need be secured. *Illinois Cereal Mills, Inc. v. Department of Revenue*, 99 Ill. 2d 9, 457 N.E.2d 385 (1983); *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill. 2d 471, 413 N.E.2d 370 (1980); Cf. *Tri-America Oil Co. v. Department of Revenue*, 102 Ill. 2d 234, 464 N.E.2d 1076 (1984).

The Illinois Appellate Court held that a retailer's sale of artwork to a purchaser did not constitute a tax-free sale for resale, even though the invoice stated "purchased for resale" and the purchaser subsequently consigned the artwork to the taxpayer, when the taxpayer failed to present either (1) an active registration number or resale number and a certification to the seller that the sale was for resale, or (2) other evidence to show that the sales were to purchasers who were in the business of selling art to third parties for ultimate use or consumption. *R.H. Love Galleries, Inc. v. Zehnder*, 318 Ill. App. 3d 1231, 789 N.E. 2d 940 (1st Dist. 2000) (unpublished). **§§ 14-421.01 - .05.** [Reserved]

§ 14-422. Chemicals Used in Processing. See

§ 14-423 below. See *PPG Industries, Inc. v. Illinois Dep't of Rev.*, No. 13 L 050140, in which the Illinois Circuit Court of Cook County held that the taxpayer was not subject to tax on purchases of nitrogen and hydrogen used in manufacturing because they caused a “direct and immediate physical change” in the manufacturing process. See also *Horsehead Corp. v. Dep't of Revenue*, 2018 Ill. App. LEXIS 682, *19 (1st Dist. 2018), in which the Illinois Appellate Court held that a zinc recycler’s purchases of metallurgical coke used and consumed in its kilns during the manufacturing process did not qualify for the chemical exemption because only chemicals that have a direct and immediate effect on a product being manufactured are exempt from use tax.

§ 14-423. Goods Consumed in Manufacturing. The sale of additives or chemicals to a manufacturer by a retailer is exempt from ROT if the additive or chemical becomes a component of the tangible personal property produced by the manufacturer. Additives and chemicals consumed during the industrial process are not components of the final product, and sales of the additives or chemicals to the manufacturer are subject to ROT. ROT Reg. §§ 130.210, .215. However, the manufacturing and assembly exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease. 35 ILCS 120/2-45(4), ROT Reg. § 130.330(c)(6).

The Illinois Appellate Court has held that solvents added by a manufacturer to ink and lacquer concentrate are consumed by evaporation in the manufacturing process and therefore are not passed along in tangible form to the ultimate consumer of the manufactured product. As a result, the court found that the manufacturer was the “user” of the solvents for purposes of assessing use tax. The court also held that the Department was justified in declining to assess use tax on premixed solvents, citing the administrative burden of separating the cost of the solvents from the cost of nontaxable ink and lacquer. *Container Corp. of Am. v. Department of Revenue*, 293 Ill. App. 3d 1089, 689 N.E.2d 259 (1st Dist.1997).

§ 14-424. Machinery, Equipment, and Tools Used in Manufacturing. The sale of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property (or components thereof) is exempt from tax. 35 ILCS 120/2-5(14) and 2-45; ROT Reg. § 130.330.

The “manufacturing process” is defined generally as processes or activities “commonly regarded as manufacturing.” ROT Reg. § 130.330(b). The manufactured products must be held for sale or lease, and not for internal consumption. Reg. § 130.330(e). In *Electric Energy, Inc. v. Hamer*, 373 Ill. App. 3d 733, 869 N.E.2d 153 (5th Dist. 2007), the Illinois Appellate Court held that coal purchased and used by a utility company to generate electrical energy did not qualify for the manufacturing exemption because the product of electricity is considered a service business.

The Illinois Appellate Court has held that machinery and equipment used in producing retread tires was exempt from sales and use tax because the machinery and equipment was used in a manufacturing process, rather than in providing a service. As a result, the machinery and equipment used to produce the retread tires was determined to be exempt as machinery without regard to which party—the manufacturer or the customer—supplied the casing to be retread. *Richard's Tire Co. v. Department of Revenue*, 295 Ill. App. 3d 48, 692 N.E.2d 360 (2d Dist. 1998).

Regarding the definition of “assembly process,” an Illinois court held that a manufacturer of cathode ray tubes utilized in television sets was exempt from sales and use tax on certain trays used to protect the tubes during transportation to another one of its plants. According to the court, the trays qualified as equipment used primarily in the assembly process and the transfer of the tubes to the trays was part of a single, integrated manufacturing process. *Zenith Electronics Corp. v. Illinois Dep’t of Revenue*, 293 Ill. App. 3d 651, 688 N.E.2d 747 (1st Dist. 1997).

The Illinois manufacturing machinery and equipment exemption includes the sale or transfer of parts that require periodic replacement in the course of normal operation, including “stock” parts and not merely special order parts. *City Suburban Elec. Motors, Inc. v. Wagner*, 278 Ill. App. 3d 564, 663 N.E.2d 77 (1st Dist. 1996).

The manufacturing exemption does not include machinery and equipment used in (1) the generation of electricity for wholesale or retail sale; (2) the pipes, pipelines, or mains; or (3) the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. 35 ILCS 105/3-5(18).

For manufacturing machinery and equipment purchases and for purchases of graphic arts machinery and equipment, Illinois provides a credit equal to 50% of the state tax which, but for application of the manufacturing machinery and equipment exemption, would have been due on the purchase of the machinery/equipment. ROT Reg. § 130.331. This Manufacturer’s Purchase Credit was not available for purchases after June 30, 2003 and before September 1, 2004. Any credits earned on purchases prior to June 30, 2003, must have been used prior to October 1, 2003. In addition, any credits earned on or after September 1, 2004, must be used prior to August 31, 2014. Purchasers earning Manufacturer’s Purchase Credits are required to file an annual report with the Department. The credit may be used by the recipient to satisfy its Illinois UT or SUT liability due on the purchase of taxable production-related property used in the manufacturing facility or taxable equipment used for research and development. (The credit is not applicable against any local UT or SUT liability.) To do so, the credit recipient certifies to the seller that all or part of the UT or SUT due on the purchase is being satisfied by the use of a Manufacturer’s Purchase Credit. Purchasers using Manufacturer’s Purchase Credits are required to file an annual report with the Department. The credit is non-transferable and must be used by the end of the second calendar year following the year in which it arises. 35 ILCS 105/3-85; ROT Reg. § 130.331.

For purchases of exempt machinery and equipment from service people (*i.e.*, a purchase of an exempt item which also includes service charges for the installation of the item in the purchaser’s manufacturing facility), the amount of the credit earned is determined as follows. If an invoice separately states the selling price of the exempt machinery and equipment, the amount of credit earned is calculated based on the selling price of the exempt item. If an invoice contains a lump-sum charge for the machinery and equipment and the related services, the amount of credit is based on 50% of the total invoice amount. 35 ILCS 110/3-70.

Coal and aggregate exploration, mining, off-highway hauling, processing, maintenance, and reclamation equipment, including replacement parts and equipment are exempt from ROT, SOT, UT and SUT. 35 ILCS 120/2-5(21); 35 ILCS 115/3-5(12); 35 ILCS 105/3-5(16); 35 ILCS 110/3-5(12). On

June 29, 2018, the Illinois General Assembly enacted H.B. 4415, which provides that this exemption sunsets on June 30, 2023.

§ 14-426. Agricultural Items.

§ 14-426.01. Sellers of Feed and Breeding Livestock. The sale of feed to a purchaser for feeding livestock or poultry intended for sale (including the sale of eggs) is exempt from tax. If the poultry or livestock are consumed other than at market, then the sale of feed is not exempt. Feed includes salt, grains, tankage, oyster shells, mineral supplements, vitamins, limestone, and other generally recognized animal feeds. ROT Reg. § 130.2100.

§ 14-426.02. Farm Actions. [Reserved]

§ 14-426.03. Livestock. Sellers of breeding livestock are not subject to tax when selling livestock for breeding purposes. ROT Reg. § 130.2100.

§§ 14-426.04 - .05. [Reserved]

§ 14-426.06. Farm Machinery. Sales of farm equipment certified by the purchaser as being used primarily for agricultural production are exempt from tax. 35 ILCS 120/2-35, 35 ILCS 120/2-5(2), 35 ILCS 105/3-5(11). This includes new or used equipment, purchased or leased, and components and replacement parts thereof. Specifically not exempt are motor vehicles required to be registered under the Illinois Vehicle Code. 35 ILCS 120/2-5(2); 35 ILCS 105/3-5(11), ROT Reg. § 130.305. Where the purchaser is not the primary user but plans to lease the equipment for agricultural use, he must certify this to the seller. ROT Reg. § 130.305(n).

§ 14-426.07. Farm Chemicals. The sale of farm chemicals is exempt from ROT. 35 ILCS 120/2-5(l); ROT Reg. § 130.1955.

§ 14-427. Real Estate. Sales of real property and buildings permanently attached thereto are exempt from ROT. *See generally* 35 ILCS 120/1; ROT Reg. § 130.1940(d)(1). For sales by construction contractors, *see* § 14.520 below.

