



Sen. Toi W. Hutchinson

Filed: 5/21/2014

09800SB0352sam001

LRB098 04568 HLH 59982 a

1 AMENDMENT TO SENATE BILL 352

2 AMENDMENT NO. _____. Amend Senate Bill 352 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Use Tax Act is amended by changing Section
5 2 as follows:

6 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

7 (Text of Section before amendment by P.A. 98-628)

8 Sec. 2. Definitions.

9 "Use" means the exercise by any person of any right or power
10 over tangible personal property incident to the ownership of
11 that property, except that it does not include the sale of such
12 property in any form as tangible personal property in the
13 regular course of business to the extent that such property is
14 not first subjected to a use for which it was purchased, and
15 does not include the use of such property by its owner for
16 demonstration purposes: Provided that the property purchased

1 is deemed to be purchased for the purpose of resale, despite
2 first being used, to the extent to which it is resold as an
3 ingredient of an intentionally produced product or by-product
4 of manufacturing. "Use" does not mean the demonstration use or
5 interim use of tangible personal property by a retailer before
6 he sells that tangible personal property. For watercraft or
7 aircraft, if the period of demonstration use or interim use by
8 the retailer exceeds 18 months, the retailer shall pay on the
9 retailers' original cost price the tax imposed by this Act, and
10 no credit for that tax is permitted if the watercraft or
11 aircraft is subsequently sold by the retailer. "Use" does not
12 mean the physical incorporation of tangible personal property,
13 to the extent not first subjected to a use for which it was
14 purchased, as an ingredient or constituent, into other tangible
15 personal property (a) which is sold in the regular course of
16 business or (b) which the person incorporating such ingredient
17 or constituent therein has undertaken at the time of such
18 purchase to cause to be transported in interstate commerce to
19 destinations outside the State of Illinois: Provided that the
20 property purchased is deemed to be purchased for the purpose of
21 resale, despite first being used, to the extent to which it is
22 resold as an ingredient of an intentionally produced product or
23 by-product of manufacturing.

24 "Watercraft" means a Class 2, Class 3, or Class 4
25 watercraft as defined in Section 3-2 of the Boat Registration
26 and Safety Act, a personal watercraft, or any boat equipped

1 with an inboard motor.

2 "Purchase at retail" means the acquisition of the ownership
3 of or title to tangible personal property through a sale at
4 retail.

5 "Purchaser" means anyone who, through a sale at retail,
6 acquires the ownership of tangible personal property for a
7 valuable consideration.

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

26 "Sale at retail" shall also be construed to include any

1 Illinois florist's sales transaction in which the purchase
2 order is received in Illinois by a florist and the sale is for
3 use or consumption, but the Illinois florist has a florist in
4 another state deliver the property to the purchaser or the
5 purchaser's donee in such other state.

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

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 "Selling price" means the consideration for a sale valued
24 in money whether received in money or otherwise, including
25 cash, credits, property other than as hereinafter provided, and
26 services, but not including the value of or credit given for

1 traded-in tangible personal property where the item that is
2 traded-in is of like kind and character as that which is being
3 sold, and shall be determined without any deduction on account
4 of the cost of the property sold, the cost of materials used,
5 labor or service cost or any other expense whatsoever, but does
6 not include interest or finance charges which appear as
7 separate items on the bill of sale or sales contract nor
8 charges that are added to prices by sellers on account of the
9 seller's tax liability under the "Retailers' Occupation Tax
10 Act", or on account of the seller's duty to collect, from the
11 purchaser, the tax that is imposed by this Act, or, except as
12 otherwise provided with respect to any cigarette tax imposed by
13 a home rule unit, on account of the seller's tax liability
14 under any local occupation tax administered by the Department,
15 or, except as otherwise provided with respect to any cigarette
16 tax imposed by a home rule unit on account of the seller's duty
17 to collect, from the purchasers, the tax that is imposed under
18 any local use tax administered by the Department. Effective
19 December 1, 1985, "selling price" shall include charges that
20 are added to prices by sellers on account of the seller's tax
21 liability under the Cigarette Tax Act, on account of the
22 seller's duty to collect, from the purchaser, the tax imposed
23 under the Cigarette Use Tax Act, and on account of the seller's
24 duty to collect, from the purchaser, any cigarette tax imposed
25 by a home rule unit.

