



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4344

Introduced 1/5/2022, by Rep. Amy Elik

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2	from Ch. 120, par. 439.2
35 ILCS 120/1	from Ch. 120, par. 440
35 ILCS 157/10-15	
35 ILCS 158/15-10	

Amends the Use Tax Act, the Retailers' Occupation Tax Act, the Aircraft Use Tax Law, and the Watercraft Use Tax Law. Provides that the taxes under those Acts do not apply to transfers that occur between a natural individual and (i) a revocable trust where the transferor is the grantor of the trust or (ii) a business entity if the transferor has ownership or control of the business entity. Provides that the transferor must retain a beneficial interest in the property, and the property must be transferred without valuable consideration.

LRB102 21996 HLH 31124 b

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 (Text of Section before amendment by P.A. 102-353)

8 Sec. 2. Definitions.

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

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

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

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

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

1 valuable consideration.

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

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

26 "Sale at retail" does not include a transfer that occurs

1 between a natural individual and (i) a revocable trust where
2 the transferor is the grantor of the trust or (ii) a business
3 entity, including a firm, partnership, association, joint
4 stock company, joint adventure, public or private corporation,
5 or limited liability company, where the transferor has
6 ownership or control of the business entity, provided that the
7 transferor retains a beneficial interest in the property, and
8 the property is transferred without valuable consideration.

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

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

26 "Selling price" means the consideration for a sale valued

1 in money whether received in money or otherwise, including
2 cash, credits, property other than as hereinafter provided,
3 and services, but, prior to January 1, 2020, not including the
4 value of or credit given for traded-in tangible personal
5 property where the item that is traded-in is of like kind and
6 character as that which is being sold; beginning January 1,
7 2020, "selling price" includes the portion of the value of or
8 credit given for traded-in motor vehicles of the First
9 Division as defined in Section 1-146 of the Illinois Vehicle
10 Code of like kind and character as that which is being sold
11 that exceeds \$10,000. "Selling price" shall be determined
12 without any deduction on account of the cost of the property
13 sold, the cost of materials used, labor or service cost or any
14 other expense whatsoever, but does not include interest or
15 finance charges which appear as separate items on the bill of
16 sale or sales contract nor charges that are added to prices by
17 sellers on account of the seller's tax liability under the
18 Retailers' Occupation Tax Act, or on account of the seller's
19 duty to collect, from the purchaser, the tax that is imposed by
20 this Act, or, except as otherwise provided with respect to any
21 cigarette tax imposed by a home rule unit, on account of the
22 seller's tax liability under any local occupation tax
23 administered by the Department, or, except as otherwise
24 provided with respect to any cigarette tax imposed by a home
25 rule unit on account of the seller's duty to collect, from the
26 purchasers, the tax that is imposed under any local use tax

1 administered by the Department. Effective December 1, 1985,
2 "selling price" shall include charges that are added to prices
3 by sellers on account of the seller's tax liability under the
4 Cigarette Tax Act, on account of the seller's duty to collect,
5 from the purchaser, the tax imposed under the Cigarette Use
6 Tax Act, and on account of the seller's duty to collect, from
7 the purchaser, any cigarette tax imposed by a home rule unit.

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

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

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

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

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

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

25 A person who holds himself or herself out as being engaged
26 (or who habitually engages) in selling tangible personal

1 property at retail is a retailer hereunder with respect to
2 such sales (and not primarily in a service occupation)
3 notwithstanding the fact that such person designs and produces
4 such tangible personal property on special order for the
5 purchaser and in such a way as to render the property of value
6 only to such purchaser, if such tangible personal property so
7 produced on special order serves substantially the same
8 function as stock or standard items of tangible personal
9 property that are sold at retail.

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

1 and operated exclusively for charitable, religious or
2 educational purposes, whether or not such activities are open
3 to the public.

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

11 Persons who engage in the business of transferring
12 tangible personal property upon the redemption of trading
13 stamps are retailers hereunder when engaged in such business.

