



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3249

by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

30 ILCS 105/6z-18	from Ch. 127, par. 142z-18
30 ILCS 105/6z-20	from Ch. 127, par. 142z-20
35 ILCS 105/3	from Ch. 120, par. 439.3
35 ILCS 110/3	from Ch. 120, par. 439.33
35 ILCS 115/3	from Ch. 120, par. 439.103
35 ILCS 120/2	from Ch. 120, par. 441

Amends the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act. Provides that, for the purposes of determining the location where a sale takes place: (i) if a buyer purchases tangible personal property at a retail location and either the buyer takes possession of that property at that retail location or the seller ships that property to the buyer from that location, the sale occurs at that location and (ii) in all other cases, the sales location is the location where certain specified selling activity occurs with respect to that sale. Contains provisions concerning out-of-State sales. Amends the State Finance Act to make conforming changes. Effective immediately.

LRB098 07958 HLH 38047 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 State Finance Act is amended by changing
5 Sections 6z-18 and 6z-20 as follows:

6 (30 ILCS 105/6z-18) (from Ch. 127, par. 142z-18)

7 Sec. 6z-18. A portion of the money paid into the Local
8 Government Tax Fund from sales of food for human consumption
9 which is to be consumed off the premises where it is sold
10 (other than alcoholic beverages, soft drinks and food which has
11 been prepared for immediate consumption) and prescription and
12 nonprescription medicines, drugs, medical appliances and
13 insulin, urine testing materials, syringes and needles used by
14 diabetics, which occurred in municipalities, shall be
15 distributed to each municipality based upon the sales which
16 occurred in that municipality. The remainder shall be
17 distributed to each county based upon the sales which occurred
18 in the unincorporated area of that county. For sales occurring
19 on and after July 1, 2013, the determination of where a sale
20 has occurred shall be determined using the sourcing rules
21 provided in subsection (b) of Section 2 of the Retailers'
22 Occupation Tax Act.

23 A portion of the money paid into the Local Government Tax

1 Fund from the 6.25% general use tax rate on the selling price
2 of tangible personal property which is purchased outside
3 Illinois at retail from a retailer and which is titled or
4 registered by any agency of this State's government shall be
5 distributed to municipalities as provided in this paragraph.
6 Each municipality shall receive the amount attributable to
7 sales for which Illinois addresses for titling or registration
8 purposes are given as being in such municipality. The remainder
9 of the money paid into the Local Government Tax Fund from such
10 sales shall be distributed to counties. Each county shall
11 receive the amount attributable to sales for which Illinois
12 addresses for titling or registration purposes are given as
13 being located in the unincorporated area of such county.

14 A portion of the money paid into the Local Government Tax
15 Fund from the 6.25% general rate (and, beginning July 1, 2000
16 and through December 31, 2000, the 1.25% rate on motor fuel and
17 gasohol, and beginning on August 6, 2010 through August 15,
18 2010, the 1.25% rate on sales tax holiday items) on sales
19 subject to taxation under the Retailers' Occupation Tax Act and
20 the Service Occupation Tax Act, which occurred in
21 municipalities, shall be distributed to each municipality,
22 based upon the sales which occurred in that municipality. The
23 remainder shall be distributed to each county, based upon the
24 sales which occurred in the unincorporated area of such county.

25 Before July 1, 2013, ~~For~~ the purpose of determining
26 allocation to the local government unit, a retail sale by a

1 producer of coal or other mineral mined in Illinois is a sale
2 at retail at the place where the coal or other mineral mined in
3 Illinois is extracted from the earth. This paragraph does not
4 apply to coal or other mineral when it is delivered or shipped
5 by the seller to the purchaser at a point outside Illinois so
6 that the sale is exempt under the United States Constitution as
7 a sale in interstate or foreign commerce.

8 Whenever the Department determines that a refund of money
9 paid into the Local Government Tax Fund should be made to a
10 claimant instead of issuing a credit memorandum, the Department
11 shall notify the State Comptroller, who shall cause the order
12 to be drawn for the amount specified, and to the person named,
13 in such notification from the Department. Such refund shall be
14 paid by the State Treasurer out of the Local Government Tax
15 Fund.

