

1 AN ACT concerning finance.

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

4 Section 5. If and only if House Bill 2317 of the 98th
5 General Assembly becomes law, then the Use Tax Act is amended
6 by changing Section 2 as follows:

7 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

8 Sec. 2. "Use" means the exercise by any person of any right
9 or power over tangible personal property incident to the
10 ownership of that property, except that it does not include the
11 sale of such property in any form as tangible personal property
12 in the regular course of business to the extent that such
13 property is not first subjected to a use for which it was
14 purchased, and does not include the use of such property by its
15 owner for demonstration purposes: Provided that the property
16 purchased is deemed to be purchased for the purpose of resale,
17 despite first being used, to the extent to which it is resold
18 as an ingredient of an intentionally produced product or
19 by-product of manufacturing. "Use" does not mean the
20 demonstration use or interim use of tangible personal property
21 by a retailer before he sells that tangible personal property.
22 For watercraft or aircraft, if the period of demonstration use
23 or interim use by the retailer exceeds 18 months, the retailer

1 shall pay on the retailers' original cost price the tax imposed
2 by this Act, and no credit for that tax is permitted if the
3 watercraft or aircraft is subsequently sold by the retailer.

4 "Use" does not mean the physical incorporation of tangible
5 personal property, to the extent not first subjected to a use
6 for which it was purchased, as an ingredient or constituent,
7 into other tangible personal property (a) which is sold in the
8 regular course of business or (b) which the person
9 incorporating such ingredient or constituent therein has
10 undertaken at the time of such purchase to cause to be
11 transported in interstate commerce to destinations outside the
12 State of Illinois: Provided that the property purchased is
13 deemed to be purchased for the purpose of resale, despite first
14 being used, to the extent to which it is resold as an
15 ingredient of an intentionally produced product or by-product
16 of manufacturing.

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

21 "Purchase at retail" means the acquisition of the ownership
22 of or title to tangible personal property through a sale at
23 retail.

24 "Purchaser" means anyone who, through a sale at retail,
25 acquires the ownership of tangible personal property for a
26 valuable consideration.

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

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

25 Nonreusable tangible personal property that is used by
26 persons engaged in the business of operating a restaurant,

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

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

16 "Selling price" means the consideration for a sale valued
17 in money whether received in money or otherwise, including
18 cash, credits, property other than as hereinafter provided, and
19 services, but not including the value of or credit given for
20 traded-in tangible personal property where the item that is
21 traded-in is of like kind and character as that which is being
22 sold, and shall be determined without any deduction on account
23 of the cost of the property sold, the cost of materials used,
24 labor or service cost or any other expense whatsoever, but does
25 not include interest or finance charges which appear as
26 separate items on the bill of sale or sales contract nor

1 charges that are added to prices by sellers on account of the
2 seller's tax liability under the "Retailers' Occupation Tax
3 Act", or on account of the seller's duty to collect, from the
4 purchaser, the tax that is imposed by this Act, or, except as
5 otherwise provided with respect to any cigarette tax imposed by
6 a home rule unit, on account of the seller's tax liability
7 under any local occupation tax administered by the Department,
8 or, except as otherwise provided with respect to any cigarette
9 tax imposed by a home rule unit on account of the seller's duty
10 to collect, from the purchasers, the tax that is imposed under
11 any local use tax administered by the Department. Effective
12 December 1, 1985, "selling price" shall include charges that
13 are added to prices by sellers on account of the seller's tax
14 liability under the Cigarette Tax Act, on account of the
15 seller's duty to collect, from the purchaser, the tax imposed
16 under the Cigarette Use Tax Act, and on account of the seller's
17 duty to collect, from the purchaser, any cigarette tax imposed
18 by a home rule unit.