26 The phrase "like kind and character" shall be liberally

1 construed (including but not limited to any form of motor
2 vehicle for any form of motor vehicle, or any kind of farm or
3 agricultural implement for any other kind of farm or
4 agricultural implement), while not including a kind of item
5 which, if sold at retail by that retailer, would be exempt from
6 retailers' occupation tax and use tax as an isolated or
7 occasional sale.

8 "Department" means the Department of Revenue.

9 "Person" means any natural individual, firm, partnership,
10 association, joint stock company, joint adventure, public or
11 private corporation, limited liability company, or a receiver,
12 executor, trustee, guardian or other representative appointed
13 by order of any court.

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

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

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

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

1 Persons who engage in the business of transferring tangible
2 personal property upon the redemption of trading stamps are
3 retailers hereunder when engaged in such business.

4 The isolated or occasional sale of tangible personal
5 property at retail by a person who does not hold himself out as
6 being engaged (or who does not habitually engage) in selling
7 such tangible personal property at retail or a sale through a
8 bulk vending machine does not make such person a retailer
9 hereunder. However, any person who is engaged in a business
10 which is not subject to the tax imposed by the "Retailers'
11 Occupation Tax Act" because of involving the sale of or a
12 contract to sell real estate or a construction contract to
13 improve real estate, but who, in the course of conducting such
14 business, transfers tangible personal property to users or
15 consumers in the finished form in which it was purchased, and
16 which does not become real estate, 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 a retailer to the
20 extent of the value of the tangible personal property so
21 transferred. If, in such transaction, a separate charge is made
22 for the tangible personal property so transferred, the value of
23 such property, for the purposes of this Act, is the amount so
24 separately charged, but not less than the cost of such property
25 to the transferor; if no separate charge is made, the value of
26 such property, for the purposes of this Act, is the cost to the

1 transferor of such tangible personal property.

2 "Retailer maintaining a place of business in this State",
3 or any like term, means and includes any of the following
4 retailers:

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

22 1.1. ~~A Beginning July 1, 2011, a~~ retailer having a
23 contract with a person located in this State under which
24 the person, for a commission or other consideration based
25 upon the sale of tangible personal property by the
26 retailer, directly or indirectly refers potential

1 customers to the retailer by providing to the potential
2 customers a promotional code or other mechanism that allows
3 the retailer to track purchases referred by such persons.
4 Examples of mechanisms that allow the retailer to track
5 purchases referred by such persons include but are not
6 limited to the use of a link on the person's Internet
7 website, promotional codes distributed through the
8 person's hand-delivered or mailed material, and
9 promotional codes distributed by the person through radio
10 or other broadcast media. The provisions of this paragraph
11 1.1 shall apply only if the cumulative gross receipts from
12 sales of tangible personal property by the retailer to
13 customers who are referred to the retailer by all persons
14 in this State under such contracts exceed \$10,000 during
15 the preceding 4 quarterly periods ending on the last day of
16 March, June, September, and December. A retailer meeting
17 the requirements of this paragraph 1.1 shall be presumed to
18 be maintaining a place of business in this State but may
19 rebut this presumption by submitting proof that the
20 referrals or other activities pursued within this State by
21 such persons were not sufficient to meet the nexus
22 standards of the United States Constitution during the
23 preceding 4 quarterly periods.

24 1.2. Beginning July 1, 2011, a retailer having a
25 contract with a person located in this State under which:

26 A. the retailer sells the same or substantially

1 similar line of products as the person located in this
2 State and does so using an identical or substantially
3 similar name, trade name, or trademark as the person
4 located in this State; and

5 B. the retailer provides a commission or other
6 consideration to the person located in this State based
7 upon the sale of tangible personal property by the
8 retailer.

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

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

21 3. A retailer, pursuant to a contract with a
22 broadcaster or publisher located in this State, soliciting
23 orders for tangible personal property by means of
24 advertising which is disseminated primarily to consumers
25 located in this State and only secondarily to bordering
26 jurisdictions.

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

8 5. A retailer that is owned or controlled by the same
9 interests that own or control any retailer engaging in
10 business in the same or similar line of business in this
11 State.

12 6. A retailer having a franchisee or licensee operating
13 under its trade name if the franchisee or licensee is
14 required to collect the tax under this Section.

15 7. A retailer, pursuant to a contract with a cable
16 television operator located in this State, soliciting
17 orders for tangible personal property by means of
18 advertising which is transmitted or distributed over a
19 cable television system in this State.

20 8. A retailer engaging in activities in Illinois, which
21 activities in the state in which the retail business
22 engaging in such activities is located would constitute
23 maintaining a place of business in that state.

