



## 93RD GENERAL ASSEMBLY

### State of Illinois

### 2003 and 2004

Introduced 02/09/04, by George Scully Jr.

#### SYNOPSIS AS INTRODUCED:

35 ILCS 105/3-50	from Ch. 120, par. 439.3-50
35 ILCS 110/2	from Ch. 120, par. 439.32
35 ILCS 115/2	from Ch. 120, par. 439.102
35 ILCS 120/2-45	from Ch. 120, par. 441-45

Amends the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act. Provides that, at the same time as the taxpayer files it's annual Illinois income tax return, the taxpayer must disclose the aggregate dollar amount of manufacturing and assembling machinery and equipment tax exemptions received under these Acts during the most recently completed calendar year, broken down by plant and by facility. Provides that, if a plant or facility with respect to which a taxpayer received such manufacturing and assembling machinery and equipment exemptions closes, the taxpayer must pay to the Department all amounts that were not not paid in taxes under these Acts due to the exemption, for the 5-year period immediately preceding the plant or facility closure.

LRB093 18465 SJM 47022 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning taxes.

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  
5 3-50 as follows:

6 (35 ILCS 105/3-50) (from Ch. 120, par. 439.3-50)

7 Sec. 3-50. Manufacturing and assembly exemption. The  
8 manufacturing and assembling machinery and equipment exemption  
9 includes machinery and equipment that replaces machinery and  
10 equipment in an existing manufacturing facility as well as  
11 machinery and equipment that are for use in an expanded or new  
12 manufacturing facility. The machinery and equipment exemption  
13 also includes machinery and equipment used in the general  
14 maintenance or repair of exempt machinery and equipment or for  
15 in-house manufacture of exempt machinery and equipment. For the  
16 purposes of this exemption, terms have the following meanings:

17 (1) "Manufacturing process" means the production of an  
18 article of tangible personal property, whether the article  
19 is a finished product or an article for use in the process  
20 of manufacturing or assembling a different article of  
21 tangible personal property, by a procedure commonly  
22 regarded as manufacturing, processing, fabricating, or  
23 refining that changes some existing material into a  
24 material with a different form, use, or name. In relation  
25 to a recognized integrated business composed of a series of  
26 operations that collectively constitute manufacturing, or  
27 individually constitute manufacturing operations, the  
28 manufacturing process commences with the first operation  
29 or stage of production in the series and does not end until  
30 the completion of the final product in the last operation  
31 or stage of production in the series. For purposes of this  
32 exemption, photoprocessing is a manufacturing process of

1 tangible personal property for wholesale or retail sale.

2 (2) "Assembling process" means the production of an  
3 article of tangible personal property, whether the article  
4 is a finished product or an article for use in the process  
5 of manufacturing or assembling a different article of  
6 tangible personal property, by the combination of existing  
7 materials in a manner commonly regarded as assembling that  
8 results in an article or material of a different form, use,  
9 or name.

10 (3) "Machinery" means major mechanical machines or  
11 major components of those machines contributing to a  
12 manufacturing or assembling process.

13 (4) "Equipment" includes an independent device or tool  
14 separate from machinery but essential to an integrated  
15 manufacturing or assembly process; including computers  
16 used primarily in a manufacturer's computer assisted  
17 design, computer assisted manufacturing (CAD/CAM) system;  
18 any subunit or assembly comprising a component of any  
19 machinery or auxiliary, adjunct, or attachment parts of  
20 machinery, such as tools, dies, jigs, fixtures, patterns,  
21 and molds; and any parts that require periodic replacement  
22 in the course of normal operation; but does not include  
23 hand tools. Equipment includes chemicals or chemicals  
24 acting as catalysts but only if the chemicals or chemicals  
25 acting as catalysts effect a direct and immediate change  
26 upon a product being manufactured or assembled for  
27 wholesale or retail sale or lease.

28 The manufacturing and assembling machinery and equipment  
29 exemption includes the sale of materials to a purchaser who  
30 produces exempted types of machinery, equipment, or tools and  
31 who rents or leases that machinery, equipment, or tools to a  
32 manufacturer of tangible personal property. This exemption  
33 also includes the sale of materials to a purchaser who  
34 manufactures those materials into an exempted type of  
35 machinery, equipment, or tools that the purchaser uses himself  
36 or herself in the manufacturing of tangible personal property.

