

SB1743



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1743

Introduced 2/15/2013, by Sen. Chapin Rose

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2	from Ch. 120, par. 439.2
35 ILCS 110/2	from Ch. 120, par. 439.32
35 ILCS 120/1	from Ch. 120, par. 440

Amends the Use Tax Act, the Service Use Tax Act, and the Retailers' Occupation Tax Act. Provides that, on and after January 1, 2008, with respect to sales of cellular telephones and other wireless cellular devices, the terms "selling price" and "gross receipts" do not include consideration paid by a third-party cellular service provider. Effective immediately.

LRB098 08146 HLH 38239 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. On and after January 1, 2008, with respect
18 to sales of cellular telephones or other wireless cellular
19 devices, the term "selling price" does not include
20 consideration paid by a third-party cellular service provider.

21 "Wireless cellular device" means any wireless
22 communication device that provides for voice or data
23 communication between 2 or more parties, including, but not
24 limited to, a text messaging device or other device that sends
25 or receives messages or electronic data.

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

18 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

19 Sec. 2. "Use" means the exercise by any person of any right
20 or power over tangible personal property incident to the
21 ownership of that property, but does not include the sale or
22 use for demonstration by him of that property in any form as
23 tangible personal property in the regular course of business.

24 "Use" does not mean the interim use of tangible personal

1 property nor the physical incorporation of tangible personal
2 property, as an ingredient or constituent, into other tangible
3 personal property, (a) which is sold in the regular course of
4 business or (b) which the person incorporating such ingredient
5 or constituent therein has undertaken at the time of such
6 purchase to cause to be transported in interstate commerce to
7 destinations outside the State of Illinois.

8 "Purchased from a serviceman" means the acquisition of the
9 ownership of, or title to, tangible personal property through a
10 sale of service.

11 "Purchaser" means any person who, through a sale of
12 service, acquires the ownership of, or title to, any tangible
13 personal property.

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

26 "Selling price" means the consideration for a sale valued

1 in money whether received in money or otherwise, including
2 cash, credits and service, and shall be determined without any
3 deduction on account of the serviceman's cost of the property
4 sold, the cost of materials used, labor or service cost or any
5 other expense whatsoever, but does not include interest or
6 finance charges which appear as separate items on the bill of
7 sale or sales contract nor charges that are added to prices by
8 sellers on account of the seller's duty to collect, from the
9 purchaser, the tax that is imposed by this Act. On and after
10 January 1, 2008, with respect to sales of cellular telephones
11 or other wireless cellular devices, the term "selling price"
12 does not include consideration paid by a third-party cellular
13 service provider.

14 "Wireless cellular device" means any wireless
15 communication device that provides for voice or data
16 communication between 2 or more parties, including, but not
17 limited to, a text messaging device or other device that sends
18 or receives messages or electronic data.

19 "Department" means the Department of Revenue.

20 "Person" means any natural individual, firm, partnership,
21 association, joint stock company, joint venture, public or
22 private corporation, limited liability company, and any
23 receiver, executor, trustee, guardian or other representative
24 appointed by order of any court.

25 "Sale of service" means any transaction except:

26 (1) a retail sale of tangible personal property taxable

1 under the Retailers' Occupation Tax Act or under the Use
2 Tax Act.

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

6 (3) except as hereinafter provided, a sale or transfer
7 of tangible personal property as an incident to the
8 rendering of service for or by any governmental body, or
9 for or by any corporation, society, association,
10 foundation or institution organized and operated
11 exclusively for charitable, religious or educational
12 purposes or any not-for-profit corporation, society,
13 association, foundation, institution or organization which
14 has no compensated officers or employees and which is
15 organized and operated primarily for the recreation of
16 persons 55 years of age or older. A limited liability
17 company may qualify for the exemption under this paragraph
18 only if the limited liability company is organized and
19 operated exclusively for educational purposes.