19 Notwithstanding any law to the contrary, for any motor
20 vehicle, as defined in Section 1-146 of the Vehicle Code, that
21 is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
22 purpose of leasing the vehicle for a defined period that is
23 longer than one year and (1) is a motor vehicle of the second
24 division that: (A) is a self-contained motor vehicle designed
25 or permanently converted to provide living quarters for
26 recreational, camping, or travel use, with direct walk through

1 access to the living quarters from the driver's seat; (B) is of
2 the van configuration designed for the transportation of not
3 less than 7 nor more than 16 passengers; or (C) has a gross
4 vehicle weight rating of 8,000 pounds or less or (2) is a motor
5 vehicle of the first division, "selling price" or "amount of
6 sale" means the consideration received by the lessor pursuant
7 to the lease contract, including amounts due at lease signing
8 and all monthly or other regular payments charged over the term
9 of the lease. Also included in the selling price is any amount
10 received by the lessor from the lessee for the leased vehicle
11 that is not calculated at the time the lease is executed,
12 including, but not limited to, excess mileage charges and
13 charges for excess wear and tear. For sales that occur in
14 Illinois, with respect to any amount received by the lessor
15 from the lessee for the leased vehicle that is not calculated
16 at the time the lease is executed, the lessor who purchased the
17 motor vehicle does not incur the tax imposed by the Use Tax Act
18 on those amounts, and the retailer who makes the retail sale of
19 the motor vehicle to the lessor is not required to collect the
20 tax imposed by this Act or to pay the tax imposed by the
21 Retailers' Occupation Tax Act on those amounts. However, the
22 lessor who purchased the motor vehicle assumes the liability
23 for reporting and paying the tax on those amounts directly to
24 the Department in the same form (Illinois Retailers' Occupation
25 Tax, and local retailers' occupation taxes, if applicable) in
26 which the retailer would have reported and paid such tax if the

1 retailer had accounted for the tax to the Department. For
2 amounts received by the lessor from the lessee that are not
3 calculated at the time the lease is executed, the lessor must
4 file the return and pay the tax to the Department by the due
5 date otherwise required by this Act for returns other than
6 transaction returns. If the retailer is entitled under this Act
7 to a discount for collecting and remitting the tax imposed
8 under this Act to the Department with respect to the sale of
9 the motor vehicle to the lessor, then the right to the discount
10 provided in this Act shall be transferred to the lessor with
11 respect to the tax paid by the lessor for any amount received
12 by the lessor from the lessee for the leased vehicle that is
13 not calculated at the time the lease is executed; provided that
14 the discount is only allowed if the return is timely filed and
15 for amounts timely paid. The "selling price" of a motor vehicle
16 that is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
17 purpose of leasing for a defined period of longer than one year
18 shall not be reduced by the value of or credit given for
19 traded-in tangible personal property owned by the lessor, nor
20 shall it be reduced by the value of or credit given for
21 traded-in tangible personal property owned by the lessee,
22 regardless of whether the trade-in value thereof is assigned by
23 the lessee to the lessor. In the case of a motor vehicle that
24 is sold for the purpose of leasing for a defined period of
25 longer than one year, the sale occurs at the time of the
26 delivery of the vehicle, regardless of the due date of any

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

20 The phrase "like kind and character" shall be liberally
21 construed (including but not limited to any form of motor
22 vehicle for any form of motor vehicle, or any kind of farm or
23 agricultural implement for any other kind of farm or
24 agricultural implement), while not including a kind of item
25 which, if sold at retail by that retailer, would be exempt from
26 retailers' occupation tax and use tax as an isolated or

1 occasional sale.

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

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

21 A person whose activities are organized and conducted
22 primarily as a not-for-profit service enterprise, and who
23 engages in selling tangible personal property at retail
24 (whether to the public or merely to members and their guests)
25 is a retailer with respect to such transactions, excepting only
26 a person organized and operated exclusively for charitable,

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

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

21 Persons who engage in the business of transferring tangible
22 personal property upon the redemption of trading stamps are
23 retailers hereunder when engaged in such business.

24 The isolated or occasional sale of tangible personal
25 property at retail by a person who does not hold himself out as
26 being engaged (or who does not habitually engage) in selling

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

22 "Retailer maintaining a place of business in this State",
23 or any like term, means and includes any of the following
24 retailers:

- 25 1. A retailer having or maintaining within this State,
26 directly or by a subsidiary, an office, distribution house,

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

16 1.1. Beginning July 1, 2011, a retailer having a
17 contract with a person located in this State under which
18 the person, for a commission or other consideration based
19 upon the sale of tangible personal property by the
20 retailer, directly or indirectly refers potential
21 customers to the retailer by a link on the person's
22 Internet website. The provisions of this paragraph 1.1
23 shall apply only if the cumulative gross receipts from
24 sales of tangible personal property by the retailer to
25 customers who are referred to the retailer by all persons
26 in this State under such contracts exceed \$10,000 during

1 the preceding 4 quarterly periods ending on the last day of
2 March, June, September, and December.

