



Sen. Jeffrey M. Schoenberg

Filed: 5/7/2012

09700HB5289sam002

LRB097 16882 HLH 69171 a

1 AMENDMENT TO HOUSE BILL 5289

2 AMENDMENT NO. _____. Amend House Bill 5289, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 20. The Retailers' Occupation Tax Act is amended
6 by changing Section 13 as follows:

7 (35 ILCS 120/13) (from Ch. 120, par. 452)

8 Sec. 13. Criminal penalties.

9 (a) When the amount due is under \$300, any person engaged
10 in the business of selling tangible personal property at retail
11 in this State who fails to file a return, or who files a
12 fraudulent return, or any officer, employee or agent of a
13 corporation, member, employee or agent of a partnership, or
14 manager, member, agent, or employee of a limited liability
15 company engaged in the business of selling tangible personal
16 property at retail in this State who, as such officer,

1 employee, agent, manager, or member is under a duty to file a
2 return, or any officer, agent or employee of a corporation,
3 member, agent, or employee of a partnership, or manager,
4 member, agent, or employee of a limited liability company
5 engaged in the business of selling tangible personal property
6 at retail in this State who files or causes to be filed or
7 signs or causes to be signed a fraudulent return filed on
8 behalf of such corporation or limited liability company, or any
9 accountant or other agent who knowingly enters false
10 information on the return of any taxpayer under this Act, is
11 guilty of a Class 4 felony.

12 Any person who or any officer or director of any
13 corporation, partner or member of any partnership, or manager
14 or member of a limited liability company that: (a) violates
15 Section 2a of this Act or (b) fails to keep books and records,
16 or fails to produce books and records as required by Section 7
17 or (c) willfully violates a rule or regulation of the
18 Department for the administration and enforcement of this Act
19 is guilty of a Class A misdemeanor. Any person, manager or
20 member of a limited liability company, or officer or director
21 of any corporation who engages in the business of selling
22 tangible personal property at retail after the certificate of
23 registration of that person, corporation, limited liability
24 company, or partnership has been revoked is guilty of a Class A
25 misdemeanor. Each day such person, corporation, or partnership
26 is engaged in business without a certificate of registration or

1 after the certificate of registration of that person,
2 corporation, or partnership has been revoked constitutes a
3 separate offense.

4 Any purchaser who obtains a registration number or resale
5 number from the Department through misrepresentation, or who
6 represents to a seller that such purchaser has a registration
7 number or a resale number from the Department when he knows
8 that he does not, or who uses his registration number or resale
9 number to make a seller believe that he is buying tangible
10 personal property for resale when such purchaser in fact knows
11 that this is not the case is guilty of a Class 4 felony.

12 Any distributor, supplier or other reseller of motor fuel
13 registered pursuant to Section 2a or 2c of this Act who fails
14 to collect the prepaid tax on invoiced gallons of motor fuel
15 sold or who fails to deliver a statement of tax paid to the
16 purchaser or to the Department as required by Sections 2d and
17 2e of this Act, respectively, shall be guilty of a Class A
18 misdemeanor if the amount due is under \$300, and a Class 4
19 felony if the amount due is \$300 or more.

20 When the amount due is under \$300, any person who accepts
21 money that is due to the Department under this Act from a
22 taxpayer for the purpose of acting as the taxpayer's agent to
23 make the payment to the Department, but who fails to remit such
24 payment to the Department when due is guilty of a Class 4
25 felony.

26 Any seller who collects or attempts to collect an amount

1 (however designated) which purports to reimburse such seller
2 for retailers' occupation tax liability measured by receipts
3 which such seller knows are not subject to retailers'
4 occupation tax, or any seller who knowingly over-collects or
5 attempts to over-collect an amount purporting to reimburse such
6 seller for retailers' occupation tax liability in a transaction
7 which is subject to the tax that is imposed by this Act, shall
8 be guilty of a Class 4 felony for each such offense. This
9 paragraph does not apply to an amount collected by the seller
10 as reimbursement for the seller's retailers' occupation tax
11 liability on receipts which are subject to tax under this Act
12 as long as such collection is made in compliance with the tax
13 collection brackets prescribed by the Department in its Rules
14 and Regulations.

