



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4932

Introduced 2/18/2020, by Rep. David A. Welter

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 July 1, 2020, the term "selling price" no longer includes the value of or credit given for traded-in tangible personal property. Effective immediately.

LRB101 17162 HLH 66563 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 and beginning again on
19 July 1, 2020, not including the value of or credit given for
20 traded-in tangible personal property where the item that is
21 traded-in is of like kind and character as that which is being
22 sold; beginning January 1, 2020 and through June 30, 2020,
23 "selling price" includes the portion of the value of or credit
24 given for traded-in motor vehicles of the First Division as
25 defined in Section 1-146 of the Illinois Vehicle Code of like
26 kind and character as that which is being sold that exceeds

1 \$10,000. "Selling price" shall be determined without any
2 deduction on account of the cost of the property sold, the cost
3 of materials used, labor or service cost or any other expense
4 whatsoever, but does not include interest or finance charges
5 which appear as separate items on the bill of sale or sales
6 contract nor charges that are added to prices by sellers on
7 account of the seller's tax liability under the Retailers'
8 Occupation Tax Act, or on account of the seller's duty to
9 collect, from the purchaser, the tax that is imposed by this
10 Act, or, except as otherwise provided with respect to any
11 cigarette tax imposed by a home rule unit, on account of the
12 seller's tax liability under any local occupation tax
13 administered by the Department, or, except as otherwise
14 provided with respect to any cigarette tax imposed by a home
15 rule unit on account of the seller's duty to collect, from the
16 purchasers, the tax that is imposed under any local use tax
17 administered by the Department. Effective December 1, 1985,
18 "selling price" shall include charges that are added to prices
19 by sellers on account of the seller's tax liability under the
20 Cigarette Tax Act, on account of the seller's duty to collect,
21 from the purchaser, the tax imposed under the Cigarette Use Tax
22 Act, and on account of the seller's duty to collect, from the
23 purchaser, any cigarette tax imposed by a home rule unit.

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

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

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

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

25 The phrase "like kind and character" shall be liberally
26 construed (including but not limited to any form of motor

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

7 "Department" means the Department of Revenue.

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

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

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

26 A person whose activities are organized and conducted

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

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

26 Persons who engage in the business of transferring tangible

1 personal property upon the redemption of trading stamps are
2 retailers hereunder when engaged in such business.

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

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

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

21 (1.1) A retailer having a contract with a person
22 located in this State under which the person, for a
23 commission or other consideration based upon the sale of
24 tangible personal property by the retailer, directly or
25 indirectly refers potential customers to the retailer by
26 providing to the potential customers a promotional code or

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

22 (1.2) Beginning July 1, 2011, a retailer having a
23 contract with a person located in this State under which:

24 (A) the retailer sells the same or substantially
25 similar line of products as the person located in this
26 State and does so using an identical or substantially

1 similar name, trade name, or trademark as the person
2 located in this State; and

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

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

13 (2) (Blank).

14 (3) (Blank).

15 (4) (Blank).

16 (5) (Blank).

17 (6) (Blank).

18 (7) (Blank).

19 (8) (Blank).

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

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

26 (B) the retailer enters into 200 or more separate

1 transactions for the sale of tangible personal
2 property to purchasers in Illinois.

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

1 September, and December, whether he or she meets the
2 threshold of either subparagraph (A) or (B) for the
3 preceding 12-month period.

4 Beginning January 1, 2020, neither the gross receipts
5 from nor the number of separate transactions for sales of
6 tangible personal property to purchasers in Illinois that a
7 retailer makes through a marketplace facilitator and for
8 which the retailer has received a certification from the
9 marketplace facilitator pursuant to Section 2d of this Act
10 shall be included for purposes of determining whether he or
11 she has met the thresholds of this paragraph (9).

12 (10) Beginning January 1, 2020, a marketplace
13 facilitator that meets a threshold set forth in subsection
14 (b) of Section 2d of this Act.

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

21 (Source: P.A. 100-587, eff. 6-4-18; 101-9, eff. 6-5-19; 101-31,
22 eff. 1-1-20; 101-604, eff. 1-1-20.)

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

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

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

18 "Sale at retail" shall be construed to include any transfer
19 of the ownership of or title to tangible personal property to a
20 purchaser, for use or consumption by any other person to whom
21 such purchaser may transfer the tangible personal property
22 without a valuable consideration, and to include any transfer,
23 whether made for or without a valuable consideration, for
24 resale in any form as tangible personal property unless made in
25 compliance with Section 2c of this Act.

26 Sales of tangible personal property, which property, to the

1 extent not first subjected to a use for which it was purchased,
2 as an ingredient or constituent, goes into and forms a part of
3 tangible personal property subsequently the subject of a "Sale
4 at retail", are not sales at retail as defined in this Act:
5 Provided that the property purchased is deemed to be purchased
6 for the purpose of resale, despite first being used, to the
7 extent to which it is resold as an ingredient of an
8 intentionally produced product or byproduct of manufacturing.

