



Adopted in House Comm. on May 13, 2004

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LRB093 15833 BDD 50832 a

1 AMENDMENT TO SENATE BILL 2205

2 AMENDMENT NO. _____. Amend Senate Bill 2205 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" shall be construed
33 to include the licensing of computer software.

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

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

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

33 "Department" means the Department of Revenue.

34 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or
2 private corporation, limited liability company, or a receiver,
3 executor, trustee, guardian or other representative appointed
4 by order of any court.

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

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

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

1 charitable, religious or educational purposes, whether or not
2 such activities are open to the public.

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

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

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

1 such property, for the purposes of this Act, is the cost to the
2 transferor of such tangible personal property.

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

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

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

29 3. A retailer, pursuant to a contract with a
30 broadcaster or publisher located in this State, soliciting
31 orders for tangible personal property by means of
32 advertising which is disseminated primarily to consumers
33 located in this State and only secondarily to bordering
34 jurisdictions.

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

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

12 6. A retailer having a franchisee or licensee operating
13 under its trade name if the franchisee or licensee is
14 required to collect the tax under this Section.

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

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

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

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

31 (35 ILCS 105/3) (from Ch. 120, par. 439.3)

32 Sec. 3. Tax imposed. A tax is imposed upon the privilege of
33 using in this State tangible personal property purchased at

1 retail from a retailer, including computer software, and
2 including photographs, negatives, and positives that are the
3 product of photoprocessing, but not including products of
4 photoprocessing produced for use in motion pictures for
5 commercial exhibition. Beginning January 1, 2001, prepaid
6 telephone calling arrangements shall be considered tangible
7 personal property subject to the tax imposed under this Act
8 regardless of the form in which those arrangements may be
9 embodied, transmitted, or fixed by any method now known or
10 hereafter developed. Beginning July 1, 2004, computer software
11 subject to tax under this Act includes licenses of computer
12 software.

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

14 (35 ILCS 105/3-25) (from Ch. 120, par. 439.3-25)

15 Sec. 3-25. Computer software; prewritten computer
16 software.

17 (a) For the purposes of this Act, "computer software" means
18 a set of statements, data, or instructions to be used directly
19 or indirectly in a computer in order to bring about a certain
20 result in any form in which those statements, data, or
21 instructions may be embodied, transmitted, or fixed, by any
22 method now known or hereafter developed, regardless of whether
23 the statements, data, or instructions are capable of being
24 perceived by or communicated to humans, and includes prewritten
25 or canned software that is held for repeated sale or lease, and
26 all associated documentation and materials, if any, whether
27 contained on magnetic tapes, discs, cards, or other devices or
28 media, but does not include (i) until July 1, 2004, software
29 that is adapted to specific individualized requirements of a
30 purchaser, custom-made and modified software designed for a
31 particular or limited use by a purchaser, or (ii) software used
32 to operate exempt machinery and equipment used in the process
33 of manufacturing or assembling tangible personal property for

1 wholesale or retail sale or lease.

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

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

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

28 Section 10. The Service Use Tax Act is amended by changing
29 Sections 2 and 3-25 as follows:

30 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

31 Sec. 2. "Use" means the exercise by any person of any right
32 or power over tangible personal property incident to the

1 ownership of that property, but does not include the sale or
2 use for demonstration by him of that property in any form as
3 tangible personal property in the regular course of business.

4 "Use" does not mean the interim use of tangible personal
5 property nor the physical incorporation of tangible personal
6 property, as an ingredient or constituent, into other tangible
7 personal property, (a) which is sold in the regular course of
8 business or (b) which the person incorporating such ingredient
9 or constituent therein has undertaken at the time of such
10 purchase to cause to be transported in interstate commerce to
11 destinations outside the State of Illinois. Beginning July 1,
12 2004, the use of licenses of computer software is considered a
13 use of tangible personal property under this Act.

14 "Purchased from a serviceman" means the acquisition of the
15 ownership of, or title to, tangible personal property through a
16 sale of service.

17 "Purchaser" means any person who, through a sale of
18 service, acquires the ownership of, or title to, any tangible
19 personal property.

