



Sen. Don Harmon

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09800HB2317sam001

LRB098 09941 HLH 46045 a

1 AMENDMENT TO HOUSE BILL 2317

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2317 immediately  
3 below the enacting clause, by inserting the following:

4 "Section 3. The Use Tax Act is amended by changing Section  
5 2 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

1 as an ingredient of an intentionally produced product or  
2 by-product of manufacturing. "Use" does not mean the  
3 demonstration use or interim use of tangible personal property  
4 by a retailer before he sells that tangible personal property.  
5 For watercraft or aircraft, if the period of demonstration use  
6 or interim use by the retailer exceeds 18 months, the retailer  
7 shall pay on the retailers' original cost price the tax imposed  
8 by this Act, and no credit for that tax is permitted if the  
9 watercraft or aircraft is subsequently sold by the retailer.  
10 "Use" does not mean the physical incorporation of tangible  
11 personal property, to the extent not first subjected to a use  
12 for which it was purchased, as an ingredient or constituent,  
13 into other tangible personal property (a) which is sold in the  
14 regular course of business or (b) which the person  
15 incorporating such ingredient or constituent therein has  
16 undertaken at the time of such purchase to cause to be  
17 transported in interstate commerce to destinations outside the  
18 State of Illinois: Provided that the property purchased is  
19 deemed to be purchased for the purpose of resale, despite first  
20 being used, to the extent to which it is resold as an  
21 ingredient of an intentionally produced product or by-product  
22 of manufacturing.

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

1 "Purchase at retail" means the acquisition of the ownership  
2 of or title to tangible personal property through a sale at  
3 retail.

4 "Purchaser" means anyone who, through a sale at retail,  
5 acquires the ownership of tangible personal property for a  
6 valuable consideration.

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

25 "Sale at retail" shall also be construed to include any  
26 Illinois florist's sales transaction in which the purchase

1 order is received in Illinois by a florist and the sale is for  
2 use or consumption, but the Illinois florist has a florist in  
3 another state deliver the property to the purchaser or the  
4 purchaser's donee in such other state.

5 Nonreusable tangible personal property that is used by  
6 persons engaged in the business of operating a restaurant,  
7 cafeteria, or drive-in is a sale for resale when it is  
8 transferred to customers in the ordinary course of business as  
9 part of the sale of food or beverages and is used to deliver,  
10 package, or consume food or beverages, regardless of where  
11 consumption of the food or beverages occurs. Examples of those  
12 items include, but are not limited to nonreusable, paper and  
13 plastic cups, plates, baskets, boxes, sleeves, buckets or other  
14 containers, utensils, straws, placemats, napkins, doggie bags,  
15 and wrapping or packaging materials that are transferred to  
16 customers as part of the sale of food or beverages in the  
17 ordinary course of business.

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

22 "Selling price" means the consideration for a sale valued  
23 in money whether received in money or otherwise, including  
24 cash, credits, property other than as hereinafter provided, and  
25 services, but not including the value of or credit given for  
26 traded-in tangible personal property where the item that is

1 traded-in is of like kind and character as that which is being  
2 sold, and shall be determined without any deduction on account  
3 of the cost of the property sold, the cost of materials used,  
4 labor or service cost or any other expense whatsoever, but does  
5 not include interest or finance charges which appear as  
6 separate items on the bill of sale or sales contract nor  
7 charges that are added to prices by sellers on account of the  
8 seller's tax liability under the "Retailers' Occupation Tax  
9 Act", or on account of the seller's duty to collect, from the  
10 purchaser, the tax that is imposed by this Act, or, except as  
11 otherwise provided with respect to any cigarette tax imposed by  
12 a home rule unit, on account of the seller's tax liability  
13 under any local occupation tax administered by the Department,  
14 or, except as otherwise provided with respect to any cigarette  
15 tax imposed by a home rule unit on account of the seller's duty  
16 to collect, from the purchasers, the tax that is imposed under  
17 any local use tax administered by the Department. Effective  
18 December 1, 1985, "selling price" shall include charges that  
19 are added to prices by sellers on account of the seller's tax  
20 liability under the Cigarette Tax Act, on account of the  
21 seller's duty to collect, from the purchaser, the tax imposed  
22 under the Cigarette Use Tax Act, and on account of the seller's  
23 duty to collect, from the purchaser, any cigarette tax imposed  
24 by a home rule unit.

