



Rep. Carol A. Sente

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09600HB6359ham001

LRB096 20982 HLH 37622 a

1 AMENDMENT TO HOUSE BILL 6359

2 AMENDMENT NO. _____. Amend House Bill 6359 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Retailers' Occupation Tax Act is amended by
5 changing Section 2a as follows:

6 (35 ILCS 120/2a) (from Ch. 120, par. 441a)

7 Sec. 2a. It is unlawful for any person to engage in the
8 business of selling tangible personal property at retail in
9 this State without a certificate of registration from the
10 Department. Application for a certificate of registration
11 shall be made to the Department upon forms furnished by it.
12 Each such application shall be signed and verified and shall
13 state: (1) the name and social security number of the
14 applicant; (2) the address of his principal place of business;
15 (3) the address of the principal place of business from which
16 he engages in the business of selling tangible personal

1 property at retail in this State and the addresses of all other
2 places of business, if any (enumerating such addresses, if any,
3 in a separate list attached to and made a part of the
4 application), from which he engages in the business of selling
5 tangible personal property at retail in this State; (4) the
6 name and address of the person or persons who will be
7 responsible for filing returns and payment of taxes due under
8 this Act; (5) in the case of a corporation, the name, title,
9 and social security number of each corporate officer; (6) in
10 the case of a limited liability company, the name, social
11 security number, and FEIN number of each manager and member;
12 and (7) such other information as the Department may reasonably
13 require. The application shall contain an acceptance of
14 responsibility signed by the person or persons who will be
15 responsible for filing returns and payment of the taxes due
16 under this Act. If the applicant will sell tangible personal
17 property at retail through vending machines, his application to
18 register shall indicate the number of vending machines to be so
19 operated; and thereafter, he shall notify the Department by
20 January 31 of the number of vending machines which such person
21 was using in his business of selling tangible personal property
22 at retail on the preceding December 31.

23 The Department may deny a certificate of registration to
24 any applicant if the owner, any partner, any manager or member
25 of a limited liability company, or a corporate officer of the
26 applicant, is or has been the owner, a partner, a manager or

1 member of a limited liability company, or a corporate officer,
2 of another retailer that is in default for moneys due under
3 this Act.

4 The Department may require an ~~Every~~ applicant for a
5 certificate of registration hereunder ~~to shall~~, at the time of
6 filing such application, furnish a bond from a surety company
7 authorized to do business in the State of Illinois, or an
8 irrevocable bank letter of credit or a bond signed by 2
9 personal sureties who have filed, with the Department, sworn
10 statements disclosing net assets equal to at least 3 times the
11 amount of the bond to be required of such applicant, or a bond
12 secured by an assignment of a bank account or certificate of
13 deposit, stocks or bonds, conditioned upon the applicant paying
14 to the State of Illinois all moneys becoming due under this Act
15 and under any other State tax law or municipal or county tax
16 ordinance or resolution under which the certificate of
17 registration that is issued to the applicant under this Act
18 will permit the applicant to engage in business without
19 registering separately under such other law, ordinance or
20 resolution. In making a determination as to whether to require
21 a bond or other security, the Department shall take into
22 consideration whether the owner, any partner, any manager or
23 member of a limited liability company, or a corporate officer
24 of the applicant is or has been the owner, a partner, a manager
25 or member of a limited liability company, or a corporate
26 officer of another retailer that is in default for moneys due

1 under this Act or any other tax or fee Act administered by the
2 Department; and whether the owner, any partner, any manager or
3 member of a limited liability company, or a corporate officer
4 of the applicant is or has been the owner, a partner, a manager
5 or member of a limited liability company, or a corporate
6 officer of another retailer whose certificate of registration
7 has been revoked within the previous 5 years under this Act or
8 any other tax or fee Act administered by the Department. If a
9 bond or other security is required, the Department shall fix
10 the amount of the bond or other security, taking into
11 consideration the amount of money expected to become due from
12 the applicant under this Act and under any other State tax law
13 or municipal or county tax ordinance or resolution under which
14 the certificate of registration that is issued to the applicant
15 under this Act will permit the applicant to engage in business
16 without registering separately under such other law,
17 ordinance, or resolution. The Department shall fix the amount
18 of such security in each case, taking into consideration the
19 amount of money expected to become due from the applicant under
20 this Act and under any other State tax law or municipal or
21 county tax ordinance or resolution under which the certificate
22 of registration that is issued to the applicant under this Act
23 will permit the applicant to engage in business without
24 registering separately under such other law, ordinance or
25 resolution. The amount of security required by the Department
26 shall be such as, in its opinion, will protect the State of

