

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.1952 Sales of Building Materials to a High Impact Business

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.1952 Sales of Building Materials to a High Impact Business

- a) *Beginning January 1, 1995, each retailer who makes a sale of building materials that will be incorporated into a High Impact Business (HIB) location as designated by the Department of Commerce and Economic Opportunity (DCEO) under Section 5.5 of the Illinois Enterprise Zone Act may deduct receipts from such sales when calculating the 6.25% State rate of tax imposed by the Retailers' Occupation Tax Act and any local taxes. [35 ILCS 120/5]*

- b) A retailer claiming the exemption must have among its books and records a written statement signed by the purchaser setting out facts which establish the exemption. For purchases made through June 30, 2013, this purchaser's statement must contain the following information:
 - 1) a certification by the purchaser that the building materials being purchased are being purchased for incorporation into a HIB location;
 - 2) a description of the building materials being purchased (this may be done by a cross reference to the retailer's invoice number);
 - 3) the name of the HIB location into which the building materials will be incorporated and, if applicable, the street address of the real estate; and
 - 4) the purchaser's signature and date of signing.

- c) Issuance of Exemption Certificates for Purchases Made on and after July 1, 2013
 - 1) *Each retailer who makes a sale of building materials that will be incorporated into a High Impact Business location as designated by the DCEO under Section 5.5 of the Illinois Enterprise Zone Act may deduct receipts from such sales when calculating the tax imposed by the Act and when calculating any applicable local taxes. No retailer who is eligible for the exemption under Section 5k of the Act for making a sale of building materials to be incorporated into real estate in an enterprise zone by rehabilitation, remodeling or new construction shall be eligible for the exemption authorized under this Section. [35 ILCS 120/5]*

 - 2) *Upon request from a designated High Impact Business, the Department shall issue a High Impact Business Building Materials Exemption Certificate (Exemption Certificate) for each construction contractor or other entity identified by the designated High Impact Business. The Department shall make an*

Exemption Certificate available to each construction contractor or other entity and the designated High Impact Business. [35 ILCS 120/5l(b)]

- A) *A request for an Exemption Certificate from the designated High Impact Business must include the following information:*
 - i) *the name, address, telephone number and e-mail address of the construction contractor or other entity;*
 - ii) *the name and location or address of the designated High Impact Business;*
 - iii) *the estimated amount of the exemption for each construction contractor or other entity for which a request for Exemption Certificate is made, based on a stated estimated average tax rate and the percentage of the contract that consists of materials;*
 - iv) *the period of time over which supplies for the project are expected to be purchased; and*
 - v) *the FEIN of the applicant.*

- B) *The Department shall issue an Exemption Certificates within 3 business days after receipt of a request from the designated High Impact Business, unless the Department, for reasonable cause, is unable to issue the Exemption Certificate within 3 business days. Examples of "reasonable cause" include, but are not limited to, receipt of a request lacking all the information required by subsection (c)(2)(A), the receipt of a large number of requests for Exemption Certificates from a zone administrator, or lack of sufficient staff to process the number of existing requests.*

- C) *The Department may refuse to issue an Exemption Certificate if the owner, any partner, or a corporate officer, and in the case of a limited liability company, any manager or member, of the construction contractor or other entity is or has been the owner, a partner, a corporate officer, and in the case of a limited liability company, a manager or member, of a person that is in default for moneys due to the Department under the Retailers' Occupation Tax Act or any other tax or fee Act administered by the Department.*

- D) *The request for an Exemption Certificate must be submitted electronically.*

- E) *An Exemption Certificate shall be effective for no more than 2 years after the date of issuance. At the request of the designated High Impact Business, the Department may renew an Exemption Certificate.*

- F) *After the Department issues Exemption Certificates for a designated High Impact Business building project, the designated High Impact Business may notify the Department of additional construction contractors or other entities eligible for an Exemption Certificate. Upon notification by the designated High Impact Business, and subject to the other provisions of*

this subsection (c), the Department shall issue an Exemption Certificate to each additional construction contractor or other entity identified by the designated High Impact Business.

- G) *A designated High Impact Business may notify the Department to rescind an Exemption Certificate previously issued by the Department but that has not yet expired. Upon notification by the designated High Impact Business, and subject to the other provisions of this subsection (c), the Department shall issue the rescission of the Exemption Certificate to the construction contractor or other entity identified by the designated High Impact Business and provide a copy to the designated High Impact Business.*
- 3) *Notwithstanding anything to the contrary in this Section, for High Impact Businesses' building projects already in existence and for which construction contracts are already in place on July 1, 2013, the request for Exemption Certificates from the designated High Impact Business to the Department for these pre-existing construction contractors and other entities must include the information required under subsection (c)(2)(A), but need not include the information listed in subsection (c)(2)(A)(iii) and (iv). For any new construction contract entered into on or after July 1, 2013, however, all of the information in subsection (c) must be provided. [35 ILCS 120/5(c)]*
- d) Documentation of Exemption for Purchases Made on or after July 1, 2013
- 1) *On and after July 1, 2013, to document the exemption allowed under this Section, the retailer must obtain from the purchaser the purchaser's Exemption Certificate number issued by the Department along with a certification identified in subsection (d)(2). A construction contractor or other entity shall not make tax-free purchases unless it has an active Exemption Certificate issued by the Department at the time of purchase. [35 ILCS 120/5(b)]*
 - 2) The retailer must obtain a certification from the purchaser that contains:
 - A) a statement that the building materials are being purchased for incorporation into a designated High Impact Business location;
 - B) the location or address of the designated High Impact Business into which the building materials will be incorporated;
 - C) The name of the designated High Impact Business;
 - D) a description of the building materials being purchased;
 - E) the purchaser's Exemption Certificate number issued by the Department; and
 - F) the purchaser's signature and date of purchase.
 - 3) The retailer may comply with this subsection (d) certification requirement by securing from the purchaser a completed and signed Form EZ-1.

