

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 130 Section 130.801     Retailers' Occupation Tax</b>
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**TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130  
RETAILERS' OCCUPATION TAX**

**Section 130.801 Books and Records – General Requirements**

- a) *Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales and purchases of tangible personal property, including all sales and purchase invoices, purchase orders, merchandise records and requisitions, inventory records prepared as of December 31 of each year or otherwise annually, as has been the custom in the specific trade [35 ILCS 120/7], credit memos, debit memos, bills of lading, shipping records, and all other records pertaining to any and all purchases and sales of goods whether or not the retailer believes them to be taxable under the Act; and the retailer shall also keep summaries, recapitulations, totals, journal entries, ledger accounts, accounts receivable records, accounts payable records, statements, tax returns with all schedules or pertinent working papers used in connection with the preparation of such returns, and other documents listing, summarizing or pertaining to such sales, purchases, inventory changes, shipments or other transactions. For a description of what records constitute the minimum required, including the use of machine-sensible records and electronic data interchange, see Section 130.805 of this Part.*
- b) Retailers must maintain complete books and records covering receipts from all sales and distinguishing taxable from nontaxable receipts.
- c) The books and records must clearly indicate and explain all the information (deductions as well as gross receipts) required for tax returns.d) If a taxpayer retains records required to be retained under this Section in both machine-sensible and hard-copy formats, the taxpayer shall, upon request, make the records available to the Department in machine-sensible format in accordance with Section 130.805(b)(5).
- e) *The books and records must be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. [35 ILCS 120/7]*
- f) The books and records must be kept within Illinois except in instances where a business has several branches, with the head office being located outside Illinois, and where all books and records have been regularly kept outside the State at such head office. Under such circumstances, upon written permission from the Department, books and records may be kept outside Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at some point within Illinois for the purpose of the inspection and

audit as the Department may deem necessary.

g) Request for Books and Records and Documentation During an Audit

1) At the initiation of an audit, the Department will notify the taxpayer of the books and records that the taxpayer will be required to produce for the Department to enable the Department to conduct the audit. During the course of the audit, the Department will provide the taxpayer with information document requests ("Information Document Request") for books and records the Department is requesting the taxpayer to produce for review. The taxpayer will be provided 30 days, or the number of days agreed to by the taxpayer and the Department, to respond to an Information Document Request. If the taxpayer and the Department cannot agree on a date to respond to a request, the taxpayer shall have 30 days to respond. If the taxpayer does not provide the Department with the books and records requested in the Information Document Request, the Department will issue a second Information Document Request for the books and records. If the taxpayer again fails to provide the Department with the books and records requested, the Department is authorized to issue a written document request for the records pursuant to subsection (i)(3).

2) *It shall be presumed that all sales of tangible personal property are subject to tax under the Act until the contrary is established. The burden of proving that a transaction is not taxable shall be upon the person who would be required to remit the tax to the Department if the transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax, the Department is authorized to notify the taxpayer in writing to produce such evidence ("Notice of Demand for Documentary Evidence"), and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection and audit, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable. [35 ILCS 120/7].* In the course of any audit or investigation by the Department with reference to a given taxpayer, if the taxpayer fails to produce the documentary evidence needed to support the taxpayer's claim to exemption from tax within the 60 days or the time allotted, the taxpayer is subject to the penalty in subsection (i).

EXAMPLE: The auditor requests all the resale certificates and exemption certificates for all tax-exempt sales. The auditor has issued an Information Document Request pursuant to subsection (g)(1). The retailer has failed to provide the documentary evidence required to support the exemptions. The Department issued a written request ("Notice of Demand for Documentary Evidence") pursuant to subsection (g)(2) and provided the taxpayer 60 days to produce the documentation. If the retailer has not provided all of the certificates after the 60 days has elapsed, the matter will be closed, the transactions will be conclusively presumed to be taxable, and the retailer is subject to the penalty in subsection (i).

h) All books and records kept by a medical cannabis dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act pursuant to rules adopted by the Illinois Department of Financial and Professional Regulation to implement the Compassionate Use of Medical Cannabis Pilot Program Act shall, at all times during

business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

i) *Any person who fails to keep books and records or fails to produce books and records for examination, as required by Section 7 of the Act and this Part, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by Section 7 of the Act and this Part. The penalties imposed under Section 7 of the Act and this subsection (i) shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. [35 ILCS 120/7]*