1 This exemption includes the sale of exempted types of machinery  
2 or equipment to a purchaser who is not the manufacturer, but  
3 who rents or leases the use of the property to a manufacturer.  
4 The purchaser of the machinery and equipment who has an active  
5 resale registration number shall furnish that number to the  
6 seller at the time of purchase. A user of the machinery,  
7 equipment, or tools without an active resale registration  
8 number shall prepare a certificate of exemption for each  
9 transaction stating facts establishing the exemption for that  
10 transaction, and that certificate shall be available to the  
11 Department for inspection or audit. The Department shall  
12 prescribe the form of the certificate. Informal rulings,  
13 opinions, or letters issued by the Department in response to an  
14 inquiry or request for an opinion from any person regarding the  
15 coverage and applicability of this exemption to specific  
16 devices shall be published, maintained as a public record, and  
17 made available for public inspection and copying. If the  
18 informal ruling, opinion, or letter contains trade secrets or  
19 other confidential information, where possible, the Department  
20 shall delete that information before publication. Whenever  
21 informal rulings, opinions, or letters contain a policy of  
22 general applicability, the Department shall formulate and  
23 adopt that policy as a rule in accordance with the Illinois  
24 Administrative Procedure Act.

25 At the same time as the taxpayer files it's annual Illinois  
26 income tax return, the taxpayer must disclose the aggregate  
27 dollar amount of manufacturing and assembling machinery and  
28 equipment tax exemptions received under the Use Tax Act, the  
29 Service Use Tax Act, the Service Occupation Tax Act, and the  
30 Retailers' Occupation Tax Act during the most recently  
31 completed calendar year, broken down by plant and by facility.  
32 If a plant or facility with respect to which a taxpayer  
33 received such manufacturing and assembling machinery and  
34 equipment exemptions closes, the taxpayer must pay to the  
35 Department all amounts that were not not paid in taxes under  
36 the Use Tax Act, the Service Use Tax Act, the Service

1 Occupation Tax Act, and the Retailers' Occupation Tax Act due  
2 to the exemption, for the 5-year period immediately preceding  
3 the date of the plant or facility closure.

4 (Source: P.A. 91-51, eff. 6-30-99; 92-484, eff. 8-23-01.)

5 Section 10. The Service Use Tax Act is amended by changing  
6 Section 2 as follows:

7 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

8 Sec. 2. "Use" means the exercise by any person of any right  
9 or power over tangible personal property incident to the  
10 ownership of that property, but does not include the sale or  
11 use for demonstration by him of that property in any form as  
12 tangible personal property in the regular course of business.  
13 "Use" does not mean the interim use of tangible personal  
14 property nor the physical incorporation of tangible personal  
15 property, as an ingredient or constituent, into other tangible  
16 personal property, (a) which is sold in the regular course of  
17 business or (b) which the person incorporating such ingredient  
18 or constituent therein has undertaken at the time of such  
19 purchase to cause to be transported in interstate commerce to  
20 destinations outside the State of Illinois.

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  
34 shall be presumed that the cost price to the serviceman of the

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

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

15 "Department" means the Department of Revenue.

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

21 "Sale of service" means any transaction except:

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

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

28 (3) except as hereinafter provided, a sale or transfer  
29 of tangible personal property as an incident to the  
30 rendering of service for or by any governmental body, or  
31 for or by any corporation, society, association,  
32 foundation or institution organized and operated  
33 exclusively for charitable, religious or educational  
34 purposes or any not-for-profit corporation, society,  
35 association, foundation, institution or organization which  
36 has no compensated officers or employees and which is

1 organized and operated primarily for the recreation of  
2 persons 55 years of age or older. A limited liability  
3 company may qualify for the exemption under this paragraph  
4 only if the limited liability company is organized and  
5 operated exclusively for educational purposes.