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

32 "Selling price" means the consideration for a sale valued
33 in money whether received in money or otherwise, including
34 cash, credits and service, and shall be determined without any

1 deduction on account of the serviceman's cost of the property
2 sold, the cost of materials used, labor or service cost or any
3 other expense whatsoever, but does not include interest or
4 finance charges which appear as separate items on the bill of
5 sale or sales contract nor charges that are added to prices by
6 sellers on account of the seller's duty to collect, from the
7 purchaser, the tax that is imposed by this Act.

8 "Department" means the Department of Revenue.

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

14 "Sale of service" means any transaction except:

15 (1) a retail sale of tangible personal property taxable
16 under the Retailers' Occupation Tax Act or under the Use
17 Tax Act.

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

21 (3) except as hereinafter provided, a sale or transfer
22 of tangible personal property as an incident to the
23 rendering of service for or by any governmental body, or
24 for or by any corporation, society, association,
25 foundation or institution organized and operated
26 exclusively for charitable, religious or educational
27 purposes or any not-for-profit corporation, society,
28 association, foundation, institution or organization which
29 has no compensated officers or employees and which is
30 organized and operated primarily for the recreation of
31 persons 55 years of age or older. A limited liability
32 company may qualify for the exemption under this paragraph
33 only if the limited liability company is organized and
34 operated exclusively for educational purposes.

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

13 (4a) a sale or transfer of tangible personal property
14 as an incident to the rendering of service for owners,
15 lessors, or shippers of tangible personal property which is
16 utilized by interstate carriers for hire for use as rolling
17 stock moving in interstate commerce so long as so used by
18 interstate carriers for hire, and equipment operated by a
19 telecommunications provider, licensed as a common carrier
20 by the Federal Communications Commission, which is
21 permanently installed in or affixed to aircraft moving in
22 interstate commerce.

23 (4a-5) on and after July 1, 2003, a sale or transfer of
24 a motor vehicle of the second division with a gross vehicle
25 weight in excess of 8,000 pounds as an incident to the
26 rendering of service if that motor vehicle is subject to
27 the commercial distribution fee imposed under Section
28 3-815.1 of the Illinois Vehicle Code. This exemption
29 applies to repair and replacement parts added after the
30 initial purchase of such a motor vehicle if that motor
31 vehicle is used in a manner that would qualify for the
32 rolling stock exemption otherwise provided for in this Act.

33 (5) a sale or transfer of machinery and equipment used
34 primarily in the process of the manufacturing or

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

11 (5a) the repairing, reconditioning or remodeling, for
12 a common carrier by rail, of tangible personal property
13 which belongs to such carrier for hire, and as to which
14 such carrier receives the physical possession of the
15 repaired, reconditioned or remodeled item of tangible
16 personal property in Illinois, and which such carrier
17 transports, or shares with another common carrier in the
18 transportation of such property, out of Illinois on a
19 standard uniform bill of lading showing the person who
20 repaired, reconditioned or remodeled the property to a
21 destination outside Illinois, for use outside Illinois.

22 (5b) a sale or transfer of tangible personal property
23 which is produced by the seller thereof on special order in
24 such a way as to have made the applicable tax the Service
25 Occupation Tax or the Service Use Tax, rather than the
26 Retailers' Occupation Tax or the Use Tax, for an interstate
27 carrier by rail which receives the physical possession of
28 such property in Illinois, and which transports such
29 property, or shares with another common carrier in the
30 transportation of such property, out of Illinois on a
31 standard uniform bill of lading showing the seller of the
32 property as the shipper or consignor of such property to a
33 destination outside Illinois, for use outside Illinois.

34 (6) until July 1, 2003, a sale or transfer of

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

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

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

32 Beginning July 1, 2004, prewritten computer software that
33 is modified or enhanced, when that enhancement or modification
34 according to Department rules is designed and developed to the

1 specifications of a specific purchaser, is exempt from the tax
2 imposed under this Act and the transfer of that modified or
3 enhanced computer software is subject to tax under the
4 Retailers' Occupation Tax Act and the Use Tax Act.

