



Sen. Dan McConchie

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LRB100 17737 HLH 38221 a

1 AMENDMENT TO SENATE BILL 2668

2 AMENDMENT NO. _____. Amend Senate Bill 2668 by replacing
3 everything after the enacting clause with the following:

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

1 an incident to manufacturing pig iron or steel and sold is
2 considered to be an intentionally produced byproduct of
3 manufacturing. Transactions whereby the possession of the
4 property is transferred but the seller retains the title as
5 security for payment of the selling price shall be deemed to be
6 sales.

7 "Sale at retail" shall be construed to include any transfer
8 of the ownership of or title to tangible personal property to a
9 purchaser, for use or consumption by any other person to whom
10 such purchaser may transfer the tangible personal property
11 without a valuable consideration, and to include any transfer,
12 whether made for or without a valuable consideration, for
13 resale in any form as tangible personal property unless made in
14 compliance with Section 2c of this Act.

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

24 "Sale at retail" shall be construed to include any Illinois
25 florist's sales transaction in which the purchase order is
26 received in Illinois by a florist and the sale is for use or

1 consumption, but the Illinois florist has a florist in another
2 state deliver the property to the purchaser or the purchaser's
3 donee in such other state.

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

17 "Sale at retail" does not include the selling of food at
18 retail at schools to students, teachers, or staff.

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

23 A person whose activities are organized and conducted
24 primarily as a not-for-profit service enterprise, and who
25 engages in selling tangible personal property at retail
26 (whether to the public or merely to members and their guests)

1 is engaged in the business of selling tangible personal
2 property at retail with respect to such transactions, excepting
3 only a person organized and operated exclusively for
4 charitable, religious or educational purposes either (1), to
5 the extent of sales by such person to its members, students,
6 patients or inmates of tangible personal property to be used
7 primarily for the purposes of such person, or (2), to the
8 extent of sales by such person of tangible personal property
9 which is not sold or offered for sale by persons organized for
10 profit. The selling of school books and school supplies by
11 schools at retail to students is not "primarily for the
12 purposes of" the school which does such selling. The provisions
13 of this paragraph shall not apply to nor subject to taxation
14 occasional dinners, socials or similar activities of a person
15 organized and operated exclusively for charitable, religious
16 or educational purposes, whether or not such activities are
17 open to the public.

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

26 "Purchaser" means anyone who, through a sale at retail,

1 acquires the ownership of or title to tangible personal
2 property for a valuable consideration.

3 "Reseller of motor fuel" means any person engaged in the
4 business of selling or delivering or transferring title of
5 motor fuel to another person other than for use or consumption.
6 No person shall act as a reseller of motor fuel within this
7 State without first being registered as a reseller pursuant to
8 Section 2c or a retailer pursuant to Section 2a.

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

1 rule unit on account of the seller's duty to collect, from the
2 purchasers, the tax that is imposed under any local use tax
3 administered by the Department. Effective December 1, 1985,
4 "selling price" shall include charges that are added to prices
5 by sellers on account of the seller's tax liability under the
6 Cigarette Tax Act, on account of the sellers' duty to collect,
7 from the purchaser, the tax imposed under the Cigarette Use Tax
8 Act, and on account of the seller's duty to collect, from the
9 purchaser, any cigarette tax imposed by a home rule unit.

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

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

1 shall be transferred to the lessor with respect to the tax paid
2 by the lessor for any amount received by the lessor from the
3 lessee for the leased vehicle that is not calculated at the
4 time the lease is executed; provided that the discount is only
5 allowed if the return is timely filed and for amounts timely
6 paid. The "selling price" of a motor vehicle that is sold on or
7 after January 1, 2015 for the purpose of leasing for a defined
8 period of longer than one year shall not be reduced by the
9 value of or credit given for traded-in tangible personal
10 property owned by the lessor, nor shall it be reduced by the
11 value of or credit given for traded-in tangible personal
12 property owned by the lessee, regardless of whether the
13 trade-in value thereof is assigned by the lessee to the lessor.
14 In the case of a motor vehicle that is sold for the purpose of
15 leasing for a defined period of longer than one year, the sale
16 occurs at the time of the delivery of the vehicle, regardless
17 of the due date of any lease payments. A lessor who incurs a
18 Retailers' Occupation Tax liability on the sale of a motor
19 vehicle coming off lease may not take a credit against that
20 liability for the Use Tax the lessor paid upon the purchase of
21 the motor vehicle (or for any tax the lessor paid with respect
22 to any amount received by the lessor from the lessee for the
23 leased vehicle that was not calculated at the time the lease
24 was executed) if the selling price of the motor vehicle at the
25 time of purchase was calculated using the definition of
26 "selling price" as defined in this paragraph. Notwithstanding

1 any other provision of this Act to the contrary, lessors shall
2 file all returns and make all payments required under this
3 paragraph to the Department by electronic means in the manner
4 and form as required by the Department. This paragraph does not
5 apply to leases of motor vehicles for which, at the time the
6 lease is entered into, the term of the lease is not a defined
7 period, including leases with a defined initial period with the
8 option to continue the lease on a month-to-month or other basis
9 beyond the initial defined period.

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

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

1 "Department" means the Department of Revenue.

2 "Person" means any natural individual, firm, partnership,
3 association, joint stock company, joint adventure, public or
4 private corporation, limited liability company, or a receiver,
5 executor, trustee, guardian or other representative appointed
6 by order of any court.

7 The isolated or occasional sale of tangible personal
8 property at retail by a person who does not hold himself out as
9 being engaged (or who does not habitually engage) in selling
10 such tangible personal property at retail, or a sale through a
11 bulk vending machine, does not constitute engaging in a
12 business of selling such tangible personal property at retail
13 within the meaning of this Act; provided that any person who is
14 engaged in a business which is not subject to the tax imposed
15 by this Act because of involving the sale of or a contract to
16 sell real estate or a construction contract to improve real
17 estate or a construction contract to engineer, install, and
18 maintain an integrated system of products, but who, in the
19 course of conducting such business, transfers tangible
20 personal property to users or consumers in the finished form in
21 which it was purchased, and which does not become real estate
22 or was not engineered and installed, under any provision of a
23 construction contract or real estate sale or real estate sales
24 agreement entered into with some other person arising out of or
25 because of such nontaxable business, is engaged in the business
26 of selling tangible personal property at retail to the extent

1 of the value of the tangible personal property so transferred.
2 If, in such a transaction, a separate charge is made for the
3 tangible personal property so transferred, the value of such
4 property, for the purpose of this Act, shall be the amount so
5 separately charged, but not less than the cost of such property
6 to the transferor; if no separate charge is made, the value of
7 such property, for the purposes of this Act, is the cost to the
8 transferor of such tangible personal property. Construction
9 contracts for the improvement of real estate consisting of
10 engineering, installation, and maintenance of voice, data,
11 video, security, and all telecommunication systems do not
12 constitute engaging in a business of selling tangible personal
13 property at retail within the meaning of this Act if they are
14 sold at one specified contract price.

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

1 Persons who engage in the business of transferring tangible
2 personal property upon the redemption of trading stamps are
3 engaged in the business of selling such property at retail and
4 shall be liable for and shall pay the tax imposed by this Act
5 on the basis of the retail value of the property transferred
6 upon redemption of such stamps.

7 "Bulk vending machine" means a vending machine, containing
8 unsorted confections, nuts, toys, or other items designed
9 primarily to be used or played with by children which, when a
10 coin or coins of a denomination not larger than \$0.50 are
11 inserted, are dispensed in equal portions, at random and
12 without selection by the customer.
13 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14.)".