



Sen. Cristina Castro

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LRB100 05137 HLH 25762 a

1 AMENDMENT TO SENATE BILL 474

2 AMENDMENT NO. _____. Amend Senate Bill 474 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Use Tax Act is amended by changing Section
5 2 as follows:

6 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

7 Sec. 2. Definitions.

8 "Use" means the exercise by any person of any right or
9 power over tangible personal property incident to the ownership
10 of that property, except that it does not include the sale of
11 such property in any form as tangible personal property in the
12 regular course of business to the extent that such property is
13 not first subjected to a use for which it was purchased, and
14 does not include the use of such property by its owner for
15 demonstration purposes: Provided that the property purchased
16 is deemed to be purchased for the purpose of resale, despite

1 first being used, to the extent to which it is resold as an
2 ingredient of an intentionally produced product or by-product
3 of manufacturing. "Use" does not mean the demonstration use or
4 interim use of tangible personal property by a retailer before
5 he sells that tangible personal property. For watercraft or
6 aircraft, if the period of demonstration use or interim use by
7 the retailer exceeds 18 months, the retailer shall pay on the
8 retailers' original cost price the tax imposed by this Act, and
9 no credit for that tax is permitted if the watercraft or
10 aircraft is subsequently sold by the retailer. "Use" does not
11 mean the physical incorporation of tangible personal property,
12 to the extent not first subjected to a use for which it was
13 purchased, as an ingredient or constituent, into other tangible
14 personal property (a) which is sold in the regular course of
15 business or (b) which the person incorporating such ingredient
16 or constituent therein has undertaken at the time of such
17 purchase to cause to be transported in interstate commerce to
18 destinations outside the State of Illinois: Provided that the
19 property purchased is deemed to be purchased for the purpose of
20 resale, despite first being used, to the extent to which it is
21 resold as an ingredient of an intentionally produced product or
22 by-product of manufacturing.

23 "Watercraft" means a Class 2, Class 3, or Class 4
24 watercraft as defined in Section 3-2 of the Boat Registration
25 and Safety Act, a personal watercraft, or any boat equipped
26 with an inboard motor.

1 "Purchase at retail" means the acquisition of the ownership
2 of or title to tangible personal property through a sale at
3 retail.

4 "Purchaser" means anyone who, through a sale at retail,
5 acquires the ownership of tangible personal property for a
6 valuable consideration.

7 "Sale at retail" means any transfer of the ownership of or
8 title to tangible personal property to a purchaser, for the
9 purpose of use, and not for the purpose of resale in any form
10 as tangible personal property to the extent not first subjected
11 to a use for which it was purchased, for a valuable
12 consideration: Provided that the property purchased is deemed
13 to be purchased for the purpose of resale, despite first being
14 used, to the extent to which it is resold as an ingredient of
15 an intentionally produced product or by-product of
16 manufacturing. For this purpose, slag produced as an incident
17 to manufacturing pig iron or steel and sold is considered to be
18 an intentionally produced by-product of manufacturing. "Sale
19 at retail" includes any such transfer made for resale unless
20 made in compliance with Section 2c of the Retailers' Occupation
21 Tax Act, as incorporated by reference into Section 12 of this
22 Act. Transactions whereby the possession of the property is
23 transferred but the seller retains the title as security for
24 payment of the selling price are sales.

25 "Sale at retail" shall also be construed to include any
26 Illinois florist's sales transaction in which the purchase

1 order is received in Illinois by a florist and the sale is for
2 use or consumption, but the Illinois florist has a florist in
3 another state deliver the property to the purchaser or the
4 purchaser's donee in such other state.

5 Nonreusable tangible personal property that is used by
6 persons engaged in the business of operating a restaurant,
7 cafeteria, or drive-in is a sale for resale when it is
8 transferred to customers in the ordinary course of business as
9 part of the sale of food or beverages and is used to deliver,
10 package, or consume food or beverages, regardless of where
11 consumption of the food or beverages occurs. Examples of those
12 items include, but are not limited to nonreusable, paper and
13 plastic cups, plates, baskets, boxes, sleeves, buckets or other
14 containers, utensils, straws, placemats, napkins, doggie bags,
15 and wrapping or packaging materials that are transferred to
16 customers as part of the sale of food or beverages in the
17 ordinary course of business.

18 The purchase, employment and transfer of such tangible
19 personal property as newsprint and ink for the primary purpose
20 of conveying news (with or without other information) is not a
21 purchase, use or sale of tangible personal property.