5 Exemption (5) also includes machinery and equipment used in
6 the general maintenance or repair of such exempt machinery and
7 equipment or for in-house manufacture of exempt machinery and
8 equipment. For the purposes of exemption (5), each of these
9 terms shall have the following meanings: (1) "manufacturing
10 process" shall mean the production of any article of tangible
11 personal property, whether such article is a finished product
12 or an article for use in the process of manufacturing or
13 assembling a different article of tangible personal property,
14 by procedures commonly regarded as manufacturing, processing,
15 fabricating, or refining which changes some existing material
16 or materials into a material with a different form, use or
17 name. In relation to a recognized integrated business composed
18 of a series of operations which collectively constitute
19 manufacturing, or individually constitute manufacturing
20 operations, the manufacturing process shall be deemed to
21 commence with the first operation or stage of production in the
22 series, and shall not be deemed to end until the completion of
23 the final product in the last operation or stage of production
24 in the series; and further, for purposes of exemption (5),
25 photoprocessing is deemed to be a manufacturing process of
26 tangible personal property for wholesale or retail sale; (2)
27 "assembling process" shall mean the production of any article
28 of tangible personal property, whether such article is a
29 finished product or an article for use in the process of
30 manufacturing or assembling a different article of tangible
31 personal property, by the combination of existing materials in
32 a manner commonly regarded as assembling which results in a
33 material of a different form, use or name; (3) "machinery"
34 shall mean major mechanical machines or major components of

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

25 Any informal rulings, opinions or letters issued by the
26 Department in response to an inquiry or request for any opinion
27 from any person regarding the coverage and applicability of
28 exemption (5) to specific devices shall be published,
29 maintained as a public record, and made available for public
30 inspection and copying. If the informal ruling, opinion or
31 letter contains trade secrets or other confidential
32 information, where possible the Department shall delete such
33 information prior to publication. Whenever such informal
34 rulings, opinions, or letters contain any policy of general

1 applicability, the Department shall formulate and adopt such
2 policy as a rule in accordance with the provisions of the
3 Illinois Administrative Procedure Act.

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

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

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

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

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

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

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

31 2. soliciting orders for tangible personal property by
32 means of a telecommunication or television shopping system
33 (which utilizes toll free numbers) which is intended by the
34 retailer to be broadcast by cable television or other means

1 of broadcasting, to consumers located in this State;

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

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

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

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

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

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

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

31 (35 ILCS 110/3-25) (from Ch. 120, par. 439.33-25)

32 Sec. 3-25. Computer software.

33 (a) On and before June 30, 2004, for ~~For~~ the purposes of

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

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

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

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

25 Section 15. The Service Occupation Tax Act is amended by
26 changing Sections 2 and 3-25 as follows:

27 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

28 Sec. 2. "Transfer" means any transfer of the title to
29 property or of the ownership of property whether or not the
30 transferor retains title as security for the payment of amounts
31 due him from the transferee. Beginning July 1, 2004, the
32 transfer of licenses of computer software is considered the

1 transfer of tangible personal property under this Act.

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

14 "Department" means the Department of Revenue.

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

20 "Sale of Service" means any transaction except:

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

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

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

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

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

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

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

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

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

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

31 (e) A sale or transfer of machinery and equipment used
32 primarily in the process of the manufacturing or assembling,
33 either in an existing, an expanded or a new manufacturing
34 facility, of tangible personal property for wholesale or retail

1 sale or lease, whether such sale or lease is made directly by
2 the manufacturer or by some other person, whether the materials
3 used in the process are owned by the manufacturer or some other
4 person, or whether such sale or lease is made apart from or as
5 an incident to the seller's engaging in a service occupation
6 and the applicable tax is a Service Occupation Tax or Service
7 Use Tax, rather than Retailers' Occupation Tax or Use Tax.

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

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

34 Tangible personal property transferred incident to the

1 completion of a maintenance agreement is exempt from the tax
2 imposed pursuant to this Act.

