

HB3664



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3664

by Rep. Monica Bristow

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2
35 ILCS 120/1

from Ch. 120, par. 439.2
from Ch. 120, par. 440

Amends the Use Tax Act and the Retailers' Occupation Tax Act. Provides that, beginning on January 1, 2020, "selling price" shall not include any shipping or delivery charges, which means any freight, express, mail, truck, or other carrier conveyance or delivery process.

LRB101 10400 HLH 55506 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

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

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

7 Sec. 2. Definitions.

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

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

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

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

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

26 "Sale at retail" means any transfer of the ownership of or

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

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

24 Nonreusable tangible personal property that is used by
25 persons engaged in the business of operating a restaurant,
26 cafeteria, or drive-in is a sale for resale when it is

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

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 tangible personal property.

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

1 seller's tax liability under the "Retailers' Occupation Tax
2 Act", or on account of the seller's duty to collect, from the
3 purchaser, the tax that is imposed by this Act, or, except as
4 otherwise provided with respect to any cigarette tax imposed by
5 a home rule unit, on account of the seller's tax liability
6 under any local occupation tax administered by the Department,
7 or, except as otherwise provided with respect to any cigarette
8 tax imposed by a home rule unit on account of the seller's duty
9 to collect, from the purchasers, the tax that is imposed under
10 any local use tax administered by the Department. Effective
11 December 1, 1985, "selling price" shall include charges that
12 are added to prices by sellers on account of the seller's tax
13 liability under the Cigarette Tax Act, on account of the
14 seller's duty to collect, from the purchaser, the tax imposed
15 under the Cigarette Use Tax Act, and on account of the seller's
16 duty to collect, from the purchaser, any cigarette tax imposed
17 by a home rule unit. Beginning January 1, 2020, "selling price"
18 shall not include any shipping or delivery charges, which means
19 any freight, express, mail, truck, or other carrier conveyance
20 or delivery process.

21 Notwithstanding any law to the contrary, for any motor
22 vehicle, as defined in Section 1-146 of the Vehicle Code, that
23 is sold on or after January 1, 2015 for the purpose of leasing
24 the vehicle for a defined period that is longer than one year
25 and (1) is a motor vehicle of the second division that: (A) is
26 a self-contained motor vehicle designed or permanently

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

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

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

22 The phrase "like kind and character" shall be liberally
23 construed (including but not limited to any form of motor
24 vehicle for any form of motor vehicle, or any kind of farm or
25 agricultural implement for any other kind of farm or
26 agricultural implement), while not including a kind of item

1 which, if sold at retail by that retailer, would be exempt from
2 retailers' occupation tax and use tax as an isolated or
3 occasional sale.

4 "Department" means the Department of Revenue.

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

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

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

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

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

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

26 The isolated or occasional sale of tangible personal

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

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

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

18 (1.1) A retailer having a contract with a person
19 located in this State under which the person, for a
20 commission or other consideration based upon the sale of
21 tangible personal property by the retailer, directly or
22 indirectly refers potential customers to the retailer by
23 providing to the potential customers a promotional code or
24 other mechanism that allows the retailer to track purchases
25 referred by such persons. Examples of mechanisms that allow
26 the retailer to track purchases referred by such persons

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

19 (1.2) Beginning July 1, 2011, a retailer having a
20 contract with a person located in this State under which:

21 (A) the retailer sells the same or substantially
22 similar line of products as the person located in this
23 State and does so using an identical or substantially
24 similar name, trade name, or trademark as the person
25 located in this State; and

26 (B) the retailer provides a commission or other

1 consideration to the person located in this State based
2 upon the sale of tangible personal property by the
3 retailer.

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

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

16 (3) A retailer, pursuant to a contract with a
17 broadcaster or publisher located in this State, soliciting
18 orders for tangible personal property by means of
19 advertising which is disseminated primarily to consumers
20 located in this State and only secondarily to bordering
21 jurisdictions.

22 (4) A retailer soliciting orders for tangible personal
23 property by mail if the solicitations are substantial and
24 recurring and if the retailer benefits from any banking,
25 financing, debt collection, telecommunication, or
26 marketing activities occurring in this State or benefits

1 from the location in this State of authorized installation,
2 servicing, or repair facilities.

3 (5) A retailer that is owned or controlled by the same
4 interests that own or control any retailer engaging in
5 business in the same or similar line of business in this
6 State.

7 (6) A retailer having a franchisee or licensee
8 operating under its trade name if the franchisee or
9 licensee is required to collect the tax under this Section.

10 (7) A retailer, pursuant to a contract with a cable
11 television operator located in this State, soliciting
12 orders for tangible personal property by means of
13 advertising which is transmitted or distributed over a
14 cable television system in this State.

15 (8) A retailer engaging in activities in Illinois,
16 which activities in the state in which the retail business
17 engaging in such activities is located would constitute
18 maintaining a place of business in that state.

