

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Retailers' Occupation Tax Act is amended by  
5 changing Section 1 as follows:

6 (35 ILCS 120/1) (from Ch. 120, par. 440)

7 Sec. 1. Definitions. "Sale at retail" means any transfer of  
8 the ownership of or title to tangible personal property to a  
9 purchaser, for the purpose of use or consumption, and not for  
10 the purpose of resale in any form as tangible personal property  
11 to the extent not first subjected to a use for which it was  
12 purchased, for a valuable consideration: Provided that the  
13 property purchased is deemed to be purchased for the purpose of  
14 resale, despite first being used, to the extent to which it is  
15 resold as an ingredient of an intentionally produced product or  
16 byproduct of manufacturing. For this purpose, slag produced as  
17 an incident to manufacturing pig iron or steel and sold is  
18 considered to be an intentionally produced byproduct of  
19 manufacturing. Transactions whereby the possession of the  
20 property is transferred but the seller retains the title as  
21 security for payment of the selling price shall be deemed to be  
22 sales.

23 "Sale at retail" shall be construed to include any transfer

1 of the ownership of or title to tangible personal property to a  
2 purchaser, for use or consumption by any other person to whom  
3 such purchaser may transfer the tangible personal property  
4 without a valuable consideration, and to include any transfer,  
5 whether made for or without a valuable consideration, for  
6 resale in any form as tangible personal property unless made in  
7 compliance with Section 2c of this Act.

8 Sales of tangible personal property, which property, to the  
9 extent not first subjected to a use for which it was purchased,  
10 as an ingredient or constituent, goes into and forms a part of  
11 tangible personal property subsequently the subject of a "Sale  
12 at retail", are not sales at retail as defined in this Act:  
13 Provided that the property purchased is deemed to be purchased  
14 for the purpose of resale, despite first being used, to the  
15 extent to which it is resold as an ingredient of an  
16 intentionally produced product or byproduct of manufacturing.

17 "Sale at retail" shall be construed to include any Illinois  
18 florist's sales transaction in which the purchase order is  
19 received in Illinois by a florist and the sale is for use or  
20 consumption, but the Illinois florist has a florist in another  
21 state deliver the property to the purchaser or the purchaser's  
22 donee in such other state.

23 Nonreusable tangible personal property that is used by  
24 persons engaged in the business of operating a restaurant,  
25 cafeteria, or drive-in is a sale for resale when it is  
26 transferred to customers in the ordinary course of business as

1 part of the sale of food or beverages and is used to deliver,  
2 package, or consume food or beverages, regardless of where  
3 consumption of the food or beverages occurs. Examples of those  
4 items include, but are not limited to nonreusable, paper and  
5 plastic cups, plates, baskets, boxes, sleeves, buckets or other  
6 containers, utensils, straws, placemats, napkins, doggie bags,  
7 and wrapping or packaging materials that are transferred to  
8 customers as part of the sale of food or beverages in the  
9 ordinary course of business.

10 "Sale at retail" does not include the selling of food at  
11 retail to students, teachers, or staff at a school serving some  
12 or all of grades kindergarten through 12.

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

17 A person whose activities are organized and conducted  
18 primarily as a not-for-profit service enterprise, and who  
19 engages in selling tangible personal property at retail  
20 (whether to the public or merely to members and their guests)  
21 is engaged in the business of selling tangible personal  
22 property at retail with respect to such transactions, excepting  
23 only a person organized and operated exclusively for  
24 charitable, religious or educational purposes either (1), to  
25 the extent of sales by such person to its members, students,  
26 patients or inmates of tangible personal property to be used

1 primarily for the purposes of such person, or (2), to the  
2 extent of sales by such person of tangible personal property  
3 which is not sold or offered for sale by persons organized for  
4 profit. The selling of school books and school supplies by  
5 schools at retail to students is not "primarily for the  
6 purposes of" the school which does such selling. The provisions  
7 of this paragraph shall not apply to nor subject to taxation  
8 occasional dinners, socials or similar activities of a person  
9 organized and operated exclusively for charitable, religious  
10 or educational purposes, whether or not such activities are  
11 open to the public.

12 A person who is the recipient of a grant or contract under  
13 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and  
14 serves meals to participants in the federal Nutrition Program  
15 for the Elderly in return for contributions established in  
16 amount by the individual participant pursuant to a schedule of  
17 suggested fees as provided for in the federal Act is not  
18 engaged in the business of selling tangible personal property  
19 at retail with respect to such transactions.

20 "Purchaser" means anyone who, through a sale at retail,  
21 acquires the ownership of or title to tangible personal  
22 property for a valuable consideration.