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

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

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

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

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

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

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

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

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

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

27 (35 ILCS 115/3-25) (from Ch. 120, par. 439.103-25)

28 Sec. 3-25. Computer software.

29 (a) On and before June 30, 2004, for ~~For~~ the purposes of this
30 Act, "computer software" means a set of statements, data, or
31 instructions to be used directly or indirectly in a computer in
32 order to bring about a certain result in any form in which
33 those statements, data, or instructions may be embodied,

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

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

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

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

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

23 (35 ILCS 120/1) (from Ch. 120, par. 440)

24 Sec. 1. Definitions. "Sale at retail" means any transfer of
25 the ownership of or title to tangible personal property to a
26 purchaser, for the purpose of use or consumption, and not for
27 the purpose of resale in any form as tangible personal property
28 to the extent not first subjected to a use for which it was
29 purchased, for a valuable consideration: Provided that the
30 property purchased is deemed to be purchased for the purpose of
31 resale, despite first being used, to the extent to which it is
32 resold as an ingredient of an intentionally produced product or

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

8 Beginning July 1, 2004, "sale at retail" includes the
9 licensing of computer software.

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

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

27 "Sale at retail" shall be construed to include any Illinois
28 florist's sales transaction in which the purchase order is
29 received in Illinois by a florist and the sale is for use or
30 consumption, but the Illinois florist has a florist in another
31 state deliver the property to the purchaser or the purchaser's
32 donee in such other state.

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

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

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

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

1 or educational purposes, whether or not such activities are
2 open to the public.

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

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

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

20 "Selling price" or the "amount of sale" means the
21 consideration for a sale valued in money whether received in
22 money or otherwise, including cash, credits, property, other
23 than as hereinafter provided, and services, but not including
24 the value of or credit given for traded-in tangible personal
25 property where the item that is traded-in is of like kind and
26 character as that which is being sold, and shall be determined
27 without any deduction on account of the cost of the property
28 sold, the cost of materials used, labor or service cost or any
29 other expense whatsoever, but does not include charges that are
30 added to prices by sellers on account of the seller's tax
31 liability under this Act, or on account of the seller's duty to
32 collect, from the purchaser, the tax that is imposed by the Use
33 Tax Act, or on account of the seller's tax liability under
34 Section 8-11-1 of the Illinois Municipal Code, as heretofore

1 and hereafter amended, or on account of the seller's tax
2 liability under the County Retailers' Occupation Tax Act, or on
3 account of the seller's tax liability under the Home Rule
4 Municipal Soft Drink Retailers' Occupation Tax, or on account
5 of the seller's tax liability under any tax imposed under the
6 "Regional Transportation Authority Act", approved December 12,
7 1973. Effective December 1, 1985, "selling price" shall include
8 charges that are added to prices by sellers on account of the
9 seller's tax liability under the Cigarette Tax Act, on account
10 of the sellers' duty to collect, from the purchaser, the tax
11 imposed under the Cigarette Use Tax Act, and on account of the
12 seller's duty to collect, from the purchaser, any cigarette tax
13 imposed by a home rule unit.

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

22 "Gross receipts" from the sales of tangible personal
23 property at retail means the total selling price or the amount
24 of such sales, as hereinbefore defined. In the case of charge
25 and time sales, the amount thereof shall be included only as
26 and when payments are received by the seller. Receipts or other
27 consideration derived by a seller from the sale, transfer or
28 assignment of accounts receivable to a wholly owned subsidiary
29 will not be deemed payments prior to the time the purchaser
30 makes payment on such accounts.

31 "Department" means the Department of Revenue.

32 "Person" means any natural individual, firm, partnership,
33 association, joint stock company, joint adventure, public or
34 private corporation, limited liability company, or a receiver,

1 executor, trustee, guardian or other representative appointed
2 by order of any court.