§§ 14-428. Services. Transactions that do not involve the sale or transfer of tangible personal property, whether at retail or as an incident of a sale of service, are not subject to ROT or SOT. 35 ILCS 115/3; 35 ILCS 120/2.

§ 14-429.01. [Reserved]

§ 14-430. Occasional Sales. An isolated or occasional sale of tangible personal property by a person who does not hold himself out as being engaged in the sale of such tangible personal property, or does not habitually engage in selling at retail such tangible personal property, is exempt from ROT. 35 ILCS 120/1; ROT Reg. § 130.110.

In *Jl Aviation Inc., v. Department of Revenue*, 335 Ill. App. 3d 905; 781 N.E.2d 469 (1st Dist. 2002), the Illinois Appellate Court held that use tax was not owed on a like-kind exchange of aircraft. The court concluded that an intermediary to the exchange was, in substance, a mere conduit. The court noted that the conduit was subject to a written agreement limiting its role, that upon receiving title the

conduit was required to reconvey title immediately, and that the conduit assumed no liability for its transfer of title. *But see Weber-Stephens Products, Inc. v. Department of Revenue*, 324 Ill. App. 3d 893, 756 N.E. 2d 321 (1st Dist. 2001) (where the Illinois Appellate Court determined that the occasional sale exemption did not apply to a transfer of an airplane as part of an exchange qualifying for like-kind treatment under Internal Revenue Code Section 1031).

§ 14-450. Other Exemptions and Exclusions.

§ 14-451. Graphic Arts Machinery. Through August 30, 2014, Illinois exempts from ROT the sale of machinery and equipment, including repair and replacement parts, certified by the purchaser to be used primarily for graphic arts production. 35 ILCS 120/2-5(4). ROT Reg. § 130.325; P.A. 96-116. “Graphic arts production” is printing by one or more of the common processes or graphic arts production services as those processes and services are defined in Major Group 27 of the North American Standard Industrial Classification Manual. 35 ILCS 120/2-30. In addition, the qualifying graphic arts machinery and equipment must be used primarily in the production of tangible personal property for wholesale or retail sale or lease. 35 ILCS 120/2-30; ROT Reg., § 130.325. Effective July 1, 2017, the manufacturing and assembling machinery and equipment exemption extends to graphic arts machinery and equipment. 35 ILCS §120/2-5(14). Illinois Department of Revenue Info Bulletin No. FY 2018-01 (July 1, 2017).

§ 14-452. Rolling Stock. The sale or lease for more than one year of tangible personal property to interstate carriers for hire for movement in interstate commerce is exempt from ROT. 35 ILCS 120/2-51; ROT Reg. § 130.340. Motor vehicles weighing over 16,000 pounds and certain trailers can qualify for the rolling stock exemption under a mileage test or under the trip test. The trip test is met when, during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period. The mileage test is met when, during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total miles for that period. The person claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method. For purposes of determining qualifying trips or miles, motor vehicles that carry persons or property for hire, even just between points in Illinois, will be considered used for hire in interstate commerce if the motor vehicle transports persons whose journeys or property whose shipments originate or terminate outside Illinois. Absent an election, the person will be deemed to have elected the mileage method. 35 ILCS 120/2-51(c) & (d); 35 ILCS 105/3-61(c) & (d). Limousines used in interstate commerce may also qualify for the rolling stock exemption if certain conditions are met. 35 ILCS 120/2-51(c), 35 ILCS 105/3-61(c).

In *Midway Airlines, Inc. v. Department of Revenue*, 234 Ill. App. 3d 866, 602 N.E.2d 13 (1st Dist. 1992), an Illinois Appellate Court determined that airplane meal trays and hand towels were not “rolling stock” because the term “rolling stock” generally applied only to wheeled vehicles owned and used by a motor carrier. The court did acknowledge that the term possibly could be extended to certain vehicles or equipment used by an air carrier.

On two separate occasions, the Illinois Appellate Court has found that waste haulers were not in the business of hauling goods for hire and thus, garbage trucks used to haul garbage did not qualify for

exemption as rolling stock used in interstate commerce. *Admiral Disposal Co. v. Department of Revenue*, 302 Ill. App. 3d 256, 706 N.E.2d 118 (2d Dist. 1999), *XL Disposal v. Zehnder*, 304 Ill. App. 3d 202, 709 N.E.2d 293 (4th Dist. 1999).

§ 14-454. Enterprise Zones. An Enterprise Zone certified prior to January 1, 2016 or on or after January 1, 2017 shall be effective on or after January 1 of the first calendar year after Department of Commerce and Economic Opportunity certification. An Enterprise Zone certified on or after January 1, 2016 and on or before December 31, 2016 shall be effective on the date of Department of Commerce and Economic Opportunity certification. 20 ILCS 655/5.3.

Retailers within an established enterprise zone pursuant to the “Enterprise Zone Act” (20 ILCS 655/1) and who make sales of building materials to be incorporated into real estate in such enterprise zone by remodeling, rehabilitation, or new construction, may (if the county or municipality which created the enterprise zone has adopted an appropriate ordinance) deduct those receipts from gross receipts when calculating ROT, provided a Certificate of Eligibility for Sales Tax Exemption has been issued. 35 ILCS 120/5k, ROT Reg. § 130.1951(d).

Purchases of machinery and equipment to be used in the operation of “high impact service facilities” may qualify for exemption from ROT. 35 ILCS 120/1j. *See* § 14-465 below. Similarly, jet fuel and petroleum products used in the operation of a “high impact service facility” located in an enterprise zone may qualify for exemption from ROT. 35 ILCS 120/1j.1. A “high impact service facility” is a facility used primarily for the sorting, handling, and redistribution of mail, freight, cargo, or other parcels. The facility must also make qualified investments in a business enterprise project. 35 ILCS 120/1i.

The Illinois Department of Revenue clarified the rules for obtaining certain enterprise zone exemptions in a general information letter issued in August 2011. The letter states that the exemptions from tax on the sale of tangible personal property are available only to certified business enterprises or their lessors and are not available to construction contractors when the property (1) is to be used or consumed within an enterprise zone in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease or (2) is purchased for use or consumption in the operation of pollution control facilities within an enterprise zone. ST 11-0060-GIL (8/11/2011).

Effective July 1, 2017, Illinois adopted a new rolling stock test for motor vehicles and trailers. Under the new test, (1) the motor vehicle or trailer must be used to transport persons or property for hire; (2) the purchaser must certify that the motor vehicle or trailer will be utilized by an interstate carrier for hire that holds an active USDOT number with the Carrier Operation listed as “interstate” and the Operation Classification listed as “authorized for hire,” “exempt for hire,” or both “authorized for hire” and “exempt for hire;” and (3) for motor vehicles, the gross vehicle weight rating must exceed 16,000 pounds. Provisions are added that specify tax due on reversion to non-qualifying use. There is a different, new test for motor vehicles or trailers used at airports to support the operation of aircraft moving in interstate commerce. 35 ILCS 105/3-61(d-5) as amended by P.A. 100-0321. The Illinois Department of Revenue has written that existing regulations will be amended.

Tax Practitioners' Meeting, Sales and Excise Tax 2017 Legislation/Regulations (October 27, 2017) (available on Illinois Department of Revenue Internet site).

§ 14-455. Food and Medical Supplies. Transactions involving the sale 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, for human use” are subject to tax at a 1% rate. 35 ILCS 120/2-10. ROT Reg. § 130.310, 35 ILCS 110/3-10. As of September 1, 2009, “food for human consumption that is to be consumed off the premises where it is sold” does not include candy. For purposes of this Section, “candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” does not include any preparation that contains flour or requires refrigeration. 35 ILCS 120/2-10. Also beginning September 1, 2009, “nonprescription medicines and drugs” does not include grooming and hygiene products. 35 ILCS 120/2-10, 35 ILCS 110/3-10.

Beginning January 1, 2014, “prescription and nonprescription medicines and drugs” includes medical cannabis and medical cannabis infused products sold by a registered dispensing organizations under the Compassionate Use of Medical Cannabis Pilot Program Act [35 ILCS 120/2-10]. As such, such sales are subject to the state’s favorable 1% Retailers' Occupation Tax rate applicable to sales of prescription medicines and drugs. Cannabis paraphernalia is taxed at the general merchandise rate of 6.25%. Local taxes may also apply to sales of cannabis and paraphernalia. 86 Ill. Adm. Code § 130.311(a), effective July 25, 2014.

All food sold through a vending machine, except soft drinks, candy, and hot food products, is taxed at the 1% sales and use tax rate for “food for human consumption that is to be consumed off the premises where it is sold.” 35 ILCS 120/2-10; 35 ILCS 115/3-10; ROT Reg. § 130.310.

Food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food that has been prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances, modifications of a motor vehicle for purposes of rendering it usable by a disabled person and insulin, urine testing materials, syringes, and needles used by diabetics, for human use is taxed at the reduced 1% SOT and SUT rate. 35 ILCS 110/3-10; 35 ILCS 115/3-10.

