



Sen. Donne E. Trotter

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1 AMENDMENT TO HOUSE BILL 849

2 AMENDMENT NO. _____. Amend House Bill 849 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Use Tax Act is amended by changing Sections
5 2, 3, and 3-25 as follows:

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

7 Sec. 2. "Use" means the exercise by any person of any right
8 or power over tangible personal property incident to the
9 ownership of that property, except that it does not include the
10 sale of such property in any form as tangible personal property
11 in the regular course of business to the extent that such
12 property is not first subjected to a use for which it was
13 purchased, and does not include the use of such property by its
14 owner for demonstration purposes: Provided that the property
15 purchased is deemed to be purchased for the purpose of resale,
16 despite first being used, to the extent to which it is resold
17 as an ingredient of an intentionally produced product or
18 by-product of manufacturing. "Use" does not mean the
19 demonstration use or interim use of tangible personal property
20 by a retailer before he sells that tangible personal property.
21 For watercraft or aircraft, if the period of demonstration use
22 or interim use by the retailer exceeds 18 months, the retailer
23 shall pay on the retailers' original cost price the tax imposed
24 by this Act, and no credit for that tax is permitted if the

1 watercraft or aircraft is subsequently sold by the retailer.
2 "Use" does not mean the physical incorporation of tangible
3 personal property, to the extent not first subjected to a use
4 for which it was purchased, as an ingredient or constituent,
5 into other tangible personal property (a) which is sold in the
6 regular course of business or (b) which the person
7 incorporating such ingredient or constituent therein has
8 undertaken at the time of such purchase to cause to be
9 transported in interstate commerce to destinations outside the
10 State of Illinois: Provided that the property purchased is
11 deemed to be purchased for the purpose of resale, despite first
12 being used, to the extent to which it is resold as an
13 ingredient of an intentionally produced product or by-product
14 of manufacturing.

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

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

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

25 "Sale at retail" means any transfer of the ownership of or
26 title to tangible personal property to a purchaser, for the
27 purpose of use, and not for the purpose of resale in any form
28 as tangible personal property to the extent not first subjected
29 to a use for which it was purchased, for a valuable
30 consideration: Provided that the property purchased is deemed
31 to be purchased for the purpose of resale, despite first being
32 used, to the extent to which it is resold as an ingredient of
33 an intentionally produced product or by-product of
34 manufacturing. For this purpose, slag produced as an incident

1 to manufacturing pig iron or steel and sold is considered to be
2 an intentionally produced by-product of manufacturing. "Sale
3 at retail" includes any such transfer made for resale unless
4 made in compliance with Section 2c of the Retailers' Occupation
5 Tax Act, as incorporated by reference into Section 12 of this
6 Act. Transactions whereby the possession of the property is
7 transferred but the seller retains the title as security for
8 payment of the selling price are sales.

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

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

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

32 Beginning July 1, 2004, "sale at retail" includes licenses
33 of prewritten computer software and any other transfer, for
34 consideration, of the possession or right to use prewritten

1 computer software, no matter how the transaction is
2 characterized by the parties.

3 "Selling price" means the consideration for a sale valued
4 in money whether received in money or otherwise, including
5 cash, credits, property other than as hereinafter provided, and
6 services, but not including the value of or credit given for
7 traded-in tangible personal property where the item that is
8 traded-in is of like kind and character as that which is being
9 sold, and shall be determined without any deduction on account
10 of the cost of the property sold, the cost of materials used,
11 labor or service cost or any other expense whatsoever, but does
12 not include interest or finance charges which appear as
13 separate items on the bill of sale or sales contract nor
14 charges that are added to prices by sellers on account of the
15 seller's tax liability under the "Retailers' Occupation Tax
16 Act", or on account of the seller's duty to collect, from the
17 purchaser, the tax that is imposed by this Act, or on account
18 of the seller's tax liability under Section 8-11-1 of the
19 Illinois Municipal Code, as heretofore and hereafter amended,
20 or on account of the seller's tax liability under the "County
21 Retailers' Occupation Tax Act". Effective December 1, 1985,
22 "selling price" shall include charges that are added to prices
23 by sellers on account of the seller's tax liability under the
24 Cigarette Tax Act, on account of the seller's duty to collect,
25 from the purchaser, the tax imposed under the Cigarette Use Tax
26 Act, and on account of the seller's duty to collect, from the
27 purchaser, any cigarette tax imposed by a home rule unit.

28 The phrase "like kind and character" shall be liberally
29 construed (including but not limited to any form of motor
30 vehicle for any form of motor vehicle, or any kind of farm or
31 agricultural implement for any other kind of farm or
32 agricultural implement), while not including a kind of item
33 which, if sold at retail by that retailer, would be exempt from
34 retailers' occupation tax and use tax as an isolated or

1 occasional sale.

2 "Department" means the Department of Revenue.

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

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

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

21 A person whose activities are organized and conducted
22 primarily as a not-for-profit service enterprise, and who
23 engages in selling tangible personal property at retail
24 (whether to the public or merely to members and their guests)
25 is a retailer with respect to such transactions, excepting only
26 a person organized and operated exclusively for charitable,
27 religious or educational purposes either (1), to the extent of
28 sales by such person to its members, students, patients or
29 inmates of tangible personal property to be used primarily for
30 the purposes of such person, or (2), to the extent of sales by
31 such person of tangible personal property which is not sold or
32 offered for sale by persons organized for profit. The selling
33 of school books and school supplies by schools at retail to
34 students is not "primarily for the purposes of" the school

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

13 Persons who engage in the business of transferring tangible
14 personal property upon the redemption of trading stamps are
15 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
27 consumers in the finished form in which it was purchased, and
28 which does not become real estate, under any provision of a
29 construction contract or real estate sale or real estate sales
30 agreement entered into with some other person arising out of or
31 because of such nontaxable business, is a retailer to the
32 extent of the value of the tangible personal property so
33 transferred. If, in such transaction, a separate charge is made
34 for the tangible personal property so transferred, the value of

1 such property, for the purposes of this Act, is the amount so
2 separately charged, but not less than the cost of such property
3 to the transferor; if no separate charge is made, the value of
4 such property, for the purposes of this Act, is the cost to the
5 transferor of such tangible personal property.