e) **Qualified Sales of Tangible Personal Property.** In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into an HIB location. For example, gross receipts from sales of the following can qualify for the exemption:

- 1) common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal;
- 2) plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes;
- 3) heating systems and components thereof such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators;
- 4) electrical systems and components thereof such as wiring, outlets and light fixtures which are physically incorporated into the HIB location;
- 5) central air conditioning systems, ventilation systems and components thereof which are physically incorporated into the HIB location;
- 6) built-in cabinets and other woodwork which is physically incorporated into the HIB location;
- 7) built-in appliances such as refrigerators, stoves, ovens and trash compactors which are physically incorporated into the HIB location;
- 8) floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the HIB location by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips");
- 9) landscape products such as trees, shrubs, topsoil and sod which are physically incorporated (i.e., transplanted) into the HIB location.

f) **Sales of Tangible Personal Property that Do Not Qualify for the Exemption.** Items that are not physically incorporated into an HIB location cannot qualify for the exemption. For example, gross receipts from sales of the following do not qualify for the exemption:

- 1) tools, machinery, equipment, fuel, forms and other items which may be used by a construction contractor at an HIB location, but which are not physically incorporated into the HIB location;
- 2) free-standing appliances such as stoves, ovens, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers which may be connected to and operate from a building's electrical or plumbing system but which do not become a component of those systems;
- 3) floor coverings that are area rugs or that are attached to the structure using only two-sided tape.

g) Penalties – Revocation – Protest Procedures

- 1) *If the Department determines that a construction contractor or other entity that was issued an Exemption Certificate under subsection (c) made a tax-exempt purchase, as described in this Section, that was not eligible for exemption under this Section, or allowed another person to make a tax-exempt purchase, as described in this Section, that was not eligible for exemption under this Section, then, in addition to any tax or other penalty imposed, the construction contractor or other entity is subject to a penalty equal to the tax that would have been paid by the retailer under the Retailers' Occupation Tax Act as well as any applicable local retailers' occupation tax on the purchase that was not eligible for the exemption [35 ILCS 120/5(b)].*
- 2) *Each contractor or other entity that has been issued an Exemption Certificate shall annually report to the Department the total tax benefits for taxes imposed by the State that are received under Exemption Certificates and shall be broken down by designated High Impact Business. Reports are due no later than May 31 of each year and shall cover the previous calendar year. Failure to report the data may result in revocation of the Exemption Certificate issued to the contractor or other entity. [20 ILCS 655/8.1(a-5)]*
- 3) Suspension of Exemption Certificate for Failure to Report Data. A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (g)(2) shall have the Exemption Certificate for which it failed to report suspended.
 - A) First Offense: A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (g)(2) shall have the Exemption Certificate suspended until the contractor or other entity complies with the reporting requirements of subsection (g)(2).
 - B) Second Offense: A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (g)(2) for two reporting periods within a five-year period shall have all Exemption Certificates issued to it suspended until 30 days after the contractor or other entity complies with the reporting requirements of subsection (g)(2).
 - C) Subsequent Offenses: A contractor or other entity that fails to comply with the reporting requirements or deadlines of subsection (g)(2) for more than two reporting periods within a five-year period shall have all Exemption Certificates issued to it suspended until 180 days after the contractor or other entity complies with the reporting requirements of subsection (g)(2).
- 4) Suspension or Revocation of Exemption Certificate for Both Failure to Report Data and Unlawful Use of Exemption Certificate. The Department shall revoke or suspend, as follows, the Exemption Certificate of a contractor or other entity that has, for the same certificate, both failed to comply with the reporting requirements of subsection (g)(2) and has been found to have used the Exemption Certificate in violation of subsection (g)(1):

- A) First Offense: In addition to all other penalties provided by law, a first offense shall result in the suspension of all Exemption Certificates issued to a contractor or other entity for 1 year.
 - B) Second Offense: In addition to all other penalties provided by law, a second offense shall result in permanent revocation of all Exemption Certificates issued to the contractor or other entity.
- 5) Ineligibility. A contractor or other entity is not eligible to receive additional Exemption Certificates during the period that one or more Exemption Certificates issued to it are subject to suspension or revocation.
- 6) Protest Procedures. Any person aggrieved by any decision of the Department under subsections (g)(3) through (g)(4) may, within 20 days after notice of the decision, protest and request a hearing, whereupon the Department shall give notice to that person of the time and place fixed for a hearing and shall hold a hearing and then issue its final administrative decision in the matter to that person. In the absence of a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

(Source: Amended at 39 Ill. Reg. 14616, effective October 22, 2015)