

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
130.555	Amendment
130.701	Amendment
130.715	Amendment
- 4) Statutory Authority: 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) A Complete Description of the Subjects and Issues Involved:

This rulemaking amends 86 Ill. Adm. Code 130.555 (Vending Machine Information Returns), 130.701 (General Information on Obtaining a Certificate of Registration) and 130.715 (Sub-Certificates of Registration).

86 Ill. Adm. Code 130.555 and 130.715 are being amended to reflect the changes made pursuant to Public Act 97-0335. That public act provided that effective January 1, 2012, persons who sell tangible personal property through vending machines are no longer required to report annually to the Department by January 31 the number of vending machines operated by their business. If such persons, though, add additional vending machines, they must contact the Department to request additional sub-certificates of registration, as applicable. With each such request, the persons must report the number of sub-certificates of registration being requested, as well as the total number of vending machines from which retail sales are being made.

86 Ill. Adm. Code 130.701 is being amended to reflect the change made pursuant to Public Act 98-0974. That public act provided that effective January 1, 2015, the Department must notify a taxpayer, to whom a certificate of registration is issued and who is in default to the State for delinquent returns, within 60 days before the expiration of the taxpayer's certificate of registration that the certificate will not be automatically renewed (previously, the Department had to notify the taxpayer 120 days before the expiration date). The taxpayer will be notified that the certificate of registration will not be automatically renewed upon its expiration date unless the taxpayer files and pays the delinquent returns or defaulted amount in full.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking:
None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
If "Yes", please specify the date:
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citation</u>
130.340	Amendment	40 Ill. Reg. 10083, July 29, 2016
130.311	Amendment	41 Ill. Reg. 3168, March 17, 2017
130.320	Amendment	41 Ill. Reg. 3817, March 31, 2017

- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Debra M. Boggess
 Illinois Department of Revenue
 Legal Services Office
 101 West Jefferson
 Springfield, Illinois 62794

(217) 782-2844

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking will affect businesses that sell tangible personal property through vending machines and those that are in default to the State for delinquent returns.
- B) Reporting, bookkeeping or other procedures required for compliance: Basic bookkeeping.
- C) Types of professional skills necessary for compliance: Bookkeeping
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

Section 130.555 Vending Machine Information Returns

Any person who engages in the business of selling tangible personal property at retail through a vending machine or through vending machines shall file an information report or return with the Department by January 31 of the number of vending machines which such person was using in his business of selling tangible personal property at retail on the preceding December 31. Beginning January 1, 2012, if a person who is registered to sell tangible personal property through a vending machine adds an additional vending machine, he or she shall request an additional sub-certificate and report to the Department the number of sub-certificates of registration being requested, as well as the total number of vending machines from which he or she makes retail sales. Additional sub-certificates of registration may be requested electronically on the Department's website at www.tax.illinois.gov.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART G: CERTIFICATE OF REGISTRATION

Section 130.701 General Information on Obtaining a Certificate of Registration

- a) It shall be unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration from the Department.
- b) Every person who engages in the business of selling tangible personal property at retail in this State must procure a certificate of registration (and sub-certificate of registration when required) from the Department.
- c) For information with respect to penalties for violating this requirement, see Subpart I of this Part.
- d) The application to register must be made on a form prescribed and furnished by the Department for that purpose. Upon request therefor, made to the Department of Revenue, an application form will be furnished. Each such application shall be signed and verified. The application shall contain an acceptance of responsibility by the person or persons who will be responsible for filing returns and payment of the taxes due under the Act. Applications to register may be submitted electronically on the Department's website at www.tax.illinois.gov.

e) Special Requirements Pertaining to Vending Machines

If the applicant will sell tangible personal property at retail through vending machines, his application to register shall indicate the number of vending machines to be so operated; and thereafter, he shall notify the Department by January 31 of the number of vending machines which such person was using in his business of selling tangible personal property at retail on the preceding December 31. Beginning January 1, 2012, persons who add additional vending machines must contact the Department to request additional sub-certificates of registration, as well as inform the Department of the total number of vending machines from which retail sales are being made. Additional sub-certificates of registration may be requested on the Department's website at www.tax.illinois.gov.

f) Posting Bond or Other Security

- 1) Every applicant for a certificate of registration shall, within 30 days after he commences to engage in the business of selling tangible personal property at retail, furnish a bond from a surety company authorized to do business in the State of Illinois, or a bond signed by 2 personal sureties who have filed, with the Department, sworn statements disclosing net assets equal to at least 3 times the amount of the bond to be required of such applicant, or a bond secured by an assignment of a bank account or certificate of deposit, stocks or bonds, conditioned upon the applicant paying to the State of Illinois all moneys becoming due under the Retailers' Occupation Tax Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under the Retailers' Occupation Tax Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution.