6 "Retailer maintaining a place of business in this State",
7 or any like term, means and includes any of the following
8 retailers:

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

26 2. A retailer soliciting orders for tangible personal
27 property by means of a telecommunication or television
28 shopping system (which utilizes toll free numbers) which is
29 intended by the retailer to be broadcast by cable
30 television or other means of broadcasting, to consumers
31 located in this State.

32 3. A retailer, pursuant to a contract with a
33 broadcaster or publisher located in this State, soliciting
34 orders for tangible personal property by means of

1 advertising which is disseminated primarily to consumers
2 located in this State and only secondarily to bordering
3 jurisdictions.

4 4. A retailer soliciting orders for tangible personal
5 property by mail if the solicitations are substantial and
6 recurring and if the retailer benefits from any banking,
7 financing, debt collection, telecommunication, or
8 marketing activities occurring in this State or benefits
9 from the location in this State of authorized installation,
10 servicing, or repair facilities.

11 5. A retailer that is owned or controlled by the same
12 interests that own or control any retailer engaging in
13 business in the same or similar line of business in this
14 State.

15 6. A retailer having a franchisee or licensee operating
16 under its trade name if the franchisee or licensee is
17 required to collect the tax under this Section.

18 7. A retailer, pursuant to a contract with a cable
19 television operator located in this State, soliciting
20 orders for tangible personal property by means of
21 advertising which is transmitted or distributed over a
22 cable television system in this State.

23 8. A retailer engaging in activities in Illinois, which
24 activities in the state in which the retail business
25 engaging in such activities is located would constitute
26 maintaining a place of business in that state.

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

33 (Source: P.A. 92-213, eff. 1-1-02.)

1 (35 ILCS 105/3) (from Ch. 120, par. 439.3)

2 Sec. 3. Tax imposed. A tax is imposed upon the privilege of
3 using in this State tangible personal property purchased at
4 retail from a retailer, including computer software, and
5 including photographs, negatives, and positives that are the
6 product of photoprocessing, but not including products of
7 photoprocessing produced for use in motion pictures for
8 commercial exhibition. Beginning January 1, 2001, prepaid
9 telephone calling arrangements shall be considered tangible
10 personal property subject to the tax imposed under this Act
11 regardless of the form in which those arrangements may be
12 embodied, transmitted, or fixed by any method now known or
13 hereafter developed. Beginning July 1, 2004, computer software
14 subject to tax under this Act includes licenses of prewritten
15 computer software and any other transfer, for consideration, of
16 the possession or right to use prewritten computer software, no
17 matter how the transaction is characterized by the parties.

18 (Source: P.A. 91-51, eff. 6-30-99; 91-870, eff. 6-22-00.)

19 (35 ILCS 105/3-25) (from Ch. 120, par. 439.3-25)

20 Sec. 3-25. Computer software; prewritten computer
21 software.

22 (a) For the purposes of this Act, "computer software" means
23 a set of statements, data, or instructions to be used directly
24 or indirectly in a computer in order to bring about a certain
25 result in any form in which those statements, data, or
26 instructions may be embodied, transmitted, or fixed, by any
27 method now known or hereafter developed, regardless of whether
28 the statements, data, or instructions are capable of being
29 perceived by or communicated to humans, and includes prewritten
30 or canned software that is held for repeated sale or lease, and
31 all associated documentation and materials, if any, whether
32 contained on magnetic tapes, discs, cards, or other devices or
33 media, but does not include (i) until July 1, 2004, software

1 that is adapted to specific individualized requirements of a
2 purchaser, custom-made and modified software designed for a
3 particular or limited use by a purchaser, or (ii) software used
4 to operate exempt machinery and equipment used in the process
5 of manufacturing or assembling tangible personal property for
6 wholesale or retail sale or lease.

7 (b) Beginning on July 1, 2004, "prewritten computer
8 software" means computer software, including upgrades, that is
9 not designed and developed by the author or other creator to
10 the specifications of a specific purchaser. The combining of 2
11 or more "prewritten computer software" programs or prewritten
12 portions thereof does not cause the combination to be other
13 than "prewritten computer software". "Prewritten computer
14 software" includes software designed and developed by the
15 author or other creator to the specifications of a specific
16 purchaser when it is sold to a person other than the specific
17 purchaser. When a person modifies or enhances computer software
18 of which the person is not the author or creator, the person
19 shall be deemed to be the author or creator only of that
20 person's modifications or enhancements. "Prewritten computer
21 software" or a prewritten portion thereof that is modified or
22 enhanced to any degree, when the modification or enhancement
23 according to Department rules is designed and developed to the
24 specifications of a specific purchaser, remains "prewritten
25 computer software", except that when there is a reasonable
26 separately stated charge or an invoice or other statement of
27 the price given to the purchaser for the modification or
28 enhancement, the modification or enhancement does not
29 constitute "prewritten computer software".

30 For the purposes of this Act, computer software shall be
31 considered to be tangible personal property.

32 (Source: P.A. 91-51, eff. 6-30-99.)