1) The Act imposes two requirements on retailers: retailers must maintain books and records (see subsection (a)) and they must produce the books and records for inspection and examination by the Department upon request (see subsection (e)). A retailer may be subject to the penalty in this subsection (i) if it maintains books and records but fails or refuses to produce the records upon request of the Department. A retailer also may be subject to the penalty in this subsection (i) if it does not maintain books and records and therefore cannot produce the books and records to the Department upon request. In the latter case, the retailer may be subject to either a penalty for the failure to maintain books and records or the failure to produce books and records; the Department cannot impose two penalties in this case.

2) If a person fails to produce books and records for examination or inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (i).

3) Except as otherwise provided by subsection (i)(8)(A), if a request has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing ("Notice of Demand for Books and Records").

A) The Notice of Demand for Books and Records shall contain:

i) the name of the person receiving the request;

ii) the name of the business;

iii) the date of the request or requests;

iv) the books and records requested;

v) the books and records that the person failed to produce;

vi) the number of days the person has to produce the books and records; and

- vii) the name of the Department agent or employee.
- B) The Department agent or employee shall sign and date the form and provide a copy of the form to the person either in person or by mail. The person shall have 30 days from the date of the Notice of Demand for Books and Records to produce the books and records the person has failed to produce. The Department is authorized to extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department shall issue a notice of penalty pursuant to this subsection (i).
- 4) Any person receiving a notice of penalty may, within 20 days after the date on the notice of penalty, protest and request a hearing in writing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act, and then issue its final administrative decision in the matter to that person. The Department shall postpone the hearing until completion of the inspection or audit. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.
- 5) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: In April, an authorized agent of the Department inspects a retailer and requests all purchase invoices for tangible personal property purchased in March. The purchase invoices are not provided by the retailer and the Department issues a notice of penalty in the amount of \$1,000. The agent returns in May and requests to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the purchase invoices for March.

- 6) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period.

EXAMPLE: An auditor makes multiple requests for books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The auditor fills out a Notice of Demand for Books and Records, provides a copy to the person, and provides 30 days for the person to produce the books and records. After the 30-day period expires, the retailer does not produce the books and records. The Department issues a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.

- 7) *The penalties imposed under this subsection (i) shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence.* [35 ILCS 120/7] When determining whether a taxpayer has acted with ordinary business care and prudence, the Department will consider the size of the business, the amount of gross receipts, the volume of sales, the nature of the business, the type and number of items sold by the business, the types of books and records requested, and whether the books and records constitute the minimum records required by Section 130.805. (In other words, would a taxpayer that exercised ordinary business care and prudence be able to produce the books and records requested by the Department?) "Ordinary care has been defined to be that degree of care which is exercised by ordinarily prudent persons under same or similar circumstances." *Swenson v. City of Rockford*, 9 Ill.2d 122, 127 (1956).
- 8) Requests for Books and Records at the Beginning and During Scheduled Audits
- A) When the Department determines it will audit a taxpayer's books and records, it shall notify the taxpayer of the audit and schedule a time to commence the audit that is satisfactory to the Department and the taxpayer. In no event can this time be later than 6 months after the date of the notice, unless the Department agrees to extend the 6-month period. If the taxpayer refuses to schedule the commencement of the audit within 6 months after the date of the notice, the taxpayer is subject to a penalty for refusal to produce books and records for every month subject to the audit. After the 6-month period has expired, the Department may issue a notice of penalty to the taxpayer pursuant to this subsection (i). The Department is not required to provide the taxpayer with a document request or allow additional time to schedule an audit of the person's books and records.
- B) During the course of an audit, the auditor may issue multiple requests for specific books and records. Prior to issuing the first notice of penalty during an audit, the auditor shall complete a Notice of Demand for Books and Records in accordance with subsection (i) that identifies all books and records that have not been provided pursuant to all earlier requests for the production of documents.

(Source: Amended at 43 Ill. Reg. 8865, effective July 30, 2019)