22 "Selling price" means the consideration for a sale valued
23 in money whether received in money or otherwise, including
24 cash, credits, property other than as hereinafter provided, and
25 services, but not including the value of or credit given for
26 traded-in tangible personal property where the item that is

1 traded-in is of like kind and character as that which is being
2 sold, and shall be determined without any deduction on account
3 of the cost of the property sold, the cost of materials used,
4 labor or service cost or any other expense whatsoever, but does
5 not include interest or finance charges which appear as
6 separate items on the bill of sale or sales contract nor
7 charges that are added to prices by sellers on account of the
8 seller's tax liability under the "Retailers' Occupation Tax
9 Act", or on account of the seller's duty to collect, from the
10 purchaser, the tax that is imposed by this Act, or, except as
11 otherwise provided with respect to any cigarette tax imposed by
12 a home rule unit, on account of the seller's tax liability
13 under any local occupation tax administered by the Department,
14 or, except as otherwise provided with respect to any cigarette
15 tax imposed by a home rule unit on account of the seller's duty
16 to collect, from the purchasers, the tax that is imposed under
17 any local use tax administered by the Department. Effective
18 December 1, 1985, "selling price" shall include charges that
19 are added to prices by sellers on account of the seller's tax
20 liability under the Cigarette Tax Act, on account of the
21 seller's duty to collect, from the purchaser, the tax imposed
22 under the Cigarette Use Tax Act, and on account of the seller's
23 duty to collect, from the purchaser, any cigarette tax imposed
24 by a home rule unit.

25 Notwithstanding any law to the contrary, for any motor
26 vehicle, as defined in Section 1-146 of the Vehicle Code, that

1 is sold on or after January 1, 2015 for the purpose of leasing
2 the vehicle for a defined period that is longer than one year
3 and (1) is a motor vehicle of the second division that: (A) is
4 a self-contained motor vehicle designed or permanently
5 converted to provide living quarters for recreational,
6 camping, or travel use, with direct walk through access to the
7 living quarters from the driver's seat; (B) is of the van
8 configuration designed for the transportation of not less than
9 7 nor more than 16 passengers; or (C) has a gross vehicle
10 weight rating of 8,000 pounds or less or (2) is a motor vehicle
11 of the first division, "selling price" or "amount of sale"
12 means the consideration received by the lessor pursuant to the
13 lease contract, including amounts due at lease signing and all
14 monthly or other regular payments charged over the term of the
15 lease. Also included in the selling price is any amount
16 received by the lessor from the lessee for the leased vehicle
17 that is not calculated at the time the lease is executed,
18 including, but not limited to, excess mileage charges and
19 charges for excess wear and tear. For sales that occur in
20 Illinois, with respect to any amount received by the lessor
21 from the lessee for the leased vehicle that is not calculated
22 at the time the lease is executed, the lessor who purchased the
23 motor vehicle does not incur the tax imposed by the Use Tax Act
24 on those amounts, and the retailer who makes the retail sale of
25 the motor vehicle to the lessor is not required to collect the
26 tax imposed by this Act or to pay the tax imposed by the

1 Retailers' Occupation Tax Act on those amounts. However, the
2 lessor who purchased the motor vehicle assumes the liability
3 for reporting and paying the tax on those amounts directly to
4 the Department in the same form (Illinois Retailers' Occupation
5 Tax, and local retailers' occupation taxes, if applicable) in
6 which the retailer would have reported and paid such tax if the
7 retailer had accounted for the tax to the Department. For
8 amounts received by the lessor from the lessee that are not
9 calculated at the time the lease is executed, the lessor must
10 file the return and pay the tax to the Department by the due
11 date otherwise required by this Act for returns other than
12 transaction returns. If the retailer is entitled under this Act
13 to a discount for collecting and remitting the tax imposed
14 under this Act to the Department with respect to the sale of
15 the motor vehicle to the lessor, then the right to the discount
16 provided in this Act shall be transferred to the lessor with
17 respect to the tax paid by the lessor for any amount received
18 by the lessor from the lessee for the leased vehicle that is
19 not calculated at the time the lease is executed; provided that
20 the discount is only allowed if the return is timely filed and
21 for amounts timely paid. The "selling price" of a motor vehicle
22 that is sold on or after January 1, 2015 for the purpose of
23 leasing for a defined period of longer than one year shall not
24 be reduced by the value of or credit given for traded-in
25 tangible personal property owned by the lessor, nor shall it be
26 reduced by the value of or credit given for traded-in tangible

1 personal property owned by the lessee, regardless of whether
2 the trade-in value thereof is assigned by the lessee to the
3 lessor. In the case of a motor vehicle that is sold for the
4 purpose of leasing for a defined period of longer than one
5 year, the sale occurs at the time of the delivery of the
6 vehicle, regardless of the due date of any lease payments. A
7 lessor who incurs a Retailers' Occupation Tax liability on the
8 sale of a motor vehicle coming off lease may not take a credit
9 against that liability for the Use Tax the lessor paid upon the
10 purchase of the motor vehicle (or for any tax the lessor paid
11 with respect to any amount received by the lessor from the
12 lessee for the leased vehicle that was not calculated at the
13 time the lease was executed) if the selling price of the motor
14 vehicle at the time of purchase was calculated using the
15 definition of "selling price" as defined in this paragraph.
16 Notwithstanding any other provision of this Act to the
17 contrary, lessors shall file all returns and make all payments
18 required under this paragraph to the Department by electronic
19 means in the manner and form as required by the Department.
20 This paragraph does not apply to leases of motor vehicles for
21 which, at the time the lease is entered into, the term of the
22 lease is not a defined period, including leases with a defined
23 initial period with the option to continue the lease on a
24 month-to-month or other basis beyond the initial defined
25 period.