1 Illinois against failure to pay the amount which may become due
2 from the applicant under this Act and under any other State tax
3 law or municipal or county tax ordinance or resolution under
4 which the certificate of registration that is issued to the
5 applicant under this Act will permit the applicant to engage in
6 business without registering separately under such other law,
7 ordinance or resolution, but the amount of the security
8 required by the Department shall not exceed three times the
9 amount of the applicant's average monthly tax liability, or
10 \$50,000.00, whichever amount is lower.

11 No certificate of registration under this Act shall be
12 issued by the Department until the applicant provides the
13 Department with satisfactory security, if required, as herein
14 provided for.

15 Upon receipt of the application for certificate of
16 registration in proper form, and upon approval by the
17 Department of the security furnished by the applicant, if
18 required, the Department shall issue to such applicant a
19 certificate of registration which shall permit the person to
20 whom it is issued to engage in the business of selling tangible
21 personal property at retail in this State. The certificate of
22 registration shall be conspicuously displayed at the place of
23 business which the person so registered states in his
24 application to be the principal place of business from which he
25 engages in the business of selling tangible personal property
26 at retail in this State.

1 No certificate of registration issued to a taxpayer who
2 files returns required by this Act on a monthly basis shall be
3 valid after the expiration of 5 years from the date of its
4 issuance or last renewal. The expiration date of a
5 sub-certificate of registration shall be that of the
6 certificate of registration to which the sub-certificate
7 relates. A certificate of registration shall automatically be
8 renewed, subject to revocation as provided by this Act, for an
9 additional 5 years from the date of its expiration unless
10 otherwise notified by the Department as provided by this
11 paragraph. Where a taxpayer to whom a certificate of
12 registration is issued under this Act is in default to the
13 State of Illinois for delinquent returns or for moneys due
14 under this Act or any other State tax law or municipal or
15 county ordinance administered or enforced by the Department,
16 the Department shall, not less than 120 days before the
17 expiration date of such certificate of registration, give
18 notice to the taxpayer to whom the certificate was issued of
19 the account period of the delinquent returns, the amount of
20 tax, penalty and interest due and owing from the taxpayer, and
21 that the certificate of registration shall not be automatically
22 renewed upon its expiration date unless the taxpayer, on or
23 before the date of expiration, has filed and paid the
24 delinquent returns or paid the defaulted amount in full. A
25 taxpayer to whom such a notice is issued shall be deemed an
26 applicant for renewal. The Department shall promulgate

1 regulations establishing procedures for taxpayers who file
2 returns on a monthly basis but desire and qualify to change to
3 a quarterly or yearly filing basis and will no longer be
4 subject to renewal under this Section, and for taxpayers who
5 file returns on a yearly or quarterly basis but who desire or
6 are required to change to a monthly filing basis and will be
7 subject to renewal under this Section.

8 The Department may in its discretion approve renewal by an
9 applicant who is in default if, at the time of application for
10 renewal, the applicant files all of the delinquent returns or
11 pays to the Department such percentage of the defaulted amount
12 as may be determined by the Department and agrees in writing to
13 waive all limitations upon the Department for collection of the
14 remaining defaulted amount to the Department over a period not
15 to exceed 5 years from the date of renewal of the certificate;
16 however, no renewal application submitted by an applicant who
17 is in default shall be approved if the immediately preceding
18 renewal by the applicant was conditioned upon the installment
19 payment agreement described in this Section. The payment
20 agreement herein provided for shall be in addition to and not
21 in lieu of the security that may be required by this Section of
22 a taxpayer who is no longer considered a prior continuous
23 compliance taxpayer. The execution of the payment agreement as
24 provided in this Act shall not toll the accrual of interest at
25 the statutory rate.