Medicines prescribed by veterinarians for animals are subject to the higher (6.25%) rate of tax. ROT Reg. § 130.310(e)(1).

A nonprofit organization that sells food for consumption off premises in a food distribution program at a price below retail to purchasers who are required to perform community service will be exempt from the 1% tax otherwise imposed on food and drugs. 35 ILCS 120/2-5.5.

The low tax rate (0%) at the time applicable to medical appliances was held to be an “exemption” by an Illinois Appellate Court and therefore is to be narrowly construed. Ambiguities are to be resolved in favor of taxation. *Medcat Leasing Co. v. Whitley*, 53 Ill. App. 3d 801, 625 N.E.2d 424 (4th Dist. 1993).

§ 14-455.01. Food for Immediate Consumption. Food sold for consumption on premises or for immediate consumption is subject to the general ROT. ROT Reg. §§ 130.2145, SOT Reg. § 140.126(a). Such transactions are also subject to local home rule ROT taxes. The home rule taxes cannot be imposed on medicines and medical appliances.

Food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Hospital Licensing Act, the Nursing Home Care Act, the MR/DD Community Care Act, the Specialized Mental Health Rehabilitation Act, or the Child Care Act of 1969 is taxed at the reduced 1% SOT and SUT rate. 35 ILCS 110/3-10; 35 ILCS 115/3-10.

§ 14-455.02. Medical Devices. Amended regulations effective August 1, 2017, reflect legislative changes under which medical cannabis and certain medical devices will be taxed at 1%.

§ 14-455.03. Sales of Feminine Hygiene Products. Beginning January 1, 2017, a variety of feminine hygiene products are exempt from the Retailers Occupation Tax. 35 ILCS § 120/2-5(42).

§ 14-455.04. Sales of Prescription Drugs by Servicepersons. Servicepersons may elect to remit tax to the Department on the sale of the prescription drugs to a purchaser based upon the serviceperson's cost price if the cost price of transferred prescription drugs is less than 75% of the aggregate annual total gross receipts from all of the serviceperson's sales of services. 35 ILCS 110/3-10. *See* § 14-150 above.

§ 14-457. Newsprint and Ink. The sale of newsprint or ink for the primary purpose of conveying news is exempt from ROT. 35 ILCS 120/1. This newsprint and ink exemption does not extend to the conveyance of news by means of tangible personal property other than newsprint and ink, *e.g.*, by means of CD-ROM disc, film or microfilm. ROT Reg. § 130.2105(a)(2). However, information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, represent the transfer of intangibles and are therefore not subject to ROT or UT, unless "canned software" is involved. ROT Reg. § 130.2105(a)(3), *see* ROT Reg. § 130.1935 for definition of "canned software."

§ 14-458. Newspapers and Magazines. Sales of newspapers and magazines are exempt from ROT, owing to the newsprint and ink exemption explained at § 14.457 above. In determining whether a publication qualifies as a magazine for the purpose of the newsprint and ink exemption, there is a "periodic publication" test that must be met and several factors to be considered. For a publication to qualify as a magazine it must be published at least two times per year in the form of newsprint and ink. The factors to be considered include: (1) whether a member of the public can subscribe to the publication; (2) whether the publication is one that has the basic format of a magazine, including soft covers, individual pages and indexed articles; (3) whether it contains articles and items that have value to the general public; and, (4) whether it contains general advertising. A publication that has one or more of these characteristics and which meets the "periodic publication" test would be considered to be a magazine. 35 ILCS 120/1, ROT Reg. § 130.2105.

§ 14-460. Coal Burning Devices. The sale of devices that convert local coal to low sulfur dioxide emission coal as defined by state and federal environmental protection agencies is exempt from ROT. 35 ILCS 120/1a-1.

§ 14-463. Transactions with Out-of-State Florists. A taxable sale at retail occurs where an Illinois florist receives an order that is then executed by a florist in another state. 35 ILCS 120/1. However, where such an order is placed with an out-of-state florist and executed by an Illinois florist, no ROT is imposed. 35 ILCS 120/2-5(23); ROT Reg. § 130.1965.

§ 14-465. Enterprise Zone Manufacturing and Pollution Control Property. Machinery and equipment used by high impact service facilities that are located in Illinois Enterprise Zones are exempt from the ROT and UT. A “high impact service facility” is a certified facility used primarily for the sorting, handling, and redistribution of mail, freight, cargo or other parcels received from agents or employees of the handler or shipper for processing at a common location and redistribution to other employees or agents for delivery to an ultimate destination on an item-by-item basis. The statute applies to high impact service facilities which (1) will make an investment in a business enterprise project of \$100 million or more; (2) will cause the creation of at least 750 to 1000 new jobs in an enterprise zone established pursuant to the Illinois Enterprise Zone Act; and (3) will be certified by the Department of Commerce and Community Affairs as contractually obligated to meet the requirements specified in (1) and (2) above within the time period as specified by the certification. 35 ILCS 120/1i, 1j, 1j.1, 1j.2.

§ 14-466. Interstate Commerce. ROT cannot be levied on transactions protected by the Commerce Clause and federal statutes. 35 ILCS 120/2-60.

A retailer selling tangible personal property to a nominal lessee or bailee pursuant to a lease with a dollar or other nominal option to purchase is engaged in the business of selling at the location where the property is first delivered to the lessee or bailee for its intended use. 35 ILCS 120/2-12(5).

Under a regulation effective July 27, 2018, out-of-state retailers engaging in “trade show activities” in Illinois will be treated for use tax purposes as maintaining a place of business in Illinois and are required to register with the Illinois Department of Revenue and collect and remit Use Tax on all taxable sales to Illinois purchasers. “Trade show activities” are “any activity, traditionally conducted at conventions, trade shows or similar meetings, whose purpose is, in whole or part, to create, maintain or enhance a business market in Illinois.” However, there is an exemption for retailers satisfying all three of the following conditions: (i) attends no more than two Illinois trade shows during any calendar year, (ii) is physically present at those two Illinois trade shows for an aggregate total of no more than 8 days during any calendar year, and (iii) has combined gross receipts from sales made subject to Retailers' Occupation Tax at all Illinois trade shows during any single calendar year not exceeding \$10,000. Admin Code § 150.802.

Effective October 1, 2018, the Use Tax Act is amended such that a retailer lacking a physical presence in Illinois may be treated as a “Retailer maintaining a place of business” in Illinois and required to collect the state’s use tax if the retailer’s cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more or the retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois. The examination of whether the retailer satisfies either of those tests is conducted quarterly. 35 ILCS 105/2. There is a comparable provision applicable to the Service Use Tax (in the definition of “Serviceman maintaining a place of business in this State”. 35 ILCS 110/2.

See also an emergency regulation adopted by the Illinois Department of Revenue (“Wayfair Nexus – Nexus Without Physical Presence”). 86 Il. 150.803. The emergency regulation is effective for a maximum of 150 days from September 11, 2018).

§ 14-467. Semen for Artificial Insemination of Livestock. Sales and use of semen for artificial insemination of livestock for direct agricultural production are exempt from ROT, SOT, UT and SUT. 35 ILCS 105/3-5(20); 35 ILCS 110/3-5(13); 35 ILCS 115/3-5(14); 35 ILCS 120/2-5(26). *See* § 14-426.03.

§ 14-468. Aircraft. The purchase of an aircraft in Illinois is not subject to tax if the following conditions are met: the aircraft leaves the state within 15 days; the aircraft is neither based nor registered in Illinois after the purchase; and the purchaser provides the Department with a signed certification that these conditions are met. For purposes of this provision, an aircraft is based in Illinois if it is hangered, stored or otherwise used in Illinois for ten or more days in each 12-month period following the date of sale. 35 ILCS 105/3-55(h-2); 35 ILCS 120/2-5(25-7), 86 Ill. Admin. Code 130.605

Beginning January 1, 2010, in the case of certain organizations, materials, parts, equipment, components, and furnishings incorporated into or upon an aircraft as part of the modification, refurbishment, completion, replacement, repair, or maintenance of the aircraft are exempt from ROT. The exemption applies to consumable supplies used in the modification, refurbishment, completion, replacement, repair, and maintenance of aircraft, but does not apply to any materials, parts, equipment, components, and consumable supplies used in the modification, replacement, repair, and maintenance of aircraft engines or power plants. “Consumable supplies” include, but are not limited to, adhesive, tape, sandpaper, general purpose lubricants, cleaning solution, latex gloves, and protective films. 35 ILCS 120/2-5(40).

Materials, parts, equipment, components, and furnishings incorporated into or on an aircraft as part of the completion, replacement, repair, or maintenance of the aircraft are exempt from tax. The exemption applies to the use of qualifying tangible personal property by persons who modify, refurbish, complete, repair, replace, or maintain aircraft by persons who (1) hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration, (2) have a Class IV Rating, and (3) conduct operations in accordance with Part 145 of the Federal Aviation Regulations. 35 ILCS 105/3-5(35), 35 ILCS 110/3-5(27), 35 ILCS 115/3-5(29) and 35 ILCS 120/2-5(40).