26 The phrase "like kind and character" shall be liberally

1 construed (including but not limited to any form of motor
2 vehicle for any form of motor vehicle, or any kind of farm or
3 agricultural implement for any other kind of farm or
4 agricultural implement), while not including a kind of item
5 which, if sold at retail by that retailer, would be exempt from
6 retailers' occupation tax and use tax as an isolated or
7 occasional sale.

8 "Department" means the Department of Revenue.

9 "Person" means any natural individual, firm, partnership,
10 association, joint stock company, joint adventure, public or
11 private corporation, limited liability company, or a receiver,
12 executor, trustee, guardian or other representative appointed
13 by order of any court.

14 "Retailer" means and includes every person engaged in the
15 business of making sales at retail as defined in this Section.

16 A person who holds himself or herself out as being engaged
17 (or who habitually engages) in selling tangible personal
18 property at retail is a retailer hereunder with respect to such
19 sales (and not primarily in a service occupation)
20 notwithstanding the fact that such person designs and produces
21 such tangible personal property on special order for the
22 purchaser and in such a way as to render the property of value
23 only to such purchaser, if such tangible personal property so
24 produced on special order serves substantially the same
25 function as stock or standard items of tangible personal
26 property that are sold at retail.

1 A person whose activities are organized and conducted
2 primarily as a not-for-profit service enterprise, and who
3 engages in selling tangible personal property at retail
4 (whether to the public or merely to members and their guests)
5 is a retailer with respect to such transactions, excepting only
6 a person organized and operated exclusively for charitable,
7 religious or educational purposes either (1), to the extent of
8 sales by such person to its members, students, patients or
9 inmates of tangible personal property to be used primarily for
10 the purposes of such person, or (2), to the extent of sales by
11 such person of tangible personal property which is not sold or
12 offered for sale by persons organized for profit. The selling
13 of school books and school supplies by schools at retail to
14 students is not "primarily for the purposes of" the school
15 which does such selling. This paragraph does not apply to nor
16 subject to taxation occasional dinners, social or similar
17 activities of a person organized and operated exclusively for
18 charitable, religious or educational purposes, whether or not
19 such activities are open to the public.

20 A person who is the recipient of a grant or contract under
21 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
22 serves meals to participants in the federal Nutrition Program
23 for the Elderly in return for contributions established in
24 amount by the individual participant pursuant to a schedule of
25 suggested fees as provided for in the federal Act is not a
26 retailer under this Act with respect to such transactions.

1 Persons who engage in the business of transferring tangible
2 personal property upon the redemption of trading stamps are
3 retailers hereunder when engaged in such business.

4 The isolated or occasional sale of tangible personal
5 property at retail by a person who does not hold himself out as
6 being engaged (or who does not habitually engage) in selling
7 such tangible personal property at retail or a sale through a
8 bulk vending machine does not make such person a retailer
9 hereunder. However, any person who is engaged in a business
10 which is not subject to the tax imposed by the "Retailers'
11 Occupation Tax Act" because of involving the sale of or a
12 contract to sell real estate or a construction contract to
13 improve real estate, but who, in the course of conducting such
14 business, transfers tangible personal property to users or
15 consumers in the finished form in which it was purchased, and
16 which does not become real estate, under any provision of a
17 construction contract or real estate sale or real estate sales
18 agreement entered into with some other person arising out of or
19 because of such nontaxable business, is a retailer to the
20 extent of the value of the tangible personal property so
21 transferred. If, in such transaction, a separate charge is made
22 for the tangible personal property so transferred, the value of
23 such property, for the purposes of this Act, is the amount so
24 separately charged, but not less than the cost of such property
25 to the transferor; if no separate charge is made, the value of
26 such property, for the purposes of this Act, is the cost to the

1 transferor of such tangible personal property.

2 "Retailer maintaining a place of business in this State",
3 or any like term, means and includes any of the following
4 retailers:

5 (1) ~~1.~~ A retailer having or maintaining within this
6 State, directly or by a subsidiary, an office, distribution
7 house, sales house, warehouse or other place of business,
8 or any agent or other representative operating within this
9 State under the authority of the retailer or its
10 subsidiary, irrespective of whether such place of business
11 or agent or other representative is located here
12 permanently or temporarily, or whether such retailer or
13 subsidiary is licensed to do business in this State.
14 However, the ownership of property that is located at the
15 premises of a printer with which the retailer has
16 contracted for printing and that consists of the final
17 printed product, property that becomes a part of the final
18 printed product, or copy from which the printed product is
19 produced shall not result in the retailer being deemed to
20 have or maintain an office, distribution house, sales
21 house, warehouse, or other place of business within this
22 State.