33 Section 10. The Service Use Tax Act is amended by changing

1 Sections 2 and 3-25 as follows:

2 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

3 Sec. 2. "Use" means the exercise by any person of any right
4 or power over tangible personal property incident to the
5 ownership of that property, but does not include the sale or
6 use for demonstration by him of that property in any form as
7 tangible personal property in the regular course of business.
8 "Use" does not mean the interim use of tangible personal
9 property nor the physical incorporation of tangible personal
10 property, as an ingredient or constituent, into other tangible
11 personal property, (a) which is sold in the regular course of
12 business or (b) which the person incorporating such ingredient
13 or constituent therein has undertaken at the time of such
14 purchase to cause to be transported in interstate commerce to
15 destinations outside the State of Illinois. Beginning July 1,
16 2004, the use of licenses of prewritten computer software and
17 any other transfer, for consideration, of the possession or
18 right to use prewritten computer software, no matter how the
19 transaction is characterized by the parties, is considered a
20 use of tangible personal property under this Act.

21 "Purchased from a serviceman" means the acquisition of the
22 ownership of, or title to, tangible personal property through a
23 sale of service.

24 "Purchaser" means any person who, through a sale of
25 service, acquires the ownership of, or title to, any tangible
26 personal property.

27 "Cost price" means the consideration paid by the serviceman
28 for a purchase valued in money, whether paid in money or
29 otherwise, including cash, credits and services, and shall be
30 determined without any deduction on account of the supplier's
31 cost of the property sold or on account of any other expense
32 incurred by the supplier. When a serviceman contracts out part
33 or all of the services required in his sale of service, it

1 shall be presumed that the cost price to the serviceman of the
2 property transferred to him or her by his or her subcontractor
3 is equal to 50% of the subcontractor's charges to the
4 serviceman in the absence of proof of the consideration paid by
5 the subcontractor for the purchase of such property.

6 "Selling price" means the consideration for a sale valued
7 in money whether received in money or otherwise, including
8 cash, credits and service, and shall be determined without any
9 deduction on account of the serviceman's cost of the property
10 sold, the cost of materials used, labor or service cost or any
11 other expense whatsoever, but does not include interest or
12 finance charges which appear as separate items on the bill of
13 sale or sales contract nor charges that are added to prices by
14 sellers on account of the seller's duty to collect, from the
15 purchaser, the tax that is imposed by this Act.

16 "Department" means the Department of Revenue.

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

22 "Sale of service" means any transaction except:

23 (1) a retail sale of tangible personal property taxable
24 under the Retailers' Occupation Tax Act or under the Use
25 Tax Act.

26 (2) a sale of tangible personal property for the
27 purpose of resale made in compliance with Section 2c of the
28 Retailers' Occupation Tax Act.

29 (3) except as hereinafter provided, a sale or transfer
30 of tangible personal property as an incident to the
31 rendering of service for or by any governmental body, or
32 for or by any corporation, society, association,
33 foundation or institution organized and operated
34 exclusively for charitable, religious or educational

1 purposes or any not-for-profit corporation, society,
2 association, foundation, institution or organization which
3 has no compensated officers or employees and which is
4 organized and operated primarily for the recreation of
5 persons 55 years of age or older. A limited liability
6 company may qualify for the exemption under this paragraph
7 only if the limited liability company is organized and
8 operated exclusively for educational purposes.

9 (4) a sale or transfer of tangible personal property as
10 an incident to the rendering of service for interstate
11 carriers for hire for use as rolling stock moving in
12 interstate commerce or by lessors under a lease of one year
13 or longer, executed or in effect at the time of purchase of
14 personal property, to interstate carriers for hire for use
15 as rolling stock moving in interstate commerce so long as
16 so used by such interstate carriers for hire, and equipment
17 operated by a telecommunications provider, licensed as a
18 common carrier by the Federal Communications Commission,
19 which is permanently installed in or affixed to aircraft
20 moving in interstate commerce.

21 (4a) a sale or transfer of tangible personal property
22 as an incident to the rendering of service for owners,
23 lessors, or shippers of tangible personal property which is
24 utilized by interstate carriers for hire for use as rolling
25 stock moving in interstate commerce so long as so used by
26 interstate carriers for hire, and equipment operated by a
27 telecommunications provider, licensed as a common carrier
28 by the Federal Communications Commission, which is
29 permanently installed in or affixed to aircraft moving in
30 interstate commerce.

31 (4a-5) on and after July 1, 2003, a sale or transfer of
32 a motor vehicle of the second division with a gross vehicle
33 weight in excess of 8,000 pounds as an incident to the
34 rendering of service if that motor vehicle is subject to

1 the commercial distribution fee imposed under Section
2 3-815.1 of the Illinois Vehicle Code. This exemption
3 applies to repair and replacement parts added after the
4 initial purchase of such a motor vehicle if that motor
5 vehicle is used in a manner that would qualify for the
6 rolling stock exemption otherwise provided for in this Act.

7 (5) a sale or transfer of machinery and equipment used
8 primarily in the process of the manufacturing or
9 assembling, either in an existing, an expanded or a new
10 manufacturing facility, of tangible personal property for
11 wholesale or retail sale or lease, whether such sale or
12 lease is made directly by the manufacturer or by some other
13 person, whether the materials used in the process are owned
14 by the manufacturer or some other person, or whether such
15 sale or lease is made apart from or as an incident to the
16 seller's engaging in a service occupation and the
17 applicable tax is a Service Use Tax or Service Occupation
18 Tax, rather than Use Tax or Retailers' Occupation Tax.

19 (5a) the repairing, reconditioning or remodeling, for
20 a common carrier by rail, of tangible personal property
21 which belongs to such carrier for hire, and as to which
22 such carrier receives the physical possession of the
23 repaired, reconditioned or remodeled item of tangible
24 personal property in Illinois, and which such carrier
25 transports, or shares with another common carrier in the
26 transportation of such property, out of Illinois on a
27 standard uniform bill of lading showing the person who
28 repaired, reconditioned or remodeled the property to a
29 destination outside Illinois, for use outside Illinois.