3 The isolated or occasional sale of tangible personal
4 property at retail by a person who does not hold himself out as
5 being engaged (or who does not habitually engage) in selling
6 such tangible personal property at retail, or a sale through a
7 bulk vending machine, does not constitute engaging in a
8 business of selling such tangible personal property at retail
9 within the meaning of this Act; provided that any person who is
10 engaged in a business which is not subject to the tax imposed
11 by this Act because of involving the sale of or a contract to
12 sell real estate or a construction contract to improve real
13 estate or a construction contract to engineer, install, and
14 maintain an integrated system of products, but who, in the
15 course of conducting such business, transfers tangible
16 personal property to users or consumers in the finished form in
17 which it was purchased, and which does not become real estate
18 or was not engineered and installed, under any provision of a
19 construction contract or real estate sale or real estate sales
20 agreement entered into with some other person arising out of or
21 because of such nontaxable business, is engaged in the business
22 of selling tangible personal property at retail to the extent
23 of the value of the tangible personal property so transferred.
24 If, in such a transaction, a separate charge is made for the
25 tangible personal property so transferred, the value of such
26 property, for the purpose of this Act, shall be the amount so
27 separately charged, but not less than the cost of such property
28 to the transferor; if no separate charge is made, the value of
29 such property, for the purposes of this Act, is the cost to the
30 transferor of such tangible personal property. Construction
31 contracts for the improvement of real estate consisting of
32 engineering, installation, and maintenance of voice, data,
33 video, security, and all telecommunication systems do not
34 constitute engaging in a business of selling tangible personal

1 property at retail within the meaning of this Act if they are
2 sold at one specified contract price.

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

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

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

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

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

29 Sec. 2. Tax imposed. A tax is imposed upon persons engaged
30 in the business of selling at retail tangible personal
31 property, including computer software, and including
32 photographs, negatives, and positives that are the product of
33 photoprocessing, but not including products of photoprocessing

1 produced for use in motion pictures for public commercial
2 exhibition. Beginning January 1, 2001, prepaid telephone
3 calling arrangements shall be considered tangible personal
4 property subject to the tax imposed under this Act regardless
5 of the form in which those arrangements may be embodied,
6 transmitted, or fixed by any method now known or hereafter
7 developed. Beginning July 1, 2004, computer software subject to
8 tax under this Act includes licenses of computer software.

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

10 (35 ILCS 120/2-25) (from Ch. 120, par. 441-25)

11 Sec. 2-25. Computer software. For the purposes of this Act,
12 "computer software" means a set of statements, data, or
13 instructions to be used directly or indirectly in a computer in
14 order to bring about a certain result in any form in which
15 those statements, data, or instructions may be embodied,
16 transmitted, or fixed, by any method now known or hereafter
17 developed, regardless of whether the statements, data, or
18 instructions are capable of being perceived by or communicated
19 to humans, and includes prewritten or canned software that is
20 held for repeated sale or lease, and all associated
21 documentation and materials, if any, whether contained on
22 magnetic tapes, discs, cards, or other devices or media, but
23 does not include (i) on and before June 30, 2004, software that
24 is adapted to specific individualized requirements of a
25 purchaser, custom-made and modified software designed for a
26 particular or limited use by a purchaser, or (ii) software used
27 to operate exempt machinery and equipment used in the process
28 of manufacturing or assembling tangible personal property for
29 wholesale or retail sale or lease.

30 Beginning on July 1, 2004, "prewritten computer software"
31 means computer software, including upgrades, that is not
32 designed and developed by the author or other creator to the
33 specifications of a specific purchaser. The combining of 2 or

1 more "prewritten computer software" programs or prewritten
2 portions thereof does not cause the combination to be other
3 than "prewritten computer software". "Prewritten computer
4 software" includes software designed and developed by the
5 author or other creator to the specifications of a specific
6 purchaser when it is sold to a person other than the specific
7 purchaser. If a person modifies or enhances computer software
8 of which the person is not the author or creator, the person
9 shall be deemed to be the author or creator only of that
10 person's modifications or enhancements. "Prewritten computer
11 software" or a prewritten portion thereof that is modified or
12 enhanced to any degree, when the modification or enhancement
13 according to Department rules is designed and developed to the
14 specifications of a specific purchaser, remains "prewritten
15 computer software", except that when there is a reasonable
16 separately stated charge or an invoice or other statement of
17 the price given to the purchaser for the modification or
18 enhancement, the modification or enhancement does not
19 constitute "prewritten computer software".

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

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."