

# HB3891



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB3891

Introduced 10/17/2019, by Rep. Ryan Spain - Grant Wehrli,  
Andrew S. Chesney and Tony McCombie

#### SYNOPSIS AS INTRODUCED:

35 ILCS 105/2

from Ch. 120, par. 439.2

35 ILCS 120/1

from Ch. 120, par. 440

Amends the Use Tax Act and the Retailers' Occupation Tax Act. Provides that the term "selling price" does not include the value of or credit given for traded-in tangible personal property (currently, beginning on January 1, 2020, with respect to motor vehicles, "selling price" does include the trade-in value). Effective immediately.

LRB101 14341 HLH 63221 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, ~~prior to January 1, 2020,~~ not including the  
19 value of or credit given for traded-in tangible personal  
20 property where the item that is traded-in is of like kind and  
21 character as that which is being sold, ~~beginning January 1,~~  
22 ~~2020, "selling price" includes the portion of the value of or~~  
23 ~~credit given for traded in motor vehicles of the First Division~~  
24 ~~as defined in Section 1-146 of the Illinois Vehicle Code of~~  
25 ~~like kind and character as that which is being sold that~~  
26 ~~exceeds \$10,000.~~ "Selling price" shall be determined without

1 any deduction on account of the cost of the property sold, the  
2 cost of materials used, labor or service cost or any other  
3 expense whatsoever, but does not include interest or finance  
4 charges which appear as separate items on the bill of sale or  
5 sales contract nor charges that are added to prices by sellers  
6 on account of the seller's tax liability under the "Retailers'  
7 Occupation Tax Act", or on account of the seller's duty to  
8 collect, from the purchaser, the tax that is imposed by this  
9 Act, or, except as otherwise provided with respect to any  
10 cigarette tax imposed by a home rule unit, on account of the  
11 seller's tax liability under any local occupation tax  
12 administered by the Department, or, except as otherwise  
13 provided with respect to any cigarette tax imposed by a home  
14 rule unit on account of the seller's duty to collect, from the  
15 purchasers, the tax that is imposed under any local use tax  
16 administered by the Department. Effective December 1, 1985,  
17 "selling price" shall include charges that are added to prices  
18 by sellers on account of the seller's tax liability under the  
19 Cigarette Tax Act, on account of the seller's duty to collect,  
20 from the purchaser, the tax imposed under the Cigarette Use Tax  
21 Act, and on account of the seller's duty to collect, from the  
22 purchaser, any cigarette tax imposed by a home rule unit.

23 Notwithstanding any law to the contrary, for any motor  
24 vehicle, as defined in Section 1-146 of the Vehicle Code, that  
25 is sold on or after January 1, 2015 for the purpose of leasing  
26 the vehicle for a defined period that is longer than one year

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

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



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

24 The phrase "like kind and character" shall be liberally  
25 construed (including but not limited to any form of motor  
26 vehicle for any form of motor vehicle, or any kind of farm or

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

6 "Department" means the Department of Revenue.

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

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

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

25 A person whose activities are organized and conducted  
26 primarily as a not-for-profit service enterprise, and who

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

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

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

1 retailers hereunder when engaged in such business.

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

26 "Retailer maintaining a place of business in this State",

1 or any like term, means and includes any of the following  
2 retailers:

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

20 (1.1) (Blank).

21 (1.2) (Blank).

22 (2) (Blank).

23 (3) (Blank).

24 (4) (Blank).

25 (5) (Blank).

26 (6) (Blank).

1 (7) (Blank).

2 (8) (Blank).

3 (9) Beginning October 1, 2018 through June 30, 2020, a  
4 retailer making sales of tangible personal property to  
5 purchasers in Illinois from outside of Illinois if:

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

9 (B) the retailer enters into 200 or more separate  
10 transactions for the sale of tangible personal  
11 property to purchasers in Illinois.

12 The retailer shall determine on a quarterly basis,  
13 ending on the last day of March, June, September, and  
14 December, whether he or she meets the criteria of either  
15 subparagraph (A) or (B) of this paragraph (9) for the  
16 preceding 12-month period. If the retailer meets the  
17 criteria of either subparagraph (A) or (B) for a 12-month  
18 period, he or she is considered a retailer maintaining a  
19 place of business in this State and is required to collect  
20 and remit the tax imposed under this Act and file returns  
21 for one year. At the end of that one-year period, the  
22 retailer shall determine whether the retailer met the  
23 criteria of either subparagraph (A) or (B) during the  
24 preceding 12-month period. If the retailer met the criteria  
25 in either subparagraph (A) or (B) for the preceding  
26 12-month period, he or she is considered a retailer

1 maintaining a place of business in this State and is  
2 required to collect and remit the tax imposed under this  
3 Act and file returns for the subsequent year. If at the end  
4 of a one-year period a retailer that was required to  
5 collect and remit the tax imposed under this Act determines  
6 that he or she did not meet the criteria in either  
7 subparagraph (A) or (B) during the preceding 12-month  
8 period, the retailer shall subsequently determine on a  
9 quarterly basis, ending on the last day of March, June,  
10 September, and December, whether he or she meets the  
11 criteria of either subparagraph (A) or (B) for the  
12 preceding 12-month period.