23 "Reseller of motor fuel" means any person engaged in the  
24 business of selling or delivering or transferring title of  
25 motor fuel to another person other than for use or consumption.  
26 No person shall act as a reseller of motor fuel within this

1 State without first being registered as a reseller pursuant to  
2 Section 2c or a retailer pursuant to Section 2a.

3 "Selling price" or the "amount of sale" means the  
4 consideration for a sale valued in money whether received in  
5 money or otherwise, including cash, credits, property, other  
6 than as hereinafter provided, and services, but not including  
7 the value of or credit given for traded-in tangible personal  
8 property where the item that is traded-in is of like kind and  
9 character as that which is being sold, and shall be determined  
10 without any deduction on account of the cost of the property  
11 sold, the cost of materials used, labor or service cost or any  
12 other expense whatsoever, but does not include charges that are  
13 added to prices by sellers on account of the seller's tax  
14 liability under this Act, or on account of the seller's duty to  
15 collect, from the purchaser, the tax that is imposed by the Use  
16 Tax Act, or, except as otherwise provided with respect to any  
17 cigarette tax imposed by a home rule unit, on account of the  
18 seller's tax liability under any local occupation tax  
19 administered by the Department, or, except as otherwise  
20 provided with respect to any cigarette tax imposed by a home  
21 rule unit on account of the seller's duty to collect, from the  
22 purchasers, the tax that is imposed under any local use tax  
23 administered by the Department. Effective December 1, 1985,  
24 "selling price" shall include charges that are added to prices  
25 by sellers on account of the seller's tax liability under the  
26 Cigarette Tax Act, on account of the sellers' duty to collect,

1 from the purchaser, the tax imposed under the Cigarette Use Tax  
2 Act, and on account of the seller's duty to collect, from the  
3 purchaser, any cigarette tax imposed by a home rule unit.

4 Notwithstanding any law to the contrary, for any motor  
5 vehicle, as defined in Section 1-146 of the Vehicle Code, that  
6 is sold on or after January 1, 2015 for the purpose of leasing  
7 the vehicle for a defined period that is longer than one year  
8 and (1) is a motor vehicle of the second division that: (A) is  
9 a self-contained motor vehicle designed or permanently  
10 converted to provide living quarters for recreational,  
11 camping, or travel use, with direct walk through access to the  
12 living quarters from the driver's seat; (B) is of the van  
13 configuration designed for the transportation of not less than  
14 7 nor more than 16 passengers; or (C) has a gross vehicle  
15 weight rating of 8,000 pounds or less or (2) is a motor vehicle  
16 of the first division, "selling price" or "amount of sale"  
17 means the consideration received by the lessor pursuant to the  
18 lease contract, including amounts due at lease signing and all  
19 monthly or other regular payments charged over the term of the  
20 lease. Also included in the selling price is any amount  
21 received by the lessor from the lessee for the leased vehicle  
22 that is not calculated at the time the lease is executed,  
23 including, but not limited to, excess mileage charges and  
24 charges for excess wear and tear. For sales that occur in  
25 Illinois, with respect to any amount received by the lessor  
26 from the lessee for the leased vehicle that is not calculated

1 at the time the lease is executed, the lessor who purchased the  
2 motor vehicle does not incur the tax imposed by the Use Tax Act  
3 on those amounts, and the retailer who makes the retail sale of  
4 the motor vehicle to the lessor is not required to collect the  
5 tax imposed by the Use Tax Act or to pay the tax imposed by this  
6 Act on those amounts. However, the lessor who purchased the  
7 motor vehicle assumes the liability for reporting and paying  
8 the tax on those amounts directly to the Department in the same  
9 form (Illinois Retailers' Occupation Tax, and local retailers'  
10 occupation taxes, if applicable) in which the retailer would  
11 have reported and paid such tax if the retailer had accounted  
12 for the tax to the Department. For amounts received by the  
13 lessor from the lessee that are not calculated at the time the  
14 lease is executed, the lessor must file the return and pay the  
15 tax to the Department by the due date otherwise required by  
16 this Act for returns other than transaction returns. If the  
17 retailer is entitled under this Act to a discount for  
18 collecting and remitting the tax imposed under this Act to the  
19 Department with respect to the sale of the motor vehicle to the  
20 lessor, then the right to the discount provided in this Act  
21 shall be transferred to the lessor with respect to the tax paid  
22 by the lessor for any amount received by the lessor from the  
23 lessee for the leased vehicle that is not calculated at the  
24 time the lease is executed; provided that the discount is only  
25 allowed if the return is timely filed and for amounts timely  
26 paid. The "selling price" of a motor vehicle that is sold on or

