



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3869

Introduced 10/27/2011, by Rep. Dave Winters

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2
35 ILCS 110/2

from Ch. 120, par. 439.2
from Ch. 120, par. 439.32

Amends the Use Tax Act and the Service Use Tax Act. Removes provisions of the Acts, beginning on the first day of the first month to occur not less than 30 days after the effective date of the amendatory Act, providing that the terms "retailer maintaining a place of business in this State" (in the Use Tax Act) and "serviceman maintaining a place of business in this State" (in the Service Use Tax Act) include a retailer or serviceman having a contract with a person located in this State under which the person directly or indirectly refers potential customers to the retailer or serviceman by a link on the person's Internet website. Effective immediately.

LRB097 14114 HLH 58792 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 Use Tax Act is amended by changing Section 2
5 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

1 by this Act, and no credit for that tax is permitted if the
2 watercraft or aircraft is subsequently sold by the retailer.

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

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

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

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

26 "Sale at retail" means any transfer of the ownership of or

1 title to tangible personal property to a purchaser, for the
2 purpose of use, and not for the purpose of resale in any form
3 as tangible personal property to the extent not first subjected
4 to a use for which it was purchased, for a valuable
5 consideration: Provided that the property purchased is deemed
6 to be purchased for the purpose of resale, despite first being
7 used, to the extent to which it is resold as an ingredient of
8 an intentionally produced product or by-product of
9 manufacturing. For this purpose, slag produced as an incident
10 to manufacturing pig iron or steel and sold is considered to be
11 an intentionally produced by-product of manufacturing. "Sale
12 at retail" includes any such transfer made for resale unless
13 made in compliance with Section 2c of the Retailers' Occupation
14 Tax Act, as incorporated by reference into Section 12 of this
15 Act. Transactions whereby the possession of the property is
16 transferred but the seller retains the title as security for
17 payment of the selling price are sales.

18 "Sale at retail" shall also be construed to include any
19 Illinois florist's sales transaction in which the purchase
20 order is received in Illinois by a florist and the sale is for
21 use or consumption, but the Illinois florist has a florist in
22 another state deliver the property to the purchaser or the
23 purchaser's donee in such other state.

24 Nonreusable tangible personal property that is used by
25 persons engaged in the business of operating a restaurant,
26 cafeteria, or drive-in is a sale for resale when it is

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

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

15 "Selling price" means the consideration for a sale valued
16 in money whether received in money or otherwise, including
17 cash, credits, property other than as hereinafter provided, and
18 services, but not including the value of or credit given for
19 traded-in tangible personal property where the item that is
20 traded-in is of like kind and character as that which is being
21 sold, and shall be determined without any deduction on account
22 of the cost of the property sold, the cost of materials used,
23 labor or service cost or any other expense whatsoever, but does
24 not include interest or finance charges which appear as
25 separate items on the bill of sale or sales contract nor
26 charges that are added to prices by sellers on account of the

1 seller's tax liability under the "Retailers' Occupation Tax
2 Act", or on account of the seller's duty to collect, from the
3 purchaser, the tax that is imposed by this Act, or, except as
4 otherwise provided with respect to any cigarette tax imposed by
5 a home rule unit, on account of the seller's tax liability
6 under any local occupation tax administered by the Department,
7 or, except as otherwise provided with respect to any cigarette
8 tax imposed by a home rule unit on account of the seller's duty
9 to collect, from the purchasers, the tax that is imposed under
10 any local use tax administered by the Department. Effective
11 December 1, 1985, "selling price" shall include charges that
12 are added to prices by sellers on account of the seller's tax
13 liability under the Cigarette Tax Act, on account of the
14 seller's duty to collect, from the purchaser, the tax imposed
15 under the Cigarette Use Tax Act, and on account of the seller's
16 duty to collect, from the purchaser, any cigarette tax imposed
17 by a home rule unit.

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

26 "Department" means the Department of Revenue.