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

18 (4a) a sale or transfer of tangible personal property  
19 as an incident to the rendering of service for owners,  
20 lessors, or shippers of tangible personal property which is  
21 utilized by interstate carriers for hire for use as rolling  
22 stock moving in interstate commerce so long as so used by  
23 interstate carriers for hire, and equipment operated by a  
24 telecommunications provider, licensed as a common carrier  
25 by the Federal Communications Commission, which is  
26 permanently installed in or affixed to aircraft moving in  
27 interstate commerce.

28 (4a-5) on and after July 1, 2003, a sale or transfer of  
29 a motor vehicle of the second division with a gross vehicle  
30 weight in excess of 8,000 pounds as an incident to the  
31 rendering of service if that motor vehicle is subject to  
32 the commercial distribution fee imposed under Section  
33 3-815.1 of the Illinois Vehicle Code. This exemption  
34 applies to repair and replacement parts added after the  
35 initial purchase of such a motor vehicle if that motor  
36 vehicle is used in a manner that would qualify for the

1 rolling stock exemption otherwise provided for in this Act.

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

14 (5a) the repairing, reconditioning or remodeling, for  
15 a common carrier by rail, of tangible personal property  
16 which belongs to such carrier for hire, and as to which  
17 such carrier receives the physical possession of the  
18 repaired, reconditioned or remodeled item of tangible  
19 personal property in Illinois, and which such carrier  
20 transports, or shares with another common carrier in the  
21 transportation of such property, out of Illinois on a  
22 standard uniform bill of lading showing the person who  
23 repaired, reconditioned or remodeled the property to a  
24 destination outside Illinois, for use outside Illinois.

25 (5b) a sale or transfer of tangible personal property  
26 which is produced by the seller thereof on special order in  
27 such a way as to have made the applicable tax the Service  
28 Occupation Tax or the Service Use Tax, rather than the  
29 Retailers' Occupation Tax or the Use Tax, for an interstate  
30 carrier by rail which receives the physical possession of  
31 such property in Illinois, and which transports such  
32 property, or shares with another common carrier in the  
33 transportation of such property, out of Illinois on a  
34 standard uniform bill of lading showing the seller of the  
35 property as the shipper or consignor of such property to a  
36 destination outside Illinois, for use outside Illinois.



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

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

30           Tangible personal property transferred incident to the  
31 completion of a maintenance agreement is exempt from the tax  
32 imposed pursuant to this Act.

33           Exemption (5) also includes machinery and equipment used in  
34 the general maintenance or repair of such exempt machinery and  
35 equipment or for in-house manufacture of exempt machinery and  
36 equipment. For the purposes of exemption (5), each of these

1 terms shall have the following meanings: (1) "manufacturing  
2 process" shall mean the production of any article of tangible  
3 personal property, whether such article is a finished product  
4 or an article for use in the process of manufacturing or  
5 assembling a different article of tangible personal property,  
6 by procedures commonly regarded as manufacturing, processing,  
7 fabricating, or refining which changes some existing material  
8 or materials into a material with a different form, use or  
9 name. In relation to a recognized integrated business composed  
10 of a series of operations which collectively constitute  
11 manufacturing, or individually constitute manufacturing  
12 operations, the manufacturing process shall be deemed to  
13 commence with the first operation or stage of production in the  
14 series, and shall not be deemed to end until the completion of  
15 the final product in the last operation or stage of production  
16 in the series; and further, for purposes of exemption (5),  
17 photoprocessing is deemed to be a manufacturing process of  
18 tangible personal property for wholesale or retail sale; (2)  
19 "assembling process" shall mean the production of any article  
20 of tangible personal property, whether such article is a  
21 finished product or an article for use in the process of  
22 manufacturing or assembling a different article of tangible  
23 personal property, by the combination of existing materials in  
24 a manner commonly regarded as assembling which results in a  
25 material of a different form, use or name; (3) "machinery"  
26 shall mean major mechanical machines or major components of  
27 such machines contributing to a manufacturing or assembling  
28 process; and (4) "equipment" shall include any independent  
29 device or tool separate from any machinery but essential to an  
30 integrated manufacturing or assembly process; including  
31 computers used primarily in a manufacturer's computer assisted  
32 design, computer assisted manufacturing (CAD/CAM) system; or  
33 any subunit or assembly comprising a component of any machinery  
34 or auxiliary, adjunct or attachment parts of machinery, such as  
35 tools, dies, jigs, fixtures, patterns and molds; or any parts  
36 which require periodic replacement in the course of normal