16 As soon as possible after the first day of each month,
17 beginning January 1, 2011, upon certification of the Department
18 of Revenue, the Comptroller shall order transferred, and the
19 Treasurer shall transfer, to the STAR Bonds Revenue Fund the
20 local sales tax increment, as defined in the Innovation
21 Development and Economy Act, collected during the second
22 preceding calendar month for sales within a STAR bond district
23 and deposited into the Local Government Tax Fund, less 3% of
24 that amount, which shall be transferred into the Tax Compliance
25 and Administration Fund and shall be used by the Department,
26 subject to appropriation, to cover the costs of the Department

1 in administering the Innovation Development and Economy Act.

2 After the monthly transfer to the STAR Bonds Revenue Fund,
3 on or before the 25th day of each calendar month, the
4 Department shall prepare and certify to the Comptroller the
5 disbursement of stated sums of money to named municipalities
6 and counties, the municipalities and counties to be those
7 entitled to distribution of taxes or penalties paid to the
8 Department during the second preceding calendar month. The
9 amount to be paid to each municipality or county shall be the
10 amount (not including credit memoranda) collected during the
11 second preceding calendar month by the Department and paid into
12 the Local Government Tax Fund, plus an amount the Department
13 determines is necessary to offset any amounts which were
14 erroneously paid to a different taxing body, and not including
15 an amount equal to the amount of refunds made during the second
16 preceding calendar month by the Department, and not including
17 any amount which the Department determines is necessary to
18 offset any amounts which are payable to a different taxing body
19 but were erroneously paid to the municipality or county, and
20 not including any amounts that are transferred to the STAR
21 Bonds Revenue Fund. Within 10 days after receipt, by the
22 Comptroller, of the disbursement certification to the
23 municipalities and counties, provided for in this Section to be
24 given to the Comptroller by the Department, the Comptroller
25 shall cause the orders to be drawn for the respective amounts
26 in accordance with the directions contained in such

1 certification.

2 When certifying the amount of monthly disbursement to a
3 municipality or county under this Section, the Department shall
4 increase or decrease that amount by an amount necessary to
5 offset any misallocation of previous disbursements. The offset
6 amount shall be the amount erroneously disbursed within the 6
7 months preceding the time a misallocation is discovered.

8 The provisions directing the distributions from the
9 special fund in the State Treasury provided for in this Section
10 shall constitute an irrevocable and continuing appropriation
11 of all amounts as provided herein. The State Treasurer and
12 State Comptroller are hereby authorized to make distributions
13 as provided in this Section.

14 In construing any development, redevelopment, annexation,
15 preannexation or other lawful agreement in effect prior to
16 September 1, 1990, which describes or refers to receipts from a
17 county or municipal retailers' occupation tax, use tax or
18 service occupation tax which now cannot be imposed, such
19 description or reference shall be deemed to include the
20 replacement revenue for such abolished taxes, distributed from
21 the Local Government Tax Fund.

22 (Source: P.A. 96-939, eff. 6-24-10; 96-1012, eff. 7-7-10;
23 97-333, eff. 8-12-11.)

24 (30 ILCS 105/6z-20) (from Ch. 127, par. 142z-20)

25 Sec. 6z-20. Of the money received from the 6.25% general

1 rate (and, beginning July 1, 2000 and through December 31,
2 2000, the 1.25% rate on motor fuel and gasohol, and beginning
3 on August 6, 2010 through August 15, 2010, the 1.25% rate on
4 sales tax holiday items) on sales subject to taxation under the
5 Retailers' Occupation Tax Act and Service Occupation Tax Act
6 and paid into the County and Mass Transit District Fund,
7 distribution to the Regional Transportation Authority tax
8 fund, created pursuant to Section 4.03 of the Regional
9 Transportation Authority Act, for deposit therein shall be made
10 based upon the retail sales occurring in a county having more
11 than 3,000,000 inhabitants. The remainder shall be distributed
12 to each county having 3,000,000 or fewer inhabitants based upon
13 the retail sales occurring in each such county.

14 For sales occurring on and after July 1, 2013, the
15 determination of where a sale has occurred shall be determined
16 using the sourcing rules provided in subsection (b) of Section
17 2 of the Retailers' Occupation Tax Act.