30 (5b) a sale or transfer of tangible personal property
31 which is produced by the seller thereof on special order in
32 such a way as to have made the applicable tax the Service
33 Occupation Tax or the Service Use Tax, rather than the
34 Retailers' Occupation Tax or the Use Tax, for an interstate

1 carrier by rail which receives the physical possession of
2 such property in Illinois, and which transports such
3 property, or shares with another common carrier in the
4 transportation of such property, out of Illinois on a
5 standard uniform bill of lading showing the seller of the
6 property as the shipper or consignor of such property to a
7 destination outside Illinois, for use outside Illinois.

8 (6) until July 1, 2003, a sale or transfer of
9 distillation machinery and equipment, sold as a unit or kit
10 and assembled or installed by the retailer, which machinery
11 and equipment is certified by the user to be used only for
12 the production of ethyl alcohol that will be used for
13 consumption as motor fuel or as a component of motor fuel
14 for the personal use of such user and not subject to sale
15 or resale.

16 (7) at the election of any serviceman not required to
17 be otherwise registered as a retailer under Section 2a of
18 the Retailers' Occupation Tax Act, made for each fiscal
19 year sales of service in which the aggregate annual cost
20 price of tangible personal property transferred as an
21 incident to the sales of service is less than 35%, or 75%
22 in the case of servicemen transferring prescription drugs
23 or servicemen engaged in graphic arts production, of the
24 aggregate annual total gross receipts from all sales of
25 service. The purchase of such tangible personal property by
26 the serviceman shall be subject to tax under the Retailers'
27 Occupation Tax Act and the Use Tax Act. However, if a
28 primary serviceman who has made the election described in
29 this paragraph subcontracts service work to a secondary
30 serviceman who has also made the election described in this
31 paragraph, the primary serviceman does not incur a Use Tax
32 liability if the secondary serviceman (i) has paid or will
33 pay Use Tax on his or her cost price of any tangible
34 personal property transferred to the primary serviceman

1 and (ii) certifies that fact in writing to the primary
2 serviceman.

3 Tangible personal property transferred incident to the
4 completion of a maintenance agreement is exempt from the tax
5 imposed pursuant to this Act.

6 Beginning July 1, 2004, prewritten computer software that
7 is modified or enhanced, when that enhancement or modification
8 according to Department rules is designed and developed to the
9 specifications of a specific purchaser, is exempt from the tax
10 imposed under this Act and the transfer of that modified or
11 enhanced computer software is subject to tax under the
12 Retailers' Occupation Tax Act and the Use Tax Act.

13 Exemption (5) also includes machinery and equipment used in
14 the general maintenance or repair of such exempt machinery and
15 equipment or for in-house manufacture of exempt machinery and
16 equipment. For the purposes of exemption (5), each of these
17 terms shall have the following meanings: (1) "manufacturing
18 process" shall mean the production of any article of tangible
19 personal property, whether such article is a finished product
20 or an article for use in the process of manufacturing or
21 assembling a different article of tangible personal property,
22 by procedures commonly regarded as manufacturing, processing,
23 fabricating, or refining which changes some existing material
24 or materials into a material with a different form, use or
25 name. In relation to a recognized integrated business composed
26 of a series of operations which collectively constitute
27 manufacturing, or individually constitute manufacturing
28 operations, the manufacturing process shall be deemed to
29 commence with the first operation or stage of production in the
30 series, and shall not be deemed to end until the completion of
31 the final product in the last operation or stage of production
32 in the series; and further, for purposes of exemption (5),
33 photoprocessing is deemed to be a manufacturing process of
34 tangible personal property for wholesale or retail sale; (2)

1 "assembling process" shall mean the production of any article
2 of tangible personal property, whether such article is a
3 finished product or an article for use in the process of
4 manufacturing or assembling a different article of tangible
5 personal property, by the combination of existing materials in
6 a manner commonly regarded as assembling which results in a
7 material of a different form, use or name; (3) "machinery"
8 shall mean major mechanical machines or major components of
9 such machines contributing to a manufacturing or assembling
10 process; and (4) "equipment" shall include any independent
11 device or tool separate from any machinery but essential to an
12 integrated manufacturing or assembly process; including
13 computers used primarily in a manufacturer's computer assisted
14 design, computer assisted manufacturing (CAD/CAM) system; or
15 any subunit or assembly comprising a component of any machinery
16 or auxiliary, adjunct or attachment parts of machinery, such as
17 tools, dies, jigs, fixtures, patterns and molds; or any parts
18 which require periodic replacement in the course of normal
19 operation; but shall not include hand tools. Equipment includes
20 chemicals or chemicals acting as catalysts but only if the
21 chemicals or chemicals acting as catalysts effect a direct and
22 immediate change upon a product being manufactured or assembled
23 for wholesale or retail sale or lease. The purchaser of such
24 machinery and equipment who has an active resale registration
25 number shall furnish such number to the seller at the time of
26 purchase. The user of such machinery and equipment and tools
27 without an active resale registration number shall prepare a
28 certificate of exemption for each transaction stating facts
29 establishing the exemption for that transaction, which
30 certificate shall be available to the Department for inspection
31 or audit. The Department shall prescribe the form of the
32 certificate.

33 Any informal rulings, opinions or letters issued by the
34 Department in response to an inquiry or request for any opinion

1 from any person regarding the coverage and applicability of
2 exemption (5) to specific devices shall be published,
3 maintained as a public record, and made available for public
4 inspection and copying. If the informal ruling, opinion or
5 letter contains trade secrets or other confidential
6 information, where possible the Department shall delete such
7 information prior to publication. Whenever such informal
8 rulings, opinions, or letters contain any policy of general
9 applicability, the Department shall formulate and adopt such
10 policy as a rule in accordance with the provisions of the
11 Illinois Administrative Procedure Act.

12 On and after July 1, 1987, no entity otherwise eligible
13 under exemption (3) of this Section shall make tax free
14 purchases unless it has an active exemption identification
15 number issued by the Department.

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

21 "Serviceman" means any person who is engaged in the
22 occupation of making sales of service.

23 "Sale at retail" means "sale at retail" as defined in the
24 Retailers' Occupation Tax Act.