25 Notwithstanding any law to the contrary, for any motor  
26 vehicle, as defined in Section 1-146 of the Vehicle Code, that

1 is sold on or after July 1, 2014 for the purpose of leasing the  
2 vehicle for a defined period that is longer than one year and  
3 (1) is a motor vehicle of the second division that: (A) is a  
4 self-contained motor vehicle designed or permanently converted  
5 to provide living quarters for recreational, camping, or travel  
6 use, with direct walk through access to the living quarters  
7 from the driver's seat; (B) is of the van configuration  
8 designed for the transportation of not less than 7 nor more  
9 than 16 passengers; or (C) has a gross vehicle weight rating of  
10 8,000 pounds or less or (2) is a motor vehicle of the first  
11 division, "selling price" or "amount of sale" means the  
12 consideration received by the lessor pursuant to the lease  
13 contract, including amounts due at lease signing and all  
14 monthly or other regular payments charged over the term of the  
15 lease. Also included in the selling price is any amount  
16 received by the lessor from the lessee for the leased vehicle  
17 that is not calculated at the time the lease is executed,  
18 including, but not limited to, excess mileage charges and  
19 charges for excess wear and tear. For sales that occur in  
20 Illinois, with respect to any amount received by the lessor  
21 from the lessee for the leased vehicle that is not calculated  
22 at the time the lease is executed, the lessor who purchased the  
23 motor vehicle does not incur the tax imposed by the Use Tax Act  
24 on those amounts, and the retailer who makes the retail sale of  
25 the motor vehicle to the lessor is not required to collect the  
26 tax imposed by the this Act or to pay the tax imposed by the

1 Retailers' Occupation Tax Act on those amounts. However, the  
2 lessor who purchased the motor vehicle assumes the liability  
3 for reporting and paying the tax on those amounts directly to  
4 the Department in the same form (Illinois Retailers' Occupation  
5 Tax, and local retailers' occupation taxes, if applicable) in  
6 which the retailer would have reported and paid such tax if the  
7 retailer had accounted for the tax to the Department. For  
8 amounts received by the lessor from the lessee that are not  
9 calculated at the time the lease is executed, the lessor must  
10 file the return and pay the tax to the Department by the due  
11 date otherwise required by this Act for returns other than  
12 transaction returns. If the retailer is entitled under this Act  
13 to a discount for collecting and remitting the tax imposed  
14 under this Act to the Department with respect to the sale of  
15 the motor vehicle to the lessor, then the right to the discount  
16 provided in this Act shall be transferred to the lessor with  
17 respect to the tax paid by the lessor for any amount received  
18 by the lessor from the lessee for the leased vehicle that is  
19 not calculated at the time the lease is executed; provided that  
20 the discount is only allowed if the return is timely filed and  
21 for amounts timely paid. The "selling price" of a motor vehicle  
22 that is sold on or after July 1, 2014 for the purpose of  
23 leasing for a defined period of longer than one year shall not  
24 be reduced by the value of or credit given for traded-in  
25 tangible personal property owned by the lessor, nor shall it be  
26 reduced by the value of or credit given for traded-in tangible

1 personal property owned by the lessee, regardless of whether  
2 the trade-in value thereof is assigned by the lessee to the  
3 lessor. In the case of a motor vehicle that is sold for the  
4 purpose of leasing for a defined period of longer than one  
5 year, the sale occurs at the time of the delivery of the  
6 vehicle, regardless of the due date of any lease payments. A  
7 lessor who incurs a Retailers' Occupation Tax liability on the  
8 sale of a motor vehicle coming off lease may not take a credit  
9 against that liability for the Use Tax the lessor paid upon the  
10 purchase of the motor vehicle (or for any tax the lessor paid  
11 with respect to any amount received by the lessor from the  
12 lessee for the leased vehicle that was not calculated at the  
13 time the lease was executed) if the selling price of the motor  
14 vehicle at the time of purchase was calculated using the  
15 definition of "selling price" as defined in this paragraph.  
16 Notwithstanding any other provision of this Act to the  
17 contrary, lessors shall file all returns and make all payments  
18 required under this paragraph to the Department by electronic  
19 means in the manner and form as required by the Department.  
20 This paragraph does not apply to leases of motor vehicles for  
21 which, at the time the lease is entered into, the term of the  
22 lease is not a defined period, including leases with a defined  
23 initial period with the option to continue the lease on a  
24 month-to-month or other basis beyond the initial defined  
25 period.