1 after January 1, 2015 for the purpose of leasing for a defined  
2 period of longer than one year shall not be reduced by the  
3 value of or credit given for traded-in tangible personal  
4 property owned by the lessor, nor shall it be reduced by the  
5 value of or credit given for traded-in tangible personal  
6 property owned by the lessee, regardless of whether the  
7 trade-in value thereof is assigned by the lessee to the lessor.  
8 In the case of a motor vehicle that is sold for the purpose of  
9 leasing for a defined period of longer than one year, the sale  
10 occurs at the time of the delivery of the vehicle, regardless  
11 of the due date of any lease payments. A lessor who incurs a  
12 Retailers' Occupation Tax liability on the sale of a motor  
13 vehicle coming off lease may not take a credit against that  
14 liability for the Use Tax the lessor paid upon the purchase of  
15 the motor vehicle (or for any tax the lessor paid with respect  
16 to any amount received by the lessor from the lessee for the  
17 leased vehicle that was not calculated at the time the lease  
18 was executed) if the selling price of the motor vehicle at the  
19 time of purchase was calculated using the definition of  
20 "selling price" as defined in this paragraph. Notwithstanding  
21 any other provision of this Act to the contrary, lessors shall  
22 file all returns and make all payments required under this  
23 paragraph to the Department by electronic means in the manner  
24 and form as required by the Department. This paragraph does not  
25 apply to leases of motor vehicles for which, at the time the  
26 lease is entered into, the term of the lease is not a defined



1 period, including leases with a defined initial period with the  
2 option to continue the lease on a month-to-month or other basis  
3 beyond the initial defined period.

4 The phrase "like kind and character" shall be liberally  
5 construed (including but not limited to any form of motor  
6 vehicle for any form of motor vehicle, or any kind of farm or  
7 agricultural implement for any other kind of farm or  
8 agricultural implement), while not including a kind of item  
9 which, if sold at retail by that retailer, would be exempt from  
10 retailers' occupation tax and use tax as an isolated or  
11 occasional sale.

12 "Gross receipts" from the sales of tangible personal  
13 property at retail means the total selling price or the amount  
14 of such sales, as hereinbefore defined. In the case of charge  
15 and time sales, the amount thereof shall be included only as  
16 and when payments are received by the seller. Receipts or other  
17 consideration derived by a seller from the sale, transfer or  
18 assignment of accounts receivable to a wholly owned subsidiary  
19 will not be deemed payments prior to the time the purchaser  
20 makes payment on such accounts.

21 "Department" means the Department of Revenue.

22 "Person" means any natural individual, firm, partnership,  
23 association, joint stock company, joint adventure, public or  
24 private corporation, limited liability company, or a receiver,  
25 executor, trustee, guardian or other representative appointed  
26 by order of any court.

1           The isolated or occasional sale of tangible personal  
2 property at retail by a person who does not hold himself out as  
3 being engaged (or who does not habitually engage) in selling  
4 such tangible personal property at retail, or a sale through a  
5 bulk vending machine, does not constitute engaging in a  
6 business of selling such tangible personal property at retail  
7 within the meaning of this Act; provided that any person who is  
8 engaged in a business which is not subject to the tax imposed  
9 by this Act because of involving the sale of or a contract to  
10 sell real estate or a construction contract to improve real  
11 estate or a construction contract to engineer, install, and  
12 maintain an integrated system of products, but who, in the  
13 course of conducting such business, transfers tangible  
14 personal property to users or consumers in the finished form in  
15 which it was purchased, and which does not become real estate  
16 or was not engineered and installed, 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 engaged in the business  
20 of selling tangible personal property at retail to the extent  
21 of the value of the tangible personal property so transferred.  
22 If, in such a transaction, a separate charge is made for the  
23 tangible personal property so transferred, the value of such  
24 property, for the purpose of this Act, shall be the amount so  
25 separately charged, but not less than the cost of such property  
26 to the transferor; if no separate charge is made, the value of

1 such property, for the purposes of this Act, is the cost to the  
2 transferor of such tangible personal property. Construction  
3 contracts for the improvement of real estate consisting of  
4 engineering, installation, and maintenance of voice, data,  
5 video, security, and all telecommunication systems do not  
6 constitute engaging in a business of selling tangible personal  
7 property at retail within the meaning of this Act if they are  
8 sold at one specified contract price.

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

21 Persons who engage in the business of transferring tangible  
22 personal property upon the redemption of trading stamps are  
23 engaged in the business of selling such property at retail and  
24 shall be liable for and shall pay the tax imposed by this Act  
25 on the basis of the retail value of the property transferred  
26 upon redemption of such stamps.

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

7 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14.)