24 "Bulk vending machine" means a vending machine, containing
25 unsorted confections, nuts, toys, or other items designed
26 primarily to be used or played with by children which, when a

1 coin or coins of a denomination not larger than \$0.50 are
2 inserted, are dispensed in equal portions, at random and
3 without selection by the customer.

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

5 (Text of Section after amendment by P.A. 98-628)

6 Sec. 2. Definitions.

7 "Use" means the exercise by any person of any right or power
8 over tangible personal property incident to the ownership of
9 that property, except that it does not include the sale of such
10 property in any form as tangible personal property in the
11 regular course of business to the extent that such property is
12 not first subjected to a use for which it was purchased, and
13 does not include the use of such property by its owner for
14 demonstration purposes: Provided that the property purchased
15 is deemed to be purchased for the purpose of resale, despite
16 first being used, to the extent to which it is resold as an
17 ingredient of an intentionally produced product or by-product
18 of manufacturing. "Use" does not mean the demonstration use or
19 interim use of tangible personal property by a retailer before
20 he sells that tangible personal property. For watercraft or
21 aircraft, if the period of demonstration use or interim use by
22 the retailer exceeds 18 months, the retailer shall pay on the
23 retailers' original cost price the tax imposed by this Act, and
24 no credit for that tax is permitted if the watercraft or
25 aircraft is subsequently sold by the retailer. "Use" does not

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

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

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18 of or title to tangible personal property through a sale at
19 retail.

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

23 "Sale at retail" means any transfer of the ownership of or
24 title to tangible personal property to a purchaser, for the
25 purpose of use, and not for the purpose of resale in any form
26 as tangible personal property to the extent not first subjected

1 to a use for which it was purchased, for a valuable
2 consideration: Provided that the property purchased is deemed
3 to be purchased for the purpose of resale, despite first being
4 used, to the extent to which it is resold as an ingredient of
5 an intentionally produced product or by-product of
6 manufacturing. For this purpose, slag produced as an incident
7 to manufacturing pig iron or steel and sold is considered to be
8 an intentionally produced by-product of manufacturing. "Sale
9 at retail" includes any such transfer made for resale unless
10 made in compliance with Section 2c of the Retailers' Occupation
11 Tax Act, as incorporated by reference into Section 12 of this
12 Act. Transactions whereby the possession of the property is
13 transferred but the seller retains the title as security for
14 payment of the selling price are sales.

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

21 Nonreusable tangible personal property that is used by
22 persons engaged in the business of operating a restaurant,
23 cafeteria, or drive-in is a sale for resale when it is
24 transferred to customers in the ordinary course of business as
25 part of the sale of food or beverages and is used to deliver,
26 package, or consume food or beverages, regardless of where

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

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

12 "Selling price" means the consideration for a sale valued
13 in money whether received in money or otherwise, including
14 cash, credits, property other than as hereinafter provided, and
15 services, but not including the value of or credit given for
16 traded-in tangible personal property where the item that is
17 traded-in is of like kind and character as that which is being
18 sold, and shall be determined without any deduction on account
19 of the cost of the property sold, the cost of materials used,
20 labor or service cost or any other expense whatsoever, but does
21 not include interest or finance charges which appear as
22 separate items on the bill of sale or sales contract nor
23 charges that are added to prices by sellers on account of the
24 seller's tax liability under the "Retailers' Occupation Tax
25 Act", or on account of the seller's duty to collect, from the
26 purchaser, the tax that is imposed by this Act, or, except as

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

15 Notwithstanding any law to the contrary, for any motor
16 vehicle, as defined in Section 1-146 of the Vehicle Code, that
17 is sold on or after July 1, 2014 for the purpose of leasing the
18 vehicle for a defined period that is longer than one year and
19 (1) is a motor vehicle of the second division that: (A) is a
20 self-contained motor vehicle designed or permanently converted
21 to provide living quarters for recreational, camping, or travel
22 use, with direct walk through access to the living quarters
23 from the driver's seat; (B) is of the van configuration
24 designed for the transportation of not less than 7 nor more
25 than 16 passengers; or (C) has a gross vehicle weight rating of
26 8,000 pounds or less or (2) is a motor vehicle of the first

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

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

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

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

24 "Department" means the Department of Revenue.

25 "Person" means any natural individual, firm, partnership,
26 association, joint stock company, joint adventure, public or

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

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5 business of making sales at retail as defined in this Section.

