

HB3636



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3636

Introduced 2/22/2021, by Rep. Thomas M. Bennett

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 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.

LRB102 10996 HLH 16328 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
10 ownership of that property, except that it does not include
11 the sale of such property in any form as tangible personal
12 property in the regular course of business to the extent that
13 such property is not first subjected to a use for which it was
14 purchased, and does not include the use of such property by its
15 owner for demonstration purposes: Provided that the property
16 purchased is deemed to be purchased for the purpose of resale,
17 despite first being used, to the extent to which it is resold
18 as an ingredient of an intentionally produced product or
19 by-product of manufacturing. "Use" does not mean the
20 demonstration use or interim use of tangible personal property
21 by a retailer before he sells that tangible personal property.
22 For watercraft or aircraft, if the period of demonstration use
23 or interim use by the retailer exceeds 18 months, the retailer

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

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

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

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

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

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

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

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

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

16 "Selling price" means the consideration for a sale valued
17 in money whether received in money or otherwise, including
18 cash, credits, property other than as hereinafter provided,
19 and services, but, ~~prior to January 1, 2020,~~ not including the
20 value of or credit given for traded-in tangible personal
21 property where the item that is traded-in is of like kind and
22 character as that which is being sold; ~~beginning January 1,~~
23 ~~2020, "selling price" includes the portion of the value of or~~
24 ~~credit given for traded-in motor vehicles of the First~~
25 ~~Division as defined in Section 1-146 of the Illinois Vehicle~~
26 ~~Code of like kind and character as that which is being sold~~

1 ~~that exceeds \$10,000.~~ "Selling price" shall be determined
2 without any deduction on account of the cost of the property
3 sold, the cost of materials used, labor or service cost or any
4 other expense whatsoever, but does not include interest or
5 finance charges which appear as separate items on the bill of
6 sale or sales contract nor charges that are added to prices by
7 sellers on account of the seller's tax liability under the
8 Retailers' Occupation Tax Act, or on account of the seller's
9 duty to collect, from the purchaser, the tax that is imposed by
10 this 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
22 Tax Act, and on account of the seller's duty to collect, from
23 the 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'
4 Occupation Tax, and local retailers' occupation taxes, if
5 applicable) in which the retailer would have reported and paid
6 such tax if the retailer had accounted for the tax to the
7 Department. For amounts received by the lessor from the lessee
8 that are not calculated at the time the lease is executed, the
9 lessor must file the return and pay the tax to the Department
10 by the due date otherwise required by this Act for returns
11 other than transaction returns. If the retailer is entitled
12 under this Act to a discount for collecting and remitting the
13 tax imposed under this Act to the Department with respect to
14 the sale of the motor vehicle to the lessor, then the right to
15 the discount provided in this Act shall be transferred to the
16 lessor with respect to the tax paid by the lessor for any
17 amount received by the lessor from the lessee for the leased
18 vehicle that is not calculated at the time the lease is
19 executed; provided that the discount is only allowed if the
20 return is timely filed and for amounts timely paid. The
21 "selling price" of a motor vehicle that is sold on or after
22 January 1, 2015 for the purpose of leasing for a defined period
23 of longer than one year shall not be reduced by the value of or
24 credit given for traded-in tangible personal property owned by
25 the lessor, nor shall it be reduced by the value of or credit
26 given for traded-in tangible personal property owned by the

1 lessee, regardless of whether the trade-in value thereof is
2 assigned by the lessee to the lessor. In the case of a motor
3 vehicle that is sold for the purpose of leasing for a defined
4 period of longer than one year, the sale occurs at the time of
5 the delivery of the vehicle, regardless of the due date of any
6 lease payments. A lessor who incurs a Retailers' Occupation
7 Tax liability on the sale of a motor vehicle coming off lease
8 may not take a credit against that liability for the Use Tax
9 the lessor paid upon the purchase of the motor vehicle (or for
10 any tax the lessor paid with respect to any amount received by
11 the lessor from the lessee for the leased vehicle that was not
12 calculated at the time the lease was executed) if the selling
13 price of the motor vehicle at the time of purchase was
14 calculated using the definition of "selling price" as defined
15 in this paragraph. Notwithstanding any other provision of this
16 Act to the contrary, lessors shall file all returns and make
17 all payments required under this paragraph to the Department
18 by electronic means in the manner and form as required by the
19 Department. This paragraph does not apply to leases of motor
20 vehicles for which, at the time the lease is entered into, the
21 term of the lease is not a defined period, including leases
22 with a defined initial period with the option to continue the
23 lease on a month-to-month or other basis beyond the initial
24 defined 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
18 such 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
5 only a person organized and operated exclusively for
6 charitable, religious or educational purposes either (1), to
7 the extent of sales by such person to its members, students,
8 patients or inmates of tangible personal property to be used
9 primarily for the purposes of such person, or (2), to the
10 extent of sales by such person of tangible personal property
11 which is not sold or offered for sale by persons organized for
12 profit. The selling of school books and school supplies by
13 schools at retail to students is not "primarily for the
14 purposes of" the school which does such selling. This
15 paragraph does not apply to nor subject to taxation occasional
16 dinners, social or similar activities of a person organized
17 and operated exclusively for charitable, religious or
18 educational purposes, whether or not such activities are open
19 to the public.

