

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.2115 Sellers of Machinery, Tools and Special Order Items

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

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.2115 Sellers of Machinery, Tools and Special Order Items

- a) When Liable For Retailers' Occupation Tax
 - 1) Sellers of machinery, tools, dies, jigs, patterns, gauges, models, exhibits, and the like to users or consumers incur Retailers' Occupation Tax liability except as specified in subsection (b) of this Section, and except to the extent that the item sold is exempted by the provisions of the Act. This is true whether the seller installs the tangible personal property for the purchaser or not. (For information concerning the taxability of receipts from installation charges, see Section 130.450 of this Part.)
 - 2) The fact that it is not a stock item and is only produced after an order is received, or is an alteration of a standard item, is not sufficient to exempt it from Retailers' Occupation Tax unless it meets all the exemption tests of subsection (b).
 - 3) Even if the sale would otherwise qualify for exemption under subsection (b) of this Section, the sale is taxable if the designing of the property that is to be sold is done by the purchaser, or by someone other than the seller hired by the purchaser, but the sale is not taxable if the seller is responsible for furnishing the service of designing the property or for contributing substantially to the designing of the property.
 - 4) However, a single order from a purchaser for 50 or more of the same item or simultaneous orders from a purchaser for 50 or more in the aggregate of the same item that would otherwise qualify for exemption under subsection (b) of this Section will be deemed to be volume production and will be subject to Retailers' Occupation Tax on the total amount received by the seller from any such volume production order or orders. For purposes of this subsection (a)(4), "simultaneous orders" consist of any orders placed on the same day by the same purchaser. Also, even if an item qualifies for Retailers' Occupation Tax exemption under subsection (b) of this Section, subsequent sales by the seller of the same item without material change to any purchaser for use (so-called repeat orders) are subject to the Retailers' Occupation Tax because the skill that is involved after the first item is made is production skill and not specialized engineering and design skill. For purposes of this subsection (a)(4), a "repeat order" is an order for the same item without material change that is placed by the same purchaser

on a date after the date that the original order for that item was placed or an order for the same item without material change that is placed by another purchaser at any time after the original order for that item.

EXAMPLES:

- A) Single orders. For example, on May 1, a building contractor special orders 75 identical roof trusses in a single order that are to be engineered and fabricated by the seller and would otherwise qualify for exemption under subsection (b) of this Section. Even though the seller may use his or her skill to design and build the 75 identical roof trusses, the seller will be deemed to be engaged in volume production and will incur Retailers' Occupation Tax liability on those sales.

- B) Simultaneous Orders
 - i) Simultaneous orders of 50 or more. For example, on May 1, a purchaser special orders a single order of 40 electrical turbines that are to be engineered and fabricated by the seller and would otherwise qualify for exemption under subsection (b) of this Section. On that same day, the same purchaser places another order for 25 electrical turbines that are identical to the 40 other electrical turbines ordered earlier that day. Even though the seller may use his or her skill to design and build the 65 identical electrical turbines, the seller will be deemed to be engaged in volume production and will incur Retailers' Occupation Tax liability on those sales.

 - ii) Simultaneous multiple orders of fewer than 50. For example, on May 1, a purchaser special orders a single order of 20 identical rain gutter components that are to be engineered and fabricated by the seller and would otherwise qualify for exemption under subsection (b) of this Section. On that same day, the same purchaser places another order for 25 rain gutter components that are identical to the 20 other rain gutter components ordered earlier that day. Since that purchaser has ordered fewer than 50 identical rain gutter components on that date, the seller will not be deemed to be engaged in volume production with these orders and would be exempt from Retailers' Occupation Tax liability on those sales. However, the seller will incur either Service Occupation Tax liability or Use Tax liability, depending upon the seller's activities in relation to the sale of those 45 rain gutter components. See the Department's Service Occupation Tax rules, 86 Ill. Adm. Code 140.

