

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 130 Section 130.1951 Sales of Building Materials Incorporated into Real Estate within Enterprise Zones</b>
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**TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130  
RETAILERS' OCCUPATION TAX**

**Section 130.1951 Sales of Building Materials Incorporated into Real Estate within Enterprise Zones**

- a) An exemption from Illinois Retailers' Occupation Tax liability exists for gross receipts from *qualified sales of building materials* that will be *incorporated into real estate* located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. [35 ILCS 120/5k]
  
- b) Documentation for Sales Made on and after August 6, 2002 through June 30, 2013
  - 1) "*Qualified sale*" means a sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption (Exemption Certificate) has been issued by the administrator of the enterprise zone in which the building project is located. [35 ILCS 120/5k] During this period, there is no requirement that the retailer from whom the materials are purchased be located in a jurisdiction that created the enterprise zone into which the materials will be incorporated; likewise, restrictions in the enterprise zone ordinance in effect at the retailer's location do not apply to purchases of building materials for incorporation into another enterprise zone. The municipality or county that created the enterprise zone into which the materials will be incorporated can limit the exemption by ordinance, except that the ordinance may not require that the materials be purchased from any class of retailers, and it may not prohibit the purchase being made from any class of retailers. All "qualified sales" of building materials sold for incorporation into any Illinois enterprise zone are eligible for the exemption.
  
  - 2) The Certificate of Eligibility for Sales Tax Exemption must contain:
    - A) a statement that the building project identified in the Certificate meets all of the requirements of the enterprise zone ordinance of the jurisdiction in which the building project is located;
  
    - B) the location or street address of the building project that is the subject of the Certificate;
  
    - C) the signature of the administrator of the enterprise zone in which the building project is located.

- 3) Certification. A retailer claiming the exemption on and after August 6, 2002 through June 30, 2013, must have among its books and records:
  - A) a copy of the Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated; and
  - B) a certification from the purchaser of the building materials containing the following:
    - i) a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone,
    - ii) the location or address of that real estate,
    - iii) the name of the enterprise zone in which that real estate is located,
    - iv) a description of the building materials being purchased for incorporation into that real estate,
    - v) the date of the purchase, and
    - vi) the purchaser's signature.
- c) Issuance of Exemption Certificates for Purchases Made on and after July 1, 2013
  - 1) *On and after July 1, 2013, "qualified sale" means a sale of building materials that will be incorporated into real estate as part of a building project for which an Enterprise Zone Building Materials Exemption Certificate (Exemption Certificate) has been issued to the purchaser by the Department. A construction contractor or other entity shall not make tax-free purchases unless it has an active Exemption Certificate issued by the Department at the time of the purchase. [35 ILCS 120/5k(a)] The exemption allowed by this Section for the sale of building materials may be limited to the extent authorized by ordinance by the municipality or county that created the enterprise zone into which the building materials will be incorporated. The ordinance, however, may neither require nor prohibit the purchase of building materials from any retailer or class of retailers in order to qualify for the exemption allowed under Section 5k of the Retailers' Occupation Tax Act. [35 ILCS 120/5k(d)]*
  - 2) *Upon request from an enterprise zone administrator, the Department shall issue an Exemption Certificate for each construction contractor or other entity identified by the enterprise zone administrator. The Department shall make the Exemption Certificates available directly to each enterprise zone administrator, construction contractor or other entity.*
    - A) *The request for an Exemption Certificate from the enterprise zone administrator to the Department must include the following information:*