20 (4) a sale or transfer of tangible personal property as
21 an incident to the rendering of service for interstate
22 carriers for hire for use as rolling stock moving in
23 interstate commerce or by lessors under a lease of one year
24 or longer, executed or in effect at the time of purchase of
25 personal property, to interstate carriers for hire for use
26 as rolling stock moving in interstate commerce so long as

1 so used by such interstate carriers for hire, and equipment
2 operated by a telecommunications provider, licensed as a
3 common carrier by the Federal Communications Commission,
4 which is permanently installed in or affixed to aircraft
5 moving in interstate commerce.

6 (4a) a sale or transfer of tangible personal property
7 as an incident to the rendering of service for owners,
8 lessors, or shippers of tangible personal property which is
9 utilized by interstate carriers for hire for use as rolling
10 stock moving in interstate commerce so long as so used by
11 interstate carriers for hire, and equipment operated by a
12 telecommunications provider, licensed as a common carrier
13 by the Federal Communications Commission, which is
14 permanently installed in or affixed to aircraft moving in
15 interstate commerce.

16 (4a-5) on and after July 1, 2003 and through June 30,
17 2004, a sale or transfer of a motor vehicle of the second
18 division with a gross vehicle weight in excess of 8,000
19 pounds as an incident to the rendering of service if that
20 motor vehicle is subject to the commercial distribution fee
21 imposed under Section 3-815.1 of the Illinois Vehicle Code.
22 Beginning on July 1, 2004 and through June 30, 2005, the
23 use in this State of motor vehicles of the second division:
24 (i) with a gross vehicle weight rating in excess of 8,000
25 pounds; (ii) that are subject to the commercial
26 distribution fee imposed under Section 3-815.1 of the

1 Illinois Vehicle Code; and (iii) that are primarily used
2 for commercial purposes. Through June 30, 2005, this
3 exemption applies to repair and replacement parts added
4 after the initial purchase of such a motor vehicle if that
5 motor vehicle is used in a manner that would qualify for
6 the rolling stock exemption otherwise provided for in this
7 Act. For purposes of this paragraph, "used for commercial
8 purposes" means the transportation of persons or property
9 in furtherance of any commercial or industrial enterprise
10 whether for-hire or not.

11 (5) a sale or transfer of machinery and equipment used
12 primarily in the process of the manufacturing or
13 assembling, either in an existing, an expanded or a new
14 manufacturing facility, of tangible personal property for
15 wholesale or retail sale or lease, whether such sale or
16 lease is made directly by the manufacturer or by some other
17 person, whether the materials used in the process are owned
18 by the manufacturer or some other person, or whether such
19 sale or lease is made apart from or as an incident to the
20 seller's engaging in a service occupation and the
21 applicable tax is a Service Use Tax or Service Occupation
22 Tax, rather than Use Tax or Retailers' Occupation Tax.

23 (5a) the repairing, reconditioning or remodeling, for
24 a common carrier by rail, of tangible personal property
25 which belongs to such carrier for hire, and as to which
26 such carrier receives the physical possession of the

1 repaired, reconditioned or remodeled item of tangible
2 personal property in Illinois, and which such carrier
3 transports, or shares with another common carrier in the
4 transportation of such property, out of Illinois on a
5 standard uniform bill of lading showing the person who
6 repaired, reconditioned or remodeled the property to a
7 destination outside Illinois, for use outside Illinois.

8 (5b) a sale or transfer of tangible personal property
9 which is produced by the seller thereof on special order in
10 such a way as to have made the applicable tax the Service
11 Occupation Tax or the Service Use Tax, rather than the
12 Retailers' Occupation Tax or the Use Tax, for an interstate
13 carrier by rail which receives the physical possession of
14 such property in Illinois, and which transports such
15 property, or shares with another common carrier in the
16 transportation of such property, out of Illinois on a
17 standard uniform bill of lading showing the seller of the
18 property as the shipper or consignor of such property to a
19 destination outside Illinois, for use outside Illinois.