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

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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 a retailer with respect to such transactions, excepting only
22 a person organized and operated exclusively for charitable,
23 religious or educational purposes either (1), to the extent of
24 sales by such person to its members, students, patients or
25 inmates of tangible personal property to be used primarily for
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1 Occupation Tax Act" because of involving the sale of or a
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3 improve real estate, but who, in the course of conducting such
4 business, transfers tangible personal property to users or
5 consumers in the finished form in which it was purchased, and
6 which does not become real estate, under any provision of a
7 construction contract or real estate sale or real estate sales
8 agreement entered into with some other person arising out of or
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10 extent of the value of the tangible personal property so
11 transferred. If, in such transaction, a separate charge is made
12 for the tangible personal property so transferred, the value of
13 such property, for the purposes of this Act, is the amount so
14 separately charged, but not less than the cost of such property
15 to the transferor; if no separate charge is made, the value of
16 such property, for the purposes of this Act, is the cost to the
17 transferor of such tangible personal property.

18 "Retailer maintaining a place of business in this State",
19 or any like term, means and includes any of the following
20 retailers:

- 21 1. A retailer having or maintaining within this State,
22 directly or by a subsidiary, an office, distribution house,
23 sales house, warehouse or other place of business, or any
24 agent or other representative operating within this State
25 under the authority of the retailer or its subsidiary,
26 irrespective of whether such place of business or agent or

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

12 1.1. ~~A Beginning July 1, 2011,~~ a retailer having a
13 contract with a person located in this State under which
14 the person, for a commission or other consideration based
15 upon the sale of tangible personal property by the
16 retailer, directly or indirectly refers potential
17 customers to the retailer by providing to the potential
18 customers a promotional code or other mechanism that allows
19 the retailer to track purchases referred by such persons.
20 Examples of mechanisms that allow the retailer to track
21 purchases referred by such persons include but are not
22 limited to the use of a link on the person's Internet
23 website, promotional codes distributed through the
24 person's hand-delivered or mailed material, and
25 promotional codes distributed by the person through radio
26 or other broadcast media. The provisions of this paragraph

1 1.1 shall apply only if the cumulative gross receipts from
2 sales of tangible personal property by the retailer to
3 customers who are referred to the retailer by all persons
4 in this State under such contracts exceed \$10,000 during
5 the preceding 4 quarterly periods ending on the last day of
6 March, June, September, and December. A retailer meeting
7 the requirements of this paragraph 1.1 shall be presumed to
8 be maintaining a place of business in this State but may
9 rebut this presumption by submitting proof that the
10 referrals or other activities pursued within this State by
11 such persons were not sufficient to meet the nexus
12 standards of the United States Constitution during the
13 preceding 4 quarterly periods.

14 1.2. Beginning July 1, 2011, a retailer having a
15 contract with a person located in this State under which:

16 A. the retailer sells the same or substantially
17 similar line of products as the person located in this
18 State and does so using an identical or substantially
19 similar name, trade name, or trademark as the person
20 located in this State; and

21 B. the retailer provides a commission or other
22 consideration to the person located in this State based
23 upon the sale of tangible personal property by the
24 retailer.

25 The provisions of this paragraph 1.2 shall apply only if
26 the cumulative gross receipts from sales of tangible

1 personal property by the retailer to customers in this
2 State under all such contracts exceed \$10,000 during the
3 preceding 4 quarterly periods ending on the last day of
4 March, June, September, and December.

5 2. A retailer soliciting orders for tangible personal
6 property by means of a telecommunication or television
7 shopping system (which utilizes toll free numbers) which is
8 intended by the retailer to be broadcast by cable
9 television or other means of broadcasting, to consumers
10 located in this State.

11 3. A retailer, pursuant to a contract with a
12 broadcaster or publisher located in this State, soliciting
13 orders for tangible personal property by means of
14 advertising which is disseminated primarily to consumers
15 located in this State and only secondarily to bordering
16 jurisdictions.

17 4. A retailer soliciting orders for tangible personal
18 property by mail if the solicitations are substantial and
19 recurring and if the retailer benefits from any banking,
20 financing, debt collection, telecommunication, or
21 marketing activities occurring in this State or benefits
22 from the location in this State of authorized installation,
23 servicing, or repair facilities.

24 5. A retailer that is owned or controlled by the same
25 interests that own or control any retailer engaging in
26 business in the same or similar line of business in this

1 State.

2 6. A retailer having a franchisee or licensee operating
3 under its trade name if the franchisee or licensee is
4 required to collect the tax under this Section.