23 (1.1) ~~1.1.~~ A retailer having a contract with a person
24 located in this State under which the person, for a
25 commission or other consideration based upon the sale of
26 tangible personal property by the retailer, directly or

1 indirectly refers potential customers to the retailer by
2 providing to the potential customers a promotional code or
3 other mechanism that allows the retailer to track purchases
4 referred by such persons. Examples of mechanisms that allow
5 the retailer to track purchases referred by such persons
6 include but are not limited to the use of a link on the
7 person's Internet website, promotional codes distributed
8 through the person's hand-delivered or mailed material,
9 and promotional codes distributed by the person through
10 radio or other broadcast media. The provisions of this
11 paragraph (1.1) ~~1.1~~ shall apply only if the cumulative
12 gross receipts from sales of tangible personal property by
13 the retailer to customers who are referred to the retailer
14 by all persons in this State under such contracts exceed
15 \$10,000 during the preceding 4 quarterly periods ending on
16 the last day of March, June, September, and December. A
17 retailer meeting the requirements of this paragraph (1.1)
18 ~~1.1~~ shall be presumed to be maintaining a place of business
19 in this State but may rebut this presumption by submitting
20 proof that the referrals or other activities pursued within
21 this State by such persons were not sufficient to meet the
22 nexus standards of the United States Constitution during
23 the preceding 4 quarterly periods.

24 (1.2) ~~1.2~~ Beginning July 1, 2011, a retailer having a
25 contract with a person located in this State under which:

26 (A) ~~A.~~ the retailer sells the same or substantially

1 similar line of products as the person located in this
2 State and does so using an identical or substantially
3 similar name, trade name, or trademark as the person
4 located in this State; and

5 (B) ~~B.~~ the retailer provides a commission or other
6 consideration to the person located in this State based
7 upon the sale of tangible personal property by the
8 retailer.

9 The provisions of this paragraph (1.2) ~~1.2~~ shall apply only
10 if the cumulative gross receipts from sales of tangible
11 personal property by the retailer to customers in this
12 State under all such contracts exceed \$10,000 during the
13 preceding 4 quarterly periods ending on the last day of
14 March, June, September, and December.

15 (2) ~~2.~~ A retailer soliciting orders for tangible
16 personal property by means of a telecommunication or
17 television shopping system (which utilizes toll free
18 numbers) which is intended by the retailer to be broadcast
19 by cable television or other means of broadcasting, to
20 consumers located in this State.

21 (3) ~~3.~~ A retailer, pursuant to a contract with a
22 broadcaster or publisher located in this State, soliciting
23 orders for tangible personal property by means of
24 advertising which is disseminated primarily to consumers
25 located in this State and only secondarily to bordering
26 jurisdictions.

1 (4) ~~4.~~ A retailer soliciting orders for tangible
2 personal property by mail if the solicitations are
3 substantial and recurring and if the retailer benefits from
4 any banking, financing, debt collection,
5 telecommunication, or marketing activities occurring in
6 this State or benefits from the location in this State of
7 authorized installation, servicing, or repair facilities.

8 (5) ~~5.~~ A retailer that is owned or controlled by the
9 same interests that own or control any retailer engaging in
10 business in the same or similar line of business in this
11 State.

12 (6) ~~6.~~ A retailer having a franchisee or licensee
13 operating under its trade name if the franchisee or
14 licensee is required to collect the tax under this Section.

15 (7) ~~7.~~ A retailer, pursuant to a contract with a cable
16 television operator located in this State, soliciting
17 orders for tangible personal property by means of
18 advertising which is transmitted or distributed over a
19 cable television system in this State.

20 (8) ~~8.~~ A retailer engaging in activities in Illinois,
21 which activities in the state in which the retail business
22 engaging in such activities is located would constitute
23 maintaining a place of business in that state.

24 (9) Beginning January 1, 2018, a retailer making sales
25 of tangible personal property to purchasers in Illinois
26 from outside of Illinois if:

1 (A) the cumulative gross receipts from sales of
2 tangible personal property to purchasers in Illinois
3 are \$150,000 or more; or

4 (B) the retailer enters into 200 or more separate
5 transactions for the sale of tangible personal
6 property to purchasers in Illinois.

7 The retailer shall determine on a quarterly basis,
8 ending on the last day of March, June, September, and
9 December, whether he or she meets the criteria of either
10 (A) or (B) of this paragraph (9) for the preceding 12-month
11 period. If the retailer meets the criteria of either (A) or
12 (B) for a 12-month period, he or she is considered a
13 retailer maintaining a place of business in this State and
14 is required to collect and remit the tax imposed under this
15 Act and file returns for one year. At the end of that
16 one-year period, the retailer shall determine whether the
17 retailer met the criteria of either (A) or (B) during the
18 preceding 12-month period. If the retailer met the criteria
19 in either (A) or (B) for the preceding 12-month period, he
20 or she is considered a retailer maintaining a place of
21 business in this State and is required to collect and remit
22 the tax imposed under this Act and file returns for the
23 subsequent year. If at the end of a one-year period a
24 retailer that was required to collect and remit the tax
25 imposed under this Act determines that he or she did not
26 meet the criteria in either (A) or (B) during the preceding

1 12-month period, the retailer shall subsequently determine
2 on a quarterly basis, ending on the last day of March,
3 June, September, and December, whether he or she meets the
4 criteria of either (A) or (B) for the preceding 12-month
5 period.