25 "Supplier" means any person who makes sales of tangible
26 personal property to servicemen for the purpose of resale as an
27 incident to a sale of service.

28 "Serviceman maintaining a place of business in this State",
29 or any like term, means and includes any serviceman:

- 30 1. having or maintaining within this State, directly or
31 by a subsidiary, an office, distribution house, sales
32 house, warehouse or other place of business, or any agent
33 or other representative operating within this State under
34 the authority of the serviceman or its subsidiary,

1 irrespective of whether such place of business or agent or
2 other representative is located here permanently or
3 temporarily, or whether such serviceman or subsidiary is
4 licensed to do business in this State;

5 2. soliciting orders for tangible personal property by
6 means of a telecommunication or television shopping system
7 (which utilizes toll free numbers) which is intended by the
8 retailer to be broadcast by cable television or other means
9 of broadcasting, to consumers located in this State;

10 3. pursuant to a contract with a broadcaster or
11 publisher located in this State, soliciting orders for
12 tangible personal property by means of advertising which is
13 disseminated primarily to consumers located in this State
14 and only secondarily to bordering jurisdictions;

15 4. soliciting orders for tangible personal property by
16 mail if the solicitations are substantial and recurring and
17 if the retailer benefits from any banking, financing, debt
18 collection, telecommunication, or marketing activities
19 occurring in this State or benefits from the location in
20 this State of authorized installation, servicing, or
21 repair facilities;

22 5. being owned or controlled by the same interests
23 which own or control any retailer engaging in business in
24 the same or similar line of business in this State;

25 6. having a franchisee or licensee operating under its
26 trade name if the franchisee or licensee is required to
27 collect the tax under this Section;

28 7. pursuant to a contract with a cable television
29 operator located in this State, soliciting orders for
30 tangible personal property by means of advertising which is
31 transmitted or distributed over a cable television system
32 in this State; or

33 8. engaging in activities in Illinois, which
34 activities in the state in which the supply business

1 engaging in such activities is located would constitute
2 maintaining a place of business in that state.

3 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
4 eff. 6-20-03; revised 8-21-03.)

5 (35 ILCS 110/3-25) (from Ch. 120, par. 439.33-25)

6 Sec. 3-25. Computer software.

7 (a) On and before June 30, 2004, for ~~For~~ the purposes of
8 this Act, "computer software" means a set of statements, data,
9 or instructions to be used directly or indirectly in a computer
10 in order to bring about a certain result in any form in which
11 those statements, data, or instructions may be embodied,
12 transmitted, or fixed, by any method now known or hereafter
13 developed, regardless of whether the statements, data, or
14 instructions are capable of being perceived by or communicated
15 to humans, and includes prewritten or canned software that is
16 held for repeated sale or lease, and all associated
17 documentation and materials, if any, whether contained on
18 magnetic tapes, discs, cards, or other devices or media, but
19 does not include software that is adapted to specific
20 individualized requirements of a purchaser, custom-made and
21 modified software designed for a particular or limited use by a
22 purchaser, or software used to operate exempt machinery and
23 equipment used in the process of manufacturing or assembling
24 tangible personal property for wholesale or retail sale or
25 lease.

26 (b) On and after July 1, 2004, for the purposes of this
27 Act, "computer software" has the same meaning as that term is
28 defined in Section 3-25 of the Use Tax Act.

29 (c) For the purposes of this Act, computer software shall
30 be considered to be tangible personal property.

31 (Source: P.A. 91-51, eff. 6-30-99.)

32 Section 15. The Service Occupation Tax Act is amended by

1 changing Sections 2 and 3-25 as follows:

2 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

3 Sec. 2. "Transfer" means any transfer of the title to
4 property or of the ownership of property whether or not the
5 transferor retains title as security for the payment of amounts
6 due him from the transferee. Beginning July 1, 2004, the
7 transfer of licenses of prewritten computer software and any
8 other transfer, for consideration, of the possession or right
9 to use prewritten computer software, no matter how the
10 transaction is characterized by the parties, is considered a
11 transfer of tangible personal property under this Act.

12 "Cost Price" means the consideration paid by the serviceman
13 for a purchase valued in money, whether paid in money or
14 otherwise, including cash, credits and services, and shall be
15 determined without any deduction on account of the supplier's
16 cost of the property sold or on account of any other expense
17 incurred by the supplier. When a serviceman contracts out part
18 or all of the services required in his sale of service, it
19 shall be presumed that the cost price to the serviceman of the
20 property transferred to him by his or her subcontractor is
21 equal to 50% of the subcontractor's charges to the serviceman
22 in the absence of proof of the consideration paid by the
23 subcontractor for the purchase of such property.

24 "Department" means the Department of Revenue.

25 "Person" means any natural individual, firm, partnership,
26 association, joint stock company, joint venture, public or
27 private corporation, limited liability company, and any
28 receiver, executor, trustee, guardian or other representative
29 appointed by order of any court.

30 "Sale of Service" means any transaction except:

31 (a) A retail sale of tangible personal property taxable
32 under the Retailers' Occupation Tax Act or under the Use Tax
33 Act.

1 (b) A sale of tangible personal property for the purpose of
2 resale made in compliance with Section 2c of the Retailers'
3 Occupation Tax Act.

4 (c) Except as hereinafter provided, a sale or transfer of
5 tangible personal property as an incident to the rendering of
6 service for or by any governmental body or for or by any
7 corporation, society, association, foundation or institution
8 organized and operated exclusively for charitable, religious
9 or educational purposes or any not-for-profit corporation,
10 society, association, foundation, institution or organization
11 which has no compensated officers or employees and which is
12 organized and operated primarily for the recreation of persons
13 55 years of age or older. A limited liability company may
14 qualify for the exemption under this paragraph only if the
15 limited liability company is organized and operated
16 exclusively for educational purposes.

