



Rep. Barbara Flynn Currie

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1 AMENDMENT TO SENATE BILL 397

2 AMENDMENT NO. _____. Amend Senate Bill 397 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Retailers' Occupation Tax Act is amended by
5 adding Section 2-1 as follows:

6 (35 ILCS 120/2-1 new)

7 Sec. 2-1. Local sourcing.

8 (a) The provisions of this Section apply exclusively for
9 the purpose of sourcing sales of tangible personal property.
10 The tax imposed under this Act is imposed upon persons engaged
11 in the business of selling tangible personal property at retail
12 in this State. For a seller to incur a retailers' occupation
13 tax liability at a given location, the seller must be engaged
14 in the business of selling tangible personal property at retail
15 at that location. In allocating or sourcing the local share of
16 the State tax imposed under this Act or any municipal, county,

1 or special district retailers' occupation taxes administered
2 by the Department of Revenue, the sourcing rules in this
3 Section apply to determine where a sale occurs. The provisions
4 of subsections (b) through (g) apply to specific types of
5 sales. If a sale does not fall within the activities described
6 in subsections (b) through (g) of this Section, then the
7 provisions of subsection (h) of this Section apply.

8 (b) Over-the-counter sales. When a person makes an
9 over-the-counter sale of tangible personal property at a retail
10 location and either (i) the purchaser takes possession of that
11 property at that retail location or (ii) the seller ships that
12 property to the purchaser from that location to a location in
13 Illinois or arranges for delivery from another location to a
14 location in Illinois, then the sale occurs at that retail
15 location regardless of the method of payment for that sale.

16 (c) Prior shipments. If the tangible personal property
17 ordered by the purchaser is shipped or delivered to, or
18 installed for, the purchaser before the performance of 3 of the
19 5 activities listed in paragraphs (A) through (E) of item (1)
20 of subsection (h) of this Section by the retailer or its
21 authorized representative, then the Illinois location from
22 which the tangible personal property was shipped or delivered,
23 or from which it was removed before installation, is deemed to
24 be the location of the sale.

25 (d) Out-of-State sales. If at least 3 of the 5 activities
26 listed in paragraphs (A) through (E) of item (1) of subsection

1 (h) of this Section occur outside of Illinois, or if the sale
2 is made through contact centers as described in subsection (g)
3 that are located outside of Illinois, but the tangible personal
4 property being sold is in the inventory of the seller at a
5 location within Illinois at the time of sale (or is
6 subsequently produced by the seller at a location in Illinois),
7 then the inventory location is deemed to be the location of the
8 sale.

9 (e) Coal and other minerals. For sales to end users by a
10 producer of coal or other minerals mined in this State, the
11 sale is deemed to occur at the place where the coal or other
12 minerals mined in this State are extracted from the earth. With
13 respect to minerals, (i) the term "extracted from the earth"
14 means the location at which the coal or other mineral is
15 extracted from the mouth of the mine and (ii) a "mineral"
16 includes not only coal, but also oil, sand, stone taken from a
17 quarry, gravel, and any other thing commonly regarded as a
18 mineral and extracted from the earth.

19 (f) Long-term blanket or master contracts. Under a
20 long-term blanket or master contract that (although it may be
21 definite as to price, quantity, or both) must be implemented by
22 the purchaser's placing of specific orders when goods are
23 wanted, the seller is deemed to be engaged in the business of
24 selling for any specific orders placed under that contract at
25 an office location determined in accordance with subsection (h)
26 of this Section.

1 (g) Sales made from orders placed through contact centers.

2 (1) A sale of tangible personal property made from an
3 order placed through a contact center is not subject to tax
4 under this Act, provided that the retailer's only activity
5 in this State with respect to that sale is the maintenance
6 of a contact center that is a centralized office used
7 exclusively for receiving customer orders by means of
8 telephone or Internet and recording the following: name and
9 address of purchaser; price, type, and quantity of items;
10 and method of payment and delivery. Under these conditions,
11 those sales are subject to tax under the Use Tax Act.
12 However, those sales are subject to Retailers' Occupation
13 Tax if the tangible personal property that is sold is in an
14 inventory of the retailer located in Illinois at the time
15 of its sale (or is subsequently produced in this State) and
16 is then delivered in Illinois to a purchaser. Such sales
17 must be sourced to the location of the inventory or the
18 location from which the item is subsequently produced. This
19 item (1) does not apply to over-the-counter sales made at a
20 retail location in Illinois by means of telephone or
21 Internet. Those sales must be sourced as provided in
22 subsection (b) of this Section.

23 (2) If the retailer maintains any other location in
24 Illinois at which any of the activities listed in
25 paragraphs (A) through (D) of item (1) of subsection (h) of
26 this Section occur, or if the contact center performs any

1 of the activities listed in paragraphs (A) through (D) of
2 item (1) subsection (h) of this Section, the provisions of
3 item (1) of this subsection (g) do not apply and the sale
4 must be sourced according to the provisions of subsection
5 (h).

6 (h) All other sales. For all sales other than those listed
7 in subsections (b) through (g) of this Section, when sourcing
8 the local share of the State tax imposed under this Act or any
9 municipal, county, or special district retailers' occupation
10 taxes administered by the Department of Revenue, enough of the
11 selling activity must occur at a given office location to
12 justify concluding that the seller is engaged in the business
13 of selling at that office location.

14 (1) A seller is deemed to be engaged in the business of
15 selling at an office location for purchase orders received
16 there by means, including, but not limited to, mail,
17 telephone, e-mail, or facsimile transmission, if there is
18 present at that office location one or more individuals who
19 are exclusively employees of the retailer or its authorized
20 representative and who continuously perform, for all
21 sales, at least 3 of the activities listed in paragraphs
22 (A) through (E) of this item (1) on behalf of the retailer.
23 An employee or an authorized representative may perform
24 these activities on behalf of only one retailer.

25 (A) Determination of appropriate pricing of the
26 item, taking into account various factors such as, but

1 not limited to, application of discounts, surcharges,
2 shipping costs, and calculation of whether the high or
3 low rate of tax applies to items purchased.

4 (B) Determination of whether sufficient inventory
5 exists, or can be obtained consistent with customer
6 requirements, to fill the order.

7 (C) Determination of whether the order can be
8 shipped and delivered in the manner and within the
9 timeframes required by the customer.

10 (D) Determination of the creditworthiness of the
11 purchaser, including bankruptcy screening.

12 (E) Processing of the order.

13 (2) If a retailer has no single Illinois location that
14 meets the requirements of item (1) of subsection (h) of
15 this Section, it is presumed that the retailer's principal
16 Illinois office location is the location at which the
17 retailer is engaged in the business of selling. This
18 presumption may be rebutted if the Department or the
19 retailer clearly proves that another location is the
20 location at which enough selling activities occur to
21 justify concluding that the seller is engaged in the
22 business of selling at that other location. The activities
23 listed in paragraphs (A) through (E) of item (1) of
24 subsection (h) of this Section shall be considered in
25 rebutting the presumption created in this item (2).

26 (i) The Department of Revenue is authorized to promulgate

1 rules to implement the provisions of this Section.

2 Section 99. Effective date. This Act takes effect January
3 1, 2012.".