In addition, fuel and petroleum products: (1) sold to or used by an air carrier; (2) certified by the air carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier; (3) for a flight destined for ore returning from a location outside the United States without regard to previous or subsequent domestic stopovers is exempt from ROT. 35 ILCS 120/2-5(22).

See § 14-211: *Irwin Indus. Tool Co. v. Dep’t of Revenue*, 238 Ill. 2d 332, 351 (2010). The Illinois Supreme Court held imposition of a use tax obligation on the full purchase price of an airplane owned by an out-of-state corporation and hangered in Nebraska, constitutionally permissible where the airplane’s “frequent physical presence in Illinois, through the many take-offs and landings from

Illinois runways, as well as the nights that it spent in Illinois, was not coincidental, but was inherent in its basic purpose and function in this state.” **§ 14-470. Use Tax Exemptions.**

§ 14-471. Generally. In keeping with the complementary nature of the ROT and UT, if the seller of tangible personal property for use would not be taxable for ROT despite all elements of the sale occurring in Illinois, then the UT imposed by the Act does not apply to the use of such tangible personal property in Illinois. 35 ILCS 105/3; UT Reg. § 150.101. Accordingly, all purchases identified in § 14-420 above do not require either the collection or the remittance of UT.

§ 14-472. Nonresident Users. The use of tangible personal property “acquired outside this State by a nonresident individual and brought into this State by such individual for his or her own use while temporarily within this State or while passing through this State” is not subject to UT. 35 ILCS 105/3-55(a); UT Reg. § 150.310(a)(1).

§ 14-473. Rolling Stock-Leases. Tangible personal property used “by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by such interstate carriers for hire” is exempt from UT. 35 ILCS 105/3-55(b); UT Reg. § 150.310(a)(2). Motor vehicles and trailers will be exempt as rolling stock moving in interstate commerce when, during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. 35 ILCS 105/3-61. The limitation of this exemption to carriers for hire does not violate the state constitutional requirement of uniformity in taxation. *Square D Co. v. Johnson*, 233 Ill. App. 3d 1070, 599 N.E.2d 1235 (1st Dist. 1992). See § 14-452 above. Beginning January 1, 2014, for aircraft and watercraft, “use as rolling stock moving in interstate commerce” occurs when, during a 12-month period, the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. 35 ILCS 105/3-61(e).

§ 14-474. Credit for Sales and Use Taxes Paid Outside Illinois. The use “of tangible personal property which is acquired outside this state and caused to be brought into this state by a person who has already paid a tax in another state in respect to the sale, purchase, or use of such property, to the extent of the amount of such tax properly due and paid in such other State” is not subject to UT. However, the “credit” permitted for taxes properly due and paid to another state is limited to the UT which would be due if the initial use of the tangible personal property occurred in Illinois. 35 ILCS 105/3-55(d); UT Reg. § 150.310(a)(3).

§ 14-475. Temporary Storage. There is no UT on the “temporary storage, in this State, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and as altered, is used solely outside this State.” 35 ILCS 105/3-55(e); UT Reg. § 150.310(a)(4). Likewise, the temporary storage in this Illinois of building materials and fixtures that are acquired either in

Illinois or outside Illinois by an Illinois registered combination retailer and construction contractor, and that the purchaser thereafter uses outside Illinois by incorporating that property into real estate located outside Illinois is exempt from UT. 35 ILCS 105/3-55(f), UT Reg. § 150.310(a)(5).

Through June 30, 2016, for purposes of Illinois UT, SUT, SOT, and ROT, tangible personal property is exempt if the taxpayer is engaged in the centralized purchasing activities in Illinois who will, upon receipt of the property, temporarily store the property in Illinois (1) for the purpose of subsequently transporting it outside Illinois for use or consumption solely outside Illinois or (2) for the purpose of being processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property to be transported outside Illinois and used or consumed solely outside Illinois. The Department of Revenue will issue a permit to taxpayers qualifying for the exemption. 35 ILCS 105/3-55(j); 35 ILCS 110/3-45(f); 35 ILCS 115/3-5(24); 35 ILCS 120/2-5(38); P.A. 097-0073, effective 6/30/2011; 86 Ill. Admin. Code 150.310(a)(6). The Illinois Appellate Court held that the temporary storage is not available for property which, having previously qualified for that exemption, was used out-of-state and then returned to Illinois under a claim that the exemption could apply again. Once out-of-state use occurred, the Illinois exemption was no longer available (“...the return of the units to Illinois for storage demonstrates that they were not solely used outside of Illinois following their initial post-purchase storage because, as discussed, storage constitutes use under the [Use Tax] Act”). *Shared Imaging, LLC v. Hamer*, 2017 IL App (1st 152817) *P9, *P40 (May 28, 2017).

§ 14-476. Common Carrier by Rail. There is no UT on “the use or purchase of tangible personal property by a common carrier by rail which received the physical possession of such property in Illinois, and which transports such property, or shares with another common carrier in the transportation of such property, out of Illinois on a

standard uniform bill of lading showing the seller of the property as the shipper or consignor of such property to a destination outside Illinois, for use outside Illinois.” 35 ILCS 105/3-55(g).

§ 14-477. Automobiles Sold to Nonresidents for Use Outside Illinois. *See* § 14-412 above.

§ 14-478. Property Used by Nonresidents Prior to Moving to Illinois. Illinois UT does not apply to the use “of tangible personal property which is acquired outside this State by a nonresident individual who then brings the property to this State for use here and who has used the property outside this State for at least three months before bringing the property to this State.” 35 ILCS 105/3-70; UT Reg. § 150.315(a).

In *JB4 Aircraft v. Dept. of Rev.*, 388 Ill. App. 3d 970; 905 N.E.2d 310 (2d Dist. 2009) the Illinois Appellate Court, held that an airplane owned by a limited liability company organized under Delaware law was not exempt from use tax because the exemption applies only to individuals and an LLC does not satisfy the plain and ordinary meaning of an individual.

§ 14-479. Property Used by Businesses Before Moving to Illinois. Where a business that is not operated in Illinois, but which does operate in another state, is moved to Illinois or opens up an office, plant or other business facility in Illinois, such business shall not be taxed on its use, in Illinois, of tangible personal property, except for property that must be titled or registered with Illinois or

whose registration with the United States Government must be filed with Illinois, which such business bought outside Illinois and used outside Illinois in the operation of such business for at least three months before moving such used property to Illinois for use here. 35 ILCS 105/3-70; UT Reg. § 150.315(b).

§ 14-480. Interim Use and Demonstration. The use for demonstration purposes of tangible personal property purchased by a retailer for resale is not subject to UT. 35 ILCS 105/2; UT Reg. § 150.306. An exception to this general rule is provided for watercraft or aircraft used by a retailer for demonstration or interim use purposes more than 18 months. In such a situation, the retailer must pay use tax on the retailer's original cost price, and no credit for that tax will be permitted if the watercraft or aircraft is subsequently sold by the retailer. 35 ILCS 105/2.

§ 14-481. Telecommunications Equipment. Proceeds from the sale and use of equipment operated by a telecommunications provider, licensed as a common carrier by the FCC, and permanently installed or affixed to aircraft moving in interstate commerce are exempt from ROT, SOT, UT, and SUT. 35 ILCS 105/3-55(b) & (c); 110/2; 115/2 & 120/2-5(12) & (13).

§ 14-500. SPECIAL AND PROBLEM SITUATIONS.

§ 14-510. Computer Software. Sales of computer software are subject to the ROT and UT. "Computer software" includes "a set of statements, data, or instructions that is used directly or indirectly in a computer" including prewritten or canned software that is held for repeated sale or lease, and all associated documentation and materials." Sales of software that is adapted to specific individualized requirements of a purchaser, custom made and modified software designed for a particular or limited use by a purchaser, or software used to operate exempt machinery and equipment used in the process of manufacturing or assembling tangible personal property for wholesale, retail sale, or lease are exempt from the ROT and UT taxes. 35 ILCS 120/2; 35 ILCS 120/2-25; ROT Reg. § 130.1935(a).

Canned software is not specifically defined under Illinois law, but is generally considered to include all software that is not modified or custom software. Illinois defines custom software as software that has been developed by the licensor to the specific individualized requirements of the purchaser or has been custom made for a particular or limited use by the purchaser. Modified software is canned software that has been modified by real and substantial changes to its operational coding to meet the specific individualized requirements of the purchaser. ROT Reg. § 130.1935(c).

Illinois applies a numerical test to determine whether real or substantial changes have occurred. Software is exempt from tax if the price of the canned software (if previously marketed) is 50% or less of the new modified program. If the canned software was not previously marketed, the modified software is exempt from tax if more than 50% of its contract price is for custom programming. ROT Reg. § 130.1935 (c)(3).

Licensed software is not subject to Illinois tax if the license meets certain requirements. The license must be evidenced by a written agreement signed by the licensor and customer; the agreement must restrict the customer's duplication and use of the software; the agreement must prohibit the customer from licensing, sublicensing, or transferring the software to a third party; the licensor

must provide another copy of the software at minimal or no charge if the customer loses or damages the software; and the customer must destroy or return all copies of the software to the licensor at the end of the license period. ROT Reg. § 130.1935(a)(1).