1 operation; but shall not include hand tools. Equipment includes  
2 chemicals or chemicals acting as catalysts but only if the  
3 chemicals or chemicals acting as catalysts effect a direct and  
4 immediate change upon a product being manufactured or assembled  
5 for wholesale or retail sale or lease. The purchaser of such  
6 machinery and equipment who has an active resale registration  
7 number shall furnish such number to the seller at the time of  
8 purchase. The user of such machinery and equipment and tools  
9 without an active resale registration number shall prepare a  
10 certificate of exemption for each transaction stating facts  
11 establishing the exemption for that transaction, which  
12 certificate shall be available to the Department for inspection  
13 or audit. The Department shall prescribe the form of the  
14 certificate.

15 Any informal rulings, opinions or letters issued by the  
16 Department in response to an inquiry or request for any opinion  
17 from any person regarding the coverage and applicability of  
18 exemption (5) to specific devices shall be published,  
19 maintained as a public record, and made available for public  
20 inspection and copying. If the informal ruling, opinion or  
21 letter contains trade secrets or other confidential  
22 information, where possible the Department shall delete such  
23 information prior to publication. Whenever such informal  
24 rulings, opinions, or letters contain any policy of general  
25 applicability, the Department shall formulate and adopt such  
26 policy as a rule in accordance with the provisions of the  
27 Illinois Administrative Procedure Act.

28 At the same time as the taxpayer files it's annual Illinois  
29 income tax return, the taxpayer must disclose the aggregate  
30 dollar amount of manufacturing and assembling machinery and  
31 equipment tax exemptions received under the Use Tax Act, the  
32 Service Use Tax Act, the Service Occupation Tax Act, and the  
33 Retailers' Occupation Tax Act during the most recently  
34 completed calendar year, broken down by plant and by facility.  
35 If a plant or facility with respect to which a taxpayer  
36 received manufacturing and assembling machinery and equipment

1 exemptions closes, the taxpayer must pay to the Department all  
2 amounts that were not not paid in taxes under the Use Tax Act,  
3 the Service Use Tax Act, the Service Occupation Tax Act, and  
4 the Retailers' Occupation Tax Act due to such exemptions, for  
5 the 5-year period immediately preceding the plant or facility  
6 closure.

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

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

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

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

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

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

25 1. having or maintaining within this State, directly or  
26 by a subsidiary, an office, distribution house, sales  
27 house, warehouse or other place of business, or any agent  
28 or other representative operating within this State under  
29 the authority of the serviceman or its subsidiary,  
30 irrespective of whether such place of business or agent or  
31 other representative is located here permanently or  
32 temporarily, or whether such serviceman or subsidiary is  
33 licensed to do business in this State;

34 2. soliciting orders for tangible personal property by  
35 means of a telecommunication or television shopping system  
36 (which utilizes toll free numbers) which is intended by the

1 retailer to be broadcast by cable television or other means  
2 of broadcasting, to consumers located in this State;

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

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

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

18 6. having a franchisee or licensee operating under its  
19 trade name if the franchisee or licensee is required to  
20 collect the tax under this Section;

21 7. pursuant to a contract with a cable television  
22 operator located in this State, soliciting orders for  
23 tangible personal property by means of advertising which is  
24 transmitted or distributed over a cable television system  
25 in this State; or

26 8. engaging in activities in Illinois, which  
27 activities in the state in which the supply business  
28 engaging in such activities is located would constitute  
29 maintaining a place of business in that state.

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

32 Section 15. The Service Occupation Tax Act is amended by  
33 changing Section 2 as follows:

34 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

1           Sec. 2. "Transfer" means any transfer of the title to  
2 property or of the ownership of property whether or not the  
3 transferor retains title as security for the payment of amounts  
4 due him from the transferee.

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

17           "Department" means the Department of Revenue.

