

CITY OF CHICAGO
DEPARTMENT OF REVENUECHICAGO USE TAX
FOR NONTITLED PERSONAL PROPERTY REGULATIONS

Effective date: June 1, 2004

Original effective date: March 3, 1992

1. Description of Tax

The Chicago Use Tax for Nontitled Personal Property (“Chicago Use Tax” or “tax”) is imposed upon the privilege of using in the City of Chicago nontitled tangible personal property purchased at retail on or after January 1, 1992 from a retailer located outside the City. The tax is at the rate of one percent of the property’s selling price and applies whether an item is purchased or used by an individual or a business entity. (Chicago Municipal Code (“Code”) § 3-27-030).

Every taxpayer is entitled to an annual tax credit of \$25 to be applied against the taxpayer’s aggregate tax liability for each taxable year. Code § 3-27-040. Unless the tax is collected by a retailer, any person liable for tax in an amount greater than the \$25 annual credit must pay the tax directly to the Chicago Department of Revenue (“Department”). Code § 3-27-070. Retailers who voluntarily collect the Chicago Use Tax and timely remit it to the city are allowed a fee in the form of a discount of five percent of tax collected to defray expenses in collecting and remitting the tax. Code § 3-27-080.

2. Application of State Rulings and Regulations

a. Published rulings and regulations promulgated under Illinois Use Tax Act, effective July 14, 1955, as amended, 35 ILCS 105/1 et seq., generally apply to the Chicago Use Tax unless (i) a state ruling or regulation relates to a provision of the Illinois Use Tax Act that differs in substance from the Chicago Use Tax Ordinance for Nontitled Personal Property (“Chicago Use Tax Ordinance”) or (ii) the Department has promulgated a ruling or regulation relating to the same subject.

b. All words or terms used in these Chicago Use Tax regulations that are not defined in the Chicago Use Tax Ordinance or in the Uniform Revenue Procedures Ordinance, chapter 3-4 of the Municipal Code of Chicago, as amended, have the meaning set forth in the Illinois Use Tax Act, as amended, and the rules and regulations promulgated thereunder.

3. Effective Date of Tax

For purposes of Section 3-27-030(A) of the Chicago Use Tax Ordinance, the date of purchase shall be considered the earlier of the (a) date of delivery and (b) the date the purchase price of the personal property is paid in full. Therefore, every item of

nonexempt, nontitled tangible personal property purchased at retail from an out-of-Chicago retailer for use in the city, and delivered to the purchaser on or after January 1, 1992, was subject to the Chicago Use Tax unless the item's purchase price was paid in full prior to January 1, 1992.

4. Purchases at Retail from a Retailer

a. Under the terms of the Chicago Use Tax Ordinance, a purchaser or user is liable for the Chicago Use Tax if an item of nontitled tangible personal property is purchased at retail from a retailer located outside the city for use in the city. See Code § 3-27-030(A). For purposes of the Chicago Use Tax, an item of nontitled tangible personal property is purchased at retail if the purchaser acquires ownership of, or title to, the property through a sale at retail.

b. The terms "sale at retail" and "retailer" have the meanings set forth in Section 2 of the Illinois Use Tax Act, as amended. In general (and subject to all the exceptions and conditions contained in the Illinois Use Tax Act, as amended): (a) "sale at retail" means any transfer of ownership of, or title to, nontitled tangible personal property to a purchaser for the purpose of use, and not for the purpose of resale, in any form as nontitled tangible personal property to the extent not first subject to a use for which it was purchased; and (b) "retailer" means every person engaged in the business of making sales at retail.

c. Examples

(1) Manufacturer A purchases materials to be used as constituents in producing steel. Because the materials are deemed to be purchased for the purpose of resale, rather than for use, under the definition of "sale at retail," no tax is due.

(2) Distributor B purchases promotional materials from a supplier located outside the City. Distributor B thereupon transfers the materials without charge to a Chicago retailer who will use the materials in the city. Because the sale of the materials to distributor B is a sale at retail, Chicago Use Tax is due.

(3) Construction contractor C purchases steel and lumber from a supplier located in Indiana to be used to construct an office building in the City. The construction contractor is liable for Chicago Use Tax on the purchase price of the steel and lumber.

