

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Parking Excise Tax
- 2) Code Citation: 86 Ill. Adm. Code 195
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
195.100	New Section
195.105	New Section
195.110	New Section
195.115	New Section
195.120	New Section
195.125	New Section
195.130	New Section
195.135	New Section
195.140	New Section
195.145	New Section
195.150	New Section
- 4) Statutory Authority: 35 ILCS 525/10-50; 35 ILCS 120/12.
- 5) A Complete Description of the Subjects and Issues Involved: The proposed rules implement PA 101-31, codified at 35 ILCS 525. Beginning on January 1, 2020, a tax is imposed on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles. The tax is imposed at the rate of 6% of the purchase price for a parking space paid for on an hourly, daily, or weekly basis; and 9% of the purchase price for a parking space paid for on a monthly or annual basis.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 rulemakings pending on this Part? No

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- 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:  
  
Richard S. Wolters  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield IL 62794  
  
217/782-2844
- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any person, except the federal government, the State, municipalities, counties and special districts, who engages in the business of operating a parking area or garage for consideration, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking or storage of motor vehicles, recreational vehicles, or other self-propelled vehicles, at that parking place, must collect and remit the tax imposed on the purchaser of the parking space. If the federal government, the State, municipalities, counties or special districts enter into an agreement with a third-party to operate the parking area or garage, the third-party must collect and remit the tax. Persons that operate 3 or fewer parking spaces are exempt from collecting the tax.
  - B) Reporting, bookkeeping or other procedures required for compliance: General bookkeeping, accounting and computer skills
  - C) Types of professional skills necessary for compliance: General bookkeeping, accounting and computer skills
- 14) Small Business Impact Analysis:
  - A) Types of businesses subject to the proposed rule:

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B) Categories that the agency reasonably believes the rulemaking will impact, including:

- ii. regulatory requirements;
- iii. record keeping;

15) Regulatory Agenda on which this rulemaking was summarized: July 2019

The full text of the Proposed Rules begins on the next page:

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TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUEPART 195  
PARKING EXCISE TAX

Section	
195.100	Nature of the Tax
195.105	Definitions
195.110	Tax Imposed
195.115	Exemptions from Tax
195.120	Collection of Tax
195.125	Filing of Returns
195.130	Books and Records
195.135	Registration of Operators
195.140	Revocation of Certificate of Registration
195.145	Valet Services
195.150	Incorporation by Reference

AUTHORITY: Implementing the Parking Excise Tax Act [35 ILCS 525].

SOURCE: Adopted at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 195.100 Nature of the Tax**

- a) *Beginning January 1, 2020, the Parking Excise Tax Act ("Act") [35 ILCS 525] imposes a tax on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles. (Section 10-10(a) of the Act)*
- b) The tax is imposed upon the person purchasing and using a parking space in a parking area or garage. *The tax is collected from the purchaser by the operator of the parking area or garage. (Section 10-10(b) of the Act)*

**Section 195.105 Definitions**

*"Booking intermediary" means any person or entity that facilitates the processing and fulfillment of reservation transactions between an operator and a person or entity desiring parking in a parking lot or garage of that operator.*

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*"Charge or fee paid for parking" means the gross amount of consideration for the use or privilege of parking a motor vehicle in or upon any parking lot or garage in the State, collected by an operator and valued in money, whether received in money or otherwise, including cash, credits, property, and services, determined without any deduction for costs or expenses, but not including charges that are added to the charge or fee on account of the tax imposed by the Act or on account of any other tax imposed on the charge or fee. "Charge or fee paid for parking" excludes separately stated charges not for the use or privilege of parking and excludes amounts retained by or paid to a booking intermediary for services provided by the booking intermediary. If any separately stated charge is not optional, it shall be presumed that it is part of the charge for the use or privilege of parking.*

*"Department" means the Department of Revenue.*

*"Motor vehicle" means a motor vehicle as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5].*

*"Operator" means any person who engages in the business of operating a parking area or garage, or who, directly or through an agreement or arrangement with another party, collects the consideration for parking or storage of motor vehicles, recreational vehicles, or other self-propelled vehicles, at that parking place. This includes, but is not limited to, any facilitator or aggregator that collects from the purchaser the charge or fee paid for parking. "Operator" does not include a bank, credit card company, payment processor, booking intermediary, or person whose involvement is limited to performing functions that are similar to those performed by a bank, credit card company, payment processor, or booking intermediary.*

*"Parking area or garage" means any real estate, building, structure, premises, enclosure or other place, whether enclosed or not, except a public way, within the State, where motor vehicles, recreational vehicles, or other self-propelled vehicles, are stored, housed or parked for hire, charge, fee or other valuable consideration in a condition ready for use, or where rent or compensation is paid to the owner, manager, operator or lessee of the premises for the housing, storing, sheltering, keeping or maintaining motor vehicles, recreational vehicles, or other self-propelled vehicles. "Parking area or garage" includes any parking area or garage, whether the vehicle is parked by the owner of the vehicle or by*

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*the operator or an attendant.* "Parking area or garage" includes a self-storage unit capable of storing a motor vehicle, recreational vehicle or self-propelled vehicle when the lessor of the storage unit has knowledge of the contents of the storage unit at the time the storage unit is leased.