§ 14-520. Construction Contracts. The Department has promulgated two extensive regulations identifying those who qualify as “construction contractors” and explaining the application of the ROT Act to this occupation. ROT Reg. §§ 130.1940, 130.2075. In general, a construction contractor remits the tax to his supplier, or directly to the Department. ROT is based on the construction contractor’s purchase price of items that he will convert into real estate. No additional tax would, in this case, be due on the subsequent transfer.

§ 14-521. Sales by a Construction Contractor. Sales by a construction contractor are not subject to ROT or UT if the materials and fixtures which the contractor sells are installed pursuant to the construction contract. If the contractor does not install the fixture and materials, then the sale is subject to tax. However, the sale of the following items is subject to tax, regardless of whether or not they are installed, since these items are considered to remain the personal property of the purchaser even when installed: curtains, drapes, gas or electric stoves, refrigerators, and washing machines. ROT Reg. §§ 130.1940, 130.2075.

§ 14-522. Sales to a Construction Contractor. Sales to construction contractors are subject to tax when the materials sold are incorporated by the contractor into the construction project. The sale of tools and equipment which will be used in the construction project are also subject to tax. Sales to contractors are exempt if the contractor would be subject to tax on the resale of the property to the ultimate consumer. ROT Reg. §§ 130.1940, 130.2075.

§ 14-523. Basis of Tax. If the amount charged by a construction contractor for the retail sale of personal property is not stated separately in the construction contract, then the sales tax is based on the cost of the property to the contractor. If a separate charge is made, then the tax base is the greater of the cost or the amount charged for the property. 35 ILCS 120/1.

The tax base on items sold to a contractor which are then incorporated into a construction project is the cost of the items to the contractor. A contractor that is also the manufacturer of the installed items must pay tax on both the cost of materials required to manufacture the items as well as the cost of property used to install the items (*e.g.*, screws). ROT Reg. § 130.2075(a).

§ 14-524. Definitions. A “contractor” is any person engaged in the occupation of entering into and performing construction contracts for owners. “Construction contractor” includes a general contractor, subcontractor and specialized contractor such as a landscape contractor. ROT Reg. § 130.1940(a)(1).

A “construction contract” is a contract to construct a structure, or to otherwise incorporate tangible personal property into real estate. “Construct” means build, erect, construct, reconstruct, install, plant, repair, renovate, or remodel. “Structure” includes any building, house, edifice, tunnel, sewer, highway, road, bridge, or any other improvement to real estate. ROT Reg. § 130.1940(a).

§ 14-530. Business Reorganizations, Sales of Businesses and Successor Liability.

§ 14-531. Business Reorganizations. Illinois does not have any provisions directly addressing the transfer of property pursuant to a reorganization. However, such a transfer might be exempt as an occasional sale. *See* ROT Reg. §§ 130.110.

§ 14-532. Sales of Businesses. When the assets of a business are sold outside the ordinary course of the business, the transfer of tangible personal property qualifies as an occasional sale and is not subject to ROT or UT. However, this exemption does not apply to inventory or tangible personal property that is required to be titled and registered with an agency of the state. 35 ILCS 120/1, 105/2. ROT Reg. § 130.110.

§ 14-533. Successor Liability. The Illinois Business Corporation Act provides that all property owned by each of the companies that are part of a merger vests with the surviving corporation. Consequently, the surviving corporation obtains all of the debts, liabilities, and other obligations of the each of the corporations that are part of the merger. This transfer of the assets and liabilities to the surviving corporation takes place as a matter of law and is not considered a sale at retail. 805 ILCS 5/11.50. As such, the transfer does not result in either ROT or UT liability. Illinois Dept. of Revenue General Info. Letter ST 11-0006-GIL (2/9/2011).

It should be noted that the purchaser of an entire business or simply the business' assets is liable for the unpaid taxes of the seller. The purchaser is required to withhold enough of the purchase price to cover the amount of all tax, penalty, and interest due. A purchaser must give the Department the appropriate notice with documentation within ten days after the sale or transfer. (Note, however, that the better practice is for the purchaser to give notice to the Department at least ten days prior to the sale or transfer.) Appropriate notice is given by completing Form NUC-542-A. If no such notice is given, the purchaser becomes personally liable for any liability of the seller up to the reasonable value of the property acquired.

If the notice is filed at least ten days prior to the sale or transfer, the Department will review the seller's records and determine an amount, if any, that the purchaser should withhold from the proceeds of the sale. The Department is required to notify the purchaser of the amount of proceeds to withhold within ten days after the Department received a notice from the taxpayer. 35 ILCS 120/5j.

§ 14-540. Audio/Video Recordings and Movies. ROT does not apply to a charge made for producing a custom-made audio or video tape. Rather, because the sale of a service is primarily involved, SOT would be due. *See* § 14-150 above. However, ROT does apply to the retail purchase of movies, audio tapes, and video tapes.

§ 14-541. Photoprocessing. Retailers of photoprocessing products, including photo finishers, portrait and studio photographers, and freelance and other photographers, engaged in the business of selling the products of photoprocessing are considered manufacturers rather than servicepersons and thus are subject to ROT or UT. If photo-processing products are sold in conjunction with other services and the charge for the photo-processing component is not separately stated, tax is imposed on 50% of the entire selling price. However, if the sale is made by a professional photographer, the tax is imposed on 10% of the entire selling price. 35 ILCS 120/2, 35 ILCS 120/ 2-15; ROT Reg. § 130.2000.

Photoprocessing machinery and equipment, including new and used repair and replacement parts, and photoprocessing machinery purchased for lease are exempt from the ROT, UT, SOT and SUT as machinery used in manufacturing. Cameras are not considered to be photoprocessing machinery. 35 ILCS 120/2-15.

§ 14-550. Auctions. A retail sale at auction, on behalf of an undisclosed principal, is subject to ROT on the part of the auctioneer. A retail sale at auction, on behalf of a disclosed principal, is subject to ROT on the part of the principal if the principal is engaged in the business of selling such tangible personal property at retail. ROT Reg. § 130.1915.

§ 14-560. Transient Businesses. Transient retail sellers are required to file returns and pay taxes as retail sellers. However, the Department may require any such transient seller to make a daily report. 35 ILCS 120/3; ROT Reg. § 130.1990.

§ 14-570. Limited Liability Companies. The provisions of the Retailers' Occupation, Service Occupation, Use and Service Use Tax Acts expressly apply to limited liability companies. 35 ILCS 120/1, 110/2, 105/2, and 115/2c.

§ 14-580. Leased Tangible Personal Property. Under Illinois law, leases are taxed differently depending on whether they are "true leases" or "conditional sales." In the case of "true leases," lessors in Illinois are deemed the end users of the property to be leased and are therefore liable for UT on their cost price of leased property. As a corollary to this rule, no tax is imposed on rental receipts. Consequently, lessees under "true leases" incur no tax liability. ROT Reg. §§ 130.220, 130.2010 *et seq.* Leases under which the lessor is guaranteed at the time the lease is entered into that the leased property will be sold, are considered to be "conditional sales," and are subject to ROT. ROT Reg. § 130.2010.

A 5% tax is imposed on persons engaged in the business of renting automobiles in Illinois for a period of one year or less. 35 ILCS 155/1 *et seq.* See § 14-627 below.

For any motor vehicle, as defined in Section 1-146 of the Vehicle Code, that is sold on or after January 1, 2015 for the purpose of leasing the vehicle for a defined period that is longer than one year and (1) is a motor vehicle of the second division that: (A) 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; (B) is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers; or (C) has a gross vehicle weight rating of 8,000 pounds or less or (2) is a motor vehicle of the first division, "selling price" or "amount of sale" means the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease. Also included in the selling price is any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear. 35 ILS 105/2.

Whether ROT is owed on a lessor's sale of its used rental inventory depends on whether the seller is strictly a lessor, or whether the seller is otherwise engaged in the business of selling like-kind

property. ROT Reg. § 130.2013(e). A person who is strictly a lessor and whose only sales are of items no longer needed for his rental inventory does not incur ROT liability on those sales. However, that nontaxable treatment is not available if the lessor is otherwise engaged in the business of selling like-kind property at retail, because a person in the business of selling tangible personal property cannot make an isolated or occasional sale of like-kind tangible personal property. ROT Reg. 130.2013(e)(1) & (2). The rule is different for sales of used motor vehicles by leasing and rental companies. ROT Reg. 130.111.

For leasing arrangements involving governmental bodies and nonprofit organizations, *see* §§ 14-411 and 14.413 above.

Effective January 1, 2018, Illinois has enacted a “Rental Purchase Agreement Occupation and Use Tax” (35 ILCS 180/1) (L. 2017, S1434 (P.A. 100-437)). The tax applies to every person in Illinois in the business of renting merchandise for the use “by a consumer for personal, family, or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the merchandise.” 35 ILCS 180/5. The tax is imposed upon persons engaged in this State in the business of renting merchandise to consumers under a rental-purchase agreement in Illinois at the rate of 6.25% of the gross receipts received from the business. 35 ILCS 180/10. Registration and electronic filing and payment are required. The Illinois Department of Revenue has written that regulations will be promulgated. Tax Practitioners’ Meeting, Sales and Excise Tax 2017 Legislation/Regulations (October 27, 2017) (available on Illinois Department of Revenue Internet site).