5. Depreciation Allowed for Out-of-City Use

Section 3-27-030(C) of the Chicago Use Tax Ordinance states that if nontitled tangible personal property is used outside the City before being brought into the City for

use in the City, its “selling price” for purposes of computing Chicago Use Tax shall be reduced by an amount representing a reasonable allowance for depreciation attributable to the period of out-of-city use. For purposes of this provision, depreciation shall be determined by using the straight line method of depreciation, and an item’s useful life shall be as provided in the U.S. Internal Revenue Code, as amended. Depreciation shall be calculated on a monthly basis with no adjustment for fractions of a month.

6. Credits to Prevent Multiple Taxation

To prevent multiple taxation, a taxpayer who purchases nontitled tangible personal property for use in the City from a retailer located outside the City may take a credit equal to any municipal tax due and payable that the taxpayer in fact has paid to another municipality in any state with respect to the sale, purchase or use of the property, whether or not the municipal is a home rule tax. For example, a purchaser of nontitled tangible personal property may take a credit equal to the amount of Home Rule Municipal Retailers’ Occupation Tax paid. No credit may be taken for any part of the Retailers’ Occupation Tax, 35 ILCS 120/1 et seq., paid to the State of Illinois.

7. Use Tax Obligation of Lessors

a. For purposes of the Chicago Use Tax, a lessor of nontitled tangible personal property is the user of the property. Therefore, if a person (wherever located) who will act as lessor purchases nontitled tangible personal property at retail from a retailer located outside the City, and the property is leased to a lessee for use in the City, the lessor is required to pay the Chicago Use Tax.

b. Examples

(1) Lessor A purchases a cash register from a manufacturer located outside the City which it will lease to a business located in the City. Lessor A is subject to the Chicago Use Tax on the purchase of the cash register.

(2) Lessor B, which is located in the suburbs, purchases raw materials from a supplier located outside of Illinois to manufacture photocopying machines. The raw materials will be incorporated into the final product by the lessor. Lessor B thereafter leases the photocopying machines to businesses for use in the City. Lessor B must pay Chicago Use Tax on the purchase price of the raw materials.

8. Boats

The purchase or use of every boat which is not in fact titled or registered with an agency of the state of Illinois and which is moored within the corporate limits of the City is subject to the Chicago Use Tax.

9. Annual Tax Credit for Married Couples

Section 3-27-040 of the Chicago Use Tax Ordinance provides for an annual tax credit of \$25. Section 3-27-070 requires every taxpayer that is liable for Chicago Use Tax in an amount greater than the annual tax credit to file a return with the Department and pay all applicable tax. For the purpose of these sections, it shall be presumed that a married couple shall have no Chicago Use Tax liability and shall not be required to file a Chicago Use Tax return if the aggregate purchase price of all nonexempt, nontitled tangible personal property they jointly purchase during a taxable year is \$5,000 or less.

10. Exempt Property

Section 3-27-050 of the Chicago Use Tax Ordinance exempts the following items of nontitled tangible personal property, and the use thereof, from the Chicago Use Tax:

- a. Items of nontitled tangible personal property which are exempt from tax under the provisions of the Illinois Use Tax Act, as amended. Examples of exempt property include, but are not limited to, pollution control facilities, manufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease and graphic arts machinery and equipment (all as further described by the Illinois Use Tax Act, as amended, and the rules and regulations promulgated thereunder);
- b. Food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption); and
- c. Prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics, for human use.

11. Exempt Uses

Section 3-27-060 of the Chicago Use Tax Ordinance exempts the following purchases and uses of nontitled-tangible personal property from the Chicago Use Tax:

- a. Use in the City of nontitled tangible personal property acquired outside the City by a nonresident natural individual if the property is brought into the City by the individual for his or her own use while temporarily in the City or while passing through the City;
- b. Use of nontitled tangible personal property either by: (a) an interstate carrier for hire as rolling stock moving in interstate commerce or (b) a lessor under a lease of at least one year, executed or in effect at the time of purchase of the property, to an interstate carrier for hire as rolling stock moving in interstate commerce but only as long as the property is so used by the interstate carrier for hire;

c. Use by an owner, lessor or shipper of nontitled tangible personal property which is utilized by an interstate carrier for hire as rolling stock moving in interstate commerce but only as long as so used by the interstate carrier for hire;

