



Sen. Dan McConchie

**Filed: 4/20/2018**

10000SB2668sam002

LRB100 17737 HLH 39013 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 to students, teachers, or staff at a school serving some  
19 or all of grades kindergarten through 12.

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

24 A person whose activities are organized and conducted  
25 primarily as a not-for-profit service enterprise, and who  
26 engages in selling tangible personal property at retail

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

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

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

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

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

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

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

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

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



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

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

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

1 makes payment on such accounts.

2 "Department" means the Department of Revenue.

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

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

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

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 person engaged in the business of  
19 selling tangible personal property at retail hereunder with  
20 respect to such sales (and not primarily in a service  
21 occupation) notwithstanding the fact that such person designs  
22 and produces such tangible personal property on special order  
23 for the purchaser and in such a way as to render the property  
24 of value only to such purchaser, if such tangible personal  
25 property so produced on special order serves substantially the  
26 same function as stock or standard items of tangible personal

1 property that are sold at retail.

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

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

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