6 "Bulk vending machine" means a vending machine, containing
7 unsorted confections, nuts, toys, or other items designed
8 primarily to be used or played with by children which, when a
9 coin or coins of a denomination not larger than \$0.50 are
10 inserted, are dispensed in equal portions, at random and
11 without selection by the customer.

12 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14;
13 98-1089, eff. 1-1-15; 99-78, eff. 7-20-15.)

14 Section 10. The Service Use Tax Act is amended by changing
15 Section 2 as follows:

16 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

17 Sec. 2. Definitions.

18 "Use" means the exercise by any person of any right or
19 power over tangible personal property incident to the ownership
20 of that property, but does not include the sale or use for
21 demonstration by him of that property in any form as tangible
22 personal property in the regular course of business. "Use" does
23 not mean the interim use of tangible personal property nor the
24 physical incorporation of tangible personal property, as an

1 ingredient or constituent, into other tangible personal
2 property, (a) which is sold in the regular course of business
3 or (b) which the person incorporating such ingredient or
4 constituent therein has undertaken at the time of such purchase
5 to cause to be transported in interstate commerce to
6 destinations outside the State of Illinois.

7 "Purchased from a serviceman" means the acquisition of the
8 ownership of, or title to, tangible personal property through a
9 sale of service.

10 "Purchaser" means any person who, through a sale of
11 service, acquires the ownership of, or title to, any tangible
12 personal property.

13 "Cost price" means the consideration paid by the serviceman
14 for a purchase valued in money, whether paid in money or
15 otherwise, including cash, credits and services, and shall be
16 determined without any deduction on account of the supplier's
17 cost of the property sold or on account of any other expense
18 incurred by the supplier. When a serviceman contracts out part
19 or all of the services required in his sale of service, it
20 shall be presumed that the cost price to the serviceman of the
21 property transferred to him or her by his or her subcontractor
22 is equal to 50% of the subcontractor's charges to the
23 serviceman in the absence of proof of the consideration paid by
24 the subcontractor for the purchase of such property.

25 "Selling price" means the consideration for a sale valued
26 in money whether received in money or otherwise, including

1 cash, credits and service, and shall be determined without any
2 deduction on account of the serviceman's cost of the property
3 sold, the cost of materials used, labor or service cost or any
4 other expense whatsoever, but does not include interest or
5 finance charges which appear as separate items on the bill of
6 sale or sales contract nor charges that are added to prices by
7 sellers on account of the seller's duty to collect, from the
8 purchaser, the tax that is imposed by this Act.

9 "Department" means the Department of Revenue.

10 "Person" means any natural individual, firm, partnership,
11 association, joint stock company, joint venture, public or
12 private corporation, limited liability company, and any
13 receiver, executor, trustee, guardian or other representative
14 appointed by order of any court.

15 "Sale of service" means any transaction except:

16 (1) a retail sale of tangible personal property taxable
17 under the Retailers' Occupation Tax Act or under the Use
18 Tax Act.

19 (2) a sale of tangible personal property for the
20 purpose of resale made in compliance with Section 2c of the
21 Retailers' Occupation Tax Act.

22 (3) except as hereinafter provided, a sale or transfer
23 of tangible personal property as an incident to the
24 rendering of service for or by any governmental body, or
25 for or by any corporation, society, association,
26 foundation or institution organized and operated

1 exclusively for charitable, religious or educational
2 purposes or any not-for-profit corporation, society,
3 association, foundation, institution or organization which
4 has no compensated officers or employees and which is
5 organized and operated primarily for the recreation of
6 persons 55 years of age or older. A limited liability
7 company may qualify for the exemption under this paragraph
8 only if the limited liability company is organized and
9 operated exclusively for educational purposes.

10 (4) a sale or transfer of tangible personal property as
11 an incident to the rendering of service for interstate
12 carriers for hire for use as rolling stock moving in
13 interstate commerce or by lessors under a lease of one year
14 or longer, executed or in effect at the time of purchase of
15 personal property, to interstate carriers for hire for use
16 as rolling stock moving in interstate commerce so long as
17 so used by such interstate carriers for hire, and equipment
18 operated by a telecommunications provider, licensed as a
19 common carrier by the Federal Communications Commission,
20 which is permanently installed in or affixed to aircraft
21 moving in interstate commerce.

22 (4a) a sale or transfer of tangible personal property
23 as an incident to the rendering of service for owners,
24 lessors, or shippers of tangible personal property which is
25 utilized by interstate carriers for hire for use as rolling
26 stock moving in interstate commerce so long as so used by

1 interstate carriers for hire, and equipment operated by a
2 telecommunications provider, licensed as a common carrier
3 by the Federal Communications Commission, which is
4 permanently installed in or affixed to aircraft moving in
5 interstate commerce.