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

23           "Sale of Service" means any transaction except:

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

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

30           (c) Except as hereinafter provided, a sale or transfer of  
31 tangible personal property as an incident to the rendering of  
32 service for or by any governmental body or for or by any  
33 corporation, society, association, foundation or institution  
34 organized and operated exclusively for charitable, religious  
35 or educational purposes or any not-for-profit corporation,  
36 society, association, foundation, institution or organization

1 which has no compensated officers or employees and which is  
2 organized and operated primarily for the recreation of persons  
3 55 years of age or older. A limited liability company may  
4 qualify for the exemption under this paragraph only if the  
5 limited liability company is organized and operated  
6 exclusively for educational purposes.

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

17 (d-1) A sale or transfer of tangible personal property as  
18 an incident to the rendering of service for owners, lessors or  
19 shippers of tangible personal property which is utilized by  
20 interstate carriers for hire for use as rolling stock moving in  
21 interstate commerce, and equipment operated by a  
22 telecommunications provider, licensed as a common carrier by  
23 the Federal Communications Commission, which is permanently  
24 installed in or affixed to aircraft moving in interstate  
25 commerce.

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

36 (d-2) The repairing, reconditioning or remodeling, for a

1 common carrier by rail, of tangible personal property which  
2 belongs to such carrier for hire, and as to which such carrier  
3 receives the physical possession of the repaired,  
4 reconditioned or remodeled item of tangible personal property  
5 in Illinois, and which such carrier transports, or shares with  
6 another common carrier in the transportation of such property,  
7 out of Illinois on a standard uniform bill of lading showing  
8 the person who repaired, reconditioned or remodeled the  
9 property as the shipper or consignor of such property to a  
10 destination outside Illinois, for use outside Illinois.

11 (d-3) A sale or transfer of tangible personal property  
12 which is produced by the seller thereof on special order in  
13 such a way as to have made the applicable tax the Service  
14 Occupation Tax or the Service Use Tax, rather than the  
15 Retailers' Occupation Tax or the Use Tax, for an interstate  
16 carrier by rail which receives the physical possession of such  
17 property in Illinois, and which transports such property, or  
18 shares with another common carrier in the transportation of  
19 such property, out of Illinois on a standard uniform bill of  
20 lading showing the seller of the property as the shipper or  
21 consignor of such property to a destination outside Illinois,  
22 for use outside Illinois.

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

30 (e) A sale or transfer of machinery and equipment used  
31 primarily in the process of the manufacturing or assembling,  
32 either in an existing, an expanded or a new manufacturing  
33 facility, of tangible personal property for wholesale or retail  
34 sale or lease, whether such sale or lease is made directly by  
35 the manufacturer or by some other person, whether the materials  
36 used in the process are owned by the manufacturer or some other



1 person, or whether such sale or lease is made apart from or as  
2 an incident to the seller's engaging in a service occupation  
3 and the applicable tax is a Service Occupation Tax or Service  
4 Use Tax, rather than Retailers' Occupation Tax or Use Tax.

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

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

31 Tangible personal property transferred incident to the  
32 completion of a maintenance agreement is exempt from the tax  
33 imposed pursuant to this Act.

34 Exemption (e) also includes machinery and equipment used in  
35 the general maintenance or repair of such exempt machinery and  
36 equipment or for in-house manufacture of exempt machinery and