§ 14-590. Prepaid Telephone Cards. Prepaid telephone calling arrangements are considered tangible personal property subject to ROT, SOT, UT, and SUT regardless of the form in which those arrangements are embodied or transmitted. 35 ILCS 105/3; 35 ILCS 110/3; 35 ILCS 115/3; 35 ILCS 120/2; ROT Reg. § 130.101; UT Reg. § 150.105.

§ 14-600. COMMODITIES SUBJECT TO SPECIFIC TAXES IN ADDITION TO, OR IN LIEU OF, THE GENERAL RETAILERS’ OCCUPATION/USE TAXES.

§ 14-610. Taxes in Addition to ROT/UT Tax.

§ 14-611. Tobacco Products Tax Act. The tax on the sale or use of cigarettes is 20 mills per cigarette (\$0.14 per package of 20). Cigarette distributors who are in possession of cigarettes taxed at the lower, preexisting, cigarette sales and use tax rates must pay the difference in the taxes at the time of their next purchase of cigarette tax stamp. 35 ILCS 130/2 & 135/2. In addition, an 18% tax on the wholesale price of tobacco sold or otherwise disposed of in Illinois. 35 ILCS 143/10-1 *et seq.* The amount of the retail selling price of cigarettes represented by the Cigarette Tax or Cigarette Use Tax may not be deducted from the seller’s gross receipts from the sale in computing ROT. ROT Reg. § 130.435(a)(2).

In August of 2010, the Department amended several of the Tobacco Products Tax regulations to detail the circumstances under which a retailer is required to obtain distributor’s licenses from the Department; to explain when retailers are required to file returns and pay the tax; to clarify that

surcharges added by manufacturers and distributors are considered part of the wholesale price subject to tax; to provide for a presumption that the tax has not been paid whenever a sales invoice issued by the supplier to a retailer does not contain either the distributor's license number or a statement that the tax has been paid; and to clarify how exemptions from the tax are to be properly documented. 86 Ill. Adm. Code §§ 660.5, 660.10, 660.15, 660.25, 660.30, effective 8/19/2010. On August 9, 2013, Illinois amended the Cigarette Use Tax Act, adding "little cigars" to the list of taxable items under the act. 35 ILCS 130/1.

Effective August 17, 2018, Illinois law contains a prima facie presumption applicable whenever any original package of cigarettes is found in the place of business or in the possession of any person who is not a licensed distributor without proper stamps affixed thereto, or an authorized substitute therefor imprinted thereon, underneath the sealed transparent wrapper of such original package. In this circumstance, there is a prima facie presumption that the package of cigarettes is kept or is held by such person in violation of the Tobacco Products Tax Act. 35 ILCS 130/13.

Also effective August 17, 2018, there is a prima facie presumption applicable to persons who obtain tobacco products from an unlicensed in-state or out-of-state distributor or person, such that it is presumed that the tax imposed by the Tobacco Products Tax Act has not been paid. 35 ILCS 130/13a. If either presumption is raised, the Illinois Department of Revenue may, in addition to the penalties imposed by Sections 18b and 18c of the Tobacco Products Tax Act and any other civil or criminal penalties provided for in that Act, assess tax, penalty, and interest on the original packages of cigarettes. 35 ILCS 130/13 and 13a.

§ 14-612. Motor Fuel Tax Law. 35 ILCS 505/1 *et seq.*; ROT Reg. § 130.435; 86 IAC 500.100 *et seq.* *see also* Illinois Dept. of Revenue Info. Bulletin FY 2011-02 (7/1/200), in which the Department summarizes statutory changes to the Motor Fuel Tax Law resulting from the passage of Public Act 96-1384. The prepaid sales tax for motor fuel is subject to change every six months. The Illinois Department of Revenue periodically issues a bulletin ("Prepaid sales tax rates") providing the current rates.

§ 14-620. Taxes In Lieu of ROT/UT.

§ 14-621. Real Estate Transfer Tax. 35 ILCS 305/1 *et seq.* (Local real estate transfer taxes are also present, *see e.g., Rajterowski, et al. v. The City of Sycamore*, 405 Ill. App. 3d 1086 (2010), in which the 2d District Illinois Appellate Court considered, and rejected, several challenges to a city ordinance imposing a real estate transfer tax, including a challenge under the Equal Protection and Privileges and Immunities Clauses of the U.S. Constitution).

§ 14-622. Gas Revenue Tax Act. 35 ILCS 615/1 *et seq.*

§ 14-623. Replacement Vehicle Tax. 625 ILCS 5/3-2001 *et seq.*; 35 ILCS 120/2-5(7). *See* § 14-461 above.

§ 14-624. Vehicle Use Tax. 625 ILCS 5/3-1001 *et seq.* The Vehicle Use Tax applies to the purchase of certain used vehicles, other than from a dealer.

§ 14-625. Public Utilities Revenue Act. 35 ILCS 620/1 *et seq.*

§ 14-626. Mobile Home Local Services Act. 35 ILCS 515/1 *et seq.*

§ 14-627. Automobile Renting Occupation and Use Tax Act. Effective April 1, 2015, the City of Rockford imposes a 1% municipal automobile renting occupation and use tax. 35 ILCS 155/1 *et seq.*

§ 14-628. Coin-Operated Amusement Device and Redemption Machine Tax Act. 35 ILCS 510/1 *et seq.*

§ 14-629. Hotel Operators' Occupation Tax Act. 35 ILCS 145/1 *et seq.* The Hotel Operators Occupation tax was amended effective July 1, 2017 to expand the definition of "hotel" to include retreat centers, conference centers, and hunting lodges but to exclude facilities operated by/for religious purposes having an Illinois Exemption Identification number when the rooms are rented in furtherance of the purpose for which the organization was organized. 35 ILCS 145/2, amended in Public Act 100-0213.

§ 14-630. Watercraft Use Tax Law. 35 ILCS 158/15-1 *et seq.*

§ 14-631. Aircraft Use Tax. 35 ILCS 157/10-1 *et seq.*

§ 14-800. ADMINISTRATION.

§ 14-810. Responsible Administrative Agency.

Illinois Department of Revenue
Willard Ice Building
101 West Jefferson Street
Springfield, IL 62702
Tel: 217-782-3336 or 1-800-732-8866
Website: <http://www.revenue.state.il.us/>

§ 14-820. License or Certificate of Authority. Retailers, suppliers, or servicepersons selling tangible personal property or maintaining a place of business in Illinois must obtain certificates of registration from the Department. 35 ILCS 120/2a, 105/6, 115/6, 110/6. *See* § 14-200 above. Effective August 24, 2017, a certificate of registration shall automatically be renewed, subject to revocation as provided by this Act, for an additional one year from the date of its expiration unless otherwise notified by the Department. 35 ILCS 120/2a as amended by P.A. 100-0302.

§ 14-830. Reporting/Payment Procedures.

§ 14-831. Returns.

§ 14-831.01. Form. State and Local Retailers' Occupation and Use Taxes are reported on the Combined Sales, Use, Occupation and Transit Taxes Return, Illinois Form ST-1. The Illinois Department of Revenue announced on December 15, 2010, that taxpayers can report their use tax liability on Line 22 of Form IL-1040, provided that the use tax owing is less than \$600. For use tax liabilities over \$600, taxpayers must file Form ST-44 within 30 days of the purchase subjecting them to use tax liability.

§ 14-831.02. Frequency and Deadlines. The frequency with which a taxpayer must file a combined return depends on the average monthly tax liability to the Department over the preceding four complete calendar quarters. (That average tax liability includes all Retailers' Occupation, Use, Service Occupation, and Service Use Taxes.) If the taxpayer's average monthly tax liability is \$20,000 or more, the return for each month is due on or before the 20th day of the following month. 35 ILCS 105/9. If the taxpayer's average monthly tax liability does not exceed \$200, the Department may authorize quarterly returns. If the taxpayer's average monthly tax liability does not exceed \$50, the Department may authorize annual returns. 35 ILCS 120/3; ROT Reg. § 130.510; UT Reg. § 150.701.

If the taxpayer's average monthly tax liability is \$20,000 or more, payments must be made four times each month. Payments are due on the 7th, 15th, 22nd, and the last day of the month. Each quarter-monthly payment must be in an amount equal to 22.5% of the taxpayer's actual liability for the month, or 25% of the taxpayer's liability for the same calendar month of the preceding year. Quarter-monthly payments are credited to the taxpayer against the liability shown on the subsequently filed monthly return. 35 ILCS 120/3; ROT Reg. § 130.535.

On and after January 1, 2018, with respect to retailers and servicemen whose annual gross receipts average \$20,000 or more, all returns required to be filed pursuant to the Act shall be filed electronically. Servicemen who demonstrate that they do not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement. 35 ILCS 105/9, 110/9, 115/9, and 120/3. See also Code §§140.401 and 760.100.