14 The isolated or occasional sale of tangible personal
15 property at retail by a person who does not hold himself out as
16 being engaged (or who does not habitually engage) in selling
17 such tangible personal property at retail or a sale through a
18 bulk vending machine does not make such person a retailer
19 hereunder. However, any person who is engaged in a business
20 which is not subject to the tax imposed by the Retailers'
21 Occupation Tax Act because of involving the sale of or a
22 contract to sell real estate or a construction contract to
23 improve real estate, but who, in the course of conducting such
24 business, transfers tangible personal property to users or
25 consumers in the finished form in which it was purchased, and
26 which does not become real estate, under any provision of a

1 construction contract or real estate sale or real estate sales
2 agreement entered into with some other person arising out of
3 or because of such nontaxable business, is a retailer to the
4 extent of the value of the tangible personal property so
5 transferred. If, in such transaction, a separate charge is
6 made for the tangible personal property so transferred, the
7 value of such property, for the purposes of this Act, is the
8 amount so separately charged, but not less than the cost of
9 such property to the transferor; if no separate charge is
10 made, the value of such property, for the purposes of this Act,
11 is the cost to the transferor of such tangible personal
12 property.

13 "Retailer maintaining a place of business in this State",
14 or any like term, means and includes any of the following
15 retailers:

16 (1) A retailer having or maintaining within this
17 State, directly or by a subsidiary, an office,
18 distribution house, sales house, warehouse or other place
19 of business, or any agent or other representative
20 operating within this State under the authority of the
21 retailer or its subsidiary, irrespective of whether such
22 place of business or agent or other representative is
23 located here permanently or temporarily, or whether such
24 retailer or subsidiary is licensed to do business in this
25 State. However, the ownership of property that is located
26 at the premises of a printer with which the retailer has

1 contracted for printing and that consists of the final
2 printed product, property that becomes a part of the final
3 printed product, or copy from which the printed product is
4 produced shall not result in the retailer being deemed to
5 have or maintain an office, distribution house, sales
6 house, warehouse, or other place of business within this
7 State.

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

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

9 (1.2) Beginning July 1, 2011, a retailer having a
10 contract with a person located in this State under which:

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

16 (B) the retailer provides a commission or other
17 consideration to the person located in this State
18 based upon the sale of tangible personal property by
19 the retailer.

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

26 (2) (Blank).

1 (3) (Blank).

2 (4) (Blank).

3 (5) (Blank).

4 (6) (Blank).

5 (7) (Blank).

6 (8) (Blank).

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

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

13 (B) the retailer enters into 200 or more separate
14 transactions for the sale of tangible personal
15 property to purchasers in Illinois.

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

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

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

25 (10) Beginning January 1, 2020, a marketplace
26 facilitator that meets a threshold set forth in subsection

1 (b) of Section 2d of this Act.

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

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

10 (Text of Section after amendment by P.A. 102-353)

11 Sec. 2. Definitions.

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

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

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

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24 ownership of or title to tangible personal property through a
25 sale at retail.

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1 acquires the ownership of tangible personal property for a
2 valuable consideration.

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

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

1 "Sale at retail" does not include a transfer that occurs
2 between a natural individual and (i) a revocable trust where
3 the transferor is the grantor of the trust or (ii) a business
4 entity, including a firm, partnership, association, joint
5 stock company, joint adventure, public or private corporation,
6 or limited liability company, where the transferor has
7 ownership or control of the business entity, provided that the
8 transferor retains a beneficial interest in the property, and
9 the property is transferred without valuable consideration.

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

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

1 "Selling price" means the consideration for a sale valued
2 in money whether received in money or otherwise, including
3 cash, credits, property other than as hereinafter provided,
4 and services, but, prior to January 1, 2020 and beginning
5 again on January 1, 2022, not including the value of or credit
6 given for traded-in tangible personal property where the item
7 that is traded-in is of like kind and character as that which
8 is being sold; beginning January 1, 2020 and until January 1,
9 2022, "selling price" includes the portion of the value of or
10 credit given for traded-in motor vehicles of the First
11 Division as defined in Section 1-146 of the Illinois Vehicle
12 Code of like kind and character as that which is being sold
13 that exceeds \$10,000. "Selling price" shall be determined
14 without any deduction on account of the cost of the property
15 sold, the cost of materials used, labor or service cost or any
16 other expense whatsoever, but does not include interest or
17 finance charges which appear as separate items on the bill of
18 sale or sales contract nor charges that are added to prices by
19 sellers on account of the seller's tax liability under the
20 Retailers' Occupation Tax Act, or on account of the seller's
21 duty to collect, from the purchaser, the tax that is imposed by
22 this Act, or, except as otherwise provided with respect to any
23 cigarette tax imposed by a home rule unit, on account of the
24 seller's tax liability under any local occupation tax
25 administered by the Department, or, except as otherwise
26 provided with respect to any cigarette tax imposed by a home

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

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

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

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

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

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

19 "Department" means the Department of Revenue.