20 (6) until July 1, 2003, a sale or transfer of
21 distillation machinery and equipment, sold as a unit or kit
22 and assembled or installed by the retailer, which machinery
23 and equipment is certified by the user to be used only for
24 the production of ethyl alcohol that will be used for
25 consumption as motor fuel or as a component of motor fuel
26 for the personal use of such user and not subject to sale

1 or resale.

2 (7) at the election of any serviceman not required to
3 be otherwise registered as a retailer under Section 2a of
4 the Retailers' Occupation Tax Act, made for each fiscal
5 year sales of service in which the aggregate annual cost
6 price of tangible personal property transferred as an
7 incident to the sales of service is less than 35%, or 75%
8 in the case of servicemen transferring prescription drugs
9 or servicemen engaged in graphic arts production, of the
10 aggregate annual total gross receipts from all sales of
11 service. The purchase of such tangible personal property by
12 the serviceman shall be subject to tax under the Retailers'
13 Occupation Tax Act and the Use Tax Act. However, if a
14 primary serviceman who has made the election described in
15 this paragraph subcontracts service work to a secondary
16 serviceman who has also made the election described in this
17 paragraph, the primary serviceman does not incur a Use Tax
18 liability if the secondary serviceman (i) has paid or will
19 pay Use Tax on his or her cost price of any tangible
20 personal property transferred to the primary serviceman
21 and (ii) certifies that fact in writing to the primary
22 serviceman.

23 Tangible personal property transferred incident to the
24 completion of a maintenance agreement is exempt from the tax
25 imposed pursuant to this Act.

26 Exemption (5) also includes machinery and equipment used in

1 the general maintenance or repair of such exempt machinery and
2 equipment or for in-house manufacture of exempt machinery and
3 equipment. For the purposes of exemption (5), each of these
4 terms shall have the following meanings: (1) "manufacturing
5 process" shall mean the production of any article of tangible
6 personal property, whether such article is a finished product
7 or an article for use in the process of manufacturing or
8 assembling a different article of tangible personal property,
9 by procedures commonly regarded as manufacturing, processing,
10 fabricating, or refining which changes some existing material
11 or materials into a material with a different form, use or
12 name. In relation to a recognized integrated business composed
13 of a series of operations which collectively constitute
14 manufacturing, or individually constitute manufacturing
15 operations, the manufacturing process shall be deemed to
16 commence with the first operation or stage of production in the
17 series, and shall not be deemed to end until the completion of
18 the final product in the last operation or stage of production
19 in the series; and further, for purposes of exemption (5),
20 photoprocessing is deemed to be a manufacturing process of
21 tangible personal property for wholesale or retail sale; (2)
22 "assembling process" shall mean the production of any article
23 of tangible personal property, whether such article is a
24 finished product or an article for use in the process of
25 manufacturing or assembling a different article of tangible
26 personal property, by the combination of existing materials in

1 a manner commonly regarded as assembling which results in a
2 material of a different form, use or name; (3) "machinery"
3 shall mean major mechanical machines or major components of
4 such machines contributing to a manufacturing or assembling
5 process; and (4) "equipment" shall include any independent
6 device or tool separate from any machinery but essential to an
7 integrated manufacturing or assembly process; including
8 computers used primarily in a manufacturer's computer assisted
9 design, computer assisted manufacturing (CAD/CAM) system; or
10 any subunit or assembly comprising a component of any machinery
11 or auxiliary, adjunct or attachment parts of machinery, such as
12 tools, dies, jigs, fixtures, patterns and molds; or any parts
13 which require periodic replacement in the course of normal
14 operation; but shall not include hand tools. Equipment includes
15 chemicals or chemicals acting as catalysts but only if the
16 chemicals or chemicals acting as catalysts effect a direct and
17 immediate change upon a product being manufactured or assembled
18 for wholesale or retail sale or lease. The purchaser of such
19 machinery and equipment who has an active resale registration
20 number shall furnish such number to the seller at the time of
21 purchase. The user of such machinery and equipment and tools
22 without an active resale registration number shall prepare a
23 certificate of exemption for each transaction stating facts
24 establishing the exemption for that transaction, which
25 certificate shall be available to the Department for inspection
26 or audit. The Department shall prescribe the form of the

1 certificate.

