

ILLINOIS REGISTER  
DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3) Section Number: 150.802                      Proposed Action:  
New Section
- 4) Statutory Authority: 35 ILCS 105/12
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking adds a new section to the Use Tax regulations providing that the presence of an out-of-State retailer or its representative in Illinois for the purpose of engaging in trade show activities establishes nexus for the retailer and requires collection of Use Tax on all sales into Illinois. The rule, however, creates a “safe harbor” for retailers at trade shows. Provided that a retailer meets 3 conditions, the retailer’s presence at a trade show will not trigger collection of Use Tax on sales into Illinois. The three conditions are that the retailer attends no more than 2 trade shows per calendar year; is physically present at those 2 trade shows for an aggregate total of no more than 8 days during any calendar year; and combined gross receipts from sales made at the 2 trade shows during any single calendar year do not exceed \$10,000. The regulation describes the types of activities that count toward the 8-day physical presence limitation; sets out how a “day” is calculated; and provides additional information to assist retailers in determining whether their activities fall within the safe harbor created by the rule. The rule specifies that any sales made in Illinois during the trade show (using the sourcing rules at Section 270.115) are subject to Retailers’ Occupation Tax Act and applicable local taxes. The rule defines “trade show activities,” and provides examples of trade shows that are included within or excluded from the scope of the regulation.
- 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.
- 9) Does this rulemaking contain incorporations by reference? No.
- 10) Are there any other proposed rulemakings pending on this Part? No.
- 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:

Jerilynn Troxell Gorden

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Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794

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13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: This rule affects any out-of-State retailer present in Illinois for the purpose of participating in trade show activities.
- 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 Amendment begins on the next page:

**Section 150.802 Trade Show Appearances**

- a) Except as provided in subsection (b) of this Section, the presence of an out-of-State retailer or its representative in Illinois to engage in trade show activities brings that retailer within the definition found in Section 2 of the Use Tax Act of a “retailer maintaining a place of business in this State.” As a result, the out-of-State retailer is required to register with the Department and collect and remit Use Tax on all sales to Illinois purchasers.
- b) Safe Harbor – Requirements. The presence in Illinois of an out-of-State retailer for purposes of engaging in trade show activities will not result in the determination that the retailer is a “retailer maintaining a place of business in this State” if the retailer meets each of the following 3 conditions:
  - 1) The retailer attends no more than two Illinois trade shows during any calendar year.
  - 2) The retailer is physically present at those two Illinois trade shows for an aggregate total of no more than eight days during any calendar year. For purposes of calculating the eight days, the Department will apply the following criteria:
    - A) Days during which a retailer is present in Illinois but is not engaged in activity related to the trade show will not count toward the eight day limit. For example, a retailer arrives in Illinois on the day before a trade show begins and stays in a hotel the night before the trade show. The day before the trade show begins will not count as one of the eight days. Similarly, if a retailer stays in Illinois as a tourist for three days after the trade show, those three days will not count toward the eight days.

- B) It does not matter whether the retailer has one representative at the Illinois trade show or more than one representative at the Illinois trade show. In both situations, each day of the trade show only counts as one of the eight days.
- C) Any portion of a day that a retailer is physically present at an Illinois trade show counts as a whole day. For example, if the only representative at the trade show leaves the trade show after one hour, that hour counts as a whole day.
- D) Days spent setting up displays prior to a trade show and days spent tearing down displays after a trade show do not count toward the eight days.

3) Combined gross receipts from sales made at all Illinois trade shows during any single calendar year do not exceed \$10,000.

c) For purposes of this Section, a representative need not be an agent. It does not matter that a representative may engage in business on his or her own account in other transactions, nor that he or she may act as a representative for other persons in other transactions. Similarly, it does not matter that a representative is not an employee but is an independent contractor acting as a representative. The term "representative" is broader than the term "employee," and includes anyone acting under the seller's authority.

d) "Trade show activity" means any activity, traditionally conducted at conventions, trade shows or similar meetings, whose purpose is, in whole or part, to create, maintain or enhance a business market in Illinois. "Trade show activity" includes activities to attract persons in an industry generally, as well as members of the public, to the trade show for the purpose of displaying industry products or to stimulate interest in and demand for industry products or services, or to educate persons engaged in the industry in the development of new products and services.

e) Sales made by retailers at an Illinois trade show are subject to Retailers' Occupation Tax, including applicable local taxes, regardless of whether the retailer falls within the safe harbor for Use Tax collection or of the amount of gross receipts from sales at the trade show. For rules regarding liability for Retailers' Occupation Tax and applicable local taxes, see the provisions of 86 Ill. Adm. Code 270.115. Retailers making retail sales at Illinois trade shows must be registered under the Retailers' Occupation Tax Act ("Act")(see 86 Ill. Adm. Code 130.701) and must file all returns required under that Act (see 86 Ill. Adm. Code 130.501).

f) EXAMPLE 1: An athletic clothing and shoe retailer located outside Illinois maintains a display booth at a sports and fitness exposition that runs for 2 days immediately prior to the Chicago Marathon. Attendance at the expo is the only activity of the retailer in Illinois during the calendar year. At the expo, the retailer displays new merchandise to race participants, provides information to local athletic stores regarding its product line, and distributes promotional materials such as t-shirts, hats and other gear. The retailer also makes sales at the expo totaling \$20,000. Presence at the expo creates nexus for the retailer. While the retailer only attends 1 trade show for less than 8 days, its sales total more than \$10,000. As a result, the retailer has not met all 3 requirements necessary for safe harbor. Its presence at the expo requires it to collect Use Tax on sales made into Illinois from its out of State location. As explained in subsection (e) of this Section, all sales (\$20,000) made at the trade show by the retailer are subject to Retailers' Occupation Tax.

EXAMPLE 2: An out-of-State flooring manufacturer attends 2 trade shows in Illinois each year for the purpose of exhibiting its products to builders, contractors and the general public.

Seven employees of the manufacturer attend each show and are physically present for a combined total of 10 days. The employees are present for 2 of the 10 days for purposes of setting up and tearing down displays. No sales are made at the trade shows. The manufacturer's attendance at the trade shows meets all 3 requirements for safe harbor. Consequently, the manufacturer is not required to collect Use Tax on sales into Illinois from its out-of-State location.

EXAMPLE 3: An out-of-State retailer holds its annual management meeting in Chicago. The purpose of the meeting is to provide orientation for new managers, instruct managers about new company policies and procedures, and conduct team building exercises. The purpose of the annual meeting is not to create, maintain or enhance a business market in Illinois. Consequently, the meeting does not constitute a trade show, and the retailer's presence in Illinois for these purposes does not create tax collection obligations.

(Source: ~~Amended~~Added at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)