18 Before July 1, 2013, for ~~For~~ the purpose of determining
19 allocation to the local government unit, a retail sale by a
20 producer of coal or other mineral mined in Illinois is a sale
21 at retail at the place where the coal or other mineral mined in
22 Illinois is extracted from the earth. This paragraph does not
23 apply to coal or other mineral when it is delivered or shipped
24 by the seller to the purchaser at a point outside Illinois so
25 that the sale is exempt under the United States Constitution as
26 a sale in interstate or foreign commerce.

1 Of the money received from the 6.25% general use tax rate
2 on tangible personal property which is purchased outside
3 Illinois at retail from a retailer and which is titled or
4 registered by any agency of this State's government and paid
5 into the County and Mass Transit District Fund, the amount for
6 which Illinois addresses for titling or registration purposes
7 are given as being in each county having more than 3,000,000
8 inhabitants shall be distributed into the Regional
9 Transportation Authority tax fund, created pursuant to Section
10 4.03 of the Regional Transportation Authority Act. The
11 remainder of the money paid from such sales shall be
12 distributed to each county based on sales for which Illinois
13 addresses for titling or registration purposes are given as
14 being located in the county. Any money paid into the Regional
15 Transportation Authority Occupation and Use Tax Replacement
16 Fund from the County and Mass Transit District Fund prior to
17 January 14, 1991, which has not been paid to the Authority
18 prior to that date, shall be transferred to the Regional
19 Transportation Authority tax fund.

20 Whenever the Department determines that a refund of money
21 paid into the County and Mass Transit District Fund should be
22 made to a claimant instead of issuing a credit memorandum, the
23 Department shall notify the State Comptroller, who shall cause
24 the order to be drawn for the amount specified, and to the
25 person named, in such notification from the Department. Such
26 refund shall be paid by the State Treasurer out of the County

1 and Mass Transit District Fund.

2 As soon as possible after the first day of each month,
3 beginning January 1, 2011, upon certification of the Department
4 of Revenue, the Comptroller shall order transferred, and the
5 Treasurer shall transfer, to the STAR Bonds Revenue Fund the
6 local sales tax increment, as defined in the Innovation
7 Development and Economy Act, collected during the second
8 preceding calendar month for sales within a STAR bond district
9 and deposited into the County and Mass Transit District Fund,
10 less 3% of that amount, which shall be transferred into the Tax
11 Compliance and Administration Fund and shall be used by the
12 Department, subject to appropriation, to cover the costs of the
13 Department in administering the Innovation Development and
14 Economy Act.

15 After the monthly transfer to the STAR Bonds Revenue Fund,
16 on or before the 25th day of each calendar month, the
17 Department shall prepare and certify to the Comptroller the
18 disbursement of stated sums of money to the Regional
19 Transportation Authority and to named counties, the counties to
20 be those entitled to distribution, as hereinabove provided, of
21 taxes or penalties paid to the Department during the second
22 preceding calendar month. The amount to be paid to the Regional
23 Transportation Authority and each county having 3,000,000 or
24 fewer inhabitants shall be the amount (not including credit
25 memoranda) collected during the second preceding calendar
26 month by the Department and paid into the County and Mass

1 Transit District Fund, plus an amount the Department determines
2 is necessary to offset any amounts which were erroneously paid
3 to a different taxing body, and not including an amount equal
4 to the amount of refunds made during the second preceding
5 calendar month by the Department, and not including any amount
6 which the Department determines is necessary to offset any
7 amounts which were payable to a different taxing body but were
8 erroneously paid to the Regional Transportation Authority or
9 county, and not including any amounts that are transferred to
10 the STAR Bonds Revenue Fund. Within 10 days after receipt, by
11 the Comptroller, of the disbursement certification to the
12 Regional Transportation Authority and counties, provided for
13 in this Section to be given to the Comptroller by the
14 Department, the Comptroller shall cause the orders to be drawn
15 for the respective amounts in accordance with the directions
16 contained in such certification.

17 When certifying the amount of a monthly disbursement to the
18 Regional Transportation Authority or to a county under this
19 Section, the Department shall increase or decrease that amount
20 by an amount necessary to offset any misallocation of previous
21 disbursements. The offset amount shall be the amount
22 erroneously disbursed within the 6 months preceding the time a
23 misallocation is discovered.