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

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

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

1 is the cost to the transferor of such tangible personal
2 property.

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

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

24 (1.1) A retailer having a contract with a person
25 located in this State under which the person, for a
26 commission or other consideration based upon the sale of

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

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

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

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

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

16 (2) (Blank).

17 (3) (Blank).

18 (4) (Blank).

19 (5) (Blank).

20 (6) (Blank).

21 (7) (Blank).

22 (8) (Blank).

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

26 (A) the cumulative gross receipts from sales of

1 tangible personal property to purchasers in Illinois
2 are \$100,000 or more; or

3 (B) the retailer enters into 200 or more separate
4 transactions for the sale of tangible personal
5 property to purchasers in Illinois.

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

1 either subparagraph (A) or (B) during the preceding
2 12-month period, the retailer shall subsequently determine
3 on a quarterly basis, ending on the last day of March,
4 June, September, and December, whether he or she meets the
5 threshold of either subparagraph (A) or (B) for the
6 preceding 12-month period.

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

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

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

24 (Source: P.A. 100-587, eff. 6-4-18; 101-9, eff. 6-5-19;
25 101-31, eff. 1-1-20; 101-604, eff. 1-1-20.)

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

3 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

20 "Sale at retail" shall be construed to include any
21 transfer of the ownership of or title to tangible personal
22 property to a purchaser, for use or consumption by any other
23 person to whom such purchaser may transfer the tangible
24 personal property without a valuable consideration, and to
25 include any transfer, whether made for or without a valuable

1 consideration, for resale in any form as tangible personal
2 property unless made in compliance with Section 2c of this
3 Act.

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

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

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

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

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

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

1 provisions of this paragraph shall not apply to nor subject to
2 taxation occasional dinners, socials or similar activities of
3 a person organized and operated exclusively for charitable,
4 religious or educational purposes, whether or not such
5 activities are open to the public.

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

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

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

23 "Selling price" or the "amount of sale" means the
24 consideration for a sale valued in money whether received in
25 money or otherwise, including cash, credits, property, other
26 than as hereinafter provided, and services, but, ~~prior to~~

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

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

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

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

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

1 term of the lease is not a defined period, including leases
2 with a defined initial period with the option to continue the
3 lease on a month-to-month or other basis beyond the initial
4 defined period.

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

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

22 "Department" means the Department of Revenue.

23 "Person" means any natural individual, firm, partnership,
24 association, joint stock company, joint adventure, public or
25 private corporation, limited liability company, or a receiver,
26 executor, trustee, guardian or other representative appointed

1 by order of any court.

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

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

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

23 Persons who engage in the business of transferring
24 tangible personal property upon the redemption of trading
25 stamps are engaged in the business of selling such property at
26 retail and shall be liable for and shall pay the tax imposed by

1 this Act on the basis of the retail value of the property
2 transferred upon redemption of such stamps.

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

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

21 "Marketplace facilitator" means a person who, pursuant to
22 an agreement with an unrelated third-party marketplace seller,
23 directly or indirectly through one or more affiliates
24 facilitates a retail sale by an unrelated third party
25 marketplace seller by:

26 (1) listing or advertising for sale by the marketplace

1 seller in a marketplace, tangible personal property that
2 is subject to tax under this Act; and

3 (2) either directly or indirectly, through agreements
4 or arrangements with third parties, collecting payment
5 from the customer and transmitting that payment to the
6 marketplace seller regardless of whether the marketplace
7 facilitator receives compensation or other consideration
8 in exchange for its services.

9 A person who provides advertising services, including
10 listing products for sale, is not considered a marketplace
11 facilitator, so long as the advertising service platform or
12 forum does not engage, directly or indirectly through one or
13 more affiliated persons, in the activities described in
14 paragraph (2) of this definition of "marketplace facilitator".

15 "Marketplace seller" means a person that makes sales
16 through a marketplace operated by an unrelated third party
17 marketplace facilitator.

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

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