- 2) Maximum Amount of Bond or Other Security
 - A) The Department shall fix the amount of such security in each case, taking into consideration the amount of money expected to become due from the applicant under the Retailers' Occupation Tax Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under the Retailers' Occupation Tax Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution. The amount of security required by the Department shall be such as, in its opinion, will protect the State of Illinois against failure to pay the amount which may become due from the applicant under the Retailers' Occupation Tax Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under the Retailers' Occupation Tax Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution, but the amount of the security required by the Department shall not exceed three times the amount of the applicant's average monthly tax liability, or \$50,000, whichever amount is lower.
 - B) No certificate of registration under the Retailers' Occupation Tax Act shall be issued by the Department until the applicant provides the Department with satisfactory security as herein provided for.
- 3) Exception from Security Requirements for Prior Continuance Compliance Taxpayers

Any taxpayer who has, as verified by the Department, faithfully and continuously complied with the condition of his bond or other security under the provisions of the Act for a period of 3 consecutive years shall be considered to be a Prior Continuous Compliance taxpayer. Every Prior Continuous Compliance taxpayer shall be exempt from all requirements under the Act concerning the furnishing of security as a condition precedent to his being authorized to engage in the business of selling tangible personal property at retail in this State. This exemption shall continue for each such taxpayer until such time as he may be determined by the Department to be delinquent in the filing of any returns, or is determined by the Department (either through the Department's issuance of a final assessment which has become final under the Act, or by the taxpayer's filing of a return which admits tax that is not paid to be due) to be delinquent or deficient in the paying of any tax under the Retailers' Occupation Tax Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the registrant under the Retailers' Occupation Tax Act will permit the registrant to engage in business without registering separately under such other law, ordinance or resolution, at which time that taxpayer shall become subject to all the financial responsibility requirements of the Act and, as a condition of being allowed to continue to engage in the business of selling tangible personal property at retail, shall be required to post bond or other acceptable security with the Department covering liability which such taxpayer may thereafter incur. Any taxpayer who fails to pay an admitted or established liability under the Act may also be required to post bond or other acceptable security with this Department guaranteeing the payment of such admitted or established liability.

g) Issuance of Certificate of Registration

Upon receipt of the application for certificate of registration in proper form, and upon approval by the Department of the security furnished by the applicant, the Department shall issue to such applicant a certificate of registration which shall permit the person to whom it is issued to engage in the business of selling tangible personal property at retail in this State.

h) *No certificate of registration issued to a taxpayer who files returns required by this Act on a monthly basis shall be valid after the expiration of 5 years from the date of its issuance or last renewal. The expiration date of a sub-certificate of registration shall be that of the certificate of registration to which the sub-certificate relates. A certificate of registration shall be automatically renewed, subject to revocation as provided by this Act, for an additional 5 years from the date of its expiration unless otherwise notified by the Department. A certificate of registration issued under this Act more than 5 years before the effective date of this amendatory Act of 1989 shall expire and be subject to the renewal provisions of this Section on the next anniversary of the date of issuance of such certificate which occurs more than 6 months after the effective date of this Amendatory Act of 1989. A certificate of registration issued less than 5 years before the effective date of this Amendatory Act of 1989 shall expire and be subject to the renewal provisions of this Section on the 5th anniversary of the issuance of the certificate. (Section 2a of the Act)*

i) *Where a taxpayer to whom a certificate of registration is issued under this Act is in default to the State of Illinois for delinquent returns or for moneys due under this Act or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 120 days before the expiration of such certificate of registration, give notice to the taxpayer to whom the certificate was issued of the account period of the delinquent returns, the amount of tax, penalty and interest due and owing from the taxpayer, and that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full. Beginning January 1, 2015, where a taxpayer to whom a certificate of registration is issued under this Act is in default to the State of Illinois for delinquent returns or for moneys due under this Act or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 60 days before the expiration of such certificate of registration, give notice to the taxpayer to whom the certificate was issued of the account period of the delinquent returns, the amount of tax, penalty and interest due and owing from the taxpayer, and that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full. [35 ILCS 120/2a]*

j) *The Department may, in its discretion, approve renewal by an applicant who is in default if, at the time of application for renewal, the applicant files all of the delinquent returns or pays to the Department such percentage of the defaulted amount as may be determined by the Department and agrees in writing to waive all limitations upon the Department for collection of the remaining defaulted amount to the Department over a period not to exceed 5 years from the date of renewal of the certificate; however, no renewal application submitted by an applicant who is in default shall be approved if the*

immediately preceding renewal by the applicant was conditioned upon the installment payment agreement described in this Section. The payment agreement herein provided for shall be in addition to, and not in lieu of, the security required by this Section of a taxpayer who is no longer considered a continuous compliance taxpayer. The execution of the payment agreement as provided in this Act shall not toll the accrual of interest at the statutory rate. (Section 2a of the Act)

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.715 Sub-Certificates of Registration

- a) Where a registered taxpayer, such as a company operating chain stores, engages in the business of selling tangible personal property at retail in this State from more than one location, the Department shall furnish to him a sub-certificate of registration for each such additional place of business.
- b) Each sub-certificate will bear the same registration number as that appearing upon the certificate of registration to which such sub-certificate relates.
- c) If the applicant will sell tangible personal property at retail through vending machines, the Department shall furnish him with a sub-certificate of registration for each such vending machine, and the applicant shall display the appropriate sub-certificate of registration on each such vending machine by attaching the sub-certificate of registration to a conspicuous part of such vending machine.
- d) Beginning January 1, 2012, if a person who is registered to sell tangible personal property at retail through vending machines adds an additional vending machine or additional vending machines to the number of vending machines he or she uses in his or her business of selling tangible personal property at retail, he or she shall contact the Department, on a form prescribed by the Department, to request an additional sub-certificate or additional sub-certificates of registration, as applicable. With each such request, the applicant shall report the number of sub-certificates of registration being requested, as well as the total number of vending machines from which retail sales are being made. [35 ILCS 120/2a] Additional sub-certificates of registration may be requested electronically on the Department's website at www.tax.illinois.gov.

(Source: Amended at 41 Ill. Reg. _____, effective _____)