9 "Sale at retail" shall be construed to include any Illinois
10 florist's sales transaction in which the purchase order is
11 received in Illinois by a florist and the sale is for use or
12 consumption, but the Illinois florist has a florist in another
13 state deliver the property to the purchaser or the purchaser's
14 donee in such other state.

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

1 ordinary course of business.

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

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

1 A person who is the recipient of a grant or contract under
2 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
3 serves meals to participants in the federal Nutrition Program
4 for the Elderly in return for contributions established in
5 amount by the individual participant pursuant to a schedule of
6 suggested fees as provided for in the federal Act is not
7 engaged in the business of selling tangible personal property
8 at retail with respect to such transactions.

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

12 "Reseller of motor fuel" means any person engaged in the
13 business of selling or delivering or transferring title of
14 motor fuel to another person other than for use or consumption.
15 No person shall act as a reseller of motor fuel within this
16 State without first being registered as a reseller pursuant to
17 Section 2c or a retailer pursuant to Section 2a.

18 "Selling price" or the "amount of sale" means the
19 consideration for a sale valued in money whether received in
20 money or otherwise, including cash, credits, property, other
21 than as hereinafter provided, and services, but, prior to
22 January 1, 2020 and beginning again on July 1, 2020, not
23 including the value of or credit given for traded-in tangible
24 personal property where the item that is traded-in is of like
25 kind and character as that which is being sold; beginning
26 January 1, 2020 and through June 30, 2020, "selling price"

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

26 Notwithstanding any law to the contrary, for any motor

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

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

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

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

17 "Department" means the Department of Revenue.

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

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

1 bulk vending machine, does not constitute engaging in a
2 business of selling such tangible personal property at retail
3 within the meaning of this Act; provided that any person who is
4 engaged in a business which is not subject to the tax imposed
5 by this Act because of involving the sale of or a contract to
6 sell real estate or a construction contract to improve real
7 estate or a construction contract to engineer, install, and
8 maintain an integrated system of products, but who, in the
9 course of conducting such business, transfers tangible
10 personal property to users or consumers in the finished form in
11 which it was purchased, and which does not become real estate
12 or was not engineered and installed, 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 engaged in the business
16 of selling tangible personal property at retail to the extent
17 of the value of the tangible personal property so transferred.
18 If, in such a transaction, a separate charge is made for the
19 tangible personal property so transferred, the value of such
20 property, for the purpose of this Act, shall be the amount so
21 separately charged, but not less than the cost of such property
22 to the transferor; if no separate charge is made, the value of
23 such property, for the purposes of this Act, is the cost to the
24 transferor of such tangible personal property. Construction
25 contracts for the improvement of real estate consisting of
26 engineering, installation, and maintenance of voice, data,

1 video, security, and all telecommunication systems do not
2 constitute engaging in a business of selling tangible personal
3 property at retail within the meaning of this Act if they are
4 sold at one specified contract price.

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

17 Persons who engage in the business of transferring tangible
18 personal property upon the redemption of trading stamps are
19 engaged in the business of selling such property at retail and
20 shall be liable for and shall pay the tax imposed by this Act
21 on the basis of the retail value of the property transferred
22 upon redemption of such stamps.

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 "Remote retailer" means a retailer that does not maintain
4 within this State, directly or by a subsidiary, an office,
5 distribution house, sales house, warehouse or other place of
6 business, or any agent or other representative operating within
7 this State under the authority of the retailer or its
8 subsidiary, irrespective of whether such place of business or
9 agent is located here permanently or temporarily or whether
10 such retailer or subsidiary is licensed to do business in this
11 State.

12 "Marketplace" means a physical or electronic place, forum,
13 platform, application, or other method by which a marketplace
14 seller sells or offers to sell items.

15 "Marketplace facilitator" means a person who, pursuant to
16 an agreement with an unrelated third-party marketplace seller,
17 directly or indirectly through one or more affiliates
18 facilitates a retail sale by an unrelated third party
19 marketplace seller by:

20 (1) listing or advertising for sale by the marketplace
21 seller in a marketplace, tangible personal property that is
22 subject to tax under this Act; and

23 (2) either directly or indirectly, through agreements
24 or arrangements with third parties, collecting payment
25 from the customer and transmitting that payment to the
26 marketplace seller regardless of whether the marketplace

1 facilitator receives compensation or other consideration
2 in exchange for its services.

3 A person who provides advertising services, including
4 listing products for sale, is not considered a marketplace
5 facilitator, so long as the advertising service platform or
6 forum does not engage, directly or indirectly through one or
7 more affiliated persons, in the activities described in
8 paragraph (2) of this definition of "marketplace facilitator".

9 "Marketplace seller" means a person that makes sales
10 through a marketplace operated by an unrelated third party
11 marketplace facilitator.

12 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 1-1-20.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.