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

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

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

12 A person whose activities are organized and conducted
13 primarily as a not-for-profit service enterprise, and who
14 engages in selling tangible personal property at retail
15 (whether to the public or merely to members and their guests)
16 is a retailer with respect to such transactions, excepting
17 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. This

1 paragraph does not apply to nor subject to taxation occasional
2 dinners, social or similar activities of a person organized
3 and operated exclusively for charitable, religious or
4 educational purposes, whether or not such activities are open
5 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 a
12 retailer under this Act with respect to such transactions.

13 Persons who engage in the business of transferring
14 tangible personal property upon the redemption of trading
15 stamps are retailers hereunder when engaged in such business.

16 The isolated or occasional sale of tangible personal
17 property at retail by a person who does not hold himself out as
18 being engaged (or who does not habitually engage) in selling
19 such tangible personal property at retail or a sale through a
20 bulk vending machine does not make such person a retailer
21 hereunder. However, any person who is engaged in a business
22 which is not subject to the tax imposed by the Retailers'
23 Occupation Tax Act because of involving the sale of or a
24 contract to sell real estate or a construction contract to
25 improve real estate, but who, in the course of conducting such
26 business, transfers tangible personal property to users or

1 consumers in the finished form in which it was purchased, and
2 which does not become real estate, under any provision of a
3 construction contract or real estate sale or real estate sales
4 agreement entered into with some other person arising out of
5 or because of such nontaxable business, is a retailer to the
6 extent of the value of the tangible personal property so
7 transferred. If, in such transaction, a separate charge is
8 made for the tangible personal property so transferred, the
9 value of such property, for the purposes of this Act, is the
10 amount so separately charged, but not less than the cost of
11 such property to the transferor; if no separate charge is
12 made, the value of such property, for the purposes of this Act,
13 is the cost to the transferor of such tangible personal
14 property.

15 "Retailer maintaining a place of business in this State",
16 or any like term, means and includes any of the following
17 retailers:

18 (1) A retailer having or maintaining within this
19 State, directly or by a subsidiary, an office,
20 distribution house, sales house, warehouse or other place
21 of business, or any agent or other representative
22 operating within this State under the authority of the
23 retailer or its subsidiary, irrespective of whether such
24 place of business or agent or other representative is
25 located here permanently or temporarily, or whether such
26 retailer or subsidiary is licensed to do business in this

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

10 (1.1) A retailer having a contract with a person
11 located in this State under which the person, for a
12 commission or other consideration based upon the sale of
13 tangible personal property by the retailer, directly or
14 indirectly refers potential customers to the retailer by
15 providing to the potential customers a promotional code or
16 other mechanism that allows the retailer to track
17 purchases referred by such persons. Examples of mechanisms
18 that allow the retailer to track purchases referred by
19 such persons include but are not limited to the use of a
20 link on the person's Internet website, promotional codes
21 distributed through the person's hand-delivered or mailed
22 material, and promotional codes distributed by the person
23 through radio or other broadcast media. The provisions of
24 this paragraph (1.1) shall apply only if the cumulative
25 gross receipts from sales of tangible personal property by
26 the retailer to customers who are referred to the retailer

1 by all persons in this State under such contracts exceed
2 \$10,000 during the preceding 4 quarterly periods ending on
3 the last day of March, June, September, and December. A
4 retailer meeting the requirements of this paragraph (1.1)
5 shall be presumed to be maintaining a place of business in
6 this State but may rebut this presumption by submitting
7 proof that the referrals or other activities pursued
8 within this State by such persons were not sufficient to
9 meet the nexus standards of the United States Constitution
10 during the preceding 4 quarterly periods.

11 (1.2) Beginning July 1, 2011, a retailer having a
12 contract with a person located in this State under which:

13 (A) the retailer sells the same or substantially
14 similar line of products as the person located in this
15 State and does so using an identical or substantially
16 similar name, trade name, or trademark as the person
17 located in this State; and

18 (B) the retailer provides a commission or other
19 consideration to the person located in this State
20 based upon the sale of tangible personal property by
21 the retailer.

22 The provisions of this paragraph (1.2) shall apply
23 only if the cumulative gross receipts from sales of
24 tangible personal property by the retailer to customers in
25 this State under all such contracts exceed \$10,000 during
26 the preceding 4 quarterly periods ending on the last day

1 of March, June, September, and December.

2 (2) (Blank).

3 (3) (Blank).

4 (4) (Blank).

5 (5) (Blank).

6 (6) (Blank).

7 (7) (Blank).

8 (8) (Blank).

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

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

15 (B) the retailer enters into 200 or more separate
16 transactions for the sale of tangible personal
17 property to purchasers in Illinois.