*"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court.*

"Public way" means any passageway (e.g., alley, road, highway, boulevard, turnpike) or part thereof (e.g., a bridge) open as a right-of-way to the public and designed for travel.

*"Purchase price" means the consideration paid for the purchase of a parking space in a parking area or garage, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property, and shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever. "Purchase price" includes any and all charges that the recipient pays related to or incidental to obtaining the use or privilege of using a parking space in a parking area or garage, including but not limited to any and all related markups, service fees, convenience fees, facilitation fees, cancellation fees, overtime fees, or other such charges, regardless of terminology. If credit is extended, then the amount of the credit shall be included only as and when payments are made. However, "purchase price" shall not include consideration paid for:*

*optional, separately stated charges not for the use or privilege of using a parking space in the parking area or garage. For example, separately stated charges for washing and waxing a motor vehicle, oil changes, installation of accessories, and repairs are not included in the purchase price;*

*any charge for a dishonored check;*

*any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;*

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*any purchase by a purchaser if the operator is prohibited by Federal or State Constitution, treaty, convention, statute or court decision from collecting the tax from the purchaser. Consideration paid for parking in a parking space in a parking area or garage by the federal government, the State, or a foreign mission that possesses an active tax exemption number is not included in the purchase price;*

*the isolated or occasional sale of parking spaces subject to tax under this Act by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling of parking spaces;*

*any amounts added to a purchaser's bill because of charges made pursuant to the tax imposed by the Act; and*

any amounts added to a purchaser's bill because of charges made pursuant to a tax imposed on the purchaser by a county or municipal ordinance for the privilege of using a parking space in a parking area or garage.

"Purchaser" means any person who acquires a parking space in a parking area or garage for use for valuable consideration.

"Recreational vehicle" means a recreational vehicle as defined in Section 1-169 of the Illinois Vehicle Code.

"Self-propelled vehicle" means a vehicle propelled by its own engine or motor. "Self-propelled vehicle" includes, but is not limited to, all-terrain vehicles, autocycles, low-speed electric vehicles, low-speed gas vehicles, mopeds, motor driven cycles and motorcycles. "Self-propelled vehicle" does not include airplanes, boats and watercraft.

*"Use" means the exercise by any person of any right or power over, or the enjoyment of, a parking space in a parking area or garage subject to tax under the Act. (Section 10-5 of the Act)*

**Section 195.110 Tax Imposed**

- a) *Beginning on January 1, 2020, a tax is imposed on the privilege of using in this State a parking space in a parking area or garage for the use of parking one or more motor vehicles, recreational vehicles, or other self-propelled vehicles.*

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- 1) *The tax is imposed at the rate of:*
  - A) *6% of the purchase price for a parking space paid for on an hourly, daily, or weekly basis; and*
  - B) *9% of the purchase price for a parking space paid for on a monthly or annual basis. (Section 10-10 of the Act)*
- 2) The rate of tax shall be determined based on the rental period agreed to by the operator and the purchaser in the contract for the parking space.

EXAMPLE: A purchaser contracts with an operator to rent a parking space on a month-to-month basis. The contract permits the purchaser to make payments twice a month. The tax is imposed at the rate of 9%.

- b) *The tax shall be collected from the purchaser by the operator.*
- c) *An operator that has paid or remitted the tax imposed by the Act to another operator in connection with the same parking transaction, or the use of the same parking space, that is subject to tax under the Act, shall be entitled to a credit for the tax paid or remitted against the amount of tax owed under the Act, provided that the other operator is registered under the Act. The operator claiming the credit shall have the burden of proving it is entitled to claim a credit. (Section 10-10 of the Act) An invoice to the operator that separately states "tax paid" or states "all taxes included" is sufficient documentation to permit the operator to claim the credit.*
- d) The operator of a parking area or garage must collect the tax on the purchase of all parking spaces in a parking area or garage unless the operator is exempt from collecting the tax or the tax is not due on the transaction. The Act does not provide an exemption for purchases of parking spaces by a person that intends to resell the parking spaces.