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

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

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

19 A person whose activities are organized and conducted
20 primarily as a not-for-profit service enterprise, and who
21 engages in selling tangible personal property at retail
22 (whether to the public or merely to members and their guests)
23 is a retailer with respect to such transactions, excepting only
24 a person organized and operated exclusively for charitable,
25 religious or educational purposes either (1), to the extent of
26 sales by such person to its members, students, patients or

1 inmates of tangible personal property to be used primarily for
2 the purposes of such person, or (2), to the extent of sales by
3 such person of tangible personal property which is not sold or
4 offered for sale by persons organized for profit. The selling
5 of school books and school supplies by schools at retail to
6 students is not "primarily for the purposes of" the school
7 which does such selling. This paragraph does not apply to nor
8 subject to taxation occasional dinners, social or similar
9 activities of a person organized and operated exclusively for
10 charitable, religious or educational purposes, whether or not
11 such activities are open to the public.

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

19 Persons who engage in the business of transferring tangible
20 personal property upon the redemption of trading stamps are
21 retailers hereunder when engaged in such business.

22 The isolated or occasional sale of tangible personal
23 property at retail by a person who does not hold himself out as
24 being engaged (or who does not habitually engage) in selling
25 such tangible personal property at retail or a sale through a
26 bulk vending machine does not make such person a retailer

1 hereunder. However, any person who is engaged in a business
2 which is not subject to the tax imposed by the "Retailers'
3 Occupation Tax Act" because of involving the sale of or a
4 contract to sell real estate or a construction contract to
5 improve real estate, but who, in the course of conducting such
6 business, transfers tangible personal property to users or
7 consumers in the finished form in which it was purchased, and
8 which does not become real estate, under any provision of a
9 construction contract or real estate sale or real estate sales
10 agreement entered into with some other person arising out of or
11 because of such nontaxable business, is a retailer to the
12 extent of the value of the tangible personal property so
13 transferred. If, in such transaction, a separate charge is made
14 for the tangible personal property so transferred, the value of
15 such property, for the purposes of this Act, is the amount so
16 separately charged, but not less than the cost of such property
17 to the transferor; if no separate charge is made, the value of
18 such property, for the purposes of this Act, is the cost to the
19 transferor of such tangible personal property.

20 "Retailer maintaining a place of business in this State",
21 or any like term, means and includes any of the following
22 retailers:

- 23 1. A retailer having or maintaining within this State,
24 directly or by a subsidiary, an office, distribution house,
25 sales house, warehouse or other place of business, or any
26 agent or other representative operating within this State

1 under the authority of the retailer or its subsidiary,
2 irrespective of whether such place of business or agent or
3 other representative is located here permanently or
4 temporarily, or whether such retailer or subsidiary is
5 licensed to do business in this State. However, the
6 ownership of property that is located at the premises of a
7 printer with which the retailer has contracted for printing
8 and that consists of the final printed product, property
9 that becomes a part of the final printed product, or copy
10 from which the printed product is produced shall not result
11 in the retailer being deemed to have or maintain an office,
12 distribution house, sales house, warehouse, or other place
13 of business within this State.

14 1.1. Beginning July 1, 2011, and until the first day of
15 the first month to occur not less than 30 days after the
16 effective date of this amendatory Act of the 97th General
17 Assembly, a retailer having a contract with a person
18 located in this State under which the person, for a
19 commission or other consideration based upon the sale of
20 tangible personal property by the retailer, directly or
21 indirectly refers potential customers to the retailer by a
22 link on the person's Internet website. The provisions of
23 this paragraph 1.1 shall apply only if the cumulative gross
24 receipts from sales of tangible personal property by the
25 retailer to customers who are referred to the retailer by
26 all persons in this State under such contracts exceed

1 \$10,000 during the preceding 4 quarterly periods ending on
2 the last day of March, June, September, and December.

3 1.2. Beginning July 1, 2011, a retailer having a
4 contract with a person located in this State under which:

5 A. the retailer sells the same or substantially
6 similar line of products as the person located in this
7 State and does so using an identical or substantially
8 similar name, trade name, or trademark as the person
9 located in this State; and

10 B. the retailer provides a commission or other
11 consideration to the person located in this State based
12 upon the sale of tangible personal property by the
13 retailer.

14 The provisions of this paragraph 1.2 shall apply only if
15 the cumulative gross receipts from sales of tangible
16 personal property by the retailer to customers in this
17 State under all such contracts exceed \$10,000 during the
18 preceding 4 quarterly periods ending on the last day of
19 March, June, September, and December.