5 7. A retailer, pursuant to a contract with a cable
6 television operator located in this State, soliciting
7 orders for tangible personal property by means of
8 advertising which is transmitted or distributed over a
9 cable television system in this State.

10 8. A retailer engaging in activities in Illinois, which
11 activities in the state in which the retail business
12 engaging in such activities is located would constitute
13 maintaining a place of business in that state.

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

20 (Source: P.A. 98-628, eff. 1-1-15.)

21 Section 10. The Service Use Tax Act is amended by changing
22 Section 2 as follows:

23 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

24 Sec. 2. Definitions.

1 "Use" means the exercise by any person of any right or
2 power over tangible personal property incident to the ownership
3 of that property, but does not include the sale or use for
4 demonstration by him of that property in any form as tangible
5 personal property in the regular course of business. "Use" does
6 not mean the interim use of tangible personal property nor the
7 physical incorporation of tangible personal property, as an
8 ingredient or constituent, into other tangible personal
9 property, (a) which is sold in the regular course of business
10 or (b) which the person incorporating such ingredient or
11 constituent therein has undertaken at the time of such purchase
12 to cause to be transported in interstate commerce to
13 destinations outside the State of Illinois.

14 "Purchased from a serviceman" means the acquisition of the
15 ownership of, or title to, tangible personal property through a
16 sale of service.

17 "Purchaser" means any person who, through a sale of
18 service, acquires the ownership of, or title to, any tangible
19 personal property.

20 "Cost price" means the consideration paid by the serviceman
21 for a purchase valued in money, whether paid in money or
22 otherwise, including cash, credits and services, and shall be
23 determined without any deduction on account of the supplier's
24 cost of the property sold or on account of any other expense
25 incurred by the supplier. When a serviceman contracts out part
26 or all of the services required in his sale of service, it

1 shall be presumed that the cost price to the serviceman of the
2 property transferred to him or her by his or her subcontractor
3 is equal to 50% of the subcontractor's charges to the
4 serviceman in the absence of proof of the consideration paid by
5 the subcontractor for the purchase of such property.

6 "Selling price" means the consideration for a sale valued
7 in money whether received in money or otherwise, including
8 cash, credits and service, and shall be determined without any
9 deduction on account of the serviceman's cost of the property
10 sold, the cost of materials used, labor or service cost or any
11 other expense whatsoever, but does not include interest or
12 finance charges which appear as separate items on the bill of
13 sale or sales contract nor charges that are added to prices by
14 sellers on account of the seller's duty to collect, from the
15 purchaser, the tax that is imposed by this Act.

16 "Department" means the Department of Revenue.

17 "Person" means any natural individual, firm, partnership,
18 association, joint stock company, joint venture, public or
19 private corporation, limited liability company, and any
20 receiver, executor, trustee, guardian or other representative
21 appointed by order of any court.

22 "Sale of service" means any transaction except:

23 (1) a retail sale of tangible personal property taxable
24 under the Retailers' Occupation Tax Act or under the Use
25 Tax Act.

26 (2) a sale of tangible personal property for the

1 purpose of resale made in compliance with Section 2c of the
2 Retailers' Occupation Tax Act.

3 (3) except as hereinafter provided, a sale or transfer
4 of tangible personal property as an incident to the
5 rendering of service for or by any governmental body, or
6 for or by any corporation, society, association,
7 foundation or institution organized and operated
8 exclusively for charitable, religious or educational
9 purposes or any not-for-profit corporation, society,
10 association, foundation, institution or organization which
11 has no compensated officers or employees and which is
12 organized and operated primarily for the recreation of
13 persons 55 years of age or older. A limited liability
14 company may qualify for the exemption under this paragraph
15 only if the limited liability company is organized and
16 operated exclusively for educational purposes.

17 (4) a sale or transfer of tangible personal property as
18 an incident to the rendering of service for interstate
19 carriers for hire for use as rolling stock moving in
20 interstate commerce or by lessors under a lease of one year
21 or longer, executed or in effect at the time of purchase of
22 personal property, to interstate carriers for hire for use
23 as rolling stock moving in interstate commerce so long as
24 so used by such interstate carriers for hire, and equipment
25 operated by a telecommunications provider, licensed as a
26 common carrier by the Federal Communications Commission,

1 which is permanently installed in or affixed to aircraft
2 moving in interstate commerce.

