



Illinois Department of Revenue

Legal Services Office 5-500
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Springfield, IL 62794

SECOND NOTICE OF PROPOSED RULEMAKING

- 1) Agency: Illinois Department of Revenue
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: Home Rule County Retailers' Occupation Tax, 86 Ill. Adm. Code 220, Section 220.115
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: March 21, 2014, Issue 12, 38 Ill. Reg. 6549
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period: The changes made to this rulemaking were technical, grammatical and editorial at the recommendation of the Joint Committee on Administrative Rules and the Administrative Code Division. See attached "First Notice Changes."
- 5) Final Regulatory Flexibility Analysis:
 - A. Summary of the issues raised by affected small businesses during the First Notice Period: The Department received one comment from a "small businesses" as defined in 5 ILCS 100/1-75. The small business raised a concern that the proposed rules were "highly subjective and open to interpretation in every case, [which] dramatically increases the risk of non-compliance and subsequent fines and penalties."
 - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: The Department addressed the concern of the small business commenter by modifying the rules to increase their objectivity and improve their certainty. The Department did not adopt the suggestion to return to imposing taxes at the location of "order acceptance" because that approach was held by the Illinois Supreme Court to be unlawful under the statute.
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: See attachment.
- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply With the Codification Scheme: All changes requested by the Administrative Code Division have been made.

- 8) Evaluation of the comments received by the agency from interested persons during the first notice period (but not including any questions raised by the Joint Committee in a preliminary review) including:
 - A. Date of any public hearing held during the first notice period. Name of the person or group requesting a hearing: A public hearing was held on March 21, 2014 at the request of the Joint Committee on Administrative Rules.
 - B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments: See attachment 8B.
 - C. A list of all specific criticisms and suggestions raised in the comments: See Attachment 8C.
 - D. The agency's evaluation of each of the specific criticisms and suggestions: A memorandum entitled "Department of Revenue Response to Comments on Local Sourcing Regulations" discusses the criticisms and suggestions raised in the comments and the Department's response. The memorandum is attached to this Notice.
 - E. A statement that the agency has considered all comments received during the first notice period: The agency has considered all comments received during the first notice period.

- 9) An analysis of the expected effects of the proposed rulemaking, including:
 - A. Impact on the public: These rules may change the jurisdiction to which some Illinois retailers pay retailers' occupation taxes.
 - B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: There are no material changes to the agency's programs or structure resulting from the implementation of the rulemaking.
 - C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any methods not utilized: Regardless of size, all retailers will be impacted by this rulemaking. The impact should be minimal, however, because these rules do not impose any new reporting requirements on retailers, who are already remitting ROT. These rules provide a different framework for making the determination of where a retailer is "engaged in the business of selling," as required by the decision of the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130.

10) A justification and rationale for the proposed rulemaking, including:

- A. Any changes in statutory language requiring the proposed rulemaking:
There were no changes to the statutory language requiring the proposed rulemaking.
- B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: There were no changes to agency policy, procedures, or structure requiring the proposed rulemaking.
- C. Relationship to other rulemaking activities of the agency including anticipated rulemaking activities:

This rulemaking is related to:

86 Ill. Adm. Code 270.115, Home Rule Municipal Retailers' Occupation Tax, 38 Ill. Reg. 6562, March 21, 2014

86 Ill. Adm. Code 320.115, Regional Transportation Authority Retailers' Occupation Tax, 38 Ill. Reg. 6575, March 21, 2014

86 Ill. Adm. Code 370.115, Metro East Mass Transit District Retailers' Occupation Tax, 38 Ill. Reg. 6588, March 21, 2014

86 Ill. Adm. Code 395.115, Metro-East Park and Recreation District Retailers' Occupation Tax, 38 Ill. Reg. 6601, March 21, 2014

86 Ill. Adm. Code 630.120 County Water Commission Retailers' Occupation Tax, 38 Ill. Reg. 6614, March 21, 2014

86 Ill. Adm. Code 670.115, Special County Retailers' Occupation Tax, 38 Ill. Reg. 6627, March 21, 2014

86 Ill. Adm. Code 690.115, Salem Civic Center Retailers' Occupation Tax, 38 Ill. Reg. 6640, March 21, 2014

86 Ill. Adm. Code 693.115, Non-Home Rule Municipal Retailers' Occupation Tax, 38 Ill. Reg. 6653, March 21, 2014 and

86 Ill. Adm. Code 695.115, County Motor Fuel Tax, 38 Ill. Reg. 6666, March 21, 2014

This rulemaking also is related to an anticipated amendment to:

86 Ill. Adm. Code 130.610

86 Ill. Adm. Code 150.201

86 Ill. Adm. Code 160.105

- D. Relationship to any relevant federal rules, regulations, or funding requirements: This rulemaking has no relationship to any federal rules, regulations, or funding requirements.
- E. Court orders or rulings which are related to the rulemaking: This

rulemaking is related to *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, which invalidated to the Department's prior rules.

- 11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No.

Agency Personnel Who Will Respond to Joint Committee Questions Regarding the Proposed Rulemaking:

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