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

26 3. A retailer, pursuant to a contract with a

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

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

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

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

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

25 8. A retailer engaging in activities in Illinois, which
26 activities in the state in which the retail business

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

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

9 (Source: P.A. 95-723, eff. 6-23-08; 96-1544, eff. 3-10-11.)

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

12 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

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

1 destinations outside the State of Illinois.

2 "Purchased from a serviceman" means the acquisition of the
3 ownership of, or title to, tangible personal property through a
4 sale of service.

5 "Purchaser" means any person who, through a sale of
6 service, acquires the ownership of, or title to, any tangible
7 personal property.

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

20 "Selling price" means the consideration for a sale valued
21 in money whether received in money or otherwise, including
22 cash, credits and service, and shall be determined without any
23 deduction on account of the serviceman's cost of the property
24 sold, the cost of materials used, labor or service cost or any
25 other expense whatsoever, but does not include interest or
26 finance charges which appear as separate items on the bill of

1 sale or sales contract nor charges that are added to prices by
2 sellers on account of the seller's duty to collect, from the
3 purchaser, the tax that is imposed by this Act.

4 "Department" means the Department of Revenue.

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

10 "Sale of service" means any transaction except:

11 (1) a retail sale of tangible personal property taxable
12 under the Retailers' Occupation Tax Act or under the Use
13 Tax Act.

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

17 (3) except as hereinafter provided, a sale or transfer
18 of tangible personal property as an incident to the
19 rendering of service for or by any governmental body, or
20 for or by any corporation, society, association,
21 foundation or institution organized and operated
22 exclusively for charitable, religious or educational
23 purposes or any not-for-profit corporation, society,
24 association, foundation, institution or organization which
25 has no compensated officers or employees and which is
26 organized and operated primarily for the recreation of

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

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

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

1 (4a-5) on and after July 1, 2003 and through June 30,
2 2004, a sale or transfer of a motor vehicle of the second
3 division with a gross vehicle weight in excess of 8,000
4 pounds as an incident to the rendering of service if that
5 motor vehicle is subject to the commercial distribution fee
6 imposed under Section 3-815.1 of the Illinois Vehicle Code.
7 Beginning on July 1, 2004 and through June 30, 2005, the
8 use in this State of motor vehicles of the second division:
9 (i) with a gross vehicle weight rating in excess of 8,000
10 pounds; (ii) that are subject to the commercial
11 distribution fee imposed under Section 3-815.1 of the
12 Illinois Vehicle Code; and (iii) that are primarily used
13 for commercial purposes. Through June 30, 2005, this
14 exemption applies to repair and replacement parts added
15 after the initial purchase of such a motor vehicle if that
16 motor vehicle is used in a manner that would qualify for
17 the rolling stock exemption otherwise provided for in this
18 Act. For purposes of this paragraph, "used for commercial
19 purposes" means the transportation of persons or property
20 in furtherance of any commercial or industrial enterprise
21 whether for-hire or not.

22 (5) a sale or transfer of machinery and equipment used
23 primarily in the process of the manufacturing or
24 assembling, either in an existing, an expanded or a new
25 manufacturing facility, of tangible personal property for
26 wholesale or retail sale or lease, whether such sale or

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

8 (5a) the repairing, reconditioning or remodeling, for
9 a common carrier by rail, of tangible personal property
10 which belongs to such carrier for hire, and as to which
11 such carrier receives the physical possession of the
12 repaired, reconditioned or remodeled item of tangible
13 personal property in Illinois, and which such carrier
14 transports, or shares with another common carrier in the
15 transportation of such property, out of Illinois on a
16 standard uniform bill of lading showing the person who
17 repaired, reconditioned or remodeled the property to a
18 destination outside Illinois, for use outside Illinois.

19 (5b) a sale or transfer of tangible personal property
20 which is produced by the seller thereof on special order in
21 such a way as to have made the applicable tax the Service
22 Occupation Tax or the Service Use Tax, rather than the
23 Retailers' Occupation Tax or the Use Tax, for an interstate
24 carrier by rail which receives the physical possession of
25 such property in Illinois, and which transports such
26 property, or shares with another common carrier in the

1 transportation of such property, out of Illinois on a
2 standard uniform bill of lading showing the seller of the
3 property as the shipper or consignor of such property to a
4 destination outside Illinois, for use outside Illinois.