EXAMPLE 1: A company provides a service in which an individual may contact the company by use of the Internet to locate and rent a parking space in a parking area or garage near a particular venue. The company charges the purchaser \$21.20 for the parking space and a fee of \$5 payable to the company. The garage owner charged the company \$20 for the parking space and \$1.20 in tax that is

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separately stated on the invoice. The company forwards the \$21.20 to the garage owner and retains the \$5 fee. The company must collect and remit tax on \$26.20. The company owes \$1.57 in tax and may take a credit for \$1.20 in tax paid to the owner of the parking area or garage. The garage owner must remit tax in the amount of \$1.20.

EXAMPLE 2: A company provides a service in which an individual may contact the company by use of the Internet to locate and rent a parking space in a parking area or garage. The company charges the purchaser \$30.00 for the parking space and a fee of \$5 payable to the company. The garage owner charged the company \$30 for the parking space and failed to separately state and collect the tax or state that all taxes are included in the purchase price. The company forwards the \$30 to the garage owner and retains the \$5 fee. The company must collect and remit tax on \$35. The company owes \$2.10 in tax. The garage owner must remit tax on the \$30, or \$1.80. Because the garage owner failed to separately state and collect tax on the \$30 from the company or state that all taxes are included in the purchase price, the company may not take a credit for the tax paid by the garage owner.

EXAMPLE 3: A hotel purchases the privilege of using 50 parking spaces at an adjacent parking garage at a price of \$100 per space per month for the purpose of reselling the use of the spaces to its hotel guests. The garage must charge the hotel \$109 per parking space (\$100 plus tax of \$9, using the monthly rate of 9%), and it must remit the \$9 in tax per parking space to the Department. If the hotel resells the use of a parking space to a guest at a price of \$20 per day, it must charge its guest \$21.20 (\$20 plus tax of \$1.20, using the daily rate of 6%). At the end of the month, the hotel will be required to remit the difference between the total amount of tax it collected from its guests for daily parking during the month and the \$450 in tax that it paid to the garage for the parking spaces.

EXAMPLE 4: A grocery store owner rents 10 parking spaces from an adjoining landowner for \$1,000 per month and allows its customers to park free while shopping in its store. The landowner must collect and remit tax (9% x \$1,000, or \$90) on the purchase price paid by the grocery store owner to the landowner to lease the parking spaces. The grocery store has no tax liability for providing free spaces to its customers.

EXAMPLE 5: A municipality owns and operates a parking area. It retains a company to install machines on the lot that accept electronic payments. The

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company also provides a mobile application that permits a person to pay for parking electronically. All payments made by a customer either by using the machine on the lot or the mobile application are paid to the municipality. The municipality pays the company a fee for its services. The municipality is the operator of the lot and, pursuant to Section 195.115(b), is not required to collect and remit the tax.

## e) Marketing or Facilitating Rental

- 1) A person who, for a fee, assists an operator in marketing or facilitating the rental of the operator's parking spaces, reserves parking spaces for customers in the operator's parking area or garage, collects the purchase price from customers, and remits the purchase price to the operator (less the fee if permitted by the agreement), is not engaged in the business of operating a parking area or garage if the following conditions are met:
  - A) the person has no ownership interest in, or legal right to operate, lease or license, parking areas or garages;
  - B) the operator controls and sets the inventory of parking spaces customers may reserve using the person's services;
  - C) the operator establishes the purchase price for the parking spots;
  - D) the person markets or facilitates the rental of the parking spaces at the purchase price set by the operator;
  - E) the person represents to prospective customers that all taxes are included in the purchase price or separately states the tax based on the purchase price set by the operator;
  - F) any additional fees charged to customers and retained by the person are separately stated;
  - G) the agreement requires the operator to pay, and the operator pays, the tax imposed by the Act on the purchase price established by the operator and paid by the customer; and

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- H) the operator is registered with the Department to collect and remit the tax imposed by the Act.
- 2) If the conditions listed in subsection (e)(1) are not met, the person is engaged in the business of operating a parking area or garage and is responsible for registering with the Department and collecting and remitting the tax on the purchase price received from the customer. The person may take a credit for the tax paid by the operator. The operator is responsible for remitting tax to the Department on the amount received from the person. (See subsection (c).)

EXAMPLE: A company provides a service in which an individual may contact the company by use of the Internet to locate and reserve a parking space in a parking area or garage near a particular venue. The company does not have any ownership interest in, or legal right to operate, lease or license, parking areas or garages. The operator of a garage with which the company has an agreement has advised the company that the company can reserve up to 10 spaces in the operator's garage and the purchase price for parking spaces in the garage is \$15. The company charges the purchaser \$15 for the parking space. The company states on its website that all taxes are included in the purchase price. Based on the agreement with the owner of the garage, for each space that is rented by the company, the company retains \$1 plus 10% of the \$15 purchase price paid by the purchaser. ( $\$1 + .10 \times \$15 = \$2.50$ .) Per the agreement, the company forwards the balance of \$12.50 to the garage owner. The garage owner is registered with the Department and remits tax on the \$15 purchase price. Because the agreement between the company and operator meets the requirements of subsection (e)(1), the company is not required to register with the Department and remit tax on \$2.50.