6 (4a-5) on and after July 1, 2003 and through June 30,
7 2004, a sale or transfer of a motor vehicle of the second
8 division with a gross vehicle weight in excess of 8,000
9 pounds as an incident to the rendering of service if that
10 motor vehicle is subject to the commercial distribution fee
11 imposed under Section 3-815.1 of the Illinois Vehicle Code.
12 Beginning on July 1, 2004 and through June 30, 2005, the
13 use in this State of motor vehicles of the second division:
14 (i) with a gross vehicle weight rating in excess of 8,000
15 pounds; (ii) that are subject to the commercial
16 distribution fee imposed under Section 3-815.1 of the
17 Illinois Vehicle Code; and (iii) that are primarily used
18 for commercial purposes. Through June 30, 2005, this
19 exemption applies to repair and replacement parts added
20 after the initial purchase of such a motor vehicle if that
21 motor vehicle is used in a manner that would qualify for
22 the rolling stock exemption otherwise provided for in this
23 Act. For purposes of this paragraph, "used for commercial
24 purposes" means the transportation of persons or property
25 in furtherance of any commercial or industrial enterprise
26 whether for-hire or not.

1 (5) a sale or transfer of machinery and equipment used
2 primarily in the process of the manufacturing or
3 assembling, either in an existing, an expanded or a new
4 manufacturing facility, of tangible personal property for
5 wholesale or retail sale or lease, whether such sale or
6 lease is made directly by the manufacturer or by some other
7 person, whether the materials used in the process are owned
8 by the manufacturer or some other person, or whether such
9 sale or lease is made apart from or as an incident to the
10 seller's engaging in a service occupation and the
11 applicable tax is a Service Use Tax or Service Occupation
12 Tax, rather than Use Tax or Retailers' Occupation Tax. The
13 exemption provided by this paragraph (5) does not include
14 machinery and equipment used in (i) the generation of
15 electricity for wholesale or retail sale; (ii) the
16 generation or treatment of natural or artificial gas for
17 wholesale or retail sale that is delivered to customers
18 through pipes, pipelines, or mains; or (iii) the treatment
19 of water for wholesale or retail sale that is delivered to
20 customers through pipes, pipelines, or mains. The
21 provisions of this amendatory Act of the 98th General
22 Assembly are declaratory of existing law as to the meaning
23 and scope of this exemption.

24 (5a) the repairing, reconditioning or remodeling, for
25 a common carrier by rail, of tangible personal property
26 which belongs to such carrier for hire, and as to which

1 such carrier receives the physical possession of the
2 repaired, reconditioned or remodeled item of tangible
3 personal property in Illinois, and which such carrier
4 transports, or shares with another common carrier in the
5 transportation of such property, out of Illinois on a
6 standard uniform bill of lading showing the person who
7 repaired, reconditioned or remodeled the property to a
8 destination outside Illinois, for use outside Illinois.

9 (5b) a sale or transfer of tangible personal property
10 which is produced by the seller thereof on special order in
11 such a way as to have made the applicable tax the Service
12 Occupation Tax or the Service Use Tax, rather than the
13 Retailers' Occupation Tax or the Use Tax, for an interstate
14 carrier by rail which receives the physical possession of
15 such property in Illinois, and which transports such
16 property, or shares with another common carrier in the
17 transportation of such property, out of Illinois on a
18 standard uniform bill of lading showing the seller of the
19 property as the shipper or consignor of such property to a
20 destination outside Illinois, for use outside Illinois.

21 (6) until July 1, 2003, a sale or transfer of
22 distillation machinery and equipment, sold as a unit or kit
23 and assembled or installed by the retailer, which machinery
24 and equipment is certified by the user to be used only for
25 the production of ethyl alcohol that will be used for
26 consumption as motor fuel or as a component of motor fuel

1 for the personal use of such user and not subject to sale
2 or resale.

3 (7) at the election of any serviceman not required to
4 be otherwise registered as a retailer under Section 2a of
5 the Retailers' Occupation Tax Act, made for each fiscal
6 year sales of service in which the aggregate annual cost
7 price of tangible personal property transferred as an
8 incident to the sales of service is less than 35%, or 75%
9 in the case of servicemen transferring prescription drugs
10 or servicemen engaged in graphic arts production, of the
11 aggregate annual total gross receipts from all sales of
12 service. The purchase of such tangible personal property by
13 the serviceman shall be subject to tax under the Retailers'
14 Occupation Tax Act and the Use Tax Act. However, if a
15 primary serviceman who has made the election described in
16 this paragraph subcontracts service work to a secondary
17 serviceman who has also made the election described in this
18 paragraph, the primary serviceman does not incur a Use Tax
19 liability if the secondary serviceman (i) has paid or will
20 pay Use Tax on his or her cost price of any tangible
21 personal property transferred to the primary serviceman
22 and (ii) certifies that fact in writing to the primary
23 serviceman.

24 Tangible personal property transferred incident to the
25 completion of a maintenance agreement is exempt from the tax
26 imposed pursuant to this Act.