17 (d) A sale or transfer of tangible personal property as an
18 incident to the rendering of service for interstate carriers
19 for hire for use as rolling stock moving in interstate commerce
20 or lessors under leases of one year or longer, executed or in
21 effect at the time of purchase, to interstate carriers for hire
22 for use as rolling stock moving in interstate commerce, and
23 equipment operated by a telecommunications provider, licensed
24 as a common carrier by the Federal Communications Commission,
25 which is permanently installed in or affixed to aircraft moving
26 in interstate commerce.

27 (d-1) A sale or transfer of tangible personal property as
28 an incident to the rendering of service for owners, lessors or
29 shippers of tangible personal property which is utilized by
30 interstate carriers for hire for use as rolling stock moving in
31 interstate commerce, and equipment operated by a
32 telecommunications provider, licensed as a common carrier by
33 the Federal Communications Commission, which is permanently
34 installed in or affixed to aircraft moving in interstate

1 commerce.

2 (d-1.1) On and after July 1, 2003, a sale or transfer of a
3 motor vehicle of the second division with a gross vehicle
4 weight in excess of 8,000 pounds as an incident to the
5 rendering of service if that motor vehicle is subject to the
6 commercial distribution fee imposed under Section 3-815.1 of
7 the Illinois Vehicle Code. This exemption applies to repair and
8 replacement parts added after the initial purchase of such a
9 motor vehicle if that motor vehicle is used in a manner that
10 would qualify for the rolling stock exemption otherwise
11 provided for in this Act.

12 (d-2) The repairing, reconditioning or remodeling, for a
13 common carrier by rail, of tangible personal property which
14 belongs to such carrier for hire, and as to which such carrier
15 receives the physical possession of the repaired,
16 reconditioned or remodeled item of tangible personal property
17 in Illinois, and which such carrier transports, or shares with
18 another common carrier in the transportation of such property,
19 out of Illinois on a standard uniform bill of lading showing
20 the person who repaired, reconditioned or remodeled the
21 property as the shipper or consignor of such property to a
22 destination outside Illinois, for use outside Illinois.

23 (d-3) A sale or transfer of tangible personal property
24 which is produced by the seller thereof on special order in
25 such a way as to have made the applicable tax the Service
26 Occupation Tax or the Service Use Tax, rather than the
27 Retailers' Occupation Tax or the Use Tax, for an interstate
28 carrier by rail which receives the physical possession of such
29 property in Illinois, and which transports such property, or
30 shares with another common carrier in the transportation of
31 such property, out of Illinois on a standard uniform bill of
32 lading showing the seller of the property as the shipper or
33 consignor of such property to a destination outside Illinois,
34 for use outside Illinois.

1 (d-4) Until January 1, 1997, a sale, by a registered
2 serviceman paying tax under this Act to the Department, of
3 special order printed materials delivered outside Illinois and
4 which are not returned to this State, if delivery is made by
5 the seller or agent of the seller, including an agent who
6 causes the product to be delivered outside Illinois by a common
7 carrier or the U.S. postal service.

8 (e) A sale or transfer of machinery and equipment used
9 primarily in the process of the manufacturing or assembling,
10 either in an existing, an expanded or a new manufacturing
11 facility, of tangible personal property for wholesale or retail
12 sale or lease, whether such sale or lease is made directly by
13 the manufacturer or by some other person, whether the materials
14 used in the process are owned by the manufacturer or some other
15 person, or whether such sale or lease is made apart from or as
16 an incident to the seller's engaging in a service occupation
17 and the applicable tax is a Service Occupation Tax or Service
18 Use Tax, rather than Retailers' Occupation Tax or Use Tax.

19 (f) Until July 1, 2003, the sale or transfer of
20 distillation machinery and equipment, sold as a unit or kit and
21 assembled or installed by the retailer, which machinery and
22 equipment is certified by the user to be used only for the
23 production of ethyl alcohol that will be used for consumption
24 as motor fuel or as a component of motor fuel for the personal
25 use of such user and not subject to sale or resale.

26 (g) At the election of any serviceman not required to be
27 otherwise registered as a retailer under Section 2a of the
28 Retailers' Occupation Tax Act, made for each fiscal year sales
29 of service in which the aggregate annual cost price of tangible
30 personal property transferred as an incident to the sales of
31 service is less than 35% (75% in the case of servicemen
32 transferring prescription drugs or servicemen engaged in
33 graphic arts production) of the aggregate annual total gross
34 receipts from all sales of service. The purchase of such

1 tangible personal property by the serviceman shall be subject
2 to tax under the Retailers' Occupation Tax Act and the Use Tax
3 Act. However, if a primary serviceman who has made the election
4 described in this paragraph subcontracts service work to a
5 secondary serviceman who has also made the election described
6 in this paragraph, the primary serviceman does not incur a Use
7 Tax liability if the secondary serviceman (i) has paid or will
8 pay Use Tax on his or her cost price of any tangible personal
9 property transferred to the primary serviceman and (ii)
10 certifies that fact in writing to the primary serviceman.

11 Tangible personal property transferred incident to the
12 completion of a maintenance agreement is exempt from the tax
13 imposed pursuant to this Act.

14 Beginning July 1, 2004, prewritten computer software that
15 is modified or enhanced, when the enhancement or modification
16 according to Department rules is designed and developed to the
17 specifications of a specific purchaser, is exempt from the tax
18 imposed under this Act and the transfer of that modified or
19 enhanced computer software is subject to tax under the
20 Retailers' Occupation Tax Act and the Use Tax Act.