3 1.2. Beginning July 1, 2011, a retailer having a
4 contract with a person located in this State under which:

5 A. the retailer sells the same or substantially
6 similar line of products as the person located in this
7 State and does so using an identical or substantially
8 similar name, trade name, or trademark as the person
9 located in this State; and

10 B. the retailer provides a commission or other
11 consideration to the person located in this State based
12 upon the sale of tangible personal property by the
13 retailer.

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

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

26 3. A retailer, pursuant to a contract with a

1 broadcaster or publisher located in this State, soliciting
2 orders for tangible personal property by means of
3 advertising which is disseminated primarily to consumers
4 located in this State and only secondarily to bordering
5 jurisdictions.

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

13 5. A retailer that is owned or controlled by the same
14 interests that own or control any retailer engaging in
15 business in the same or similar line of business in this
16 State.

17 6. A retailer having a franchisee or licensee operating
18 under its trade name if the franchisee or licensee is
19 required to collect the tax under this Section.

20 7. A retailer, pursuant to a contract with a cable
21 television operator located in this State, soliciting
22 orders for tangible personal property by means of
23 advertising which is transmitted or distributed over a
24 cable television system in this State.

25 8. A retailer engaging in activities in Illinois, which
26 activities in the state in which the retail business

1 engaging in such activities is located would constitute
2 maintaining a place of business in that state.

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

9 (Source: P.A. 95-723, eff. 6-23-08; 96-1544, eff. 3-10-11;
10 09800HB2317enr.)

11 Section 10. If and only if House Bill 2317 of the 98th
12 General Assembly becomes law, then the Retailers' Occupation
13 Tax Act is amended by changing Section 1 as follows:

14 (35 ILCS 120/1) (from Ch. 120, par. 440)

15 Sec. 1. Definitions. "Sale at retail" means any transfer of
16 the ownership of or title to tangible personal property to a
17 purchaser, for the purpose of use or consumption, and not for
18 the purpose of resale in any form as tangible personal property
19 to the extent not first subjected to a use for which it was
20 purchased, for a valuable consideration: Provided that the
21 property purchased is deemed to be purchased for the purpose of
22 resale, despite first being used, to the extent to which it is
23 resold as an ingredient of an intentionally produced product or
24 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 The purchase, employment and transfer of such tangible
18 personal property as newsprint and ink for the primary purpose
19 of conveying news (with or without other information) is not a
20 purchase, use or sale of tangible personal property.

21 A person whose activities are organized and conducted
22 primarily as a not-for-profit service enterprise, and who
23 engages in selling tangible personal property at retail
24 (whether to the public or merely to members and their guests)
25 is engaged in the business of selling tangible personal
26 property at retail with respect to such transactions, excepting

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

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

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

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

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

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

8 Notwithstanding any law to the contrary, for any motor
9 vehicle, as defined in Section 1-146 of the Vehicle Code, that
10 is sold on or after January 1, 2015 ~~July 1, 2014~~ for the
11 purpose of leasing the vehicle for a defined period that is
12 longer than one year and (1) is a motor vehicle of the second
13 division that: (A) is a self-contained motor vehicle designed
14 or permanently converted to provide living quarters for
15 recreational, camping, or travel use, with direct walk through
16 access to the living quarters from the driver's seat; (B) is of
17 the van configuration designed for the transportation of not
18 less than 7 nor more than 16 passengers; or (C) has a gross
19 vehicle weight rating of 8,000 pounds or less or (2) is a motor
20 vehicle of the first division, "selling price" or "amount of
21 sale" means the consideration received by the lessor pursuant
22 to the lease contract, including amounts due at lease signing
23 and all monthly or other regular payments charged over the term
24 of the lease. Also included in the selling price is any amount
25 received by the lessor from the lessee for the leased vehicle
26 that is not calculated at the time the lease is executed,