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

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

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

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

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 (Source: P.A. 101-9, eff. 6-5-19; 101-31, eff. 1-1-20;
11 101-604, eff. 1-1-20; 102-353, eff. 1-1-22.)

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

14 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

1 purpose, slag produced as an incident to manufacturing pig
2 iron or steel and sold is considered to be an intentionally
3 produced byproduct of manufacturing. Transactions whereby the
4 possession of the property is transferred but the seller
5 retains the title as security for payment of the selling price
6 shall be deemed to be sales.

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

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

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

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

6 "Sale at retail" does not include a transfer that occurs
7 between a natural individual and (i) a revocable trust where
8 the transferor is the grantor of the trust or (ii) a business
9 entity, including a firm, partnership, association, joint
10 stock company, joint adventure, public or private corporation,
11 or limited liability company, where the transferor has
12 ownership or control of the business entity, provided that the
13 transferor retains a beneficial interest in the property, and
14 the property is transferred without valuable consideration.

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
24 other containers, utensils, straws, placemats, napkins, doggie
25 bags, and wrapping or packaging materials that are transferred
26 to 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,
12 excepting 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
22 provisions of this paragraph shall not apply to nor subject to
23 taxation occasional dinners, socials or similar activities of
24 a person organized and operated exclusively for charitable,
25 religious or educational purposes, whether or not such
26 activities are 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
15 consumption. No person shall act as a reseller of motor fuel
16 within this State without first being registered as a reseller
17 pursuant to 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 January 1, 2022, 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 until January 1, 2022, "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
19 Department. Effective December 1, 1985, "selling price" shall
20 include charges that are added to prices by sellers on account
21 of the seller's tax liability under the Cigarette Tax Act, on
22 account of the sellers' duty to collect, from the purchaser,
23 the tax imposed under the Cigarette Use Tax Act, and on account
24 of the seller's duty to collect, from the purchaser, any
25 cigarette tax 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
2 this Act on those amounts. However, the lessor who purchased
3 the motor vehicle assumes the liability for reporting and
4 paying the tax on those amounts directly to the Department in
5 the same form (Illinois Retailers' Occupation Tax, and local
6 retailers' occupation taxes, if applicable) in which the
7 retailer would have reported and paid such tax if the retailer
8 had accounted for the tax to the Department. For amounts
9 received by the lessor from the lessee that are not calculated
10 at the time the lease is executed, the lessor must file the
11 return and pay the tax to the Department by the due date
12 otherwise required by this Act for returns other than
13 transaction returns. If the retailer is entitled under this
14 Act to a discount for collecting and remitting the tax imposed
15 under this Act to the Department with respect to the sale of
16 the motor vehicle to the lessor, then the right to the discount
17 provided in this Act shall be transferred to the lessor with
18 respect to the tax paid by the lessor for any amount received
19 by the lessor from the lessee for the leased vehicle that is
20 not calculated at the time the lease is executed; provided
21 that the discount is only allowed if the return is timely filed
22 and for amounts timely paid. The "selling price" of a motor
23 vehicle that is sold on or after January 1, 2015 for the
24 purpose of leasing for a defined period of longer than one year
25 shall not be reduced by the value of or credit given for
26 traded-in tangible personal property owned by the lessor, nor

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

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

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

18 "Department" means the Department of Revenue.

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

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

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

1 improvement of real estate consisting of engineering,
2 installation, and maintenance of voice, data, video, security,
3 and all telecommunication systems do not constitute engaging
4 in a business of selling tangible personal property at retail
5 within the meaning of this Act if they are sold at one
6 specified contract price.

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

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

25 "Bulk vending machine" means a vending machine, containing
26 unsorted confections, nuts, toys, or other items designed

1 primarily to be used or played with by children which, when a
2 coin or coins of a denomination not larger than \$0.50 are
3 inserted, are dispensed in equal portions, at random and
4 without selection by the customer.

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

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

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

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

25 (2) either directly or indirectly, through agreements
26 or arrangements with third parties, collecting payment

1 from the customer and transmitting that payment to the
2 marketplace seller regardless of whether the marketplace
3 facilitator receives compensation or other consideration
4 in exchange for its services.

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

11 "Marketplace facilitator" does not include any person
12 licensed under the Auction License Act. This exemption does
13 not apply to any person who is an Internet auction listing
14 service, as defined by the Auction License Act.

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;
19 102-353, eff. 1-1-22; 102-634, eff. 8-27-21; revised 11-1-21.)