13 Beginning January 1, 2020, neither the gross receipts  
14 from nor the number of separate transactions for sales of  
15 tangible personal property to purchasers in Illinois that a  
16 retailer makes through a marketplace facilitator and for  
17 which the retailer has received a certification from the  
18 marketplace facilitator pursuant to Section 2d of this Act  
19 shall be included for purposes of determining whether he or  
20 she has met the thresholds of this paragraph (9).

21 (10) Beginning January 1, 2020, a marketplace  
22 facilitator, as defined in Section 2d of this Act.

23 "Bulk vending machine" means a vending machine, containing  
24 unsorted confections, nuts, toys, or other items designed  
25 primarily to be used or played with by children which, when a  
26 coin or coins of a denomination not larger than \$0.50 are

1 inserted, are dispensed in equal portions, at random and  
2 without selection by the customer.

3 (Source: P.A. 100-587, eff. 6-4-18; 101-9, eff. 6-5-19; 101-31,  
4 eff. 1-1-20; revised 7-11-19.)

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

7 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

24 "Sale at retail" shall be construed to include any transfer



1 of the ownership of or title to tangible personal property to a  
2 purchaser, for use or consumption by any other person to whom  
3 such purchaser may transfer the tangible personal property  
4 without a valuable consideration, and to include any transfer,  
5 whether made for or without a valuable consideration, for  
6 resale in any form as tangible personal property unless made in  
7 compliance with Section 2c of this Act.

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

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

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

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

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

14 A person whose activities are organized and conducted  
15 primarily as a not-for-profit service enterprise, and who  
16 engages in selling tangible personal property at retail  
17 (whether to the public or merely to members and their guests)  
18 is engaged in the business of selling tangible personal  
19 property at retail with respect to such transactions, excepting  
20 only a person organized and operated exclusively for  
21 charitable, religious or educational purposes either (1), to  
22 the extent of sales by such person to its members, students,  
23 patients or inmates of tangible personal property to be used  
24 primarily for the purposes of such person, or (2), to the  
25 extent of sales by such person of tangible personal property  
26 which is not sold or offered for sale by persons organized for

1 profit. The selling of school books and school supplies by  
2 schools at retail to students is not "primarily for the  
3 purposes of" the school which does such selling. The provisions  
4 of this paragraph shall not apply to nor subject to taxation  
5 occasional dinners, socials or similar activities of a person  
6 organized and operated exclusively for charitable, religious  
7 or educational purposes, whether or not such activities are  
8 open to the public.

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

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

20 "Reseller of motor fuel" means any person engaged in the  
21 business of selling or delivering or transferring title of  
22 motor fuel to another person other than for use or consumption.  
23 No person shall act as a reseller of motor fuel within this  
24 State without first being registered as a reseller pursuant to  
25 Section 2c or a retailer pursuant to Section 2a.

26 "Selling price" or the "amount of sale" means the

1 consideration for a sale valued in money whether received in  
2 money or otherwise, including cash, credits, property, other  
3 than as hereinafter provided, and services, but, ~~prior to~~  
4 ~~January 1, 2020,~~ not including the value of or credit given for  
5 traded-in tangible personal property where the item that is  
6 traded-in is of like kind and character as that which is being  
7 sold; ~~beginning January 1, 2020, "selling price" includes the~~  
8 ~~portion of the value of or credit given for traded in motor~~  
9 ~~vehicles of the First Division as defined in Section 1-146 of~~  
10 ~~the Illinois Vehicle Code of like kind and character as that~~  
11 ~~which is being sold that exceeds \$10,000.~~ "Selling price" shall  
12 be determined without any deduction on account of the cost of  
13 the property sold, the cost of materials used, labor or service  
14 cost or any other expense whatsoever, but does not include  
15 charges that are added to prices by sellers on account of the  
16 seller's tax liability under this Act, or on account of the  
17 seller's duty to collect, from the purchaser, the tax that is  
18 imposed by the Use Tax Act, or, except as otherwise provided  
19 with respect to any cigarette tax imposed by a home rule unit,  
20 on account of the seller's tax liability under any local  
21 occupation tax administered by the Department, or, except as  
22 otherwise provided with respect to any cigarette tax imposed by  
23 a home rule unit on account of the seller's duty to collect,  
24 from the purchasers, the tax that is imposed under any local  
25 use tax administered by the Department. Effective December 1,  
26 1985, "selling price" shall include charges that are added to

1 prices by sellers on account of the seller's tax liability  
2 under the Cigarette Tax Act, on account of the sellers' duty to  
3 collect, from the purchaser, the tax imposed under the  
4 Cigarette Use Tax Act, and on account of the seller's duty to  
5 collect, from the purchaser, any cigarette tax imposed by a  
6 home rule unit.

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

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

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

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

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

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

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.

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

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

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

24 Persons who engage in the business of transferring tangible  
25 personal property upon the redemption of trading stamps are  
26 engaged in the business of selling such property at retail and

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

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

10 "Remote retailer" means a retailer located outside of this  
11 State that does not maintain within this State, directly or by  
12 a subsidiary, an office, distribution house, sales house,  
13 warehouse or other place of business, or any agent or other  
14 representative operating within this State under the authority  
15 of the retailer or its subsidiary, irrespective of whether such  
16 place of business or agent is located here permanently or  
17 temporarily or whether such retailer or subsidiary is licensed  
18 to do business in this State.

19 (Source: P.A. 101-31, eff. 6-28-19.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.