3 (4a) a sale or transfer of tangible personal property
4 as an incident to the rendering of service for owners,
5 lessors, or shippers of tangible personal property which is
6 utilized by interstate carriers for hire for use as rolling
7 stock moving in interstate commerce so long as so used by
8 interstate carriers for hire, and equipment operated by a
9 telecommunications provider, licensed as a common carrier
10 by the Federal Communications Commission, which is
11 permanently installed in or affixed to aircraft moving in
12 interstate commerce.

13 (4a-5) on and after July 1, 2003 and through June 30,
14 2004, a sale or transfer of a motor vehicle of the second
15 division with a gross vehicle weight in excess of 8,000
16 pounds as an incident to the rendering of service if that
17 motor vehicle is subject to the commercial distribution fee
18 imposed under Section 3-815.1 of the Illinois Vehicle Code.
19 Beginning on July 1, 2004 and through June 30, 2005, the
20 use in this State of motor vehicles of the second division:
21 (i) with a gross vehicle weight rating in excess of 8,000
22 pounds; (ii) that are subject to the commercial
23 distribution fee imposed under Section 3-815.1 of the
24 Illinois Vehicle Code; and (iii) that are primarily used
25 for commercial purposes. Through June 30, 2005, this
26 exemption applies to repair and replacement parts added

1 after the initial purchase of such a motor vehicle if that
2 motor vehicle is used in a manner that would qualify for
3 the rolling stock exemption otherwise provided for in this
4 Act. For purposes of this paragraph, "used for commercial
5 purposes" means the transportation of persons or property
6 in furtherance of any commercial or industrial enterprise
7 whether for-hire or not.

8 (5) a sale or transfer of machinery and equipment used
9 primarily in the process of the manufacturing or
10 assembling, either in an existing, an expanded or a new
11 manufacturing facility, of tangible personal property for
12 wholesale or retail sale or lease, whether such sale or
13 lease is made directly by the manufacturer or by some other
14 person, whether the materials used in the process are owned
15 by the manufacturer or some other person, or whether such
16 sale or lease is made apart from or as an incident to the
17 seller's engaging in a service occupation and the
18 applicable tax is a Service Use Tax or Service Occupation
19 Tax, rather than Use Tax or Retailers' Occupation Tax. The
20 exemption provided by this paragraph (5) does not include
21 machinery and equipment used in (i) the generation of
22 electricity for wholesale or retail sale; (ii) the
23 generation or treatment of natural or artificial gas for
24 wholesale or retail sale that is delivered to customers
25 through pipes, pipelines, or mains; or (iii) the treatment
26 of water for wholesale or retail sale that is delivered to

1 customers through pipes, pipelines, or mains. The
2 provisions of this amendatory Act of the 98th General
3 Assembly are declaratory of existing law as to the meaning
4 and scope of this exemption.

5 (5a) the repairing, reconditioning or remodeling, for
6 a common carrier by rail, of tangible personal property
7 which belongs to such carrier for hire, and as to which
8 such carrier receives the physical possession of the
9 repaired, reconditioned or remodeled item of tangible
10 personal property in Illinois, and which such carrier
11 transports, or shares with another common carrier in the
12 transportation of such property, out of Illinois on a
13 standard uniform bill of lading showing the person who
14 repaired, reconditioned or remodeled the property to a
15 destination outside Illinois, for use outside Illinois.

16 (5b) a sale or transfer of tangible personal property
17 which is produced by the seller thereof on special order in
18 such a way as to have made the applicable tax the Service
19 Occupation Tax or the Service Use Tax, rather than the
20 Retailers' Occupation Tax or the Use Tax, for an interstate
21 carrier by rail which receives the physical possession of
22 such property in Illinois, and which transports such
23 property, or shares with another common carrier in the
24 transportation of such property, out of Illinois on a
25 standard uniform bill of lading showing the seller of the
26 property as the shipper or consignor of such property to a

1 destination outside Illinois, for use outside Illinois.

2 (6) until July 1, 2003, a sale or transfer of
3 distillation machinery and equipment, sold as a unit or kit
4 and assembled or installed by the retailer, which machinery
5 and equipment is certified by the user to be used only for
6 the production of ethyl alcohol that will be used for
7 consumption as motor fuel or as a component of motor fuel
8 for the personal use of such user and not subject to sale
9 or resale.

