

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.1934 Community Water Supply

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.1934 Community Water Supply

- a) Tangible Personal Property Used in the Construction and Maintenance of a Community Water Supply – In General
Beginning January 1, 2008, tangible personal property used in the construction or maintenance of a community water supply, as defined under Section 3.145 of the Environmental Protection Act, that is operated by a not-for-profit corporation that holds a valid water supply permit issued under Title IV of the Environmental Protection Act is exempt from the tax imposed by the Retailers' Occupation Tax Act. [35 ILCS 120/2-5(39)]

- b) Definitions

"Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents. (Section 3.145 of the Environmental Protection Act [415 ILCS 5/3.145])

"Construction" means building, construction, reconstruction, alteration, replacement, extension, rehabilitation, betterment, development, embellishment, remodeling, remediation, renovation or improvement of a community water supply, and adding to or subtracting from any building, structure, plant, works or facility, or any part thereof.

"Maintenance" means routine, recurring and usual work for the preservation, protection and keeping of any community water supply for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered or repaired.

"Not-for-profit corporation" means a corporation subject to the General Not For Profit Corporation Act of 1986 [805 ILCS 105/101.01].

"Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. [415 ILCS 5/3.365]

- c) Tangible Personal Property Used in the Construction and Maintenance of a Community Water Supply – Tangible Personal Property Qualifying for the Exemption
- 1) Tangible personal property purchased and used in the construction or maintenance of structures and physical plant owned by a community water supply that is physically incorporated into the structures and physical plant qualifies for the exemption. For example, gross receipts from sales of:
 - A) storage tanks, well structures, intakes and cribs, pumps, filters, pipes, treatment facilities and plants, and appurtenances, used for the purpose of furnishing water, can qualify for the exemption;
 - B) common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the exemption;
 - C) plumbing systems and components of those systems such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the exemption;
 - D) heating systems and components of those systems such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators can qualify for the exemption;
 - E) electrical systems and components of those systems such as wiring, outlets and light fixtures that are physically incorporated into the real estate can qualify for the exemption;
 - F) central air conditioning systems, ventilation systems and components of those systems that are physically incorporated into the real estate can qualify for the exemption;
 - G) built-in cabinets physically incorporated into the real estate can qualify for the exemption;
 - H) built-in appliances such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate can qualify for the exemption; and
 - I) 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.
 - 2) Tangible personal property purchased and owned by a community water supply that is not physically incorporated into the structures and physical plant owned by a community water supply but is used in the construction and maintenance of a community water supply qualifies for the exemption. For example, gross receipts from sales of:

- A) tools, machinery and other similar items that are used to construct or maintain the community water supply qualify for the exemption;
 - B) backhoes, trenchers, bulldozers and other similar equipment used to construct or maintain the community water supply qualify for the exemption; and
 - C) trucks and motor vehicles used by field personnel to construct or maintain the community water supply for the exemption.
- 3) Tangible personal property purchased and owned by a community water supply that is not used in the construction and maintenance of a community water supply or that is not physically incorporated into the structures and physical plant owned by a community water supply does not qualify for the exemption. For example, gross receipts from sales of:
- A) motor vehicles used by managers and office personnel do not qualify for the exemption;
 - B) plants and landscaping materials do not qualify for the exemption;
 - C) concrete, cement, asphalt and outdoor lighting used in the construction or maintenance of parking facilities do not qualify for the exemption;
 - D) free-standing appliances such as stoves, oven, 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 that are not physically incorporated into the real estate do not qualify for the exemption; and
 - E) floor coverings such as rugs that do not qualify under (c)(1)(I) or that are attached to the structure or physical plant using only two-sided tape do not qualify for the exemption.
- 4) Tangible personal property purchased and owned by a community water supply used in the operation of a community public water supply does not qualify for the exemption. For example, gross receipts from sales of:
- A) fuel used to operate the community water supply, trucks, vehicles, backhoes, trenchers, bulldozers and equipment owned by the community water supply does not qualify for the exemption;
 - B) office supplies, cleaning supplies and office equipment do not qualify for the exemption;
 - C) cell phones, communication devices and personal digital assistants do not qualify for the exemption; and
 - D) chemicals or minerals such as chlorine, lime or charcoal do not qualify for the exemption.