26 The phrase "like kind and character" shall be liberally



1 construed (including but not limited to any form of motor  
2 vehicle for any form of motor vehicle, or any kind of farm or  
3 agricultural implement for any other kind of farm or  
4 agricultural implement), while not including a kind of item  
5 which, if sold at retail by that retailer, would be exempt from  
6 retailers' occupation tax and use tax as an isolated or  
7 occasional sale.

8 "Department" means the Department of Revenue.

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

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

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

1           A person whose activities are organized and conducted  
2 primarily as a not-for-profit service enterprise, and who  
3 engages in selling tangible personal property at retail  
4 (whether to the public or merely to members and their guests)  
5 is a retailer with respect to such transactions, excepting only  
6 a person organized and operated exclusively for charitable,  
7 religious or educational purposes either (1), to the extent of  
8 sales by such person to its members, students, patients or  
9 inmates of tangible personal property to be used primarily for  
10 the purposes of such person, or (2), to the extent of sales by  
11 such person of tangible personal property which is not sold or  
12 offered for sale by persons organized for profit. The selling  
13 of school books and school supplies by schools at retail to  
14 students is not "primarily for the purposes of" the school  
15 which does such selling. This paragraph does not apply to nor  
16 subject to taxation occasional dinners, social or similar  
17 activities of a person organized and operated exclusively for  
18 charitable, religious or educational purposes, whether or not  
19 such activities are open to the public.

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

1           Persons who engage in the business of transferring tangible  
2 personal property upon the redemption of trading stamps are  
3 retailers hereunder when engaged in such business.

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

1 transferor of such tangible personal property.

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

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

22 1.1. Beginning July 1, 2011, a retailer having a  
23 contract with a person located in this State under which  
24 the person, for a commission or other consideration based  
25 upon the sale of tangible personal property by the  
26 retailer, directly or indirectly refers potential

1 customers to the retailer by a link on the person's  
2 Internet website. The provisions of this paragraph 1.1  
3 shall apply only if the cumulative gross receipts from  
4 sales of tangible personal property by the retailer to  
5 customers who are referred to the retailer by all persons  
6 in this State under such contracts exceed \$10,000 during  
7 the preceding 4 quarterly periods ending on the last day of  
8 March, June, September, and December.

9 1.2. Beginning July 1, 2011, a retailer having a  
10 contract with a person located in this State under which:

11 A. the retailer sells the same or substantially  
12 similar line of products as the person located in this  
13 State and does so using an identical or substantially  
14 similar name, trade name, or trademark as the person  
15 located in this State; and

16 B. the retailer provides a commission or other  
17 consideration to the person located in this State based  
18 upon the sale of tangible personal property by the  
19 retailer.

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

26 2. A retailer soliciting orders for tangible personal

1 property by means of a telecommunication or television  
2 shopping system (which utilizes toll free numbers) which is  
3 intended by the retailer to be broadcast by cable  
4 television or other means of broadcasting, to consumers  
5 located in this State.

6 3. A retailer, pursuant to a contract with a  
7 broadcaster or publisher located in this State, soliciting  
8 orders for tangible personal property by means of  
9 advertising which is disseminated primarily to consumers  
10 located in this State and only secondarily to bordering  
11 jurisdictions.

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

19 5. A retailer that is owned or controlled by the same  
20 interests that own or control any retailer engaging in  
21 business in the same or similar line of business in this  
22 State.

23 6. A retailer having a franchisee or licensee operating  
24 under its trade name if the franchisee or licensee is  
25 required to collect the tax under this Section.

26 7. A retailer, pursuant to a contract with a cable

1 television operator located in this State, soliciting  
2 orders for tangible personal property by means of  
3 advertising which is transmitted or distributed over a  
4 cable television system in this State.