- i) *the name, address, telephone number and e-mail address of the construction contractor or other entity;*
  - ii) *the name and number of the enterprise zone;*
  - iii) *the name and location or address of the building project in the enterprise zone;*
  - iv) *the estimated amount of the exemption for each construction contractor or other entity for which a request for Exemption Certificate is made, based on a stated estimated average tax rate and the percentage of the contract that consists of materials;*
  - v) *the period of time over which supplies for the project are expected to be purchased; and*
  - vi) *the FEIN of the applicant.*
- B) *The Department shall issue an Exemption Certificate within 3 business days after receipt of a request from the zone administrator, unless the Department, for reasonable cause, is unable to issue an Exemption Certificate within 3 business days. Examples of "reasonable cause" include, but are not limited to, receipt of a request lacking all the information required by subsection (c)(2)(A), the receipt of a large number of requests for Exemption Certificates from a zone administrator, or lack of sufficient staff to process the number of existing requests.*
- C) *The Department may refuse to issue an Exemption Certificate if the owner, any partner, or a corporate officer, and in the case of a limited liability company, any manager or member, of the construction contractor or other entity is or has been the owner, a partner, a corporate officer, and in the case of a limited liability company, a manager or member, of a person that is in default for moneys due to the Department under this Act or any other tax or fee Act administered by the Department.*
- D) *The request for an Exemption Certificate must be submitted electronically.*
- E) *An Exemption Certificate shall be effective for no more than 2 years after the date of issuance. At the request of a zone administrator, the Department may renew an Exemption Certificate.*
- F) *After the Department issues an Exemption Certificate for a given enterprise zone building project, an enterprise zone administrator may notify the Department of additional construction contractors or other entities eligible for Exemption Certificates. Upon notification by an enterprise zone administrator, and subject to the other provisions of this subsection (c), the Department shall issue an Exemption Certificate to each additional construction contractor or other entity identified by the enterprise zone administrator.*

- G) *An enterprise zone administrator may notify the Department to rescind an Exemption Certificate previously issued by the Department but that has not yet expired. Upon notification by the enterprise zone administrator, and subject to the other provisions of this subsection (c), the Department shall issue the rescission of the Exemption Certificate to the construction contractor or other entity identified by the enterprise zone administrator and provide a copy to the enterprise zone administrator. [35 ILCS 120/5k]*
- 3) *Notwithstanding anything to the contrary in this subsection (c), for Enterprise Zone building projects already in existence and for which construction contracts are already in place on July 1, 2013, the request for Exemption Certificates from an enterprise zone administrator to the Department for pre-existing construction contractors and other entities must include the information required under subsection (c)(2)(A), but need not include the information listed in subsections (c)(2)(A)(iv) and (v). For any new construction contract entered into on or after July 1, 2013, however, all of the information in subsection (c) of this Section must be provided. [35 ILCS 120/5k(a)]*
- d) Documentation of the Exemption for Purchases made on or after July 1, 2013
- 1) *On and after July 1, 2013, to document the exemption allowed under this Section, the retailer must obtain from the purchaser the purchaser's Exemption Certificate number issued by the Department, along with a copy of the certification required by subsection (d)(2). [35 ILCS 120/5k(b)] A construction contractor or other entity shall not make tax-free purchases unless it has an active Exemption Certificate issued by the Department at the time of purchase. [35 ILCS 120/5k(a)]*
- 2) *The retailer must obtain a certification from the purchaser that contains:*
- A) *a statement that the building materials are being purchased for incorporation into real estate located in an Illinois enterprise zone;*
- B) *the location or address of the real estate into which the building materials will be incorporated;*
- C) *the name of the enterprise zone in which that real estate is located;*
- D) *a description of the building materials being purchased;*
- E) *the purchaser's Exemption Certificate number issued by the Department; and*
- F) *the purchaser's signature and date of purchase [35 ILCS 120/5k(c)].*
- 3) *The retailer may comply with this subsection (d) certification requirement by securing from the purchaser a completed and signed Form EZ-1.*
- e) **Qualified Sales of Tangible Personal Property.** In order to qualify for the building materials exemption under this Section, the materials being purchased must be building

materials. That is, they must be purchased for physical incorporation into real estate. For example, gross receipts from sales of:

- 1) common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the exemption;
  - 2) plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the exemption;
  - 3) heating systems and components thereof such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators can qualify for the exemption;
  - 4) electrical systems and components thereof such as wiring, outlets and light fixtures that are physically incorporated into the real estate can qualify for the exemption;
  - 5) central air conditioning systems, ventilation systems and components thereof that are physically incorporated into the real estate can qualify for the exemption;
  - 6) built-in cabinets and other woodwork that are physically incorporated into the real estate can qualify for the exemption;
  - 7) built-in appliances such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate can qualify for the exemption;
  - 8) floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips") can qualify for the exemption.
- f) Sales of Tangible Personal Property that Do Not Qualify for the Exemption. Items that are not physically incorporated into the real estate cannot qualify for the exemption. For example, gross receipts from sales of:
- 1) tools, machinery, equipment, fuel, forms and other items that may be used by a construction contractor at an enterprise zone building site, but that are not physically incorporated into the real estate, do not qualify for the exemption;
  - 2) free-standing appliances such as stoves, ovens, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers that may be connected to and operate from a building's electrical or plumbing system but which do not become a component of those systems do not qualify for the exemption;
  - 3) floor coverings that are area rugs or that are attached to the structure using only two-sided tape do not qualify for the exemption.
- g) Penalties – Revocation – Protest Procedures

- 1) *If the Department determines that a construction contractor or other entity that was issued an Exemption Certificate under subsection (c) made a tax-exempt purchase, as described in this Section, that was not eligible for exemption under this Section, or allowed another person to make a tax-exempt purchase, as described in this Section, that was not eligible for exemption under this Section, then, in addition to any tax or other penalty imposed, the construction contractor or other entity is subject to a penalty equal to the tax that would have been paid by the retailer under the Act, including any applicable local retailers' occupation tax on the purchase that was not eligible for the exemption.*
- 2) *Each contractor or other entity that has been issued an Exemption Certificate under Section 5k of the Retailers' Occupation Tax Act shall annually report to the Department the total tax benefits for taxes imposed by the State that are received under Enterprise Zone building materials exemption broken down by Enterprise Zone. Reports are due no later than May 31 of each year and shall cover the previous calendar year. Failure to report data may result in revocation of the Exemption Certificate issued to the contractor or other entity. [20 ILCS 655/8.1(a-5)].*
- 3) **Suspension of Exemption Certificate for Failure to Report Data.** A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (g)(2) shall have the Exemption Certificate for which it failed to report suspended.
  - A) **First Offense:** A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (g)(2) shall have the Exemption Certificate suspended until the contractor or other entity complies with the reporting requirements of subsection (g)(2).
  - B) **Second Offense:** A contractor or other entity that fails to comply with the reporting requirements or deadlines provided in subsection (g)(2) for two reporting periods within a five-year period shall have all Exemption Certificates issued to it suspended until 30 days after the contractor or other entity complies with the reporting requirements of subsection (g)(2).
  - C) **Subsequent Offenses:** A contractor or other entity that fails to comply with the reporting requirements or deadlines of subsection (g)(2) for more than two reporting periods within a five-year period shall have all Exemption Certificates issued to it suspended until 180 days after the contractor or other entity complies with the reporting requirements of subsection (g)(2).
- 4) **Suspension or Revocation of Exemption Certificate for Both Failure to Report Data and Unlawful Use of Exemption Certificate.** The Department shall suspend or revoke the Exemption Certificate of a contractor or other entity found to have both failed to comply with the reporting requirements of subsection (g)(2) and to have used an Exemption Certificate in violation of subsection (g)(1), as follows:
  - A) **First Offense:** In addition to all other penalties provided by law, a first offense shall result in the suspension of all Exemption Certificates issued to a contractor or other entity for 1 year.

- B) Second Offense: In addition to all other penalties provided by law, a second offense shall result in permanent revocation of all Exemption Certificates issued to the contractor or other entity.
- 5) Ineligibility. A contractor or other entity is not eligible to receive additional Exemption Certificates during the period that one or more Exemption Certificates issued to it are subject to suspension or revocation.
- 6) Protest Procedures. Any person aggrieved by any decision of the Department under subsections (g)(3) through (g)(4) may, within 20 days after notice of the decision, protest and request a hearing, whereupon the Department shall give notice to that person of the time and place fixed for a hearing and shall hold a hearing and then issue its final administrative decision in the matter to that person. In the absence of a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

(Source: Amended at 39 Ill. Reg. 14615, effective October 22, 2015)