1 equipment. For the purposes of exemption (e), each of these  
2 terms shall have the following meanings: (1) "manufacturing  
3 process" shall mean the production of any article of tangible  
4 personal property, whether such article is a finished product  
5 or an article for use in the process of manufacturing or  
6 assembling a different article of tangible personal property,  
7 by procedures commonly regarded as manufacturing, processing,  
8 fabricating, or refining which changes some existing material  
9 or materials into a material with a different form, use or  
10 name. In relation to a recognized integrated business composed  
11 of a series of operations which collectively constitute  
12 manufacturing, or individually constitute manufacturing  
13 operations, the manufacturing process shall be deemed to  
14 commence with the first operation or stage of production in the  
15 series, and shall not be deemed to end until the completion of  
16 the final product in the last operation or stage of production  
17 in the series; and further for purposes of exemption (e),  
18 photoprocessing is deemed to be a manufacturing process of  
19 tangible personal property for wholesale or retail sale; (2)  
20 "assembling process" shall mean the production of any article  
21 of tangible personal property, whether such article is a  
22 finished product or an article for use in the process of  
23 manufacturing or assembling a different article of tangible  
24 personal property, by the combination of existing materials in  
25 a manner commonly regarded as assembling which results in a  
26 material of a different form, use or name; (3) "machinery"  
27 shall mean major mechanical machines or major components of  
28 such machines contributing to a manufacturing or assembling  
29 process; and (4) "equipment" shall include any independent  
30 device or tool separate from any machinery but essential to an  
31 integrated manufacturing or assembly process; including  
32 computers used primarily in a manufacturer's computer assisted  
33 design, computer assisted manufacturing (CAD/CAM) system; or  
34 any subunit or assembly comprising a component of any machinery  
35 or auxiliary, adjunct or attachment parts of machinery, such as  
36 tools, dies, jigs, fixtures, patterns and molds; or any parts

1 which require periodic replacement in the course of normal  
2 operation; but shall not include hand tools. Equipment includes  
3 chemicals or chemicals acting as catalysts but only if the  
4 chemicals or chemicals acting as catalysts effect a direct and  
5 immediate change upon a product being manufactured or assembled  
6 for wholesale or retail sale or lease. The purchaser of such  
7 machinery and equipment who has an active resale registration  
8 number shall furnish such number to the seller at the time of  
9 purchase. The purchaser of such machinery and equipment and  
10 tools without an active resale registration number shall  
11 furnish to the seller a certificate of exemption for each  
12 transaction stating facts establishing the exemption for that  
13 transaction, which certificate shall be available to the  
14 Department for inspection or audit. At the same time as the  
15 taxpayer files it's annual Illinois income tax return, the  
16 taxpayer must disclose the aggregate dollar amount of  
17 manufacturing and assembling machinery and equipment tax  
18 exemptions received under the Use Tax Act, the Service Use Tax  
19 Act, the Service Occupation Tax Act, and the Retailers'  
20 Occupation Tax Act during the most recently completed calendar  
21 year, broken down by plant and by facility. If a plant or  
22 facility with respect to which a taxpayer received  
23 manufacturing and assembling machinery and equipment  
24 exemptions closes, the taxpayer must pay to the Department all  
25 amounts that were not not paid in taxes under the Use Tax Act,  
26 the Service Use Tax Act, the Service Occupation Tax Act, and  
27 the Retailers' Occupation Tax Act due to such exemptions, for  
28 the 5-year period immediately preceding the date of the plant  
29 or facility closure.

30 Except as provided in Section 2d of this Act, the rolling  
31 stock exemption applies to rolling stock used by an interstate  
32 carrier for hire, even just between points in Illinois, if such  
33 rolling stock transports, for hire, persons whose journeys or  
34 property whose shipments originate or terminate outside  
35 Illinois.

36 Any informal rulings, opinions or letters issued by the

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

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

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

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

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

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

26 Section 20. The Retailers' Occupation Tax Act is amended by  
27 changing Section 2-45 as follows:

28 (35 ILCS 120/2-45) (from Ch. 120, par. 441-45)

29 Sec. 2-45. Manufacturing and assembly exemption. The  
30 manufacturing and assembly machinery and equipment exemption  
31 includes machinery and equipment that replaces machinery and  
32 equipment in an existing manufacturing facility as well as  
33 machinery and equipment that are for use in an expanded or new  
34 manufacturing facility.

1           The machinery and equipment exemption also includes  
2 machinery and equipment used in the general maintenance or  
3 repair of exempt machinery and equipment or for in-house  
4 manufacture of exempt machinery and equipment. For the purposes  
5 of this exemption, terms have the following meanings:

6           (1) "Manufacturing process" means the production of an  
7 article of tangible personal property, whether the article  
8 is a finished product or an article for use in the process  
9 of manufacturing or assembling a different article of  
10 tangible personal property, by a procedure commonly  
11 regarded as manufacturing, processing, fabricating, or  
12 refining that changes some existing material or materials  
13 into a material with a different form, use, or name. In  
14 relation to a recognized integrated business composed of a  
15 series of operations that collectively constitute  
16 manufacturing, or individually constitute manufacturing  
17 operations, the manufacturing process commences with the  
18 first operation or stage of production in the series and  
19 does not end until the completion of the final product in  
20 the last operation or stage of production in the series.  
21 For purposes of this exemption, photoprocessing is a  
22 manufacturing process of tangible personal property for  
23 wholesale or retail sale.