1 Exemption (5) also includes machinery and equipment used in
2 the general maintenance or repair of such exempt machinery and
3 equipment or for in-house manufacture of exempt machinery and
4 equipment. The machinery and equipment exemption does not
5 include machinery and equipment used in (i) the generation of
6 electricity for wholesale or retail sale; (ii) the generation
7 or treatment of natural or artificial gas for wholesale or
8 retail sale that is delivered to customers through pipes,
9 pipelines, or mains; or (iii) the treatment of water for
10 wholesale or retail sale that is delivered to customers through
11 pipes, pipelines, or mains. The provisions of this amendatory
12 Act of the 98th General Assembly are declaratory of existing
13 law as to the meaning and scope of this exemption. For the
14 purposes of exemption (5), each of these terms shall have the
15 following meanings: (1) "manufacturing process" shall mean the
16 production of any article of tangible personal property,
17 whether such article is a finished product or an article for
18 use in the process of manufacturing or assembling a different
19 article of tangible personal property, by procedures commonly
20 regarded as manufacturing, processing, fabricating, or
21 refining which changes some existing material or materials into
22 a material with a different form, use or name. In relation to a
23 recognized integrated business composed of a series of
24 operations which collectively constitute manufacturing, or
25 individually constitute manufacturing operations, the
26 manufacturing process shall be deemed to commence with the

1 first operation or stage of production in the series, and shall
2 not be deemed to end until the completion of the final product
3 in the last operation or stage of production in the series; and
4 further, for purposes of exemption (5), photoprocessing is
5 deemed to be a manufacturing process of tangible personal
6 property for wholesale or retail sale; (2) "assembling process"
7 shall mean the production of any article of tangible personal
8 property, whether such article is a finished product or an
9 article for use in the process of manufacturing or assembling a
10 different article of tangible personal property, by the
11 combination of existing materials in a manner commonly regarded
12 as assembling which results in a material of a different form,
13 use or name; (3) "machinery" shall mean major mechanical
14 machines or major components of such machines contributing to a
15 manufacturing or assembling process; and (4) "equipment" shall
16 include any independent device or tool separate from any
17 machinery but essential to an integrated manufacturing or
18 assembly process; including computers used primarily in a
19 manufacturer's computer assisted design, computer assisted
20 manufacturing (CAD/CAM) system; or any subunit or assembly
21 comprising a component of any machinery or auxiliary, adjunct
22 or attachment parts of machinery, such as tools, dies, jigs,
23 fixtures, patterns and molds; or any parts which require
24 periodic replacement in the course of normal operation; but
25 shall not include hand tools. Equipment includes chemicals or
26 chemicals acting as catalysts but only if the chemicals or

1 chemicals acting as catalysts effect a direct and immediate
2 change upon a product being manufactured or assembled for
3 wholesale or retail sale or lease. The purchaser of such
4 machinery and equipment who has an active resale registration
5 number shall furnish such number to the seller at the time of
6 purchase. The user of such machinery and equipment and tools
7 without an active resale registration number shall prepare a
8 certificate of exemption for each transaction stating facts
9 establishing the exemption for that transaction, which
10 certificate shall be available to the Department for inspection
11 or audit. The Department shall prescribe the form of the
12 certificate.

13 Any informal rulings, opinions or letters issued by the
14 Department in response to an inquiry or request for any opinion
15 from any person regarding the coverage and applicability of
16 exemption (5) to specific devices shall be published,
17 maintained as a public record, and made available for public
18 inspection and copying. If the informal ruling, opinion or
19 letter contains trade secrets or other confidential
20 information, where possible the Department shall delete such
21 information prior to publication. Whenever such informal
22 rulings, opinions, or letters contain any policy of general
23 applicability, the Department shall formulate and adopt such
24 policy as a rule in accordance with the provisions of the
25 Illinois Administrative Procedure Act.

26 On and after July 1, 1987, no entity otherwise eligible

1 under exemption (3) of this Section shall make tax free
2 purchases unless it has an active exemption identification
3 number issued by the Department.

4 The purchase, employment and transfer of such tangible
5 personal property as newsprint and ink for the primary purpose
6 of conveying news (with or without other information) is not a
7 purchase, use or sale of service or of tangible personal
8 property within the meaning of this Act.

9 "Serviceman" means any person who is engaged in the
10 occupation of making sales of service.

11 "Sale at retail" means "sale at retail" as defined in the
12 Retailers' Occupation Tax Act.

13 "Supplier" means any person who makes sales of tangible
14 personal property to servicemen for the purpose of resale as an
15 incident to a sale of service.

16 "Serviceman maintaining a place of business in this State",
17 or any like term, means and includes any serviceman:

18 (1) ~~±~~ having or maintaining within this State,
19 directly or by a subsidiary, an office, distribution house,
20 sales house, warehouse or other place of business, or any
21 agent or other representative operating within this State
22 under the authority of the serviceman or its subsidiary,
23 irrespective of whether such place of business or agent or
24 other representative is located here permanently or
25 temporarily, or whether such serviceman or subsidiary is
26 licensed to do business in this State;