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

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

1 serviceman who has also made the election described in this
2 paragraph, the primary serviceman does not incur a Use Tax
3 liability if the secondary serviceman (i) has paid or will
4 pay Use Tax on his or her cost price of any tangible
5 personal property transferred to the primary serviceman
6 and (ii) certifies that fact in writing to the primary
7 serviceman.

8 Tangible personal property transferred incident to the
9 completion of a maintenance agreement is exempt from the tax
10 imposed pursuant to this Act.

11 Exemption (5) also includes machinery and equipment used in
12 the general maintenance or repair of such exempt machinery and
13 equipment or for in-house manufacture of exempt machinery and
14 equipment. For the purposes of exemption (5), each of these
15 terms shall have the following meanings: (1) "manufacturing
16 process" shall mean the production of any article of tangible
17 personal property, whether such article is a finished product
18 or an article for use in the process of manufacturing or
19 assembling a different article of tangible personal property,
20 by procedures commonly regarded as manufacturing, processing,
21 fabricating, or refining which changes some existing material
22 or materials into a material with a different form, use or
23 name. In relation to a recognized integrated business composed
24 of a series of operations which collectively constitute
25 manufacturing, or individually constitute manufacturing
26 operations, the manufacturing process shall be deemed to

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

1 chemicals or chemicals acting as catalysts effect a direct and
2 immediate change upon a product being manufactured or assembled
3 for wholesale or retail sale or lease. The purchaser of such
4 machinery and equipment who has an active resale registration
5 number shall furnish such number to the seller at the time of
6 purchase. The user of such machinery and equipment and tools
7 without an active resale registration number shall prepare a
8 certificate of exemption for each transaction stating facts
9 establishing the exemption for that transaction, which
10 certificate shall be available to the Department for inspection
11 or audit. The Department shall prescribe the form of the
12 certificate.

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

26 On and after July 1, 1987, no entity otherwise eligible

1 under exemption (3) of this Section shall make tax free
2 purchases unless it has an active exemption identification
3 number issued by the Department.

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

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

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

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

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

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

1 1.1. beginning July 1, 2011, and until the first day of
2 the first month to occur not less than 30 days after the
3 effective date of this amendatory Act of the 97th General
4 Assembly, having a contract with a person located in this
5 State under which the person, for a commission or other
6 consideration based on the sale of service by the
7 serviceman, directly or indirectly refers potential
8 customers to the serviceman by a link on the person's
9 Internet website. The provisions of this paragraph 1.1
10 shall apply only if the cumulative gross receipts from
11 sales of service by the serviceman to customers who are
12 referred to the serviceman by all persons in this State
13 under such contracts exceed \$10,000 during the preceding 4
14 quarterly periods ending on the last day of March, June,
15 September, and December;

16 1.2. beginning July 1, 2011, having a contract with a
17 person located in this State under which:

18 A. the serviceman sells the same or substantially
19 similar line of services as the person located in this
20 State and does so using an identical or substantially
21 similar name, trade name, or trademark as the person
22 located in this State; and

23 B. the serviceman provides a commission or other
24 consideration to the person located in this State based
25 upon the sale of services by the serviceman.

26 The provisions of this paragraph 1.2 shall apply only if

1 the cumulative gross receipts from sales of service by the
2 serviceman to customers in this State under all such
3 contracts exceed \$10,000 during the preceding 4 quarterly
4 periods ending on the last day of March, June, September,
5 and December;

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

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

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

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

26 6. having a franchisee or licensee operating under its

1 trade name if the franchisee or licensee is required to
2 collect the tax under this Section;

3 7. pursuant to a contract with a cable television
4 operator located in this State, soliciting orders for
5 tangible personal property by means of advertising which is
6 transmitted or distributed over a cable television system
7 in this State; or

8 8. engaging in activities in Illinois, which
9 activities in the state in which the supply business
10 engaging in such activities is located would constitute
11 maintaining a place of business in that state.

12 (Source: P.A. 96-1544, eff. 3-10-11.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.