5 8. A retailer engaging in activities in Illinois, which  
6 activities in the state in which the retail business  
7 engaging in such activities is located would constitute  
8 maintaining a place of business in that state.

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

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

16 Section 4. The Retailers' Occupation Tax Act is amended by  
17 changing Section 1 as follows:

18 (35 ILCS 120/1) (from Ch. 120, par. 440)

19 Sec. 1. Definitions. "Sale at retail" means any transfer of  
20 the ownership of or title to tangible personal property to a  
21 purchaser, for the purpose of use or consumption, and not for  
22 the purpose of resale in any form as tangible personal property  
23 to the extent not first subjected to a use for which it was  
24 purchased, for a valuable consideration: Provided that the

1 property purchased is deemed to be purchased for the purpose of  
2 resale, despite first being used, to the extent to which it is  
3 resold as an ingredient of an intentionally produced product or  
4 byproduct of manufacturing. For this purpose, slag produced as  
5 an incident to manufacturing pig iron or steel and sold is  
6 considered to be an intentionally produced byproduct of  
7 manufacturing. Transactions whereby the possession of the  
8 property is transferred but the seller retains the title as  
9 security for payment of the selling price shall be deemed to be  
10 sales.

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

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



1 intentionally produced product or byproduct of manufacturing.

2 "Sale at retail" shall be construed to include any Illinois  
3 florist's sales transaction in which the purchase order is  
4 received in Illinois by a florist and the sale is for use or  
5 consumption, but the Illinois florist has a florist in another  
6 state deliver the property to the purchaser or the purchaser's  
7 donee in such other state.

8 Nonreusable tangible personal property that is used by  
9 persons engaged in the business of operating a restaurant,  
10 cafeteria, or drive-in is a sale for resale when it is  
11 transferred to customers in the ordinary course of business as  
12 part of the sale of food or beverages and is used to deliver,  
13 package, or consume food or beverages, regardless of where  
14 consumption of the food or beverages occurs. Examples of those  
15 items include, but are not limited to nonreusable, paper and  
16 plastic cups, plates, baskets, boxes, sleeves, buckets or other  
17 containers, utensils, straws, placemats, napkins, doggie bags,  
18 and wrapping or packaging materials that are transferred to  
19 customers as part of the sale of food or beverages in the  
20 ordinary course of business.

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

25 A person whose activities are organized and conducted  
26 primarily as a not-for-profit service enterprise, and who

1 engages in selling tangible personal property at retail  
2 (whether to the public or merely to members and their guests)  
3 is engaged in the business of selling tangible personal  
4 property at retail with respect to such transactions, excepting  
5 only a person organized and operated exclusively for  
6 charitable, religious or educational purposes either (1), to  
7 the extent of sales by such person to its members, students,  
8 patients or inmates of tangible personal property to be used  
9 primarily for the purposes of such person, or (2), to the  
10 extent of sales by such person of tangible personal property  
11 which is not sold or offered for sale by persons organized for  
12 profit. The selling of school books and school supplies by  
13 schools at retail to students is not "primarily for the  
14 purposes of" the school which does such selling. The provisions  
15 of this paragraph shall not apply to nor subject to taxation  
16 occasional dinners, socials or similar activities of a person  
17 organized and operated exclusively for charitable, religious  
18 or educational purposes, whether or not such activities are  
19 open to the public.

20 A person who is the recipient of a grant or contract under  
21 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and  
22 serves meals to participants in the federal Nutrition Program  
23 for the Elderly in return for contributions established in  
24 amount by the individual participant pursuant to a schedule of  
25 suggested fees as provided for in the federal Act is not  
26 engaged in the business of selling tangible personal property

1 at retail with respect to such transactions.

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

5 "Reseller of motor fuel" means any person engaged in the  
6 business of selling or delivering or transferring title of  
7 motor fuel to another person other than for use or consumption.  
8 No person shall act as a reseller of motor fuel within this  
9 State without first being registered as a reseller pursuant to  
10 Section 2c or a retailer pursuant to Section 2a.