10 (7) at the election of any serviceman not required to
11 be otherwise registered as a retailer under Section 2a of
12 the Retailers' Occupation Tax Act, made for each fiscal
13 year sales of service in which the aggregate annual cost
14 price of tangible personal property transferred as an
15 incident to the sales of service is less than 35%, or 75%
16 in the case of servicemen transferring prescription drugs
17 or servicemen engaged in graphic arts production, of the
18 aggregate annual total gross receipts from all sales of
19 service. The purchase of such tangible personal property by
20 the serviceman shall be subject to tax under the Retailers'
21 Occupation Tax Act and the Use Tax Act. However, if a
22 primary serviceman who has made the election described in
23 this paragraph subcontracts service work to a secondary
24 serviceman who has also made the election described in this
25 paragraph, the primary serviceman does not incur a Use Tax
26 liability if the secondary serviceman (i) has paid or will

1 pay Use Tax on his or her cost price of any tangible
2 personal property transferred to the primary serviceman
3 and (ii) certifies that fact in writing to the primary
4 serviceman.

5 Tangible personal property transferred incident to the
6 completion of a maintenance agreement is exempt from the tax
7 imposed pursuant to this Act.

8 Exemption (5) also includes machinery and equipment used in
9 the general maintenance or repair of such exempt machinery and
10 equipment or for in-house manufacture of exempt machinery and
11 equipment. The machinery and equipment exemption does not
12 include machinery and equipment used in (i) the generation of
13 electricity for wholesale or retail sale; (ii) the generation
14 or treatment of natural or artificial gas for wholesale or
15 retail sale that is delivered to customers through pipes,
16 pipelines, or mains; or (iii) the treatment of water for
17 wholesale or retail sale that is delivered to customers through
18 pipes, pipelines, or mains. The provisions of this amendatory
19 Act of the 98th General Assembly are declaratory of existing
20 law as to the meaning and scope of this exemption. For the
21 purposes of exemption (5), each of these terms shall have the
22 following meanings: (1) "manufacturing process" shall mean the
23 production of any article of tangible personal property,
24 whether such article is a finished product or an article for
25 use in the process of manufacturing or assembling a different
26 article of tangible personal property, by procedures commonly

1 regarded as manufacturing, processing, fabricating, or
2 refining which changes some existing material or materials into
3 a material with a different form, use or name. In relation to a
4 recognized integrated business composed of a series of
5 operations which collectively constitute manufacturing, or
6 individually constitute manufacturing operations, the
7 manufacturing process shall be deemed to commence with the
8 first operation or stage of production in the series, and shall
9 not be deemed to end until the completion of the final product
10 in the last operation or stage of production in the series; and
11 further, for purposes of exemption (5), photoprocessing is
12 deemed to be a manufacturing process of tangible personal
13 property for wholesale or retail sale; (2) "assembling process"
14 shall mean the production of any article of tangible personal
15 property, whether such article is a finished product or an
16 article for use in the process of manufacturing or assembling a
17 different article of tangible personal property, by the
18 combination of existing materials in a manner commonly regarded
19 as assembling which results in a material of a different form,
20 use or name; (3) "machinery" shall mean major mechanical
21 machines or major components of such machines contributing to a
22 manufacturing or assembling process; and (4) "equipment" shall
23 include any independent device or tool separate from any
24 machinery but essential to an integrated manufacturing or
25 assembly process; including computers used primarily in a
26 manufacturer's computer assisted design, computer assisted

1 manufacturing (CAD/CAM) system; or any subunit or assembly
2 comprising a component of any machinery or auxiliary, adjunct
3 or attachment parts of machinery, such as tools, dies, jigs,
4 fixtures, patterns and molds; or any parts which require
5 periodic replacement in the course of normal operation; but
6 shall not include hand tools. Equipment includes chemicals or
7 chemicals acting as catalysts but only if the chemicals or
8 chemicals acting as catalysts effect a direct and immediate
9 change upon a product being manufactured or assembled for
10 wholesale or retail sale or lease. The purchaser of such
11 machinery and equipment who has an active resale registration
12 number shall furnish such number to the seller at the time of
13 purchase. The user of such machinery and equipment and tools
14 without an active resale registration number shall prepare a
15 certificate of exemption for each transaction stating facts
16 establishing the exemption for that transaction, which
17 certificate shall be available to the Department for inspection
18 or audit. The Department shall prescribe the form of the
19 certificate.

