

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.201 The Test of a Sale at Retail

**TITLE 86: REVENUE
PART 130
RETAILERS' OCCUPATION TAX**

SUBPART B: SALE AT RETAIL

Section 130.201 The Test of a Sale at Retail

- a) Sale at Retail
- 1) "Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subject to a use for which it was purchased, for a valuable consideration, provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales.
 - 2) "Sale at retail" includes any transfer (whether made for or without a valuable consideration) of the ownership of or title to tangible personal property to a purchaser for resale in any form as tangible personal property unless made in compliance with Section 2c of the Retailers' Occupation Tax Act and Section 130.1415 of this Part concerning the purchaser's possession and furnishing of a taxpayer registration number or resale number from the Department of Revenue to the seller (see Section 130.210 of this Subpart).
 - 3) Even if the sale is at retail, the Retailers' Occupation Tax does not apply to receipts received by the seller from a sale to any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, to a limited liability company only if it is organized and operated exclusively for educational purposes, to a not-for-profit corporation, society, association, foundation, institution or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older, or from any sale that is made to a governmental body.

- b) Sales for Transfer as Gifts, etc.

Sales at retail also include any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such

purchaser transfers the tangible personal property without a valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property or service (see Sections 130.2120 and 130.2160 of this Part). For example, when a manufacturer orders, pays for and directly ships point-of-sale advertising items to retailers separately from the sale of other tangible personal property or service, the manufacturer is considered the user of the items and incurs Use Tax. For instance, when a beer manufacturer provides items, such as interior neon signs, clocks, and other devices intended to encourage a demand for the products that they manufacture, to retailers for display, the manufacturer is the user of the property and incurs Use Tax. (*Miller Brewing Company v. Korshak* (1966), 35 Ill.2d 86, 219 N.E.2d 494). However, when the tangible personal property is transferred along with other goods for which a charge is made, that transfer is deemed a sale for resale. When sewing needle display racks, for example, are transferred along with sewing needles for which a charge is made, the transfer is deemed a sale for resale. (*Boye Needle Company v. Department of Revenue* (1970), 45 Ill.2d 484, 259 N.E.2d 278). Grocery store display racks provided free of charge to grocery stores by a manufacturer, in exchange for the right to exclusively display its product on the rack, are another example of this type of sale for resale.

(Source: Amended at 24 Ill. Reg. 15104, effective October 2, 2000)