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

1 lessee for the leased vehicle that is not calculated at the
2 time the lease is executed; provided that the discount is only
3 allowed if the return is timely filed and for amounts timely
4 paid. The "selling price" of a motor vehicle that is sold on or
5 after January 1, 2015 ~~July 1, 2014~~ for the purpose of leasing
6 for a defined period of longer than one year shall not be
7 reduced by the value of or credit given for traded-in tangible
8 personal property owned by the lessor, nor shall it be reduced
9 by the value of or credit given for traded-in tangible personal
10 property owned by the lessee, regardless of whether the
11 trade-in value thereof is assigned by the lessee to the lessor.
12 In the case of a motor vehicle that is sold for the purpose of
13 leasing for a defined period of longer than one year, the sale
14 occurs at the time of the delivery of the vehicle, regardless
15 of the due date of any lease payments. A lessor who incurs a
16 Retailers' Occupation Tax liability on the sale of a motor
17 vehicle coming off lease may not take a credit against that
18 liability for the Use Tax the lessor paid upon the purchase of
19 the motor vehicle (or for any tax the lessor paid with respect
20 to any amount received by the lessor from the lessee for the
21 leased vehicle that was not calculated at the time the lease
22 was executed) if the selling price of the motor vehicle at the
23 time of purchase was calculated using the definition of
24 "selling price" as defined in this paragraph. Notwithstanding
25 any other provision of this Act to the contrary, lessors shall
26 file all returns and make all payments required under this

1 paragraph to the Department by electronic means in the manner
2 and form as required by the Department. This paragraph does not
3 apply to leases of motor vehicles for which, at the time the
4 lease is entered into, the term of the lease is not a defined
5 period, including leases with a defined initial period with the
6 option to continue the lease on a month-to-month or other basis
7 beyond the initial defined period.

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

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

25 "Department" means the Department of Revenue.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or
2 private corporation, limited liability company, or a receiver,
3 executor, trustee, guardian or other representative appointed
4 by order of any court.

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

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

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

25 Persons who engage in the business of transferring tangible
26 personal property upon the redemption of trading stamps are

1 engaged in the business of selling such property at retail and
2 shall be liable for and shall pay the tax imposed by this Act
3 on the basis of the retail value of the property transferred
4 upon redemption of such stamps.

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

11 (Source: P.A. 95-723, eff. 6-23-08; 09800HB2317enr.)

12 Section 15. The Illinois Vehicle Code is amended by
13 changing Section 5-501 as follows:

14 (625 ILCS 5/5-501) (from Ch. 95 1/2, par. 5-501)

15 Sec. 5-501. Denial, suspension or revocation or
16 cancellation of a license.

17 (a) The license of a person issued under this Chapter may
18 be denied, revoked or suspended if the Secretary of State finds
19 that the applicant, or the officer, director, shareholder
20 having a ten percent or greater ownership interest in the
21 corporation, owner, partner, trustee, manager, employee or the
22 licensee has:

23 1. Violated this Act;

24 2. Made any material misrepresentation to the

1 Secretary of State in connection with an application for a
2 license, junking certificate, salvage certificate, title
3 or registration;

4 3. Committed a fraudulent act in connection with
5 selling, bartering, exchanging, offering for sale or
6 otherwise dealing in vehicles, chassis, essential parts,
7 or vehicle shells;

8 4. As a new vehicle dealer has no contract with a
9 manufacturer or enfranchised distributor to sell that new
10 vehicle in this State;

11 5. Not maintained an established place of business as
12 defined in this Code;

13 6. Failed to file or produce for the Secretary of State
14 any application, report, document or other pertinent
15 books, records, documents, letters, contracts, required to
16 be filed or produced under this Code or any rule or
17 regulation made by the Secretary of State pursuant to this
18 Code;

19 7. Previously had, within 3 years, such a license
20 denied, suspended, revoked, or cancelled under the
21 provisions of subsection (c) (2) of this Section;

22 8. Has committed in any calendar year 3 or more
23 violations, as determined in any civil or criminal
24 proceeding, of any one or more of the following Acts:

25 a. the "Consumer Finance Act";

26 b. the "Consumer Installment Loan Act";

- 1 c. the "Retail Installment Sales Act";
- 2 d. the "Motor Vehicle Retail Installment Sales
- 3 Act";
- 4 e. "An Act in relation to the rate of interest and
- 5 other charges in connection with sales on credit and
- 6 the lending of money", approved May 24, 1879, as
- 7 amended;
- 8 f. "An Act to promote the welfare of wage-earners
- 9 by regulating the assignment of wages, and prescribing
- 10 a penalty for the violation thereof", approved July 1,
- 11 1935, as amended;
- 12 g. Part 8 of Article XII of the Code of Civil
- 13 Procedure; or
- 14 h. the "Consumer Fraud Act";
- 15 9. Failed to pay any fees or taxes due under this Act,
- 16 or has failed to transmit any fees or taxes received by him
- 17 for transmittal by him to the Secretary of State or the
- 18 State of Illinois;
- 19 10. Converted an abandoned vehicle;
- 20 11. Used a vehicle identification plate or number
- 21 assigned to a vehicle other than the one to which
- 22 originally assigned;
- 23 12. Violated the provisions of Chapter 5 of this Act,
- 24 as amended;
- 25 13. Violated the provisions of Chapter 4 of this Act,
- 26 as amended;