20 Any informal rulings, opinions or letters issued by the
21 Department in response to an inquiry or request for any opinion
22 from any person regarding the coverage and applicability of
23 exemption (5) to specific devices shall be published,
24 maintained as a public record, and made available for public
25 inspection and copying. If the informal ruling, opinion or
26 letter contains trade secrets or other confidential

1 information, where possible the Department shall delete such
2 information prior to publication. Whenever such informal
3 rulings, opinions, or letters contain any policy of general
4 applicability, the Department shall formulate and adopt such
5 policy as a rule in accordance with the provisions of the
6 Illinois Administrative Procedure Act.

7 On and after July 1, 1987, no entity otherwise eligible
8 under exemption (3) of this Section shall make tax free
9 purchases unless it has an active exemption identification
10 number issued by the Department.

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

16 "Serviceman" means any person who is engaged in the
17 occupation of making sales of service.

18 "Sale at retail" means "sale at retail" as defined in the
19 Retailers' Occupation Tax Act.

20 "Supplier" means any person who makes sales of tangible
21 personal property to servicemen for the purpose of resale as an
22 incident to a sale of service.

23 "Serviceman maintaining a place of business in this State",
24 or any like term, means and includes any serviceman:

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

1 house, warehouse or other place of business, or any agent
2 or other representative operating within this State under
3 the authority of the serviceman 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 serviceman or subsidiary is
7 licensed to do business in this State;

8 1.1. ~~beginning July 1, 2011,~~ having a contract with a
9 person located in this State under which the person, for a
10 commission or other consideration based on the sale of
11 service by the serviceman, directly or indirectly refers
12 potential customers to the serviceman by providing to the
13 potential customers a promotional code or other mechanism
14 that allows the serviceman to track purchases referred by
15 such persons. Examples of mechanisms that allow the
16 serviceman to track purchase referred by such persons
17 include but are not limited to the use of a link on the
18 person's Internet website, promotional codes distributed
19 through the person's hand-delivered or mailed material,
20 and promotional codes distributed by the person through
21 radio or other broadcast media. The provisions of this
22 paragraph 1.1 shall apply only if the cumulative gross
23 receipts from sales of service by the serviceman to
24 customers who are referred to the serviceman by all persons
25 in this State under such contracts exceed \$10,000 during
26 the preceding 4 quarterly periods ending on the last day of

1 March, June, September, and December; a serviceman meeting
2 the requirements of this paragraph 1.1 shall be presumed to
3 be maintaining a place of business in this State but may
4 rebut this presumption by submitting proof that the
5 referrals or other activities pursued within this State by
6 such persons were not sufficient to meet the nexus
7 standards of the United States Constitution during the
8 preceding 4 quarterly periods;

9 1.2. beginning July 1, 2011, having a contract with a
10 person located in this State under which:

11 A. the serviceman sells the same or substantially
12 similar line of services as the person located in this
13 State and does so using an identical or substantially
14 similar name, trade name, or trademark as the person
15 located in this State; and

16 B. the serviceman provides a commission or other
17 consideration to the person located in this State based
18 upon the sale of services by the serviceman.

19 The provisions of this paragraph 1.2 shall apply only if
20 the cumulative gross receipts from sales of service by the
21 serviceman to customers in this State under all such
22 contracts exceed \$10,000 during the preceding 4 quarterly
23 periods ending on the last day of March, June, September,
24 and December;

25 2. soliciting orders for tangible personal property by
26 means of a telecommunication or television shopping system

1 (which utilizes toll free numbers) which is intended by the
2 retailer to be broadcast by cable television or other means
3 of broadcasting, to consumers located in this State;

4 3. pursuant to a contract with a broadcaster or
5 publisher located in this State, soliciting orders for
6 tangible personal property by means of advertising which is
7 disseminated primarily to consumers located in this State
8 and only secondarily to bordering jurisdictions;

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

16 5. being owned or controlled by the same interests
17 which own or control any retailer engaging in business in
18 the same or similar line of business in this State;

19 6. having a franchisee or licensee operating under its
20 trade name if the franchisee or licensee is required to
21 collect the tax under this Section;

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

1 8. engaging in activities in Illinois, which
2 activities in the state in which the supply business
3 engaging in such activities is located would constitute
4 maintaining a place of business in that state.

5 (Source: P.A. 98-583, eff. 1-1-14.)

6 Section 95. No acceleration or delay. Where this Act makes
7 changes in a statute that is represented in this Act by text
8 that is not yet or no longer in effect (for example, a Section
9 represented by multiple versions), the use of that text does
10 not accelerate or delay the taking effect of (i) the changes
11 made by this Act or (ii) provisions derived from any other
12 Public Act."