26 The Department may suspend a certificate of registration if

1 the Department finds that the person to whom the certificate of
2 registration has been issued knowingly sold contraband
3 cigarettes.

4 A certificate of registration issued under this Act more
5 than 5 years before the effective date of this amendatory Act
6 of 1989 shall expire and be subject to the renewal provisions
7 of this Section on the next anniversary of the date of issuance
8 of such certificate which occurs more than 6 months after the
9 effective date of this amendatory Act of 1989. A certificate of
10 registration issued less than 5 years before the effective date
11 of this amendatory Act of 1989 shall expire and be subject to
12 the renewal provisions of this Section on the 5th anniversary
13 of the issuance of the certificate.

14 If the person so registered states that he operates other
15 places of business from which he engages in the business of
16 selling tangible personal property at retail in this State, the
17 Department shall furnish him with a sub-certificate of
18 registration for each such place of business, and the applicant
19 shall display the appropriate sub-certificate of registration
20 at each such place of business. All sub-certificates of
21 registration shall bear the same registration number as that
22 appearing upon the certificate of registration to which such
23 sub-certificates relate.

24 If the applicant will sell tangible personal property at
25 retail through vending machines, the Department shall furnish
26 him with a sub-certificate of registration for each such

1 vending machine, and the applicant shall display the
2 appropriate sub-certificate of registration on each such
3 vending machine by attaching the sub-certificate of
4 registration to a conspicuous part of such vending machine.

5 Where the same person engages in 2 or more businesses of
6 selling tangible personal property at retail in this State,
7 which businesses are substantially different in character or
8 engaged in under different trade names or engaged in under
9 other substantially dissimilar circumstances (so that it is
10 more practicable, from an accounting, auditing or bookkeeping
11 standpoint, for such businesses to be separately registered),
12 the Department may require or permit such person (subject to
13 the same requirements concerning the furnishing of security as
14 those that are provided for hereinbefore in this Section as to
15 each application for a certificate of registration) to apply
16 for and obtain a separate certificate of registration for each
17 such business or for any of such businesses, under a single
18 certificate of registration supplemented by related
19 sub-certificates of registration.

20 Any person who is registered under the "Retailers'
21 Occupation Tax Act" as of March 8, 1963, and who, during the
22 3-year period immediately prior to March 8, 1963, or during a
23 continuous 3-year period part of which passed immediately
24 before and the remainder of which passes immediately after
25 March 8, 1963, has been so registered continuously and who is
26 determined by the Department not to have been either delinquent

1 or deficient in the payment of tax liability during that period
2 under this Act or under any other State tax law or municipal or
3 county tax ordinance or resolution under which the certificate
4 of registration that is issued to the registrant under this Act
5 will permit the registrant to engage in business without
6 registering separately under such other law, ordinance or
7 resolution, shall be considered to be a Prior Continuous
8 Compliance taxpayer. Also any taxpayer who has, as verified by
9 the Department, faithfully and continuously complied with the
10 condition of his bond or other security under the provisions of
11 this Act for a period of 3 consecutive years shall be
12 considered to be a Prior Continuous Compliance taxpayer.

13 Every Prior Continuous Compliance taxpayer shall be exempt
14 from all requirements under this Act concerning the furnishing
15 of a bond or other security as a condition precedent to his
16 being authorized to engage in the business of selling tangible
17 personal property at retail in this State. This exemption shall
18 continue for each such taxpayer until such time as he may be
19 determined by the Department to be delinquent in the filing of
20 any returns, or is determined by the Department (either through
21 the Department's issuance of a final assessment which has
22 become final under the Act, or by the taxpayer's filing of a
23 return which admits tax that is not paid to be due) to be
24 delinquent or deficient in the paying of any tax under this Act
25 or under any other State tax law or municipal or county tax
26 ordinance or resolution under which the certificate of

1 registration that is issued to the registrant under this Act
2 will permit the registrant to engage in business without
3 registering separately under such other law, ordinance or
4 resolution, at which time that taxpayer shall become subject to
5 all the financial responsibility requirements of this Act and,
6 as a condition of being allowed to continue to engage in the
7 business of selling tangible personal property at retail, may
8 ~~shall~~ be required to post bond or other acceptable security
9 with the Department covering liability which such taxpayer may
10 thereafter incur. Any taxpayer who fails to pay an admitted or
11 established liability under this Act may also be required to
12 post bond or other acceptable security with this Department
13 guaranteeing the payment of such admitted or established
14 liability.

