

**Illinois Department of Revenue
Regulations**

Title 86 Part 140 Section 140.108 "De Minimis" Servicemen Who Incur Use Tax on Their Cost Price
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**TITLE 86: REVENUE
PART 140
SERVICE OCCUPATION TAX**

Section 140.108 "De Minimis" Servicemen Who Incur Use Tax on Their Cost Price

- a) If a serviceman's cost ratio is less than 35% (or less than 75% in the case of servicemen transferring prescription drugs or engaged in graphic arts production), he is considered a "de minimis" serviceman. On and after January 1, 1990 for all de minimis servicemen, and on and after January 1, 1993 for de minimis servicemen not required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, a Use Tax liability may be incurred on the cost price of the tangible personal property transferred to service customers incident to his sales of service. Examples of servicemen that are not required to be registered under Section 2a of the Retailers' Occupation Tax Act include barbers or seamstresses making no "over-the-counter" retail sales. Other examples could include servicemen who make no taxable retail sales but who have obtained resale numbers under Section 130.1410, or servicemen who are registered solely to pay Use Tax on consumable supplies. De minimis servicemen eligible to pay Use Tax on their cost price must observe the following conditions:
- 1) The de minimis serviceman incurring Use Tax liability should remit Use Tax to Illinois registered suppliers at the time of purchase. If the supplier is not registered to collect Use Tax, the de minimis serviceman must register with the Department for the limited purpose of self-assessing and remitting his Use Tax liability to the Department. The de minimis serviceman should not provide Certificates of Resale to suppliers, even though he may possess a resale or registration number because the resale exemption is not available to de minimis servicemen incurring a Use Tax liability.
 - 2) The de minimis serviceman incurring Use Tax liability is considered to be the end user of the tangible personal property transferred to service customers. In this situation, the de minimis serviceman's customer incurs no tax liability, since the customer is not the "user" of the tangible personal property transferred to him by the serviceman. Although liability rests with a serviceman, the Department has determined that a de minimis serviceman incurring a Use Tax liability may claim exemptions predicated upon either the exempt status of his customer or upon exemptions claimed by his customer based on nontaxable uses of the tangible personal property transferred by the serviceman. These exemptions are as follows:

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- A) A customer's status as an exempt entity shall "flow through" to the de minimis serviceman making the sale of service. The Department has determined that a de minimis serviceman is relieved of his Use Tax liability when making sales of service to customers who have obtained exemption identification numbers ("E" numbers) from the Department (see 86 Ill. Adm. Code 130.2005). The customer must provide its "E" number to the de minimis serviceman in order to relieve the de minimis serviceman of Use Tax liability on the sale of tangible personal property being transferred to that customer. The serviceman utilizing this flow through may either present the customer's "E" number to his supplier in advance when making the purchase of tangible personal property that will be transferred to the customer, or, if tax was paid to the supplier, present it to his supplier along with a request that the supplier submit a claim for credit to the Department. Such a claim may also be filed by the de minimis serviceman, himself, if he has previously self-assessed the tax on that item to the Department.
- B) The Department has also determined that a de minimis serviceman incurring a Use Tax liability may claim any of the exemptions, except as provided in subsection (a)(2)(C), authorized under the Service Occupation Tax Act. For instance, these exemptions would include, but are not limited to, sales to customers who are able to properly document the farm chemicals, newsprint and ink, manufacturing machinery and equipment, graphic arts machinery and equipment, pollution control, farm machinery and rolling stock exemptions. De minimis servicemen may likewise claim the interstate commerce exemption, which is more fully explained at 86 Ill. Adm. Code 130.605.
- C) The Department will apply the provisions of subsections (a)(2)(A) and (B) of this Section governing the exemptions available to de minimis servicemen incurring Use Tax to all periods in which liability has not become final or for which the statute of limitations for filing a claim has not expired. A liability does not become final until the liability is no longer open to protest, hearing, judicial review, or any other proceeding or action, either before the Department or in any court.
- D) A de minimis serviceman incurring Use Tax liability is not authorized to accept resale certificates provided by service customers who claim they will resell the tangible personal property transferred to them by the serviceman.
- E) In multi-service situations, in order for both the primary de minimis serviceman and the secondary de minimis serviceman to obtain any of the exemptions listed in subsections (a)(2)(A) and (B), the primary de minimis serviceman should provide the secondary de minimis serviceman with the proper documentation certifying the exemption.

- 3) The de minimis serviceman incurring Use Tax liability is not authorized to collect "tax" from service customers. The basis for this prohibition is that the de minimis serviceman, not the customer, is deemed to be the end user of the tangible personal property transferred. In this situation, the service customer incurs no tax liability. However, in this situation, the de minimis serviceman may collect "reimbursement" for his tax liability from the customer. If reimbursement is sought and appears as a separate item on the bill, it must clearly be identified as "reimbursement" for the serviceman's Use Tax liability, and not as a "tax." Any amount collected as a "tax" in this situation constitutes an overcollection that must be refunded to the customer or, if not refunded to the customer, paid to the Department.
 - 4) A de minimis serviceman incurring Use Tax liability must remit Use Tax on all sales of service for a given fiscal year. He cannot utilize other methods of determining his Service Occupation Tax liability on a transaction by transaction basis. However, use of a transaction by transaction basis for determining tax liability was authorized for periods from January 1, 1990 through December 31, 1992.
 - 5) For special rules on multi-service transactions, see Section 140.145 of this Part.
- b) If a serviceman pays Use Tax to his suppliers in the expectation that his cost ratio will be less than 35% (or less than 75%, if applicable), but the actual ratio is 35% or more (75% or more, if applicable), the serviceman would be able to take credit for taxes paid to his supplier but would still be liable for Service Occupation Tax (including applicable local taxes). The serviceman may also be liable for penalties and interest. He should register with the Department immediately and begin remitting Service Occupation Tax on his selling price.
 - c) Even though a serviceman meets the de minimis threshold and is otherwise eligible to pay Use Tax on the cost price of the tangible personal property transferred to service customers, he can nevertheless register with the Department and pay Service Occupation Tax as explained in either Section 140.106 or 140.109.
 - d) Example of de minimis serviceman paying Use Tax. An unregistered printer contracts to print wedding invitations. The printer has determined that his cost ratio falls below the 75% threshold. The entire service bill is \$200. The printer's cost price of the paper and ink transferred to the customer is \$75. If the printer is not required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, he can remit Use Tax to his Illinois-registered supplier. If his supplier is not registered to collect the Use Tax, he may remit it directly to the Department, on the cost price of \$75. The printer may not collect "tax" from his customer. The printer may not show "tax" on his bill to the customer. However, the printer may collect "reimbursement" from his customer as provided in subsection (a)(3) of this Section.

(Source: Added at 25 Ill. Reg. 4971, effective March 23, 2001)