

**Illinois Department of Revenue
Regulations**

Title 86 Part 140 Section 140.101 Basis and Rate of the Service Occupation Tax

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

**PART 140
SERVICE OCCUPATION TAX**

SUBPART A: NATURE OF TAX

Section 140.101 Basis and Rate of the Service Occupation Tax

- a) The Service Occupation Tax Act (the Act) [35 ILCS 115] imposes a tax upon persons engaged in this State in the business of making sales of service, based on tangible personal property transferred incident to sales of service. These persons are referred to in this Part as servicemen.
- b) Rate of Tax
 - 1) The rate of Service Occupation Tax (SOT) incurred by a serviceman from October 1, 1969 through December 31, 1983, is 4%, and on and after January 1, 1984 and prior to January 1, 1990, is 5% of the serviceman's cost price of tangible personal property transferred by the serviceman incident to a sale of service. On and after January 1, 1990, if SOT is computed on the selling price or Use Tax is computed on the cost price of the tangible personal property transferred incident to sales of service, the rate is 6.25%. Effective January 1, 1990 and prior to July 1, 2003, sales of "gasohol" (*a motor fuel that is no more than 90% gasoline and at least 10% denatured ethanol that contains no more than 1.25% water by weight* [35 ILCS 105/3-40]) are subject to tax, based upon 70% of the proceeds of sales. On and after July 1, 2003 and on or before December 31, 2013, tax shall be based upon 80% of the proceeds from sales of gasohol. On and after January 1, 2014, tax shall be based upon 100% of the proceeds of sales of gasohol. However, from July 1, 1997 to June 30, 1998, the rate was 85% for gasohol sold in this State during the 12 months beginning July 1 following any calendar year for which the Department determined that the percentages in Section 10 of the Gasohol Fuels Tax Abatement Act were not met. The Gasohol Fuels Tax Abatement Act was repealed effective July 1, 1998. *Effective July 1, 2003, if at any time the tax under the Service Occupation Tax Act (SOTA) on sales of gasohol is imposed at the rate of 1.25%, then the tax imposed by SOTA applies to 100% of the proceeds of sales of gasohol made during that time. With respect to majority blended ethanol fuel, as defined in Section 3-44 of the Use Tax Act, the tax imposed by SOTA does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013, but applies to 100% of the proceeds of sales made thereafter. With respect to biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with no less than 1% and no more than 10% biodiesel, the tax imposed*

by SOTA applies to 80% of the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013 and 100% of the proceeds of sales made thereafter. If at any time, however, the tax under SOTA on sales of biodiesel blends, as defined in the Use Tax Act, with no less than 1% and no more than 10% biodiesel is imposed at the rate of 1.25%, then the tax imposed by SOTA applies to 100% of the proceeds of sales of biodiesel blends with no less than 1% and no more than 10% biodiesel made during that time. With respect to 100 % biodiesel, as defined in Section 3-41 of the Use Tax Act, and biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with more than 10% but no more than 99% biodiesel, the tax imposed by SOTA does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013, but applies to 100% of the proceeds of sales made thereafter. [35 ILCS 115/3-10] On and after January 1, 1993, if SOT is computed on the cost price of tangible personal property transferred incident to service, the rate is also 6.25%. Exceptions to these rules, however, are as follows:

- A) On and after January 1, 1984, and prior to January 1, 1990, food for human consumption that is to be consumed off the premises where it is sold (other than soft drinks, alcoholic beverages and food that has been prepared for immediate consumption and except as provided in subsection (b)(1)(B)) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics, for human use, will be taxed at the rate of 0%. On and after January 1, 1990, the rate of tax will be 1%.
 - B) Effective January 1, 1993 *food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Hospital Licensing Act or the Nursing Home Care Act shall be subject to tax at the rate of 1%. Effective August 13, 1999, the 1% rate shall also apply to food prepared for immediate consumption and transferred incident to a sale of service by an entity licensed under the Child Care Act of 1969. (Section 3-10 of the Act)*
 - C) *Beginning on July 1, 2000 through December 31, 2000, with respect to motor fuel and gasohol, the tax is imposed at the rate of 1.25% (Section 3-10 of the Act). (See the provisions of 86 Ill. Adm. Code 130.101, which is incorporated by reference as if fully set forth in this subsection (b).)*
- 2) *On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. (Section 3 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that,*

unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 6301]. "Prepaid telephone calling arrangements" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 3-27 of the Act)

- c) The date of the sale of service is deemed to be the date of the delivery, to the user, of the tangible personal property that the serviceman transfers as an incident to a sale of service.
- d) *When a serviceman contracts to design, develop and produce special order machinery or equipment, the tax imposed under the Service Occupation Tax shall be based on the serviceman's cost price of the tangible personal property transferred incident to completion of the contracts regardless of that serviceman's annual threshold. (Section 3-10 of the Act)*
- e) *For the purpose of determining the tax base, selling price shall in no event be less than the cost price to the serviceman of the tangible personal property transferred. The selling price of each item of tangible personal property transferred incident to a sale of service may be stated as a distinct item by the serviceman to the service customer and the tax imposed by the Act shall when collected be stated as a distinct item separate and apart from the selling price of the tangible personal property. If the selling price of each item of tangible personal property transferred incident to a sale of service is not stated as a separate item on the serviceman's billing to the service customer, then the tax imposed by the Act shall be based on 50% of the serviceman's entire billing to the service customer (Section 3-10 of the Act), but in no event shall this amount be less than the cost price to the serviceman of the tangible personal property so transferred.*
- f) Taxpayers who are registered may purchase all tangible personal property for retransfer by providing their suppliers with valid resale certificates even if in some transactions the cost price of the tangible personal property will be less than 35% of the total gross receipts from the transaction. If the serviceman paid tax to his supplier in the expectation that the cost of parts would be less than 35% of the total transaction selling price, but the actual percentage was more than 35%, the serviceman would be able to take credit for the tax paid to the supplier but would be liable for tax on the selling price of the parts, if stated, or on 50% of the total transaction selling price. In the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production, replace the references to 35% in this subsection with 75%. The serviceman may also be liable for penalties due to a failure to file returns.

(Source: Amended at 29 Ill. Reg. 1940, effective January 24, 2005)