15 No certificate of registration shall be issued to any
16 person who is in default to the State of Illinois for moneys
17 due under this Act or under any other State tax law or
18 municipal or county tax ordinance or resolution under which the
19 certificate of registration that is issued to the applicant
20 under this Act will permit the applicant to engage in business
21 without registering separately under such other law, ordinance
22 or resolution.

23 Any person aggrieved by any decision of the Department
24 under this Section may, within 20 days after notice of such
25 decision, protest and request a hearing, whereupon the
26 Department shall give notice to such person of the time and

1 place fixed for such hearing and shall hold a hearing in
2 conformity with the provisions of this Act and then issue its
3 final administrative decision in the matter to such person. In
4 the absence of such a protest within 20 days, the Department's
5 decision shall become final without any further determination
6 being made or notice given.

7 With respect to security other than bonds (upon which the
8 Department may sue in the event of a forfeiture), if the
9 taxpayer fails to pay, when due, any amount whose payment such
10 security guarantees, the Department shall, after such
11 liability is admitted by the taxpayer or established by the
12 Department through the issuance of a final assessment that has
13 become final under the law, convert the security which that
14 taxpayer has furnished into money for the State, after first
15 giving the taxpayer at least 10 days' written notice, by
16 registered or certified mail, to pay the liability or forfeit
17 such security to the Department. If the security consists of
18 stocks or bonds or other securities which are listed on a
19 public exchange, the Department shall sell such securities
20 through such public exchange. If the security consists of an
21 irrevocable bank letter of credit, the Department shall convert
22 the security in the manner provided for in the Uniform
23 Commercial Code. If the security consists of a bank certificate
24 of deposit, the Department shall convert the security into
25 money by demanding and collecting the amount of such bank
26 certificate of deposit from the bank which issued such

1 certificate. If the security consists of a type of stocks or
2 other securities which are not listed on a public exchange, the
3 Department shall sell such security to the highest and best
4 bidder after giving at least 10 days' notice of the date, time
5 and place of the intended sale by publication in the "State
6 Official Newspaper". If the Department realizes more than the
7 amount of such liability from the security, plus the expenses
8 incurred by the Department in converting the security into
9 money, the Department shall pay such excess to the taxpayer who
10 furnished such security, and the balance shall be paid into the
11 State Treasury.

12 The Department shall discharge any surety and shall release
13 and return any security deposited, assigned, pledged or
14 otherwise provided to it by a taxpayer under this Section
15 within 30 days after:

16 (1) such taxpayer becomes a Prior Continuous
17 Compliance taxpayer; or

18 (2) such taxpayer has ceased to collect receipts on
19 which he is required to remit tax to the Department, has
20 filed a final tax return, and has paid to the Department an
21 amount sufficient to discharge his remaining tax
22 liability, as determined by the Department, under this Act
23 and under every other State tax law or municipal or county
24 tax ordinance or resolution under which the certificate of
25 registration issued under this Act permits the registrant
26 to engage in business without registering separately under

1 such other law, ordinance or resolution. The Department
2 shall make a final determination of the taxpayer's
3 outstanding tax liability as expeditiously as possible
4 after his final tax return has been filed; if the
5 Department cannot make such final determination within 45
6 days after receiving the final tax return, within such
7 period it shall so notify the taxpayer, stating its reasons
8 therefor.

9 (Source: P.A. 95-1053, eff. 1-1-10.)

10 Section 10. The Transient Merchant Act of 1987 is amended
11 by changing Section 3 as follows:

12 (225 ILCS 465/3) (from Ch. 121 1/2, par. 1653)

13 Sec. 3. It is a violation of this Act for any person,
14 either as principal or agent, to conduct business as a
15 transient merchant or itinerant vendor in this State without
16 first complying with the requirements of Section 2a of the
17 Retailers' Occupation Tax Act by obtaining a certificate of
18 registration and, if a bond or other security is required, by
19 posting bond or other approved security, and without having
20 obtained a license under this Act.

21 (Source: P.A. 85-600.)

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