11 "Selling price" or the "amount of sale" means the  
12 consideration for a sale valued in money whether received in  
13 money or otherwise, including cash, credits, property, other  
14 than as hereinafter provided, and services, but not including  
15 the value of or credit given for traded-in tangible personal  
16 property where the item that is traded-in is of like kind and  
17 character as that which is being sold, and shall be determined  
18 without any deduction on account of the cost of the property  
19 sold, the cost of materials used, labor or service cost or any  
20 other expense whatsoever, but does not include charges that are  
21 added to prices by sellers on account of the seller's tax  
22 liability under this Act, or on account of the seller's duty to  
23 collect, from the purchaser, the tax that is imposed by the Use  
24 Tax Act, or, except as otherwise provided with respect to any  
25 cigarette tax imposed by a home rule unit, on account of the  
26 seller's tax liability under any local occupation tax

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

12 Notwithstanding any law to the contrary, for any motor  
13 vehicle, as defined in Section 1-146 of the Vehicle Code, that  
14 is sold on or after July 1, 2014 for the purpose of leasing the  
15 vehicle for a defined period that is longer than one year and  
16 (1) is a motor vehicle of the second division that: (A) is a  
17 self-contained motor vehicle designed or permanently converted  
18 to provide living quarters for recreational, camping, or travel  
19 use, with direct walk through access to the living quarters  
20 from the driver's seat; (B) is of the van configuration  
21 designed for the transportation of not less than 7 nor more  
22 than 16 passengers; or (C) has a gross vehicle weight rating of  
23 8,000 pounds or less or (2) is a motor vehicle of the first  
24 division, "selling price" or "amount of sale" means the  
25 consideration received by the lessor pursuant to the lease  
26 contract, including amounts due at lease signing and all

1 monthly or other regular payments charged over the term of the  
2 lease. Also included in the selling price is any amount  
3 received by the lessor from the lessee for the leased vehicle  
4 that is not calculated at the time the lease is executed,  
5 including, but not limited to, excess mileage charges and  
6 charges for excess wear and tear. For sales that occur in  
7 Illinois, with respect to any amount received by the lessor  
8 from the lessee for the leased vehicle that is not calculated  
9 at the time the lease is executed, the lessor who purchased the  
10 motor vehicle does not incur the tax imposed by the Use Tax Act  
11 on those amounts, and the retailer who makes the retail sale of  
12 the motor vehicle to the lessor is not required to collect the  
13 tax imposed by the Use Tax Act or to pay the tax imposed by this  
14 Act on those amounts. However, the lessor who purchased the  
15 motor vehicle assumes the liability for reporting and paying  
16 the tax on those amounts directly to the Department in the same  
17 form (Illinois Retailers' Occupation Tax, and local retailers'  
18 occupation taxes, if applicable) in which the retailer would  
19 have reported and paid such tax if the retailer had accounted  
20 for the tax to the Department. For amounts received by the  
21 lessor from the lessee that are not calculated at the time the  
22 lease is executed, the lessor must file the return and pay the  
23 tax to the Department by the due date otherwise required by  
24 this Act for returns other than transaction returns. If the  
25 retailer is entitled under this Act to a discount for  
26 collecting and remitting the tax imposed under this Act to the

1 Department with respect to the sale of the motor vehicle to the  
2 lessor, then the right to the discount provided in this Act  
3 shall be transferred to the lessor with respect to the tax paid  
4 by the lessor for any amount received by the lessor from the  
5 lessee for the leased vehicle that is not calculated at the  
6 time the lease is executed; provided that the discount is only  
7 allowed if the return is timely filed and for amounts timely  
8 paid. The "selling price" of a motor vehicle that is sold on or  
9 after July 1, 2014 for the purpose of leasing for a defined  
10 period of longer than one year shall not be reduced by the  
11 value of or credit given for traded-in tangible personal  
12 property owned by the lessor, nor shall it be reduced by the  
13 value of or credit given for traded-in tangible personal  
14 property owned by the lessee, regardless of whether the  
15 trade-in value thereof is assigned by the lessee to the lessor.  
16 In the case of a motor vehicle that is sold for the purpose of  
17 leasing for a defined period of longer than one year, the sale  
18 occurs at the time of the delivery of the vehicle, regardless  
19 of the due date of any lease payments. A lessor who incurs a  
20 Retailers' Occupation Tax liability on the sale of a motor  
21 vehicle coming off lease may not take a credit against that  
22 liability for the Use Tax the lessor paid upon the purchase of  
23 the motor vehicle (or for any tax the lessor paid with respect  
24 to any amount received by the lessor from the lessee for the  
25 leased vehicle that was not calculated at the time the lease  
26 was executed) if the selling price of the motor vehicle at the