- f) If a business provides the location of available parking spaces to persons for a fee and does not collect the actual cost of parking in the selected parking area or garage, the fee is not taxable.

EXAMPLE: A company provides a web application that allows a person to locate and rent available parking spaces in the area the person wishes to find a parking space. The app also provides the purchaser with the prices for each of the available parking spaces. The fee for finding a parking space is \$5. The person selects a parking space that costs \$15 and is charged the \$5 fee. The company

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charges the purchaser the \$5 fee but does not charge the person the \$15 for the cost of the parking space. The garage owner collects the \$15 parking fee and the tax of \$0.90 from the purchaser when the purchaser enters or exits the garage. The \$5 fee is not taxable.

- g) If a lessor of commercial real estate is required by the terms of a lease to provide a minimum number of parking spaces to the lessee for use by the lessee's employees, customers, or clients, the lessor is not considered to be engaged in the business of operating a parking area or garage, unless the lease agreement identifies a specific value for the parking spaces.

EXAMPLE 1: A lessor leases 2,000 square feet of office space to a lessee for \$15,000 a month. The terms of the lease require the lessor to provide the tenant with 20 parking spaces in the parking garage and 10 surface parking spaces. The consideration for the parking spaces is not specified in monthly lease rental or on the books and records of the lessor. The parking spaces are not subject to tax.

EXAMPLE 2: A professional sports team sells season skybox tickets to attend home games for \$100,000. Six parking passes at no additional charge are included in the price of the skybox. The sports team does not separately state the value of the 6 parking passes on its books and records. The person renting a skybox also can purchase extra tickets for the standard rate of \$50 per game. The 6 parking passes included in the price of the skyboxes are not subject to tax. The purchase price paid for the extra tickets are taxable.

- h) A lessor of an enclosed storage space or unit leased for the storage of tangible personal property is not required to collect the tax unless the lessor knows at the time the lease is agreed upon or executed that the storage space or unit will be used for parking a motor vehicle, recreational vehicle or self-propelled vehicle. A lessor may obtain knowledge by receiving the information orally from the lessee or by the lessee identifying the contents of the storage unit in the lease. A lease or other material that states storage spaces or units may be used to store motor vehicles, recreational vehicles, or self-propelled vehicles, or states the storage of motor vehicles, recreational vehicles, or self-propelled vehicles is not prohibited, does not impart knowledge to the lessor at the time a lease is agreed upon or executed that the storage space or unit will be used for parking a motor vehicle, recreational vehicle or self-propelled vehicle. The fact that the lessor believes that some lessees may be using the storage spaces or units to park motor vehicles,

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recreational vehicles, or self-propelled vehicles does not impose an obligation on the lessor to collect the tax.

- i) *If any operator erroneously collects tax or collects more from the purchaser than the purchaser's liability for the transaction, the purchaser shall have a legal right to claim a refund of that amount from the operator. However, if the amount is not refunded to the purchaser for any reason, the operator is liable to pay that amount to the Department. (Section 10-10 of the Act)*
- j) If an operator advertises a single rate ("all taxes included"), the operator must determine the base amount of the purchase price to properly calculate and remit the tax.

EXAMPLE 1: A parking operator charges a customer a single rate of \$200 per week. The amount includes the 6% State tax. The operator must determine the base amount of the purchase price paid for parking. The calculation used to calculate the base amount of the purchase price paid for parking is  $\$200 \div (1 + .06) = \$188.68$ . The amount of \$188.68 is the base amount of the purchase price for determining the amount of tax. The State tax that the operator must remit is  $\$11.32 (.06 \times 188.68)$ .

EXAMPLE 2: A parking operator charges a customer a single rate of \$200 per week. The amount includes a 22% city tax, 9% county tax, and the 6% State tax. To determine the base amount of the purchase price paid for parking, the operator must first determine the combined tax rate for all qualifying parking taxes charged the customer ( $0.22 + 0.09 + 0.06 = .37$ ). The calculation used to calculate the base amount of the purchase price paid for parking is  $\$200 \div (1 + .37) = \$145.99$ . The amount of \$145.99 is the base amount of the purchase price used for determining the taxes that can be deducted from the single rate of \$200 and the amount of State tax that must be remitted by the operator. The city tax would be  $\$32.12 (.22 \times \$145.98)$ , the county tax would be  $\$13.14 (.09 \times \$145.99)$ , and the State tax that the operator must remit is  $\$8.76 (.06 \times \$145.99)$ .

