



For Immediate Release
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New Sales Tax Allocation Rules Filed Today *Emergency rules effective immediately*

SPRINGFIELD – The Illinois Department of Revenue today filed emergency rules to comply with the Supreme Court’s decision in *Hartney Fuel Oil Co. v. Hamer* (11/21/13), and provide Illinois businesses necessary guidance about how they should allocate the local sales taxes they collect from their customers.

In recent years, the Department has identified situations where a retailer artificially sourced sales to a municipality where the business of selling was not occurring in any meaningful way. In many of these cases the retailer or its advisor received in return from the municipality a rebate of up to 85% of the sales taxes paid. These schemes diverted revenues from the governmental bodies that actually provided services to the retailer, such as fire and police protection. The Department has challenged these schemes when auditing these businesses.

The Court’s decision and today’s new rules achieve a result that the Department of Revenue has sought for years. It clarifies that sales taxes must be paid in the community where the bulk of the business activities occur. These new rules will help to ensure that the correct amount of local sales tax is collected and properly distributed. No State revenue is at issue.

The emergency rules were necessary after the Illinois Supreme Court held that the prior rules were invalid because they were inconsistent with the Retailers Occupation Tax Act. The new rules provide Illinois businesses clear guidance for the vast majority of retail sales, including over the counter sales, sales where the selling activities occur out of state but are filled from in-state inventory, and other examples. In other situations where business activities are conducted at multiple locations, the rules set out the primary selling activities to be considered, such as:

- Does the location house company executives with the authority to negotiate and finalize sales transactions;
- Is this the location where purchase orders are accepted or other contracting actions that bind the seller to the sale are completed;
- Is the inventory of the goods to be sold housed in this location?

(more)

The new rules also provide additional secondary factors to be considered if needed. However, consistent with the *Hartney* decision, merely relocating purchase order acceptance to a community without conducting any other business in that community will not be sufficient to allocate sales to that community.

The emergency rules will be in effect for 150 days unless JCAR (the Joint Committee on Administrative Rules) votes by a 3/5th majority of the twelve-member panel (eight votes) to suspend them.

In addition to the emergency rules, the Department also filed today proposed permanent rules that will replace the emergency rules after the JCAR review process. There is a 45-day 1st Notice period, during which local governments, industry groups, and concerned members of the public can file comments or request a public hearing. During the 2nd Notice period, also 45 days long, the rule, and any modifications or amendments, will be reviewed by JCAR. JCAR may request additional clarification or information from the Department that must be supplied during JCAR's review. At the end of that time, if JCAR takes no action, the rules become permanent and any further changes must be filed through a new rulemaking process. In order to stop a rule from becoming permanent, 3/5th of the panel must vote to overturn the rule.

Copies of the emergency rules and the proposed permanent rules are posted at tax.illinois.gov.