

# HB2991



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB2991

Introduced 2/23/2011, by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

35 ILCS 120/2a

from Ch. 120, par. 441a

Amends the Retailers' Occupation Tax Act. Requires retailers to verify the total number of vending machines used in the retailer's business upon request of the Department. Requires a retailer to request an additional sub-certificate or sub-certificates if he or she increases the number of vending machines used in the business.

LRB097 09100 HLH 49235 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The 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  
17 property at retail in this State and the addresses of all other  
18 places of business, if any (enumerating such addresses, if any,  
19 in a separate list attached to and made a part of the  
20 application), from which he engages in the business of selling  
21 tangible personal property at retail in this State; (4) the  
22 name and address of the person or persons who will be  
23 responsible for filing returns and payment of taxes due under

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

19 The Department may deny a certificate of registration to  
20 any applicant if the owner, any partner, any manager or member  
21 of a limited liability company, or a corporate officer of the  
22 applicant, is or has been the owner, a partner, a manager or  
23 member of a limited liability company, or a corporate officer,  
24 of another retailer that is in default for moneys due under  
25 this Act.

26 The Department may require an applicant for a certificate

1 of registration hereunder to, at the time of filing such  
2 application, furnish a bond from a surety company authorized to  
3 do business in the State of Illinois, or an irrevocable bank  
4 letter of credit or a bond signed by 2 personal sureties who  
5 have filed, with the Department, sworn statements disclosing  
6 net assets equal to at least 3 times the amount of the bond to  
7 be required of such applicant, or a bond secured by an  
8 assignment of a bank account or certificate of deposit, stocks  
9 or bonds, conditioned upon the applicant paying to the State of  
10 Illinois all moneys becoming due under this Act and under any  
11 other State tax law or municipal or county tax ordinance or  
12 resolution under which the certificate of registration that is  
13 issued to the applicant under this Act will permit the  
14 applicant to engage in business without registering separately  
15 under such other law, ordinance or resolution. In making a  
16 determination as to whether to require a bond or other  
17 security, the Department shall take into consideration whether  
18 the owner, any partner, any manager or member of a limited  
19 liability company, or a corporate officer of the applicant is  
20 or has been the owner, a partner, a manager or member of a  
21 limited liability company, or a corporate officer of another  
22 retailer that is in default for moneys due under this Act or  
23 any other tax or fee Act administered by the Department; and  
24 whether the owner, any partner, any manager or member of a  
25 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 whose certificate of registration has been  
3 revoked within the previous 5 years under this Act or any other  
4 tax or fee Act administered by the Department. If a bond or  
5 other security is required, the Department shall fix the amount  
6 of the bond or other security, taking into consideration the  
7 amount of money expected to become due from the applicant under  
8 this Act and under any other State tax law or municipal or  
9 county tax ordinance or resolution under which the certificate  
10 of registration that is issued to the applicant under this Act  
11 will permit the applicant to engage in business without  
12 registering separately under such other law, ordinance, or  
13 resolution. The amount of security required by the Department  
14 shall be such as, in its opinion, will protect the State of  
15 Illinois against failure to pay the amount which may become due  
16 from the applicant under this Act and under any other State tax  
17 law or municipal or county tax ordinance or resolution under  
18 which the certificate of registration that is issued to the  
19 applicant under this Act will permit the applicant to engage in  
20 business without registering separately under such other law,  
21 ordinance or resolution, but the amount of the security  
22 required by the Department shall not exceed three times the  
23 amount of the applicant's average monthly tax liability, or  
24 \$50,000.00, whichever amount is lower.

25 No certificate of registration under this Act shall be  
26 issued by the Department until the applicant provides the

1 Department with satisfactory security, if required, as herein  
2 provided for.

3       Upon receipt of the application for certificate of  
4 registration in proper form, and upon approval by the  
5 Department of the security furnished by the applicant, if  
6 required, the Department shall issue to such applicant a  
7 certificate of registration which shall permit the person to  
8 whom it is issued to engage in the business of selling tangible  
9 personal property at retail in this State. The certificate of  
10 registration shall be conspicuously displayed at the place of  
11 business which the person so registered states in his  
12 application to be the principal place of business from which he  
13 engages in the business of selling tangible personal property  
14 at retail in this State.