15 When the amount due is \$300 or more, any person engaged in
16 the business of selling tangible personal property at retail in
17 this State who fails to file a return, or who files a
18 fraudulent return, or any officer, employee or agent of a
19 corporation, member, employee or agent of a partnership, or
20 manager, member, agent, or employee of a limited liability
21 company engaged in the business of selling tangible personal
22 property at retail in this State who, as such officer,
23 employee, agent, manager, or member is under a duty to file a
24 return and who fails to file such return or any officer, agent,
25 or employee of a corporation, member, agent or employee of a
26 partnership, or manager, member, agent, or employee of a

1 limited liability company engaged in the business of selling
2 tangible personal property at retail in this State who files or
3 causes to be filed or signs or causes to be signed a fraudulent
4 return filed on behalf of such corporation or limited liability
5 company, or any accountant or other agent who knowingly enters
6 false information on the return of any taxpayer under this Act
7 is guilty of a Class 3 felony.

8 When the amount due is \$300 or more, any person engaged in
9 the business of selling tangible personal property at retail in
10 this State who accepts money that is due to the Department
11 under this Act from a taxpayer for the purpose of acting as the
12 taxpayer's agent to make payment to the Department but fails to
13 remit such payment to the Department when due, is guilty of a
14 Class 3 felony.

15 Any person whose principal place of business is in this
16 State and who is charged with a violation under this Section
17 shall be tried in the county where his principal place of
18 business is located unless he asserts a right to be tried in
19 another venue.

20 Any taxpayer or agent of a taxpayer who with the intent to
21 defraud purports to make a payment due to the Department by
22 issuing or delivering a check or other order upon a real or
23 fictitious depository for the payment of money, knowing that it
24 will not be paid by the depository, shall be guilty of a
25 deceptive practice in violation of Section 17-1 of the Criminal
26 Code of 1961, as amended.

1 (b) A person commits the offense of sales tax evasion under
2 this Act when he knowingly attempts in any manner to evade or
3 defeat the tax imposed on him or on any other person, or the
4 payment thereof, and he commits an affirmative act in
5 furtherance of the evasion. For purposes of this Section, an
6 "affirmative act in furtherance of the evasion" means an act
7 designed in whole or in part to (i) conceal, misrepresent,
8 falsify, or manipulate any material fact or (ii) tamper with or
9 destroy documents or materials related to a person's tax
10 liability under this Act. Two or more acts of sales tax evasion
11 may be charged as a single count in any indictment,
12 information, or complaint and the amount of tax deficiency may
13 be aggregated for purposes of determining the amount of tax
14 which is attempted to be or is evaded and the period between
15 the first and last acts may be alleged as the date of the
16 offense.

17 (1) When the amount of tax, the assessment or payment
18 of which is attempted to be or is evaded is less than \$500
19 a person is guilty of a Class 4 felony.

20 (2) When the amount of tax, the assessment or payment
21 of which is attempted to be or is evaded is \$500 or more
22 but less than \$10,000, a person is guilty of a Class 3
23 felony.

24 (3) When the amount of tax, the assessment or payment
25 of which is attempted to be or is evaded is \$10,000 or more
26 but less than \$100,000, a person is guilty of a Class 2

1 felony.

2 (4) When the amount of tax, the assessment or payment
3 of which is attempted to be or is evaded \$100,000 or more,
4 a person is guilty of a Class 1 felony.

5 (c) A prosecution for any act in violation of this Section
6 may be commenced at any time within 5 ~~3~~ years of the commission
7 of that act.

8 (Source: P.A. 87-879; 88-480.)".