2 Any informal rulings, opinions or letters issued by the
3 Department in response to an inquiry or request for any opinion
4 from any person regarding the coverage and applicability of
5 exemption (5) to specific devices shall be published,
6 maintained as a public record, and made available for public
7 inspection and copying. If the informal ruling, opinion or
8 letter contains trade secrets or other confidential
9 information, where possible the Department shall delete such
10 information prior to publication. Whenever such informal
11 rulings, opinions, or letters contain any policy of general
12 applicability, the Department shall formulate and adopt such
13 policy as a rule in accordance with the provisions of the
14 Illinois Administrative Procedure Act.

15 On and after July 1, 1987, no entity otherwise eligible
16 under exemption (3) of this Section shall make tax free
17 purchases unless it has an active exemption identification
18 number issued by the Department.

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

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

26 "Sale at retail" means "sale at retail" as defined in the

1 Retailers' Occupation Tax Act.

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

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

7 1. having or maintaining within this State, directly or
8 by a subsidiary, an office, distribution house, sales
9 house, warehouse or other place of business, or any agent
10 or other representative operating within this State under
11 the authority of the serviceman or its subsidiary,
12 irrespective of whether such place of business or agent or
13 other representative is located here permanently or
14 temporarily, or whether such serviceman or subsidiary is
15 licensed to do business in this State;

16 1.1. beginning July 1, 2011, having a contract with a
17 person located in this State under which the person, for a
18 commission or other consideration based on the sale of
19 service by the serviceman, directly or indirectly refers
20 potential customers to the serviceman by a link on the
21 person's Internet website. The provisions of this
22 paragraph 1.1 shall apply only if the cumulative gross
23 receipts from sales of service by the serviceman to
24 customers who are referred to the serviceman by all persons
25 in this State under such contracts exceed \$10,000 during
26 the preceding 4 quarterly periods ending on the last day of

1 March, June, September, and December;

2 1.2. beginning July 1, 2011, having a contract with a
3 person located in this State under which:

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

9 B. the serviceman provides a commission or other
10 consideration to the person located in this State based
11 upon the sale of services by the serviceman.

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

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

23 3. pursuant to a contract with a broadcaster or
24 publisher located in this State, soliciting orders for
25 tangible personal property by means of advertising which is
26 disseminated primarily to consumers located in this State

1 and only secondarily to bordering jurisdictions;

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

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

12 6. having a franchisee or licensee operating under its
13 trade name if the franchisee or licensee is required to
14 collect the tax under this Section;

15 7. pursuant to a contract with a cable television
16 operator located in this State, soliciting orders for
17 tangible personal property by means of advertising which is
18 transmitted or distributed over a cable television system
19 in this State; or

20 8. engaging in activities in Illinois, which
21 activities in the state in which the supply business
22 engaging in such activities is located would constitute
23 maintaining a place of business in that state.

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

25 Section 15. The Retailers' Occupation Tax Act is amended by

1 changing Section 1 as follows:

2 (35 ILCS 120/1) (from Ch. 120, par. 440)

3 Sec. 1. Definitions. "Sale at retail" means any transfer of
4 the ownership of or title to tangible personal property to a
5 purchaser, for the purpose of use or consumption, and not for
6 the purpose of resale in any form as tangible personal property
7 to the extent not first subjected to a use for which it was
8 purchased, for a valuable consideration: Provided that the
9 property purchased is deemed to be purchased for the purpose of
10 resale, despite first being used, to the extent to which it is
11 resold as an ingredient of an intentionally produced product or
12 byproduct of manufacturing. For this purpose, slag produced as
13 an incident to manufacturing pig iron or steel and sold is
14 considered to be an intentionally produced byproduct of
15 manufacturing. Transactions whereby the possession of the
16 property is transferred but the seller retains the title as
17 security for payment of the selling price shall be deemed to be
18 sales.