21 Exemption (e) also includes machinery and equipment used in
22 the general maintenance or repair of such exempt machinery and
23 equipment or for in-house manufacture of exempt machinery and
24 equipment. For the purposes of exemption (e), each of these
25 terms shall have the following meanings: (1) "manufacturing
26 process" shall mean the production of any article of tangible
27 personal property, whether such article is a finished product
28 or an article for use in the process of manufacturing or
29 assembling a different article of tangible personal property,
30 by procedures commonly regarded as manufacturing, processing,
31 fabricating, or refining which changes some existing material
32 or materials into a material with a different form, use or
33 name. In relation to a recognized integrated business composed
34 of a series of operations which collectively constitute

1 manufacturing, or individually constitute manufacturing
2 operations, the manufacturing process shall be deemed to
3 commence with the first operation or stage of production in the
4 series, and shall not be deemed to end until the completion of
5 the final product in the last operation or stage of production
6 in the series; and further for purposes of exemption (e),
7 photoprocessing is deemed to be a manufacturing process of
8 tangible personal property for wholesale or retail sale; (2)
9 "assembling process" shall mean the production of any article
10 of tangible personal property, whether such article is a
11 finished product or an article for use in the process of
12 manufacturing or assembling a different article of tangible
13 personal property, by the combination of existing materials in
14 a manner commonly regarded as assembling which results in a
15 material of a different form, use or name; (3) "machinery"
16 shall mean major mechanical machines or major components of
17 such machines contributing to a manufacturing or assembling
18 process; and (4) "equipment" shall include any independent
19 device or tool separate from any machinery but essential to an
20 integrated manufacturing or assembly process; including
21 computers used primarily in a manufacturer's computer assisted
22 design, computer assisted manufacturing (CAD/CAM) system; or
23 any subunit or assembly comprising a component of any machinery
24 or auxiliary, adjunct or attachment parts of machinery, such as
25 tools, dies, jigs, fixtures, patterns and molds; or any parts
26 which require periodic replacement in the course of normal
27 operation; but shall not include hand tools. Equipment includes
28 chemicals or chemicals acting as catalysts but only if the
29 chemicals or chemicals acting as catalysts effect a direct and
30 immediate change upon a product being manufactured or assembled
31 for wholesale or retail sale or lease. The purchaser of such
32 machinery and equipment who has an active resale registration
33 number shall furnish such number to the seller at the time of
34 purchase. The purchaser of such machinery and equipment and

1 tools without an active resale registration number shall
2 furnish to the seller a certificate of exemption for each
3 transaction stating facts establishing the exemption for that
4 transaction, which certificate shall be available to the
5 Department for inspection or audit.

6 Except as provided in Section 2d of this Act, the rolling
7 stock exemption applies to rolling stock used by an interstate
8 carrier for hire, even just between points in Illinois, if such
9 rolling stock transports, for hire, persons whose journeys or
10 property whose shipments originate or terminate outside
11 Illinois.

12 Any informal rulings, opinions or letters issued by the
13 Department in response to an inquiry or request for any opinion
14 from any person regarding the coverage and applicability of
15 exemption (e) to specific devices shall be published,
16 maintained as a public record, and made available for public
17 inspection and copying. If the informal ruling, opinion or
18 letter contains trade secrets or other confidential
19 information, where possible the Department shall delete such
20 information prior to publication. Whenever such informal
21 rulings, opinions, or letters contain any policy of general
22 applicability, the Department shall formulate and adopt such
23 policy as a rule in accordance with the provisions of the
24 Illinois Administrative Procedure Act.

25 On and after July 1, 1987, no entity otherwise eligible
26 under exemption (c) of this Section shall make tax free
27 purchases unless it has an active exemption identification
28 number issued by the Department.

29 "Serviceman" means any person who is engaged in the
30 occupation of making sales of service.

31 "Sale at Retail" means "sale at retail" as defined in the
32 Retailers' Occupation Tax Act.

33 "Supplier" means any person who makes sales of tangible
34 personal property to servicemen for the purpose of resale as an

1 incident to a sale of service.

2 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
3 eff. 6-20-03; revised 8-21-03.)

4 (35 ILCS 115/3-25) (from Ch. 120, par. 439.103-25)

5 Sec. 3-25. Computer software.

6 (a) On and before June 30, 2004, for ~~For~~ the purposes of this
7 Act, "computer software" means a set of statements, data, or
8 instructions to be used directly or indirectly in a computer in
9 order to bring about a certain result in any form in which
10 those statements, data, or instructions may be embodied,
11 transmitted, or fixed, by any method now known or hereafter
12 developed, regardless of whether the statements, data, or
13 instructions are capable of being perceived by or communicated
14 to humans, and includes prewritten or canned software that is
15 held for repeated sale or lease, and all associated
16 documentation and materials, if any, whether contained on
17 magnetic tapes, discs, cards, or other devices or media, but
18 does not include software that is adapted to specific
19 individualized requirements of a purchaser, custom-made and
20 modified software designed for a particular or limited use by a
21 purchaser, or software used to operate exempt machinery and
22 equipment used in the process of manufacturing or assembling
23 tangible personal property for wholesale or retail sale or
24 lease.

25 (b) On and after July 1, 2004, for the purposes of this
26 Act, "computer software" has the same meaning as that term is
27 defined in Section 2-25 of the Retailers' Occupation Tax Act.

28 (c) For the purposes of this Act, computer software shall
29 be considered to be tangible personal property.

30 (Source: P.A. 91-51, eff. 6-30-99.)

31 Section 20. The Retailers' Occupation Tax Act is amended by
32 changing Sections 1, 2, and 2-25 as follows:

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

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

18 Beginning July 1, 2004, "sale at retail" includes licenses
19 of prewritten computer software and any other transfer, for
20 consideration, of the possession or right to use prewritten
21 computer software, no matter how the transaction is
22 characterized by the parties.