1 (1.1) ~~1.1.~~ having a contract with a person located in
2 this State under which the person, for a commission or
3 other consideration based on the sale of service by the
4 serviceman, directly or indirectly refers potential
5 customers to the serviceman by providing to the potential
6 customers a promotional code or other mechanism that allows
7 the serviceman to track purchases referred by such persons.
8 Examples of mechanisms that allow the serviceman to track
9 purchases referred by such persons include but are not
10 limited to the use of a link on the person's Internet
11 website, promotional codes distributed through the
12 person's hand-delivered or mailed material, and
13 promotional codes distributed by the person through radio
14 or other broadcast media. The provisions of this paragraph
15 (1.1) ~~1.1~~ shall apply only if the cumulative gross receipts
16 from sales of service by the serviceman to customers who
17 are referred to the serviceman by all persons in this State
18 under such contracts exceed \$10,000 during the preceding 4
19 quarterly periods ending on the last day of March, June,
20 September, and December; a serviceman meeting the
21 requirements of this paragraph (1.1) ~~1.1~~ shall be presumed
22 to be maintaining a place of business in this State but may
23 rebut this presumption by submitting proof that the
24 referrals or other activities pursued within this State by
25 such persons were not sufficient to meet the nexus
26 standards of the United States Constitution during the

1 preceding 4 quarterly periods;

2 (1.2) ~~1.2.~~ beginning July 1, 2011, having a contract
3 with a person located in this State under which:

4 (A) ~~A.~~ the serviceman sells the same or
5 substantially similar line of services as the person
6 located in this State and does so using an identical or
7 substantially similar name, trade name, or trademark
8 as the person located in this State; and

9 (B) ~~B.~~ the serviceman provides a commission or
10 other consideration to the person located in this State
11 based upon the sale of services by the serviceman.

12 The provisions of this paragraph (1.2) ~~1.2~~ shall apply only
13 if the cumulative gross receipts from sales of service by
14 the serviceman to customers in this State under all such
15 contracts exceed \$10,000 during the preceding 4 quarterly
16 periods ending on the last day of March, June, September,
17 and December;

18 (2) ~~2.~~ soliciting orders for tangible personal
19 property by means of a telecommunication or television
20 shopping system (which utilizes toll free numbers) which is
21 intended by the retailer to be broadcast by cable
22 television or other means of broadcasting, to consumers
23 located in this State;

24 (3) ~~3.~~ pursuant to a contract with a broadcaster or
25 publisher located in this State, soliciting orders for
26 tangible personal property by means of advertising which is

1 disseminated primarily to consumers located in this State
2 and only secondarily to bordering jurisdictions;

3 (4) ~~4.~~ soliciting orders for tangible personal
4 property by mail if the solicitations are substantial and
5 recurring and if the retailer benefits from any banking,
6 financing, debt collection, telecommunication, or
7 marketing activities occurring in this State or benefits
8 from the location in this State of authorized installation,
9 servicing, or repair facilities;

10 (5) ~~5.~~ being owned or controlled by the same interests
11 which own or control any retailer engaging in business in
12 the same or similar line of business in this State;

13 (6) ~~6.~~ having a franchisee or licensee operating under
14 its trade name if the franchisee or licensee is required to
15 collect the tax under this Section;

16 (7) ~~7.~~ pursuant to a contract with a cable television
17 operator located in this State, soliciting orders for
18 tangible personal property by means of advertising which is
19 transmitted or distributed over a cable television system
20 in this State; ~~or~~

21 (8) ~~8.~~ engaging in activities in Illinois, which
22 activities in the state in which the supply business
23 engaging in such activities is located would constitute
24 maintaining a place of business in that state; or ~~-~~

25 (9) beginning January 1, 2018, making sales of service
26 to purchasers in Illinois from outside of Illinois if:

1 (A) the cumulative gross receipts from sales of
2 service to purchasers in Illinois are \$150,000 or more;
3 or

4 (B) the serviceman enters into 200 or more separate
5 transactions for sales of service to purchasers in
6 Illinois.

7 The serviceman shall determine on a quarterly basis,
8 ending on the last day of March, June, September, and
9 December, whether he or she meets the criteria of either
10 (A) or (B) of this paragraph (9) for the preceding 12-month
11 period. If the serviceman meets the criteria of either (A)
12 or (B) for a 12-month period, he or she is considered a
13 serviceman maintaining a place of business in this State
14 and is required to collect and remit the tax imposed under
15 this Act and file returns for one year. At the end of that
16 one-year period, the serviceman shall determine whether
17 the serviceman met the criteria of either (A) or (B) during
18 the preceding 12-month period. If the serviceman met the
19 criteria in either (A) or (B) for the preceding 12-month
20 period, he or she is considered a serviceman maintaining a
21 place of business in this State and is required to collect
22 and remit the tax imposed under this Act and file returns
23 for the subsequent year. If at the end of a one-year period
24 a serviceman that was required to collect and remit the tax
25 imposed under this Act determines that he or she did not
26 meet the criteria in either (A) or (B) during the preceding

1 12-month period, the serviceman subsequently shall
2 determine on a quarterly basis, ending on the last day of
3 March, June, September, and December, whether he or she
4 meets the criteria of either (A) or (B) for the preceding
5 12-month period.

6 (Source: P.A. 98-583, eff. 1-1-14; 98-1089, eff. 1-1-15.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law."