- k) If a purchaser pays for the entire term of a parking space in advance (i.e., weekly, monthly, annually), the tax shall be collected and remitted in the month received.

EXAMPLE: The purchaser pays \$2,400 in January to park in a parking space for a year. The entire \$2,400 is subject to tax when received and reported on the return for January.

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**Section 195.115 Exemption from Tax**

The tax imposed by the Act shall not apply to:

- a) *parking in a parking area or garage operated by the federal government or its instrumentalities that has been issued an active tax exemption number by the Department under Section 1g of the Retailers' Occupation Tax Act [35 ILCS 120]. For this exemption to apply, the parking area or garage must be operated by the federal government or its instrumentalities. The exemption under this subsection (a) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or held in any other manner whatsoever. (Section 10-20(1) of the Act);*
- b) parking in a parking area or garage operated by the State, State universities created by statute, or a unit of local government, e.g., counties, municipalities, townships, and special districts, that have been issued an active tax exemption number by the Department under Section 1g of the Retailers' Occupation Tax Act. For this exemption to apply, the parking area or garage must be operated by the State, State universities created by statute, or the unit of local government. The exemption under this subsection (b) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or held in any other manner whatsoever;
- c) *residential off-street parking for home or apartment tenants or condominium occupants, if the arrangement for that parking is provided in the home or apartment lease or in a separate writing between the landlord and tenant, or in a condominium agreement between the condominium association and the owner, occupant, or guest of a unit, whether the parking charge is payable to the landlord, condominium association, or the operator of the parking spaces (Section 10-20(2) of the Act). The landlord, association or operator must maintain supporting documentation to substantiate the claim. A list of residents or occupants claiming the exemption maintained by the operator that has been reviewed and approved by the landlord or association qualifies as supporting documentation.*

EXAMPLE 1: A person enters into a residential lease agreement with a landlord that requires the landlord to provide 2 parking spaces to the tenant for \$100 per month. The landlord has made arrangements with an operator of a parking garage

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to make available 2 parking spaces to the tenant. The lease requires the tenant to pay the \$100 per month directly to the operator of the garage. The operator is not required to collect tax from the tenant on the use of the 2 parking spaces. The operator should obtain a copy of the lease and maintain it in its books and records.

EXAMPLE 2: A tenant with a residential lease agreement or a condominium owner is told by his or her landlord or condominium association that the landlord or condominium association has an arrangement with a parking garage operator to provide parking to the tenants or the owners that desire parking. Based on this arrangement, the tenant or condominium owner enters into an agreement for parking with the designated operator. The landlord or condominium association provides a list of tenants or owners to the operator to verify their residency. The operator can rely on that list to exempt the tenant or owner from paying the tax and the operator from remitting the tax;

- d) *parking by hospital employees in a parking space that is owned and operated by a public, private, or non-public hospital for which they work* (Section 10-20(3) of the Act). The exemption under this subsection (d) does not apply if the parking area or garage is operated by a third party, whether under a lease or other contractual arrangement, or held in any other manner whatsoever;
- e) *parking in a parking area or garage where 3 or fewer motor vehicles are stored, housed, or parked for hire, charge, fee or other valuable consideration, if the operator of the parking area or garage does not act as the operator of more than a total of 3 parking spaces located in the State. If any operator of parking areas or garages, including any facilitator or aggregator, acts as an operator of more than 3 parking spaces in total that are located in the State, then this exemption shall not apply to any of those spaces.* (Section 10-20(4) of the Act);

EXAMPLE 1: Every year a fair comes to a town. The owners of property near the fairground sell parking spaces on their property for \$10 per day. If an owner of property makes available for use more than 3 parking spaces, the owner is liable for collecting and remitting the tax.

EXAMPLE 2: A company near a baseball stadium contracts with residents near the stadium to rent space in their driveways during game days. Each resident enters into an agreement with the company to make available 3 or fewer parking spaces. As a result of the agreements with the residents, the company in the aggregate has 20 parking spaces to rent on game days. The company charges a

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purchaser \$30 for the rental of a parking space. The company must register and remit tax at the rate of 6% of the \$30 purchase price received for the rental of a parking space. The company pays the residents \$25 for each parking space that is rented by the company. Because the residents rent 3 or fewer parking spaces, the residents are not required to register and remit tax on the consideration received from the company.