20 Section 15. The Aircraft Use Tax Law is amended by
21 changing Section 10-15 as follows:

22 (35 ILCS 157/10-15)

23 Sec. 10-15. Tax imposed. A tax is hereby imposed on the
24 privilege of using, in this State, any aircraft as defined in

1 Section 3 of the Illinois Aeronautics Act acquired by gift,
2 transfer, or purchase after June 30, 2003. This tax does not
3 apply (i) if the use of the aircraft is otherwise taxed under
4 the Use Tax Act; (ii) if the aircraft is bought and used by a
5 governmental agency or a society, association, foundation, or
6 institution organized and operated exclusively for charitable,
7 religious, or educational purposes; (iii) if the use of the
8 aircraft is not subject to the Use Tax Act by reason of
9 subsection (a), (b), (c), (d), or (e) of Section 3-55 of that
10 Act dealing with the prevention of actual or likely multistate
11 taxation; or (iv) if the transfer is a gift to a beneficiary in
12 the administration of an estate and the beneficiary is a
13 surviving spouse. In addition, this tax does not apply if the
14 transfer occurs between a natural individual and (i) a
15 revocable trust where the transferor is the grantor of the
16 trust or (ii) a business entity, including a firm,
17 partnership, association, joint stock company, joint
18 adventure, public or private corporation, or limited liability
19 company, where the transferor has ownership or control of the
20 business entity, provided that the transferor retains a
21 beneficial interest in the property, and the property is
22 transferred without valuable consideration. The rate of tax
23 shall be 6.25% of the selling price for each purchase of
24 aircraft that qualifies under this Law. For purposes of
25 calculating the tax due under this Law when an aircraft is
26 acquired by gift or transfer, the tax shall be imposed on the

1 fair market value of the aircraft on the date the aircraft is
2 acquired or the date the aircraft is brought into the State,
3 whichever is later. Tax shall be imposed on the selling price
4 of an aircraft acquired through purchase. However, the selling
5 price shall not be less than the fair market value of the
6 aircraft on the date the aircraft is purchased or the date the
7 aircraft is brought into the State, whichever is later.

8 (Source: P.A. 93-24, eff. 6-20-03.)

9 Section 20. The Watercraft Use Tax Law is amended by
10 changing Section 15-10 as follows:

11 (35 ILCS 158/15-10)

12 Sec. 15-10. Tax imposed. A tax is hereby imposed on the
13 privilege of using, in this State, any watercraft acquired by
14 gift, transfer, or purchase after September 1, 2004. This tax
15 does not apply if: (i) the use of the watercraft is otherwise
16 taxed under the Use Tax Act; (ii) the watercraft is bought and
17 used by a governmental agency or a society, association,
18 foundation, or institution organized and operated exclusively
19 for charitable, religious, or educational purposes and that
20 entity has been issued an exemption identification number
21 under Section 1g of the Retailers' Occupation Tax Act; (iii)
22 the use of the watercraft is not subject to the Use Tax Act by
23 reason of subsection (a), (b), (c), (d), or (e) of Section 3-55
24 of that Act dealing with the prevention of actual or likely

1 multi-state taxation; (iv) the transfer is a gift to a
2 beneficiary in the administration of an estate and the
3 beneficiary is a surviving spouse; or (v) the watercraft is
4 exempted from the numbering provisions of Section 3-12 of the
5 Boat Registration and Safety Act. In addition, this tax does
6 not apply if the transfer occurs between a natural individual
7 and (i) a revocable trust where the transferor is the grantor
8 of the trust or (ii) a business entity, including a firm,
9 partnership, association, joint stock company, joint
10 adventure, public or private corporation, or limited liability
11 company, where the transferor has ownership or control of the
12 business entity, provided that the transferor retains a
13 beneficial interest in the property, and the property is
14 transferred without valuable consideration. However, the
15 exemption from tax provided by item (v) shall not apply to a
16 watercraft exempted under paragraphs A, B, C, F, and G of
17 Section 3-12 of the Boat Registration and Safety Act if such
18 watercraft are used upon the waters of this State for more than
19 30 days in any calendar year.

20 (Source: P.A. 93-840, eff. 7-30-04.)

21 Section 95. No acceleration or delay. Where this Act makes
22 changes in a statute that is represented in this Act by text
23 that is not yet or no longer in effect (for example, a Section
24 represented by multiple versions), the use of that text does
25 not accelerate or delay the taking effect of (i) the changes

1 made by this Act or (ii) provisions derived from any other
2 Public Act.