d. Temporary storage in the City of nontitled tangible personal property which is acquired outside the City and which, after being brought into the City and stored temporarily in the City, (a) is used solely outside the City, (b) is physically attached to, or incorporated into, other tangible personal property which is used solely outside the City or (c) is altered by converting, fabricating, manufacturing, printing, processing or shaping and, as altered, is used solely outside the City;

e. Temporary storage in the City of building materials and fixtures by a combination retailer and construction contractor registered with the state of Illinois, but only if the contractor thereafter incorporates the building materials and fixtures into real estate located outside the City;

f. Purchase or use of nontitled tangible personal property by a common carrier by rail which receives physical possession of the property in the City and which transports the property, or shares with another common carrier in the transportation of the property, out of the City on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of the property to a destination outside the City, for use outside the City;

g. Use in the City of nontitled tangible personal property acquired outside the City by a nonresident natural individual who has used the property outside the City for at least three months prior to bringing the property into the City; and

h. Use in the City of nontitled tangible personal property by a business which relocates to the City, or opens an office, plant or other facility in the City, if the property had been used at least three months outside the City by the business before being moved into the City.

12. Rolling Stock Exemption

a. The rolling stock exemption contained in section 3-27-060 of the Chicago Use Tax Ordinance and these regulations may be claimed only if each of the following three conditions is met: (i) the purchaser or user is either an interstate carrier for hire or a lessor of nontitled tangible personal property under a lease of one year or longer executed or in effect at the time of purchase to an interstate carrier for hire; (ii) the property purchased or used is rolling stock; and (iii) the property is used in the transportation process in interstate commerce. It does not apply to nontitled tangible personal property used by an interstate carrier or lessor solely between points in the City.

b. Example

Bus company A is an interstate carrier for hire which transports its passengers between O'Hare Airport and other points in the city. Bus company A cannot claim the rolling stock exemption with respect to its purchase or use of rolling stock such as tires for this purpose because the journeys of its passengers neither originate nor terminate outside the City.

c. A lessor that qualifies for the rolling stock exemption is required to pay the Chicago Use Tax upon expiration of its lease with the interstate carrier for hire and the reversion of the leased property. The tax shall be based upon the fair market value of the property at the time of the property's reversion and shall be paid on or before the payment due date set forth in Section 13 of these regulations.

d. A person claiming the rolling stock exemption must make available to the Department upon request a copy of the carrier's Interstate Commerce Commission (or, if applicable, other federal regulatory agency) Certificate of Authority or Illinois Commerce Commission Certificate of Authority showing that the carrier is an interstate carrier for hire.

13. Filing Returns and Tax Payments Annually or Monthly; Filing Requirements of Construction Contractors

a. Unless the tax has been collected by the seller, any person who is liable for the tax in an amount greater than the annual tax credit of \$25.00 for any taxable year shall file returns with the department and pay all applicable tax to the department as set forth below.

b. Taxpayers who are natural individuals and are not engaged in business as sole proprietors shall file an annual return and pay all applicable tax on or before the last day of February of each year. The return shall report all taxable purchases and uses for the preceding calendar year.

c. For taxpayers that primarily purchase or use nontitled tangible personal property to be incorporated into real estate (i.e., contractors), (a) all tax returns shall be filed with the department on an annual basis on or before August 15 of each year in accordance with Sections 3-4-186 and 3-4-189 of the Code, (b) all tax payments shall be made in accordance with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes), and (c) the provisions of Sections 3-4-186, 3-4-187, 3-4-188 and 3-4-189 shall control over any contrary provisions in chapter 3-27 regarding the subjects covered by those sections. It shall be presumed, unless proven otherwise by documentary evidence, that every construction contractor (as that term is defined by Regulation 130.1940 promulgated under the Retailers' Occupation Tax, 35 ILCS 120/1 et seq.) is required to file returns and pay the tax as described in this paragraph.

d. All other taxpayers (i.e., all taxpayers other than natural individuals, and real estate building contractors) shall file annual returns and pay all applicable tax on or before August 15 of each year.

e. Notwithstanding paragraphs c and d above, all taxpayers that cease to engage in a business making them responsible for paying the tax must file a final return and pay all applicable tax within 30 days after discontinuing the business.

f. All tax returns required by the Chicago Use Tax Ordinance shall be filed with the Chicago Department of Revenue -- not the Illinois Department of Revenue.