EXAMPLE 3: The same facts as Example 2, except one resident enters into an agreement with the company to make 4 parking spaces available for rent. Because the resident is providing more than 3 parking spaces, the resident is required to register and remit tax on the consideration received from the rental of all 4 of the parking spaces. Because the resident does not bill the company for the parking spaces and separately state and collect tax on the \$25, the company may not take a credit for the tax paid by the resident;

- f) a person engaged in the business of renting real estate that leases real estate to a lessee that may park motor vehicles, recreational vehicles or self-propelled vehicles for the lessee's own use and not for the purpose of sub-leasing parking spaces for consideration. This person is not engaged in the business of operating a parking area or garage.

EXAMPLE 1: A car dealership leases real estate from a person to park the dealership's excess inventory. The lessor is not engaged in the business of operating a parking area or garage.

EXAMPLE 2: A car dealership leases real estate from a person to park motor vehicles for the purpose of making retail sales of the motor vehicles. The lessor is not engaged in the business of operating a parking area or garage.

EXAMPLE 3: A railroad company leases real estate to a municipality. The municipality makes improvements on the property to permit commuters to park their motor vehicles on the real estate. The railroad company is not engaged in the business of operating a parking area or garage;

- g) a person that makes *isolated or occasional sales of parking spaces subject to tax under the Act and who does not hold himself or herself out as being engaged (or who does not habitually engage) in selling of parking spaces* (Section 10-5 of the Act).

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EXAMPLE: A local promoter intends to hold a large concert on a farm and requires plenty of parking spaces for the attendees. The promoter leases a large field from a local farmer to park cars during the event. The farmer has never leased his field in the past. The farmer is exempt from collecting and remitting tax on the rental of his field to the promoter.

- h) *any transaction in interstate commerce, to the extent that the transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State (Section 10-10(e) of the Act).*

**Section 195.120 Collection of Tax**

- a) *Beginning with bills issued or charges collected for a purchase of a parking space in a parking area or garage on and after January 1, 2020, the tax imposed by the Act shall be collected from the purchaser by the operator at the rate stated in Section 195.110 and shall be remitted to the Department as provided in the Act. All charges for parking spaces in a parking area or garage are presumed subject to tax collection. Operators shall collect the tax from purchasers by adding the tax to the amount of the purchase price received from the purchaser. The tax imposed by the Act shall, when collected, be stated as a distinct item separate and apart from the purchase price of the service subject to tax under the Act. However, when it is not possible to state the tax separately, the purchases are exempt from this requirement so long as purchasers are notified by language on the invoice or notified by a sign that the tax is included in the purchase price. (Section 10-25(a) of the Act) A statement of "all tax included" on a paper or electronic receipt or invoice provided to the purchaser will be sufficient to satisfy the requirement that the tax be separately stated, as long as the purchaser can request a breakdown of the tax included amounts from the operator.*
- 1) Every operator of any parking area or garage that advertises a single rate for a parking space may include the total sum of all charges and all applicable tax in its advertised rate. Any display of a single, advertised rate shall include in a clear and conspicuous manner, the following language: "All taxes included." However, nothing in this subsection (a)(1) prevents the operator from separately stating both the parking rate and the tax.
  - 2) At events where an operator or valet service collects the purchase price for the use of a parking space in cash, it will be presumed that it is not

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possible to state the tax as a distinct item separate and apart from the purchase price. If a sign is displayed with an advertised rate, the operator must comply with subsection (a)(1).

- b) *Any person purchasing a parking space in a parking area or garage subject to tax under the Act as to which there has been no charge made to that person of the tax imposed by Section 195.110 shall make payment of the tax imposed by Section 195.110 in the form and manner provided by the Department. The payment shall be made to the Department in the manner and form required by the Department not later than the 20<sup>th</sup> day of the month following the month of purchase of the parking space. (Section 10-25(b) of the Act) This subsection does not relieve the operator of the obligation to collect the tax from the purchaser and remit the tax to the Department, nor does it negate the operator's liability for the tax.*
- c) *The tax required to be collected by any operator or valet business, and any tax collected by that person, shall constitute a debt owed by that person to the State (Section 10-45 of the Act).*

**Section 195.125 Filing of Returns**

- a) *Except as otherwise provided in this Section, on or before the last day of each calendar month, every operator engaged in the business of providing to purchasers parking areas and garages in this State during the preceding calendar month shall file a return with the Department stating:*
- 1) *the name of the operator;*
  - 2) *the address of its principal place of business;*
  - 3) *the total amount of receipts received by the operator during the preceding calendar month for sales of parking spaces to purchasers in parking areas or garages;*
  - 4) *deductions allowed by law;*
  - 5) *the total amount of receipts received by the operator during the preceding calendar month or period upon which the tax was computed;*
  - 6) *the amount of tax due; and*