19 (9) Beginning October 1, 2018, a retailer making sales
20 of tangible personal property to purchasers in Illinois
21 from outside of Illinois if:

22 (A) the cumulative gross receipts from sales of
23 tangible personal property to purchasers in Illinois
24 are \$100,000 or more; or

25 (B) the retailer enters into 200 or more separate
26 transactions for the sale of tangible personal

1 property to purchasers in Illinois.

2 The retailer shall determine on a quarterly basis,
3 ending on the last day of March, June, September, and
4 December, whether he or she meets the criteria of either
5 subparagraph (A) or (B) of this paragraph (9) for the
6 preceding 12-month period. If the retailer meets the
7 criteria of either subparagraph (A) or (B) for a 12-month
8 period, he or she is considered a retailer maintaining a
9 place of business in this State and is required to collect
10 and remit the tax imposed under this Act and file returns
11 for one year. At the end of that one-year period, the
12 retailer shall determine whether the retailer met the
13 criteria of either subparagraph (A) or (B) during the
14 preceding 12-month period. If the retailer met the criteria
15 in either subparagraph (A) or (B) for the preceding
16 12-month period, he or she is considered a retailer
17 maintaining a place of business in this State and is
18 required to collect and remit the tax imposed under this
19 Act and file returns for the subsequent year. If at the end
20 of a one-year period a retailer that was required to
21 collect and remit the tax imposed under this Act determines
22 that he or she did not meet the criteria in either
23 subparagraph (A) or (B) during the preceding 12-month
24 period, the retailer shall subsequently determine on a
25 quarterly basis, ending on the last day of March, June,
26 September, and December, whether he or she meets the

1 criteria of either subparagraph (A) or (B) for the
2 preceding 12-month period.

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. 99-78, eff. 7-20-15; 100-587, eff. 6-4-18.)

10 Section 10. The Retailers' Occupation Tax Act is amended by
11 changing Section 1 as follows:

12 (35 ILCS 120/1) (from Ch. 120, par. 440)

13 Sec. 1. Definitions. "Sale at retail" means any transfer of
14 the ownership of or title to tangible personal property to a
15 purchaser, for the purpose of use or consumption, and not for
16 the purpose of resale in any form as tangible personal property
17 to the extent not first subjected to a use for which it was
18 purchased, for a valuable consideration: Provided that the
19 property purchased is deemed to be purchased for the purpose of
20 resale, despite first being used, to the extent to which it is
21 resold as an ingredient of an intentionally produced product or
22 byproduct of manufacturing. For this purpose, slag produced as
23 an incident to manufacturing pig iron or steel and sold is
24 considered to be an intentionally produced byproduct of

1 manufacturing. Transactions whereby the possession of the
2 property is transferred but the seller retains the title as
3 security for payment of the selling price shall be deemed to be
4 sales.

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

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

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

1 donee in such other state.

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

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

19 A person whose activities are organized and conducted
20 primarily as a not-for-profit service enterprise, and who
21 engages in selling tangible personal property at retail
22 (whether to the public or merely to members and their guests)
23 is engaged in the business of selling tangible personal
24 property at retail with respect to such transactions, excepting
25 only a person organized and operated exclusively for
26 charitable, religious or educational purposes either (1), to

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

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

25 "Reseller of motor fuel" means any person engaged in the
26 business of selling or delivering or transferring title of

1 motor fuel to another person other than for use or consumption.
2 No person shall act as a reseller of motor fuel within this
3 State without first being registered as a reseller pursuant to
4 Section 2c or a retailer pursuant to Section 2a.

5 "Selling price" or the "amount of sale" means the
6 consideration for a sale valued in money whether received in
7 money or otherwise, including cash, credits, property, other
8 than as hereinafter provided, and services, but not including
9 the value of or credit given for traded-in tangible personal
10 property where the item that is traded-in is of like kind and
11 character as that which is being sold, and shall be determined
12 without any deduction on account of the cost of the property
13 sold, the cost of materials used, labor or service cost or any
14 other expense whatsoever, but does not include charges that are
15 added to prices by sellers on account of the seller's tax
16 liability under this Act, or on account of the seller's duty to
17 collect, from the purchaser, the tax that is imposed by the Use
18 Tax Act, or, except as otherwise provided with respect to any
19 cigarette tax imposed by a home rule unit, on account of the
20 seller's tax liability under any local occupation tax
21 administered by the Department, or, except as otherwise
22 provided with respect to any cigarette tax imposed by a home
23 rule unit on account of the seller's duty to collect, from the
24 purchasers, the tax that is imposed under any local use tax
25 administered by the Department. Effective December 1, 1985,
26 "selling price" shall include charges that are added to prices

1 by sellers on account of the seller's tax liability under the
2 Cigarette Tax Act, on account of the sellers' duty to collect,
3 from the purchaser, the tax imposed under the Cigarette Use Tax
4 Act, and on account of the seller's duty to collect, from the
5 purchaser, any cigarette tax imposed by a home rule unit.
6 Beginning January 1, 2020, "selling price" shall not include
7 any shipping or delivery charges, which means any freight,
8 express, mail, truck, or other carrier conveyance or delivery
9 process.

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

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

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

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

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

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

1 "Department" means the Department of Revenue.

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

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

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

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

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

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

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