

# ILLINOIS SALES & USE TAXES

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§ 14-000. **INTRODUCTION.** Illinois' general tax pertaining to the sale and use of tangible personal property is not a pure "sales" or "use" tax, but is rather an occupation tax and a privilege tax. The occupation tax is imposed on all persons engaged in the business of selling tangible personal property at retail, while the complementary privilege tax is imposed on the privilege of using, in Illinois, tangible personal property that is purchased anywhere at retail from a retailer. The taxes are termed Retailers' Occupation Tax (ROT) and Use Tax (UT). Tangible personal property transferred by a serviceperson as an incident to the provision of a service is subject to the service occupation tax (SOT), and tangible personal property used by a serviceperson to provide a service is subject to the service use tax (SUT). The taxes are administered by the Illinois Department of Revenue (Department).

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.** See § 14-700 below.

## § 14-020. **Authority and Citations.**

- Illinois Compiled Statutes (1996) (ILCS)
- Retailers' Occupation Tax Regulations (ROT Reg.)
- Service Occupation Tax Regulations (SOT Reg.)
- Use Tax Regulations (UT Reg.)
- Service Use Tax Regulations (SUT Reg.)
- 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. This includes sales where title remains with the seller as security for payment. ROT Reg. § 130.201.

§ 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. See § 14-512 below.

§ 14-112.03. **Warranty, Maintenance, and Service Agreements.** 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 in-

cluded in the base on which tax is calculated. ROT Reg. 130.450.

Tangible personal property purchased by a serviceperson is subject to ROT and UT when it is purchased for transfer by the serviceperson to complete a maintenance agreement. The tax is borne by the serviceperson and is based on the serviceperson's cost of the materials. The serviceperson is not required by statute to pass the tax onto its customers. 35 ILCS 120/2-55 & 105/3-75.

**§ 14-112.04. Services with Respect to Real Property.** See § 14-112.02 above and § 14-503 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).

**§ 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. A ROT exemption exists for automobiles sold to automobile renters for use as a rental under lease terms one year or less. 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.

**§ 14-112.08.** [Reserved]

**§ 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. Trades.** See § 14-113.01 above; see also ROT Reg. § 130.425.

**§ 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; *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.

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*, 809 N.E.2d 792 (2nd Dist. 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. Likewise, in *Stark Materials Co., Inc. v. Department of Revenue*, No. 4-03-0114, Ill. App., 4th Dist. (2004), the Illinois appellate court held that separate delivery charges were included in the taxpayer's gross receipts because the delivery charges did not reflect any cost of delivery and the delivery charge was imposed regardless of whether the product was actually delivered by the taxpayer or the customer picked up the product.

**§ 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. 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 accrual taxpayers, 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. Reserves set up for bad debts are not deductible. Department Ruling, October 12, 1977.

**§ 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.

**§ 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. *Turner v. Wright*, 11 Ill. 2d 161 (1957). 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, even though the tugboats spend 50 percent of their time in Illinois waters and had substantial nexus with the state. The court found that the use tax was not fairly related to the services provided by the state because all of the navigable waters were maintained by the United States, not Illinois.

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. 35 ILCS 110/3.

**§ 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 § 14-136 below.

§§ 14-122.01 - .07. [Reserved]

#### § 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. 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.

On and after June 1, 2004, 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. This legislation limits a company's ability to shift sales tax revenues from one county to another or one municipality to another through the use of revenue sharing or rebate agreements.

**§ 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% 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). The RTA also levies a 1% 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 3/4%, and the rate for all taxable sales in DuPage, Kane, Lake McHenry, and Will Counties is limited to 1/4%. 70 ILCS 3615/4.03. The RTA is also authorized to levy and has levied a UT of 3/4% on the use of tangible personal property in Cook County and a 1/4% 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.

**§ 14-132.03. Cook County Sales and Use Tax.** Cook County (which includes Chicago) imposes a 0.75% county sales tax and a 0.75% county use tax.

**§ 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. The City of Chicago imposes a 1.25% use tax on untitled personal property purchased on or after January 1, 1992

and a 1.25% use tax on titled personal property purchased on or after January 1, 1995.

**§ 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. *See also* Information Bulletin FY 93-18 (1992) and FY 93-19 (1992). The Illinois Supreme Court has held that the taxes on food and beverages are valid under both the United States and Illinois Constitutions. *Geja's Cafe et al v. Metropolitan Pier and Exposition Auth.*, 153 Ill. 2d 239, 606 N.E.2d 1212 (1992).

**§ 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 in a closed or sealed bottle, can, carton, or other container, 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. 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. Other Local Rates.** The Board of Trustees of any Metro East Mass Transit District may impose a ROT of 1/4% on the gross receipts of all sales of tangible personal property made in the district. A UT of 1/4% 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 1/4% 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.

**§ 14-136. 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. 35 ILCS 105/3-55(d), 110/3-45(c). See also § 14-122 above.

**§ 14-137. 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 120/51. A high impact business is one that intends to invest at least \$12 million dollars 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 120/51.

**§ 14-138. 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, 115/17, 110/17, 105/19.

**§ 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. § 150.701(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. 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). 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. *Klein Town Builders, Inc. v. Department of Revenue*, 36 Ill. 2d 301, 222 N.E.2d 482 (1966). Any taxpayer (except an individual taxpayer) that has an average monthly Illinois ROT or SOT liability of \$50,000 or more must make all tax payments by electronic funds transfer. 35 ILCS 120/3.

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.

**§ 14-200. 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), which is defined as:

1. Having or maintaining within Illinois, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent or other representative operating within the state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in Illinois;

2. 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 Illinois;

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

4. 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 Illinois or benefits from the location in the state of authorized installation, servicing, or repair facilities;

5. Being owned or controlled by the same interests which own or control any retailer engaging in business in the same or similar line of business in Illinois;

6. 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. Pursuant to a contract with a cable television operator located in Illinois, soliciting orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this State; or

8. Engaging in activities in Illinois that would constitute maintaining a place of business in Illinois in the state in which the retail business engaging in such activities is located.

Ownership of property that is located at the premises of a printer with which the retailer has contracted for printing services does not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, or other place of business in Illinois if the property consists of a final printed product, property that becomes a part of the final printed product, or copy from which the product is produced.

A 1992 United States Supreme Court decision calls into question the constitutionality of the Illinois statute which defines “retailer maintaining a place of business in this state.” In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) the court ruled that, under the Commerce Clause, a state may compel an out-of-state mail-order seller to collect use tax only if that seller has a “physical presence” within the state.

**§ 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). However, *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), limit to some extent the Department’s jurisdiction to impose collection and remittance responsibilities. See § 14-210 above.

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.

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 Rev-*

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**Please contact David A. Fruchtman at [dfruchtman@hmblaw.com](mailto:dfruchtman@hmblaw.com) or 04-629-0520 or (312) 281-1111 for additional information about sales and use taxes imposed by Illinois or any other state.**