§ 14-831.03. Direct Pay Permits. Illinois allows direct-pay permit holders to pay sales and use taxes directly to the Department of Revenue. Retailers wishing to participate must apply to the Department. The holder of the direct-pay permit is required to use it for all purchases, except that the permit is invalid for purchases of (1) food or beverages; (2) property required to be titled or registered with a government agency; or (3) transactions subject to the service occupation tax or service use tax. 35 ILCS 105/3-10.5; ROT Reg. § 130.2500 *et seq.*

§ 14-831.04. Installment Sales. Because the ROT is a tax on gross receipts, tax is remitted only as gross receipts are received by the retailer, unless a seller keeps his books on a gross sales basis, rather than on a gross receipts basis. 35 ILCS 105/9 & 120/1; ROT Reg. § 130.401.

§ 14-832. Penalties. If a person engaged in the business of selling tangible personal property at retail fails to timely file a return or fails to pay the tax when due, penalties generally are determined in accordance with Section 3-3 of the Uniform Penalty and Interest Act. 35 ILCS 120/5, 105/12. *See* § 14-832.02 below. However, in appropriate cases, where reasonable cause is shown, penalties may not apply. 35 ILCS 735/3-8.

Effective August 17, 2018, Illinois penalizes the failure to keep or produce books and records. The penalty applies to the ROT, UT, SOT, and SUT, and imposes "a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by this Section and the rules adopted by the Department." The penalties do not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. 35 ILCS 105/11, 110/11, 115/11, and 120/7.

§ 14-832.01. Liability of Corporate Officers or Employees. An officer or employee who has control, supervision, or responsibility for filing returns and making payment of the tax and who willfully fails to perform these tasks will be held personally liable for a penalty equal to the total amount of unpaid tax plus interest and penalties. 35 ILCS 735/3-7. The establishment by the Department of a prima facie case for a tax penalty operated as a rebuttable presumption of willfulness. *See Branson v. Department of Revenue*, 168 Ill. 2d 247, 659 N.E.2d 961 (1995); *Estate of Young v. Department of Revenue*, 316 Ill. App. 3d 366, 734 N.E. 2d 945 (1st Dist. 2000).

Any officer or director of any corporation, partner or member of any partnership, or manager or member of a limited liability company that: (a) engages in the business of selling tangible personal property at retail in Illinois without a certificate of registration from the Department or (b) fails to keep books and records, or fails to produce books and records as required or (c) willfully violates a rule or regulation of the Department for the administration and enforcement of the ROT is guilty of a Class A misdemeanor. In addition, any person, including any officer or director of a corporation, who engages in the business of selling tangible personal property at retail after the certificate of registration of that person, corporation or partnership has been revoked is guilty of a Class A misdemeanor. 35 ILCS 120/13.

An Illinois Appellate Court has ruled that the Department of Revenue should have sent a Notice of Final Liability for unpaid sales tax to a corporate officer's attorney, rather than to the officer himself, because following initial contact with a person, all other communications must be made through that person's attorney. Thus, in this case, the Notice was not final and the officer did not waive his right to contest it by not responding within the limitations period. *Sweis v. Sweet*, 269 Ill. App. 3d 1, 645 N.E.2d 972 (1st Dist.1995).

§ 14-832.02. Uniform Penalty and Interest Act. The Uniform Penalty and Interest Act became effective for Illinois sales and use tax on January 1, 1994. For periods after 2003, there is a two-tiered interest rate. For one year beginning with the date of underpayment or overpayment, the interest rate is the federal short-term rate established under IRC Section 6621. For any period beginning the day after the one-year period described in the preceding sentence, the underpayment rate established under IRC Section 6621.35 ILCS 735/3-2(a); ROT Reg. §§ 130.901-905; SOT Reg. § 140.801; UT Reg. § 150.1001; SUT Reg. § 160.140. Interest is simple interest calculated on a daily basis and accrued upon the tax due [not the penalty]. 35 ILCS 735/3-2(c-5).

The Uniform Penalty and Interest Act imposes penalties under the following circumstances:

1. Failure to file or pay. 35 ILCS 735/3-3.
2. Failure to file correct information returns. 35 ILCS 735/3-4.
3. Failure to pay full liability within 30 days of issuance by Department of notice [the collection penalty]. 35 ILCS 735/3-4.5.
4. Negligence. 35 ILCS 735/3-5.
5. Fraud. 35 ILCS 735/3-6.
6. Issuance of "bad check" to Department. 35 ILCS 735/3-7.5.

§ 14-833. Bond/Security for Payment of Tax. Every applicant for a certificate of registration must, at the time of filing such application, furnish an appropriate bond or irrevocable bank letter of credit

in the amount of three times the amount of the applicant's average monthly tax liability, or \$50,000, whichever amount is less. A person who has been registered during a continuous three-year period and who is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period is considered to be a "prior continuous compliance taxpayer." The Department is required to release the bond or security originally provided when a taxpayer becomes a prior continuous compliance taxpayer. 35 ILCS 120/2a, 105/12, 110/12, 115/12.

Under Public Act 96-1355, the Department was authorized to require applicants for a certificate of registration to furnish a bond or other security at the time their application is filed. In addition, P.A. 96-1355 amended Section 120/2a, (and by reference, Sections 105/12, 110/12, and 115/12) to take into consideration the tax status of those with ownership interests in limited liability companies.

§ 14-834. Retailer's Discount for Collecting Tax. Retailers are allowed to take a discount at the time of filing a timely return (if filed together with full payment) in the amount of 1.75% of ROT and UT liability or \$5 per calendar year, whichever is greater, to reimburse the retailer for administrative expenses in the remission of the tax. The discount is disallowed if the vendor fails to make any required quarter-monthly payment. 35 ILCS 105/9 & 120/3.

§ 14-835. Confidentiality of Returns. All information received by the Department from returns filed is confidential except for designated "official" purposes. 35 ILCS 120/11. Effective January 1, 2015, a person who divulges confidential information from a return filed or from an investigation conducted under the Retailers' Occupation Tax Act is subject to a fine not to exceed \$7,500. 35 ILCS 120/11. Moreover, Illinois signed the Great Lakes Interstate Sales Compact, which calls for an increased exchange of information, with respect to sales and use taxes in particular, among Indiana, Michigan, Minnesota, Ohio, and Illinois. Effective January 1, 2015, the Illinois Department of Revenue may provide certain financial information to a municipality, upon the request of the Chief Executive thereof, if the municipality agrees in writing to the Retailers' Occupation Tax Act's confidentiality provisions. L. 2014, H3885 (P.A. 98-1058).

§ 14-840. Assessments.

§ 14-841. Statute of Limitations. With one exception, there is no limitations period with respect to the Department filing a notice of tax liability against a person who has filed a fraudulent return, or against a person who has filed no return when one was due. Effective September 16, 1994, in the case of failure to file a use tax or service use tax return, no notice of tax liability may be issued on and after each July 1 and January 1 covering tax due with that return during any month or period more than six years before that July 1 or January 1. 35 ILCS 105/12; 35 ILCS 110/12.

Further, "[E]xcept . . . in the case of an amended return (where a notice of tax liability may be issued on or after January 1, and July 1 for an amended return filed not more than 3 years prior to such January 1 or July 1, respectively), no notice of tax liability shall be issued on and after January 1 and July 1 covering gross receipts received during any month or period of time more than 3 years prior to such January 1 and July 1, respectively." 35 ILCS 120/4. The limitations period, however, is stayed for the period during which a person allegedly liable is out of the state. Moreover, a taxpayer may execute a written waiver (for instance, during an audit) to extend the statute of limitations. 35 ILCS

105/12 & 120/4. Finally, a 1984 amendment to the UT and SOT Acts which provided that the statute of limitations did not apply in the case of anyone who failed to file a return, as opposed to persons who willfully failed or refused to file a return, applied retroactively because it became effective prior to the expiration of the 3-year limitations period which otherwise would have applied. Accordingly, the Department was not barred from issuing an assessment. *Cahnovsky Nashville Dental Arts, Inc. v. Department of Revenue*, 261 Ill. App. 3d 18, 634 N.E.2d 39 (5th Dist.1994).

Notably, the running of the statute of limitations does not extinguish the underlying debt owed by the taxpayer. Therefore, where the tax was assessed previously, the state may enforce its claim after running of the limitations period in ways that do not involve the filing of a cause of action in court. Thus, for example, the state revoked the certificate of registration issued to a taxpayer who was the owner of a corporation that was issued an assessment for failing to satisfy its sales tax obligations. *Acquil v. Illinois Department of Revenue*, Cook County Circuit Court (03 CH 169128, May 21, 2004).

In the case of a failure to pay tax owing, including any penalty or interest, Public Act 96-1383 amended Section 120/5 to allow the Department of Revenue to bring a suit to collect sales and use tax within six years after the date any proceedings in court for review has terminated or within six years from the time any proceedings in court for review has expired without proceedings being instituted. In addition, the Department may bring suit within six years after the date any return is filed with the Department in cases where the return constitutes the basis for the suit for unpaid tax, penalties, or interest. Formerly, the time period within which a suit could be brought by the Department was two years. P.A. 96-1383 § 10-10, effective January 1, 2011.