24           (2) "Assembling process" means the production of an  
25 article of tangible personal property, whether the article  
26 is a finished product or an article for use in the process  
27 of manufacturing or assembling a different article of  
28 tangible personal property, by the combination of existing  
29 materials in a manner commonly regarded as assembling that  
30 results in a material of a different form, use, or name.

31           (3) "Machinery" means major mechanical machines or  
32 major components of those machines contributing to a  
33 manufacturing or assembling process.

34           (4) "Equipment" includes an independent device or tool  
35 separate from machinery but essential to an integrated  
36 manufacturing or assembly process; including computers

1 used primarily in a manufacturer's computer assisted  
2 design, computer assisted manufacturing (CAD/CAM) system;  
3 any subunit or assembly comprising a component of any  
4 machinery or auxiliary, adjunct, or attachment parts of  
5 machinery, such as tools, dies, jigs, fixtures, patterns,  
6 and molds; and any parts that require periodic replacement  
7 in the course of normal operation; but does not include  
8 hand tools. Equipment includes chemicals or chemicals  
9 acting as catalysts but only if the chemicals or chemicals  
10 acting as catalysts effect a direct and immediate change  
11 upon a product being manufactured or assembled for  
12 wholesale or retail sale or lease.

13 The manufacturing and assembling machinery and equipment  
14 exemption includes the sale of materials to a purchaser who  
15 produces exempted types of machinery, equipment, or tools and  
16 who rents or leases that machinery, equipment, or tools to a  
17 manufacturer of tangible personal property. This exemption  
18 also includes the sale of materials to a purchaser who  
19 manufactures those materials into an exempted type of  
20 machinery, equipment, or tools that the purchaser uses himself  
21 or herself in the manufacturing of tangible personal property.  
22 The purchaser of the machinery and equipment who has an active  
23 resale registration number shall furnish that number to the  
24 seller at the time of purchase. A purchaser of the machinery,  
25 equipment, and tools without an active resale registration  
26 number shall furnish to the seller a certificate of exemption  
27 for each transaction stating facts establishing the exemption  
28 for that transaction, and that certificate shall be available  
29 to the Department for inspection or audit. Informal rulings,  
30 opinions, or letters issued by the Department in response to an  
31 inquiry or request for an opinion from any person regarding the  
32 coverage and applicability of this exemption to specific  
33 devices shall be published, maintained as a public record, and  
34 made available for public inspection and copying. If the  
35 informal ruling, opinion, or letter contains trade secrets or  
36 other confidential information, where possible, the Department

1 shall delete that information before publication. Whenever  
2 informal rulings, opinions, or letters contain a policy of  
3 general applicability, the Department shall formulate and  
4 adopt that policy as a rule in accordance with the Illinois  
5 Administrative Procedure Act.

6 At the same time as the taxpayer files it's annual Illinois  
7 income tax return, the taxpayer must disclose the aggregate  
8 dollar amount of manufacturing and assembling machinery and  
9 equipment tax exemptions received under the Use Tax Act, the  
10 Service Use Tax Act, the Service Occupation Tax Act, and the  
11 Retailers' Occupation Tax Act during the most recently  
12 completed calendar year, broken down by plant and by facility.  
13 If a plant or facility with respect to which a taxpayer  
14 received manufacturing and assembling machinery and equipment  
15 exemptions closes, the taxpayer must pay to the Department all  
16 amounts that were not not paid in taxes under the Use Tax Act,  
17 the Service Use Tax Act, the Service Occupation Tax Act, and  
18 the Retailers' Occupation Tax Act due to such exemptions, for  
19 the 5-year period immediately preceding the date of the plant  
20 or facility closure.

21 (Source: P.A. 91-51, eff. 6-30-99; 92-484, eff. 8-23-01.)