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

31 Sales of tangible personal property, which property, to the
32 extent not first subjected to a use for which it was purchased,
33 as an ingredient or constituent, goes into and forms a part of

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

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

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

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

30 A person whose activities are organized and conducted
31 primarily as a not-for-profit service enterprise, and who
32 engages in selling tangible personal property at retail
33 (whether to the public or merely to members and their guests)
34 is engaged in the business of selling tangible personal

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

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

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

28 "Reseller of motor fuel" means any person engaged in the
29 business of selling or delivering or transferring title of
30 motor fuel to another person other than for use or consumption.
31 No person shall act as a reseller of motor fuel within this
32 State without first being registered as a reseller pursuant to
33 Section 2c or a retailer pursuant to Section 2a.

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

1 consideration for a sale valued in money whether received in
2 money or otherwise, including cash, credits, property, other
3 than as hereinafter provided, and services, but not including
4 the 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, and shall be determined
7 without any deduction on account of the cost of the property
8 sold, the cost of materials used, labor or service cost or any
9 other expense whatsoever, but does not include charges that are
10 added to prices by sellers on account of the seller's tax
11 liability under this Act, or on account of the seller's duty to
12 collect, from the purchaser, the tax that is imposed by the Use
13 Tax Act, or on account of the seller's tax liability under
14 Section 8-11-1 of the Illinois Municipal Code, as heretofore
15 and hereafter amended, or on account of the seller's tax
16 liability under the County Retailers' Occupation Tax Act, or on
17 account of the seller's tax liability under the Home Rule
18 Municipal Soft Drink Retailers' Occupation Tax, or on account
19 of the seller's tax liability under any tax imposed under the
20 "Regional Transportation Authority Act", approved December 12,
21 1973. Effective December 1, 1985, "selling price" shall include
22 charges that are added to prices by sellers on account of the
23 seller's tax liability under the Cigarette Tax Act, on account
24 of the sellers' duty to collect, from the purchaser, the tax
25 imposed under the Cigarette Use Tax Act, and on account of the
26 seller's duty to collect, from the purchaser, any cigarette tax
27 imposed by a home rule unit.

28 The phrase "like kind and character" shall be liberally
29 construed (including but not limited to any form of motor
30 vehicle for any form of motor vehicle, or any kind of farm or
31 agricultural implement for any other kind of farm or
32 agricultural implement), while not including a kind of item
33 which, if sold at retail by that retailer, would be exempt from
34 retailers' occupation tax and use tax as an isolated or

1 occasional sale.

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

11 "Department" means the Department of Revenue.

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

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

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

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

29 Persons who engage in the business of transferring tangible
30 personal property upon the redemption of trading stamps are
31 engaged in the business of selling such property at retail and
32 shall be liable for and shall pay the tax imposed by this Act
33 on the basis of the retail value of the property transferred
34 upon redemption of such stamps.

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

7 (Source: P.A. 92-213, eff. 1-1-02.)

8 (35 ILCS 120/2) (from Ch. 120, par. 441)

9 Sec. 2. Tax imposed. A tax is imposed upon persons engaged
10 in the business of selling at retail tangible personal
11 property, including computer software, and including
12 photographs, negatives, and positives that are the product of
13 photoprocessing, but not including products of photoprocessing
14 produced for use in motion pictures for public commercial
15 exhibition. Beginning January 1, 2001, prepaid telephone
16 calling arrangements shall be considered tangible personal
17 property subject to the tax imposed under this Act regardless
18 of the form in which those arrangements may be embodied,
19 transmitted, or fixed by any method now known or hereafter
20 developed. Beginning July 1, 2004, computer software subject to
21 tax under this Act includes licenses of prewritten computer
22 software and any other transfer, for consideration, of the
23 possession or right to use prewritten computer software, no
24 matter how the transaction is characterized by the parties.

25 (Source: P.A. 91-51, eff. 6-30-99; 91-870, eff. 6-22-00.)

26 (35 ILCS 120/2-25) (from Ch. 120, par. 441-25)

27 Sec. 2-25. Computer software. For the purposes of this Act,
28 "computer software" means a set of statements, data, or
29 instructions to be used directly or indirectly in a computer in
30 order to bring about a certain result in any form in which
31 those statements, data, or instructions may be embodied,
32 transmitted, or fixed, by any method now known or hereafter

1 developed, regardless of whether the statements, data, or
2 instructions are capable of being perceived by or communicated
3 to humans, and includes prewritten or canned software that is
4 held for repeated sale or lease, and all associated
5 documentation and materials, if any, whether contained on
6 magnetic tapes, discs, cards, or other devices or media, but
7 does not include (i) on and before June 30, 2004, software that
8 is adapted to specific individualized requirements of a
9 purchaser, custom-made and modified software designed for a
10 particular or limited use by a purchaser, or (ii) software used
11 to operate exempt machinery and equipment used in the process
12 of manufacturing or assembling tangible personal property for
13 wholesale or retail sale or lease.

14 Beginning on July 1, 2004, "prewritten computer software"
15 means computer software, including upgrades, that is not
16 designed and developed by the author or other creator to the
17 specifications of a specific purchaser. The combining of 2 or
18 more "prewritten computer software" programs or prewritten
19 portions thereof does not cause the combination to be other
20 than "prewritten computer software". "Prewritten computer
21 software" includes software designed and developed by the
22 author or other creator to the specifications of a specific
23 purchaser when it is sold to a person other than the specific
24 purchaser. If a person modifies or enhances computer software
25 of which the person is not the author or creator, the person
26 shall be deemed to be the author or creator only of that
27 person's modifications or enhancements. "Prewritten computer
28 software" or a prewritten portion thereof that is modified or
29 enhanced to any degree, when the modification or enhancement
30 according to Department rules is designed and developed to the
31 specifications of a specific purchaser, remains "prewritten
32 computer software", except that when there is a reasonable
33 separately stated charge or an invoice or other statement of
34 the price given to the purchaser for the modification or

1 enhancement, the modification or enhancement does not
2 constitute "prewritten computer software".

3 For the purposes of this Act, computer software shall be
4 considered to be tangible personal property.

5 (Source: P.A. 91-51, eff. 6-30-99.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law."