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- 7) *such other reasonable information as the Department may require.*
- b) *If an operator ceases to engage in the kind of business that makes it responsible for filing returns under the Act, then that operator shall file a final return under the Act with the Department on or before the last day of the month after discontinuing that business.*
- c) *All returns required to be filed and payments required to be made under the Act shall be by electronic means. Taxpayers who demonstrate hardship in filing or paying electronically may petition the Department to waive the electronic filing or payment requirement, or both.*
- d) *If the same person has more than one business registered with the Department under separate registrations under the Act, that person shall not file each return that is due as a single return covering all such registered businesses but shall file separate returns for each such registered business. If the operator is a corporation, the return filed on behalf of that corporation shall be signed by the president, vice-president, secretary, or treasurer, or by a properly accredited agent of the corporation. When an operator operates multiple parking areas or garages under one business registration, the operator shall file one return. Upon request of the Department, an operator must provide a list of all locations where the operator engages in the business of operating a parking area or garage.*
- e) The operator filing the return under the Act shall, at the time of filing the return, pay to the Department the amount of tax imposed by the Act less a discount of 1.75%, not to exceed \$1,000 per month, which is allowed to reimburse the operator for the expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying data to the Department on request. The discount is allowed for each return that is filed pursuant to the Act and is allowed only for returns that are filed in the manner required by subsection (c).
- f) *If the Department subsequently determines that all or any part of the credit taken was not actually due to the taxpayer, the taxpayer's discount shall be reduced by an amount equal to the difference between the discount as applied to the credit taken and that actually due, and that taxpayer shall be liable for penalties and interest on that difference (Section 10-15 of the Act).*

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- g) Except as otherwise provided in subsection (k), each operator for the first year is required to file a return for each month, regardless of the fact that he or she may not have any tax liability to pay for that month. At the end of the first year, the Department will determine whether the taxpayer shall file on a quarterly or an annual basis, pursuant to subsections (h) and (i).
- h) If, after one year, the operator's average monthly tax liability to the Department does not exceed \$200, the Department may authorize the operator's returns to be filed on a quarter annual basis, with: the return for January, February and March of a given year being due on or before the last day of April of that year; the return for April, May and June of a given year being due on or before the last day of July of that year; the return for July, August and September of a given year being due on or before the last day of October of that year; and the return for October, November and December of a given year being due on or before the last day of January of the following year. Quarter annual returns, as to form and substance, shall be subject to the same requirements as monthly returns. The Department will periodically review taxpayer information, including returns filed by the taxpayer, to determine if any changes have occurred that require the taxpayer to file returns on other than a monthly or quarterly basis. If the Department determines that a change is required in filing frequency, it will notify the taxpayer of its determination.
- i) If, after one year, the operator's average monthly tax liability with the Department does not exceed \$50, the Department may authorize the operator's returns to be filed on an annual basis, with the return for a given year being due on or before the last day of January of the following year. Annual returns, as to form and substance, shall be subject to the same requirements as monthly returns. The Department will periodically review taxpayer information, including returns filed by the taxpayer, to determine if any changes have occurred that require the taxpayer to file returns on other than a quarterly basis. If the Department determines that a change is required in filing frequency, it will notify the taxpayer of its determination.
- j) Beginning January 1, 2021, if the taxpayer's average monthly tax liability to the Department under the Act was \$20,000 or more during the preceding 4 complete calendar quarters, he or she shall file a return with the Department each month by the last day of the month next following the month during which the tax liability is incurred and shall make payment to the Department on or before the 7<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup> and last day of the month during which the liability is incurred. Each

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payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year. The amount of the quarter monthly payments shall be credited against the final tax liability of the taxpayer's return for that month filed under this Section. Once applicable, the requirement of the making of quarter monthly payments to the Department pursuant to this Section shall continue until the taxpayer's average monthly prepaid tax collections during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than \$19,000 or until the taxpayer's average monthly liability to the Department, as computed for each calendar quarter of the 4 preceding complete calendar quarters, is less than \$20,000. If any such quarter monthly payment is not paid at the time or in the amount required, the taxpayer shall be liable for penalties and interest on the difference, except insofar as the taxpayer has previously made payments for that month in excess of the minimum payments previously due.

- k) An operator that will rent parking spaces in a parking area or garage for 14 days or less in a calendar year may file returns and remit tax on an annual basis.

**Section 195.130 Books and Records**

- a) Every operator shall keep records and books of all sales of parking spaces, together with invoices, sales records, copies of bills of sale, and other pertinent papers and documents. For purposes of this Section, "records" means all data maintained by the operator, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation.
- b) All books and records and other papers and documents that are required by the Act to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.
- c) It shall be presumed that all purchases of parking spaces are subject to tax under the Act until the contrary is established. The burden of proving that a transaction is not taxable under the Act shall be upon the person who would be required to remit the tax to the Department if the transaction were taxable.
- d) Any operator who fails to keep books and records or fails to produce books and records for examination, as required by this Section, is liable to pay to the

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Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000, for the first failure to keep books and records or produce books and records for examination, and a penalty of \$3,000, for each subsequent failure to keep books and records or produce books and records for examination. The penalties imposed under this Section shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence.