15       No certificate of registration issued to a taxpayer who  
16 files returns required by this Act on a monthly basis shall be  
17 valid after the expiration of 5 years from the date of its  
18 issuance or last renewal. The expiration date of a  
19 sub-certificate of registration shall be that of the  
20 certificate of registration to which the sub-certificate  
21 relates. A certificate of registration shall automatically be  
22 renewed, subject to revocation as provided by this Act, for an  
23 additional 5 years from the date of its expiration unless  
24 otherwise notified by the Department as provided by this  
25 paragraph. Where a taxpayer to whom a certificate of  
26 registration is issued under this Act is in default to the

1 State of Illinois for delinquent returns or for moneys due  
2 under this Act or any other State tax law or municipal or  
3 county ordinance administered or enforced by the Department,  
4 the Department shall, not less than 120 days before the  
5 expiration date of such certificate of registration, give  
6 notice to the taxpayer to whom the certificate was issued of  
7 the account period of the delinquent returns, the amount of  
8 tax, penalty and interest due and owing from the taxpayer, and  
9 that the certificate of registration shall not be automatically  
10 renewed upon its expiration date unless the taxpayer, on or  
11 before the date of expiration, has filed and paid the  
12 delinquent returns or paid the defaulted amount in full. A  
13 taxpayer to whom such a notice is issued shall be deemed an  
14 applicant for renewal. The Department shall promulgate  
15 regulations establishing procedures for taxpayers who file  
16 returns on a monthly basis but desire and qualify to change to  
17 a quarterly or yearly filing basis and will no longer be  
18 subject to renewal under this Section, and for taxpayers who  
19 file returns on a yearly or quarterly basis but who desire or  
20 are required to change to a monthly filing basis and will be  
21 subject to renewal under this Section.

22 The Department may in its discretion approve renewal by an  
23 applicant who is in default if, at the time of application for  
24 renewal, the applicant files all of the delinquent returns or  
25 pays to the Department such percentage of the defaulted amount  
26 as may be determined by the Department and agrees in writing to

1 waive all limitations upon the Department for collection of the  
2 remaining defaulted amount to the Department over a period not  
3 to exceed 5 years from the date of renewal of the certificate;  
4 however, no renewal application submitted by an applicant who  
5 is in default shall be approved if the immediately preceding  
6 renewal by the applicant was conditioned upon the installment  
7 payment agreement described in this Section. The payment  
8 agreement herein provided for shall be in addition to and not  
9 in lieu of the security that may be required by this Section of  
10 a taxpayer who is no longer considered a prior continuous  
11 compliance taxpayer. The execution of the payment agreement as  
12 provided in this Act shall not toll the accrual of interest at  
13 the statutory rate.

14 The Department may suspend a certificate of registration if  
15 the Department finds that the person to whom the certificate of  
16 registration has been issued knowingly sold contraband  
17 cigarettes.

18 A certificate of registration issued under this Act more  
19 than 5 years before the effective date of this amendatory Act  
20 of 1989 shall expire and be subject to the renewal provisions  
21 of this Section on the next anniversary of the date of issuance  
22 of such certificate which occurs more than 6 months after the  
23 effective date of this amendatory Act of 1989. A certificate of  
24 registration issued less than 5 years before the effective date  
25 of this amendatory Act of 1989 shall expire and be subject to  
26 the renewal provisions of this Section on the 5th anniversary



1 of the issuance of the certificate.

2 If the person so registered states that he operates other  
3 places of business from which he engages in the business of  
4 selling tangible personal property at retail in this State, the  
5 Department shall furnish him with a sub-certificate of  
6 registration for each such place of business, and the applicant  
7 shall display the appropriate sub-certificate of registration  
8 at each such place of business. All sub-certificates of  
9 registration shall bear the same registration number as that  
10 appearing upon the certificate of registration to which such  
11 sub-certificates relate.

12 If the applicant will sell tangible personal property at  
13 retail through vending machines, the Department shall furnish  
14 him with a sub-certificate of registration for each such  
15 vending machine, and the applicant shall display the  
16 appropriate sub-certificate of registration on each such  
17 vending machine by attaching the sub-certificate of  
18 registration to a conspicuous part of such vending machine. If  
19 a person who is registered to sell tangible personal property  
20 at retail through vending machines adds an additional vending  
21 machine or additional vending machines to the number of vending  
22 machines he or she uses in his or her business of selling  
23 tangible personal property at retail, he or she shall notify  
24 the Department, on a form prescribed by the Department, to  
25 request an additional sub-certificate or additional  
26 sub-certificates of registration, as applicable. With each

1 such request, the applicant shall report the number of  
2 sub-certificates of registration he or she is requesting as  
3 well as the total number of vending machines from which he or  
4 she makes retail sales.

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 be required to post bond or other acceptable security with the  
9 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; 96-1355, eff. 7-28-10.)