24 The provisions directing the distributions from the
25 special fund in the State Treasury provided for in this Section
26 and from the Regional Transportation Authority tax fund created

1 by Section 4.03 of the Regional Transportation Authority Act
2 shall constitute an irrevocable and continuing appropriation
3 of all amounts as provided herein. The State Treasurer and
4 State Comptroller are hereby authorized to make distributions
5 as provided in this Section.

6 In construing any development, redevelopment, annexation,
7 preannexation or other lawful agreement in effect prior to
8 September 1, 1990, which describes or refers to receipts from a
9 county or municipal retailers' occupation tax, use tax or
10 service occupation tax which now cannot be imposed, such
11 description or reference shall be deemed to include the
12 replacement revenue for such abolished taxes, distributed from
13 the County and Mass Transit District Fund or Local Government
14 Distributive Fund, as the case may be.

15 (Source: P.A. 96-939, eff. 6-24-10; 96-1012, eff. 7-7-10;
16 97-333, eff. 8-12-11.)

17 Section 10. The Use Tax Act is amended by changing Section
18 3 as follows:

19 (35 ILCS 105/3) (from Ch. 120, par. 439.3)

20 Sec. 3. Tax imposed. A tax is imposed upon the privilege of
21 using in this State tangible personal property purchased at
22 retail from a retailer, including computer software, and
23 including photographs, negatives, and positives that are the
24 product of photoprocessing, but not including products of

1 photoprocessing produced for use in motion pictures for
2 commercial exhibition. Beginning January 1, 2001, prepaid
3 telephone calling arrangements shall be considered tangible
4 personal property subject to the tax imposed under this Act
5 regardless of the form in which those arrangements may be
6 embodied, transmitted, or fixed by any method now known or
7 hereafter developed. For sales occurring on and after July 1,
8 2013, the determination of where a sale has occurred shall be
9 determined using the sourcing rules provided in subsection (b)
10 of Section 2 of the Retailers' Occupation Tax Act.

11 (Source: P.A. 91-51, eff. 6-30-99; 91-870, eff. 6-22-00.)

12 Section 15. The Service Use Tax Act is amended by changing
13 Section 3 as follows:

14 (35 ILCS 110/3) (from Ch. 120, par. 439.33)

15 Sec. 3. Tax imposed. A tax is imposed upon the privilege of
16 using in this State real or tangible personal property acquired
17 as an incident to the purchase of a service from a serviceman,
18 including computer software, and including photographs,
19 negatives, and positives that are the product of
20 photoprocessing, but not including products of photoprocessing
21 produced for use in motion pictures for public commercial
22 exhibition. Beginning January 1, 2001, prepaid telephone
23 calling arrangements shall be considered tangible personal
24 property subject to the tax imposed under this Act regardless

1 of the form in which those arrangements may be embodied,
2 transmitted, or fixed by any method now known or hereafter
3 developed. For sales occurring on and after July 1, 2013, the
4 determination of where a sale has occurred shall be determined
5 using the sourcing rules provided in subsection (b) of Section
6 3 of the Service Occupation Tax Act.

7 (Source: P.A. 91-51, eff. 6-30-99; 91-870, eff. 6-22-00.)

8 Section 20. The Service Occupation Tax Act is amended by
9 changing Section 3 as follows:

10 (35 ILCS 115/3) (from Ch. 120, par. 439.103)

11 Sec. 3. Tax imposed.

12 (a) A tax is imposed upon all persons engaged in the
13 business of making sales of service (referred to as
14 "servicemen") on all tangible personal property transferred as
15 an incident of a sale of service, including computer software,
16 and including photographs, negatives, and positives that are
17 the product of photoprocessing, but not including products of
18 photoprocessing produced for use in motion pictures for public
19 commercial exhibition. Beginning January 1, 2001, prepaid
20 telephone calling arrangements shall be considered tangible
21 personal property subject to the tax imposed under this Act
22 regardless of the form in which those arrangements may be
23 embodied, transmitted, or fixed by any method now known or
24 hereafter developed.