**Section 195.135 Registration of Operators**

- a) *A person who engages in business as an operator of a parking area or garage in this State shall register with the Department. Application for a certificate of registration shall be made to the Department, by electronic means, in the form and manner prescribed by the Department and shall contain any reasonable information the Department may require. The application shall contain the name of the person responsible for paying the tax to the Department. (See Section 3-7 of the Uniform Penalty and Interest Act [35 ILCS 735].) Upon receipt of the application for a certificate of registration in proper form and manner, the Department shall issue to the applicant a certificate of registration. Operators who demonstrate that they do not have access to the Internet or demonstrate hardship in applying electronically may petition the Department to waive the electronic application requirements. (Section 10-30(a) of the Act)*
- b) An operator that operates multiple parking areas or garages under one taxpayer identification number is not required to obtain a separate certificate of registration for each parking area or garage.
- c) *The Department may refuse to issue or reissue a certificate of registration to any applicant for the reasons set forth in Section 2505-380 of the Department of Revenue Law [20 ILCS 2505] (Section 10-30(b) of the Act).*
- d) *Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of that decision, protest and request a hearing. The Department shall give notice to the person of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act. After the hearing, the Department will issue its final administrative decision in the matter to the requestor. In the absence of a protest lodged within 20 days, the Department's decision shall become final without any further determination being made or notice given. (Section 10-30(c) of the Act)*

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**Section 195.140 Revocation of Certificate of Registration**

- a) *The Department may, after notice and a hearing as provided in the Act, revoke the certificate of registration of any operator who violates any of the provisions of the Act or this Part. Before revocation of a certificate of registration, the Department shall, within 90 days after noncompliance and at least 7 days prior to the date of the hearing, give the operator so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of the 90-day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary. Any hearing held under this Section shall be conducted by the Director or by any officer or employee of the Department designated in writing by the Director.*
- b) *The Department may revoke a certificate of registration for the reasons set forth in Section 2505-380 of the Department of Revenue Law.*
- c) *Upon the hearing of any such proceeding, the Director or any officer or employee of the Department designated in writing by the Director may administer oaths. The Department may procure by its subpoena the attendance of witnesses and, by its subpoena duces tecum, the production of relevant books and papers. Any circuit court, upon application either of the operator or of the Department, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Department in any hearing relating to the revocation of certificates of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience to the order by proceedings for contempt.*
- d) *The Department may, by application to any circuit court, obtain an injunction requiring any person who engages in business as an operator under the Act to obtain a certificate of registration. Upon refusal or neglect to obey the order of the court, the court may compel obedience by proceedings for contempt. (Section 10-35 of the Act)*

**Section 195.145 Valet Services**

- a) *Persons engaged in the business of providing valet services are subject to the tax imposed by the Act on the purchase price received in connection with their valet parking operations (Sections 10-40(a) of the Act). It shall be presumed that the*

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consideration paid by a person to an operator of valet parking includes payment for the privilege of using a parking space.

- b) A valet service that parks cars on public rights of way without charge is not subject to tax and is not required to collect the tax imposed by this Act. A valet parking operator claiming no tax liability, or claiming a reduced liability, under this subsection shall have the burden of proving to the Department that the parking occurred on the public way for free and not in a parking lot or parking garage.
- c) *Tips received by persons parking cars for operators providing valet services are not subject to the tax imposed by the Act if the tips are retained by the person receiving the tip. If the tips are turned over to the valet business, the tips shall be included in the purchase price.* (Section 10-40(c) of the Act)

EXAMPLE: A restaurant provides parking without charge. For the benefit of customers, the owner of the restaurant has employees park the cars for the customers. Customers often tip the employees for parking and returning their cars. The employees get to keep the tips. The tips are not taxable under this Act.

- d) *Persons engaged in the business of providing valet services are entitled to take the credit in Section 195.110(c)* (Section 10-40(b) of the Act).

**Section 195.150 Incorporation by Reference**

*All of the provisions of Sections 1, 2a, 2b, 3 (except provisions relating to transaction returns and except for provisions that are inconsistent with the Act, in respect to all provisions of those Sections other than the State rate of tax), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5j, 6, 6a, 6b, 6c, 6d, 7, 8, 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act that are not inconsistent with the Act, and all provisions of the Uniform Penalty and Interest Act [35 ILCS 735] shall apply, as far as practicable, to the subject matter of the Act to the same extent as if those provisions were included in the Act [35 ILCS 525/10-55].*