1 14. Violated the provisions of Chapter 3 of this Act,
2 as amended;

3 15. Violated Section 21-2 of the Criminal Code of 1961
4 or the Criminal Code of 2012, Criminal Trespass to
5 Vehicles;

6 16. Made or concealed a material fact in connection
7 with his application for a license;

8 17. Acted in the capacity of a person licensed or acted
9 as a licensee under this Chapter without having a license
10 therefor;

11 18. Failed to pay, within 90 days after a final
12 judgment, any fines assessed against the licensee pursuant
13 to an action brought under Section 5-404;

14 19. Failed to pay the Dealer Recovery Trust Fund fee
15 under Section 5-102.7 of this Code;

16 20. Failed to pay, within 90 days after notice has been
17 given, any fine or fee owed as a result of an
18 administrative citation issued by the Secretary under this
19 Code.

20 (b) In addition to other grounds specified in this Chapter,
21 the Secretary of State, on complaint of the Department of
22 Revenue, shall refuse the issuance or renewal of a license, or
23 suspend or revoke such license, for any of the following
24 violations of the "Retailers' Occupation Tax Act", the tax
25 imposed on corporations under subsection (b) of Section 201 of
26 the Illinois Income Tax Act, the Personal Property Tax

1 Replacement Income Tax imposed under subsections (c) and (d) of
2 Section 201 of the Illinois Income Tax Act, or the tax imposed
3 under Section 704A of the Illinois Income Tax Act:

- 4 1. Failure to make a tax return;
- 5 2. The filing of a fraudulent return;
- 6 3. Failure to pay all or part of any tax or penalty
7 finally determined to be due;
- 8 4. Failure to comply with the bonding requirements of
9 the "Retailers' Occupation Tax Act".

10 (b-1) In addition to other grounds specified in this
11 Chapter, the Secretary of State, on complaint of the Motor
12 Vehicle Review Board, shall refuse the issuance or renewal of a
13 license, or suspend or revoke that license, if costs or fees
14 assessed under Section 29 or Section 30 of the Motor Vehicle
15 Franchise Act have remained unpaid for a period in excess of 90
16 days after the licensee received from the Motor Vehicle Board a
17 second notice and demand for the costs or fees. The Motor
18 Vehicle Review Board must send the licensee written notice and
19 demand for payment of the fees or costs at least 2 times, and
20 the second notice and demand must be sent by certified mail.

21 (c) Cancellation of a license.

22 1. The license of a person issued under this Chapter
23 may be cancelled by the Secretary of State prior to its
24 expiration in any of the following situations:

- 25 A. When a license is voluntarily surrendered, by
26 the licensed person; or

1 B. If the business enterprise is a sole
2 proprietorship, which is not a franchised dealership,
3 when the sole proprietor dies or is imprisoned for any
4 period of time exceeding 30 days; or

5 C. If the license was issued to the wrong person or
6 corporation, or contains an error on its face. If any
7 person above whose license has been cancelled wishes to
8 apply for another license, whether during the same
9 license year or any other year, that person shall be
10 treated as any other new applicant and the cancellation
11 of the person's prior license shall not, in and of
12 itself, be a bar to the issuance of a new license.

13 2. The license of a person issued under this Chapter
14 may be cancelled without a hearing when the Secretary of
15 State is notified that the applicant, or any officer,
16 director, shareholder having a 10 per cent or greater
17 ownership interest in the corporation, owner, partner,
18 trustee, manager, employee or member of the applicant or
19 the licensee has been convicted of any felony involving the
20 selling, bartering, exchanging, offering for sale, or
21 otherwise dealing in vehicles, chassis, essential parts,
22 vehicle shells, or ownership documents relating to any of
23 the above items.

24 (Source: P.A. 97-480, eff. 10-1-11; 97-838, eff. 7-20-12;
25 97-1150, eff. 1-25-13.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.