1 time of purchase was calculated using the definition of  
2 "selling price" as defined in this paragraph. Notwithstanding  
3 any other provision of this Act to the contrary, lessors shall  
4 file all returns and make all payments required under this  
5 paragraph to the Department by electronic means in the manner  
6 and form as required by the Department. This paragraph does not  
7 apply to leases of motor vehicles for which, at the time the  
8 lease is entered into, the term of the lease is not a defined  
9 period, including leases with a defined initial period with the  
10 option to continue the lease on a month-to-month or other basis  
11 beyond the initial defined period.

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

20 "Gross receipts" from the sales of tangible personal  
21 property at retail means the total selling price or the amount  
22 of such sales, as hereinbefore defined. In the case of charge  
23 and time sales, the amount thereof shall be included only as  
24 and when payments are received by the seller. Receipts or other  
25 consideration derived by a seller from the sale, transfer or  
26 assignment of accounts receivable to a wholly owned subsidiary

1 will not be deemed payments prior to the time the purchaser  
2 makes payment on such accounts.

3 "Department" means the Department of Revenue.

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

9 The isolated or occasional sale of tangible personal  
10 property at retail by a person who does not hold himself out as  
11 being engaged (or who does not habitually engage) in selling  
12 such tangible personal property at retail, or a sale through a  
13 bulk vending machine, does not constitute engaging in a  
14 business of selling such tangible personal property at retail  
15 within the meaning of this Act; provided that any person who is  
16 engaged in a business which is not subject to the tax imposed  
17 by this Act because of involving the sale of or a contract to  
18 sell real estate or a construction contract to improve real  
19 estate or a construction contract to engineer, install, and  
20 maintain an integrated system of products, but who, in the  
21 course of conducting such business, transfers tangible  
22 personal property to users or consumers in the finished form in  
23 which it was purchased, and which does not become real estate  
24 or was not engineered and installed, under any provision of a  
25 construction contract or real estate sale or real estate sales  
26 agreement entered into with some other person arising out of or



1 because of such nontaxable business, is engaged in the business  
2 of selling tangible personal property at retail to the extent  
3 of the value of the tangible personal property so transferred.  
4 If, in such a transaction, a separate charge is made for the  
5 tangible personal property so transferred, the value of such  
6 property, for the purpose of this Act, shall be the amount so  
7 separately charged, but not less than the cost of such property  
8 to the transferor; if no separate charge is made, the value of  
9 such property, for the purposes of this Act, is the cost to the  
10 transferor of such tangible personal property. Construction  
11 contracts for the improvement of real estate consisting of  
12 engineering, installation, and maintenance of voice, data,  
13 video, security, and all telecommunication systems do not  
14 constitute engaging in a business of selling tangible personal  
15 property at retail within the meaning of this Act if they are  
16 sold at one specified contract price.

17 A person who holds himself or herself out as being engaged  
18 (or who habitually engages) in selling tangible personal  
19 property at retail is a person engaged in the business of  
20 selling tangible personal property at retail hereunder with  
21 respect to such sales (and not primarily in a service  
22 occupation) notwithstanding the fact that such person designs  
23 and produces such tangible personal property on special order  
24 for the purchaser and in such a way as to render the property  
25 of value only to such purchaser, if such tangible personal  
26 property so produced on special order serves substantially the

1 same function as stock or standard items of tangible personal  
2 property that are sold at retail.

3 Persons who engage in the business of transferring tangible  
4 personal property upon the redemption of trading stamps are  
5 engaged in the business of selling such property at retail and  
6 shall be liable for and shall pay the tax imposed by this Act  
7 on the basis of the retail value of the property transferred  
8 upon redemption of such stamps.

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

15 (Source: P.A. 95-723, eff. 6-23-08.)".