- C) Repeat order by same purchaser. For example, on June 1, a purchaser orders 20 identical window cladding materials that are to be engineered and fabricated by the seller and would otherwise qualify for exemption under subsection (b) of this Section. The seller will incur Service Occupation Tax liability or Use Tax liability depending upon the seller's activities, rather than Retailers' Occupation Tax liability, in relation to those sales. See the Department's Service Occupation Tax rules, 86 Ill. Adm. Code 140. If, however, on June 2, the same purchaser orders another 10

window cladding materials that are identical to the first 20 window cladding materials ordered by that purchaser, then the seller will incur Retailers' Occupation Tax liability on the sales of those 10 additional window cladding materials because those transactions are considered subsequent sales by the seller of the same item without material change (repeat orders). In this example, the seller's skill that is involved after the first order is made is considered production skill and not specialized engineering and design skill.

- D) Repeat order by different purchaser. For example, on June 1, a purchaser orders 20 identical roof trusses that are to be engineered and fabricated by the seller and would otherwise qualify for exemption under subsection (b) of this Section. The seller will incur Service Occupation Tax liability or Use Tax liability, depending upon the seller's activities, rather than Retailers' Occupation Tax liability, in relation to those sales. See the Department's Service Occupation Tax rules, 86 Ill. Adm. Code 140. Later that day on June 1, a different purchaser orders 10 roof trusses that are identical to the first 20 roof trusses ordered earlier that day by the previous purchaser. The seller will incur Retailers' Occupation Tax liability on the sales of those 10 roof trusses because those transactions are considered subsequent sales by the seller of the same item without material change (repeat orders). On June 2 another purchaser orders 30 roof trusses that are identical to the roof trusses ordered on June 1 by previous purchasers. The seller will incur Retailers' Occupation Tax liability on the sales of those 30 roof trusses because those transactions are considered subsequent sales by the seller of the same item without material change (repeat orders). In this example, the seller's skill that is involved after the first order is made is considered production skill and not specialized engineering and design skill.

- 5) In the case of special assemblies, such as switchboards, where the completed product is made almost entirely of standard parts and materials that can be interchanged in other like products and sold to other users, the sale is taxable.

b) When Not Liable For Retailers' Occupation Tax

- 1) The seller of a special machine, tool, die, jig, pattern, gauge or other similar item is engaged primarily in a service occupation, rather than in the business of selling tangible personal property, and so does not incur Retailers' Occupation Tax liability with respect to the sale, if the following tests for exemption are all met in the transaction:
- A) The purchaser employs the seller primarily for his engineering or other scientific skill to design and produce the property on special order for the purchaser and to meet the particular needs of the purchaser;
 - B) the property has use or value only for the specific purpose for which it is produced; and
 - C) the property has use or value only to the purchaser.

- 2) On the requirement of design by the seller, it is sufficient if the seller is responsible for making a substantial contribution to the designing of the property that is to be produced on special order and sold.
 - 3) If the item qualifies for Retailers' Occupation Tax exemption under this Section, the exemption is not lost merely because the seller subcontracts the service work to someone else as long as the seller is contractually responsible to see that the necessary service work is provided.
 - 4) On the question of "use or value only to the purchaser", this test for exemption is met if the property is not standard enough to be stocked or to be ordered from a catalog or other type of sales literature, but has to be produced in accordance with special requirements that are peculiar to the purchaser and not common to someone else whose conditions for possible use of the property can be shown by the Department to be reasonably comparable to those of the purchaser.
 - 5) In the case of special assemblies such as special conveyors, the sale does not become taxable (if it would otherwise be exempt under this subsection (b)) merely because a fairly substantial portion of the completed product is made of standard parts or of raw material (such as steel) that can be stocked for sale.
 - 6) The seller has the burden of establishing that the sale qualifies for exemption under the provisions of this subsection (b), and unless the seller overcomes that burden, the sale is taxable under the Retailers' Occupation Tax Act.
- c) **Cross Reference to Service Occupation Tax Regulations**
When a seller is exempt from the Retailers' Occupation Tax under subsection (b) of this Section because of being engaged primarily in a service occupation, the transaction is governed by the Service Occupation Tax (see Subpart A of the Service Occupation Tax rules, 86 Ill. Adm. Code 140).

(Source: Amended at 32 Ill. Reg. 17519, effective October 24, 2008)