- d) **Tangible Personal Property Purchased by Lessors for Lease to Community Water Supply Entities**
Tangible personal property that qualifies under this Section that is purchased by a lessor and leased to a community water supply does not qualify for the community water supply exemption. The exemption does not extend to lessors. Lessors of tangible personal property under true leases are deemed to be the users of that property. Consequently, lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on their cost price of the items. See 86 Ill. Adm. Code 130.220 (Sales to Lessors of Tangible Personal Property) and 86 Ill. Adm. Code 130.2010 (Persons Who Rent or Lease the Use of Tangible Personal Property to Others).
- e) **Certificates of Eligibility for Sales Tax Exemption**
- 1) To document the exemption, the retailer must obtain from the purchaser a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation that operates the community water supply. The Certificate of Eligibility for Sales Tax Exemption must be obtained by the retailer at the time of sale. If the retailer obtains the necessary certifications from the community water supply, the retailer shall be relieved of any tax liability relating to the sale in the event the tangible personal property purchased by the community water supply from the retailer is not used by the community water supply in the construction or maintenance of the community water supply identified in the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation.
 - 2) The Certificate of Eligibility for Sales Tax Exemption must contain all of the following:
 - A) the name of the not-for-profit corporation operating the community water supply;
 - B) the location or address of the community water supply;
 - C) a statement that the community water supply identified in the Certificate meets all the requirements of Section 2-5(39) of the Retailers' Occupation Tax Act;
 - D) a statement that the not-for-profit corporation is in good standing and has not been dissolved; in addition, a foreign not-for-profit corporation shall also state that it has obtained a certificate of authority to conduct affairs in this State and the certificate has not been withdrawn;
 - E) a description of the tangible personal property being purchased;
 - F) a statement that the tangible personal property is either:
 - i) being purchased and used in the construction or maintenance of structures and physical plant owned by a community water supply and physically incorporated into the structures and physical plant; or

- ii) being purchased for use in the construction or maintenance of a community water supply by a community water supply;
 - G) the signature of the chief executive officer of the not-for-profit corporation operating the community water supply or the chief executive officer's duly authorized designee.
- f) Contractors
 - 1) This exemption extends to and includes qualifying tangible personal property identified in subsection (c)(1) used in the construction or maintenance of a community water supply purchased by a contractor who transfers the tangible personal property in fulfillment of a construction contract with a not-for-profit corporation that operates a community water supply. This community water supply exemption does not extend to contractors purchasing tangible personal property identified in subsection (c)(2). To document the exemption, the contractor should certify to the retailer that the qualifying tangible personal property will be used in the construction or maintenance of a community water supply and provide the retailer with a copy of the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation that operates the community water supply.
 - 2) If the retailer obtains the necessary certifications from the contractor, the retailer shall be relieved of any tax liability relating to the sale in the event the tangible personal property purchased by the contractor from the retailer is not used by the contractor in the construction or maintenance of the community water supply identified in the Certificate of Eligibility for Sales Tax Exemption issued by the not-for-profit corporation. If it is subsequently determined that the tangible personal property was not used by the contractor in the construction or maintenance of a community water supply, the contractor shall be liable for Use Tax on the purchase of the tangible personal property for which an exemption was claimed under this Section. The contractor shall be liable for Use Tax on tangible personal property physically incorporated into a community water supply when the tangible personal property or the community water supply does not qualify for the exemption provided by this Section.
- g) Sunset

The exemption for tangible personal property used in the construction or maintenance of a community water supply contained in Section 2-5(39) of the Retailers' Occupation Tax Act and this Section is not subject to the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act.

(Source: Added at 34 Ill. Reg. 9405, effective June 23, 2010)