

**Illinois Department of Revenue
Regulations**

Title 86 Part 140 Section 140.126 Taxation of Food, Drugs and Medical Appliances

**TITLE 86: REVENUE
PART 140
SERVICE OCCUPATION TAX**

Section 140.126 Taxation of Food, Drugs and Medical Appliances

- a) Food for human consumption which is sold or transferred by a serviceman as an incident to a sale of service is generally subject to the high rate of tax (6.25%) if it is prepared for immediate consumption or is sold for consumption on the premises of the sale. However, 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%. In addition, effective August 13, 1999, the 1% rate applies 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. Food which is not prepared by the serviceman for immediate consumption or not sold for consumption on the premises of the sale and which is transferred as an incident to a sale of service is subject to the lower rate of 1%. (see 86 Ill. Adm. Code 130.310(b)(6)).
- b) As provided at 86 Ill. Adm. Code 130.310, which is effective as if fully set forth in this subsection (b), prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, are subject to the 1% rate of tax.
- c) If a serviceman purchases tangible personal property at retail from an unregistered out-of-State supplier that he does not transfer to service customers, but that he instead uses or consumes, he must self-assess Use Tax on that tangible personal property and remit Use Tax to the Department. The rate is 6.25% for general merchandise and 1% for food, drugs and medical appliances. (See Part 150, Use Tax.) Similarly, if a de minimis serviceman paying Use Tax (see Section 140.108) makes purchases of tangible personal property that he will transfer to service customers from suppliers who do not charge Illinois tax, the de minimis serviceman must register to self-assess and remit Use Tax directly to the Department. This would be the case, for example, when purchases were made from out-of-State suppliers not registered to collect Illinois tax.
 - 1) Example: A doctor purchases tongue depressors from an out-of-State supplier who does not collect Illinois tax. Since tongue depressors are not medical appliances, but rather are supplies used by the doctor, they are subject to Use Tax (6.25% rate), which must be self-assessed and remitted to the Department. The same would be true if the items were purchased from an Illinois retailer who did not charge tax for some reason.

- 2) Example: A dentist purchases gold for dental fillings. If he is at or above the 35% threshold, he should purchase the gold with a resale certificate and pay Service Occupation Tax on his selling price at a 1% rate (Section 140.106). If he is below the 35% threshold, he may, as appropriate, pay either Use Tax or Service Occupation Tax at the 1% rate on his cost price as described in Section 140.108 or 140.109. If he is a de minimis serviceman incurring a Use Tax liability on his cost price and purchases gold from out-of-State suppliers, he must self-assess and remit the Use Tax to the Department. If he is a de minimis serviceman incurring Service Occupation Tax liability on his cost price, he should provide his suppliers with Certificates of Resale.

- 3) Example: An optometrist makes sales of prescription glasses and non-prescription sunglasses. The sales of the non-prescription sunglasses are retail sales of general merchandise subject to Retailers' Occupation Tax at the 6.25% rate on the selling price. The prescription eyeglasses, however, are medical appliances subject to the 1% rate. If the optometrist is at or above the 35% threshold, he should purchase the eyeglass components with a resale certificate and pay Service Occupation Tax on his selling price at a 1% rate (see Section 140.106). If he is below the 35% threshold, he may pay Service Occupation Tax at the 1% rate on either his cost price as described in Section 140.109, or on his selling price as described in Section 140.106. If he is a de minimis serviceman incurring Service Occupation Tax liability on his cost price, he should provide his suppliers with Certificates of Resale. If the optometrist purchased the lenses from an optical lab which ground the lenses to his special order prescription, a multi-service situation would exist. See Section 140.145 for further information.

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