§ 14-842. Interest. Interest on late payments is imposed under the Uniform Penalty and Interest Act, and is based on the current federal rate of interest under Section 6621 of the Internal Revenue Code. *See* 35 ILCS 735/3-1 *et seq.* and § 14-832.02 below.

§ 14-843. Penalty. *See* § 14-832 above.

§ 14-844. Extensions. No extension is provided for the filing of a return or payment of tax. **§§ 14-850 - 855.** [Reserved]

§ 14-860. Refunds. ROT, UT, SOT, and SUT that are paid voluntarily, but erroneously, may be recovered by filing a timely claim for refund. 35 ILCS 110/17, 115/17, 120/6, 120/6a & 105/19. Tax overpayments are generally refunded in the form of credit memoranda that may be applied against future occupation and use tax liabilities. Cash refunds are issued only in specified circumstances in which the taxpayer may not be expected to be able to liquidate a credit memorandum in a reasonable time, based on its anticipated future tax liability (such as a taxpayer that has discontinued business or that has only a small occupation and use tax liability for each reporting period). A credit memorandum may be assigned to a similar taxpayer under certain circumstances. ROT Reg. § 130.1505.

Taxpayers who erroneously pay occupation or use taxes, penalty, or interest, due to either a mistake of fact or a mistake of law, may file a claim for a credit with the Department. The taxpayer claiming the credit must prove that the taxpayer either paid the tax to the Department or unconditionally

refunded the amount to a purchaser from whom the tax was initially collected. ROT Reg. § 130.1501(a)(2).

The Department may recover erroneous refunds or credits up to three years after the refund or credit is issued. The limitation is five years when the refund or credit results from fraud or misrepresentation. 35 ILCS 120/6b.

No refund claim is allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment or order of court. 35 ILCS 105/21; 35 ILCS 120/6. For more on the voluntary payment doctrine, *see, e.g., Karpowicz v. Papa Murphy's Int'l, LLC, 2016 IL App (5th) 150320-U (Ill. App. Ct. 5th Dist. 2016)*.

§§ 14-861 - 864. [Reserved]

§ 14-870. Taxpayer Remedies.

§ 14-871. Generally. The following three general procedures are available to secure relief: (1) filing a protest to a notice of tax liability, (2) paying a tax to the Department and filing a claim for credit, or (3) paying a tax under protest and filing an appropriate court action. Some factual situations may allow for the pursuit of only one of these remedies.

§ 14-872. Filing a Protest to a Notice of Tax Liability. If a taxpayer is audited by the Department, and the taxpayer disagrees with the liability asserted by the auditor, the taxpayer may decline to pay the asserted liability, and the Department will issue a notice of tax liability. Within 60 days thereafter, the taxpayer must file a protest and request a hearing. 35 ILCS 120/5. The protest will then be set for an administrative hearing before one of the Department's hearing officers. To the extent the hearing results are unsatisfactory to the taxpayer, the taxpayer will have 35 days from the issuance of the Department's decision (Final Assessment) to file for administrative review in circuit court. An appropriate bond for the entire liability (tax, penalty, and interest) must be secured within 20 days of the filing of the complaint and issuance of the summons. 35 ILCS 120/12 & 735 ILCS 5/3-103; 86 Ill. Adm. Code § 200.105 *et seq.*; *Piasa Motor Fuels, Inc. v. Department of Revenue*, 138 Ill. App. 3d 422, 486 N.E.2d 379 (5th Dist.1985).

§ 14-873. Paying a Tax to the Department and Filing a Claim for Credit. The taxpayer may file a claim for credit with the Department for ROT or UT paid directly to the Department. Claims for credit may be filed up to three to 3.5 years after payment. No claim will be granted unless the claimant can show that he bears the ultimate burden of the tax. *See* § 14-860 above.

If a taxpayer is being audited, he may elect to pay the alleged tax liability to reduce the penalties and interest that may be due in a protracted case and file a claim for credit. If the claim is denied, then an administrative hearing may be held. Interest accrues on overpayments at the rate set by the Uniform Penalty and Interest Act (*see* § 14-832.02 above) except that no interest is paid if the overpayment is refunded within 90 days after the return is due or tax was paid, whichever is later. 35 ILCS 735/3-2. Claims should be on the proper Department form, with one claim for the state portion of the

payment, one form for the county or municipal portion of the payment, and one portion for the transit district portion of the payment, if any. If, after ultimate review in the Department, the taxpayer is unsatisfied with the results, he has 35 days after the Department's decision within which he may file in circuit court for administrative review. 735 ILCS 5/3-103.

§ 14-874. Paying a Tax Under Protest and Filing an Appropriate Court Action. If a taxpayer is unsatisfied with the Department's audit results, the taxpayer may pay the challenged tax under protest and file an appropriate injunction action in court pursuant to statute. 30 ILCS 230/1 - 230/6a. This appears to be the only remedy available to a purchaser who desires to challenge (in a nonaudit situation) UT paid to the retailer, where the retailer will remit the complementary ROT on the challenged transactions. *Adams v. Jewel Co., Inc.*, 63 Ill. 2d 336, 348 N.E.2d 161 (1976); *Crane Supply Co. v. Symons Clamp & Mfg. Co.*, 25 Ill. 2d 521, 185 N.E.2d 139 (1962). By properly following this remedy, the taxpayer will obtain a hearing on the merits in court.

A retail purchaser that pays tax "under duress" may be able to recover the taxes paid even if the taxes are not protested. The Illinois Supreme Court ruled that the voluntary payment doctrine, under which a taxpayer may not recover taxes voluntarily paid even if the taxing body assessed or imposed the taxes illegally, did not bar a suit for recovery of taxes that were paid under duress. *Geary v. Dominick's Finer Foods*, 129 Ill. 2d 389, 544 N.E.2d 344 (1989).

§ 14-875. Board of Appeals. A taxpayer may also file a petition requesting relief before the Board of Appeals. The Board generally hears cases when a taxpayer has no other possible avenue for relief. Moreover, the Board generally hears cases pertaining to issues of an equitable nature and proposed compromises of debts due the Department. *See* 20 ILCS 2505/2505-10 *et seq.*; 86 Ill. Adm. Code § 210.101 *et seq.* The Board of Appeals has authority to abate taxes as well as other aspects of a taxpayer's tax liability. *Acquil v. Department of Revenue*, Cook County Circuit Court (03 CH 16918, May 21, 2004).

§ 14-876. Taxpayer's Bill of Rights. Illinois Taxpayer's Bill of Rights is intended to ensure that the rights, privacy and property of Illinois taxpayers are adequately protected during the process of assessment and collection of taxes. 20 ILCS 2520/ 1 *et seq.*; 86 Ill. Adm. Code § 205.10 *et seq.*

§ 14-876.02. Taxpayer Suits. Taxpayers have the right to sue the Department if the Department intentionally or recklessly disregards tax laws or regulations in collecting taxes. The maximum recovery for damages in such a suit is \$100,000. 20 ILCS 2520/5.

§ 14-876.03. Attorney/Accountant Fees. The fees for an attorney or accountant to aid a taxpayer in an administrative hearing or in court relating to the tax liability is recoverable against the Department if the taxpayer prevails in an action under the Administrative Review Law and the Department has made an assessment or denied a claim without reasonable cause. 20 ILCS 2520/7.

§ 14-876.04. Administrative Decisions. Administrative decisions rendered by the Department which pertain to sales/use tax must be available at the Department's principal office for inspection and publication within 180 days of issuance. 35 ILCS 120/11.

§ 14-877. Informal Conference Board. The Informal Conference Board (ICB) hears tax disputes before the issuance of a notice of tax liability or claim denial. The ICB, which replaced the old Informal Conference Unit, is a separate division within the Department. The ICB has three members, consisting of the following individuals or their delegates: the Department's General Counsel; the Chairperson of the Board of Appeals, and a Department employee, designated by the Director of Revenue, who is not under the direct supervision of either of the Board's other members. A taxpayer may submit a settlement proposal or request a penalty waiver either as part of the initial ICB request for review or at any point during the ICB review process. The final "action decisions" of the ICB are not subject to administrative review. However, if the Board does not grant the relief requested and a proposed assessment or claim denial is issued, the taxpayer may then seek relief through the administrative hearing system or the circuit courts. 86 Ill. Adm. Code § 215.100 *et seq.*

§ 14-878. Independent Tax Tribunal. Beginning January 1, 2014, the Tribunal will have jurisdiction to hear all protests of asserted tax or penalty liability or the denial of a refund provided the amount at issue exceeds \$15,000 not including penalties and interest. The Illinois Department of Revenue ("Department") will retain jurisdiction over the following matters: (1) all protests falling below the tax threshold, (2) all actions that pursue a collection action on liabilities that have become final by law, (3) all property tax and entity exemptions, (4) notices relating to proposed liabilities, deficiencies, and assessments, and (5) proceedings of the Department's informal administrative appeals function. 35 ILCS 1010/1-1 *et seq.*