1 (b) Notwithstanding any other provision of this Act, on or
2 after July 1, 2013, the location where a sale of service takes
3 place shall be determined under the following rules:

4 (1) When a buyer purchases tangible personal property
5 at a retail location and either the buyer takes possession
6 of that property at that retail location or the seller
7 ships that property to the buyer from that location, the
8 sale occurs at that location.

9 (2) For all sales other than those listed in item (1)
10 of this subsection (b), a sale occurs at the location where
11 the most selling activity occurs with respect to that sale.
12 The amount of selling activity occurring at a given
13 location shall be determined by considering the degree to
14 which the following activities occur at that location, with
15 no one activity being determinative:

16 (A) solicitation of the sale;

17 (B) determination of buyer creditworthiness;

18 (C) verification of inventory;

19 (D) negotiation of the terms of the sale;

20 (E) where the price is set;

21 (F) acceptance of the order;

22 (G) entrance of the sale on the books and records
23 of the seller;

24 (H) processing of the order;

25 (I) receipt of payment;

26 (J) passing of title from the seller to the buyer;

1 (K) delivery of the tangible personal property;
2 and
3 (L) any other activity without which the sale could
4 not occur.

5 (3) For all sales other than those listed in item (1)
6 of this subsection (b), if most of the selling activities
7 surrounding the sale occur outside of Illinois, then the
8 sale shall be deemed to occur outside of Illinois. However,
9 with respect to those out-of-State sales, if the tangible
10 personal property being sold is in the inventory of the
11 seller or its authorized representative at a location
12 within Illinois at the time of sale (or is subsequently
13 produced by the seller at a location in Illinois), then the
14 inventory location is deemed to be the location of the
15 sale.

16 (Source: P.A. 91-51, eff. 6-30-99; 91-870, eff. 6-22-00.)

17 Section 25. The Retailers' Occupation Tax Act is amended by
18 changing Section 2 as follows:

19 (35 ILCS 120/2) (from Ch. 120, par. 441)

20 Sec. 2. Tax imposed.

21 (a) A tax is imposed upon persons engaged in the business
22 of selling at retail tangible personal property, including
23 computer software, and including photographs, negatives, and
24 positives that are the product of photoprocessing, but not

1 including products of photoprocessing produced for use in
2 motion pictures for public commercial exhibition. Beginning
3 January 1, 2001, prepaid telephone calling arrangements shall
4 be considered tangible personal property subject to the tax
5 imposed under this Act regardless of the form in which those
6 arrangements may be embodied, transmitted, or fixed by any
7 method now known or hereafter developed.

8 (b) Notwithstanding any other provision of this Act, on or
9 after July 1, 2013, the location where a sale of tangible
10 personal property takes place shall be determined under the
11 following rules:

12 (1) When a buyer purchases tangible personal property
13 at a retail location and either the buyer takes possession
14 of that property at that retail location or the seller
15 ships that property to the buyer from that location, the
16 sale occurs at that location.

17 (2) For all sales other than those listed in item (1)
18 of this subsection (b), a sale occurs at the location where
19 the most selling activity occurs with respect to that sale.
20 The amount of selling activity occurring at a given
21 location shall be determined by considering the degree to
22 which the following activities occur at that location, with
23 no one activity being determinative:

24 (A) solicitation of the sale;

25 (B) determination of buyer creditworthiness;

26 (C) verification of inventory;

- 1 (D) negotiation of the terms of the sale;
2 (E) where the price is set;
3 (F) acceptance of the order;
4 (G) entrance of the sale on the books and records
5 of the seller;
6 (H) processing of the order;
7 (I) receipt of payment;
8 (J) passing of title from the seller to the buyer;
9 (K) delivery of the tangible personal property;
10 and
11 (L) any other activity without which the sale could
12 not occur.

13 (3) For all sales other than those listed in item (1)
14 of this subsection (b), if most of the selling activities
15 surrounding the sale occur outside of Illinois, then the
16 sale shall be deemed to occur outside of Illinois. However,
17 with respect to those out-of-State sales, if the tangible
18 personal property being sold is in the inventory of the
19 seller or its authorized representative at a location
20 within Illinois at the time of sale (or is subsequently
21 produced by the seller at a location in Illinois), then the
22 inventory location is deemed to be the location of the
23 sale.

24 (Source: P.A. 91-51, eff. 6-30-99; 91-870, eff. 6-22-00.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.