19 "Sale at retail" shall be construed to include any transfer
20 of the ownership of or title to tangible personal property to a
21 purchaser, for use or consumption by any other person to whom
22 such purchaser may transfer the tangible personal property
23 without a valuable consideration, and to include any transfer,
24 whether made for or without a valuable consideration, for
25 resale in any form as tangible personal property unless made in

1 compliance with Section 2c of this Act.

2 Sales of tangible personal property, which property, to the
3 extent not first subjected to a use for which it was purchased,
4 as an ingredient or constituent, goes into and forms a part of
5 tangible personal property subsequently the subject of a "Sale
6 at retail", are not sales at retail as defined in this Act:
7 Provided that the property purchased is deemed to be purchased
8 for the purpose of resale, despite first being used, to the
9 extent to which it is resold as an ingredient of an
10 intentionally produced product or byproduct of manufacturing.

11 "Sale at retail" shall be construed to include any Illinois
12 florist's sales transaction in which the purchase order is
13 received in Illinois by a florist and the sale is for use or
14 consumption, but the Illinois florist has a florist in another
15 state deliver the property to the purchaser or the purchaser's
16 donee in such other state.

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

1 and wrapping or packaging materials that are transferred to
2 customers as part of the sale of food or beverages in the
3 ordinary course of business.

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 tangible personal property.

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

1 or educational purposes, whether or not such activities are
2 open to the public.

3 A person who is the recipient of a grant or contract under
4 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
5 serves meals to participants in the federal Nutrition Program
6 for the Elderly in return for contributions established in
7 amount by the individual participant pursuant to a schedule of
8 suggested fees as provided for in the federal Act is not
9 engaged in the business of selling tangible personal property
10 at retail with respect to such transactions.

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

14 "Reseller of motor fuel" means any person engaged in the
15 business of selling or delivering or transferring title of
16 motor fuel to another person other than for use or consumption.
17 No person shall act as a reseller of motor fuel within this
18 State without first being registered as a reseller pursuant to
19 Section 2c or a retailer pursuant to Section 2a.

20 "Selling price" or the "amount of sale" means the
21 consideration for a sale valued in money whether received in
22 money or otherwise, including cash, credits, property, other
23 than as hereinafter provided, and services, but not including
24 the value of or credit given for traded-in tangible personal
25 property where the item that is traded-in is of like kind and
26 character as that which is being sold, and shall be determined

1 without any deduction on account of the cost of the property
2 sold, the cost of materials used, labor or service cost or any
3 other expense whatsoever, but does not include charges that are
4 added to prices by sellers on account of the seller's tax
5 liability under this Act, or on account of the seller's duty to
6 collect, from the purchaser, the tax that is imposed by the Use
7 Tax Act, or, except as otherwise provided with respect to any
8 cigarette tax imposed by a home rule unit, on account of the
9 seller's tax liability under any local occupation tax
10 administered by the Department, or, except as otherwise
11 provided with respect to any cigarette tax imposed by a home
12 rule unit on account of the seller's duty to collect, from the
13 purchasers, the tax that is imposed under any local use tax
14 administered by the Department. Effective December 1, 1985,
15 "selling price" shall include charges that are added to prices
16 by sellers on account of the seller's tax liability under the
17 Cigarette Tax Act, on account of the sellers' duty to collect,
18 from the purchaser, the tax imposed under the Cigarette Use Tax
19 Act, and on account of the seller's duty to collect, from the
20 purchaser, any cigarette tax imposed by a home rule unit. On
21 and after January 1, 2008, with respect to sales of cellular
22 telephones or other wireless cellular devices, the term
23 "selling price" does not include consideration paid by a
24 third-party cellular service provider.

25 The phrase "like kind and character" shall be liberally
26 construed (including but not limited to any form of motor

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

7 "Gross receipts" from the sales of tangible personal
8 property at retail means the total selling price or the amount
9 of such sales, as hereinbefore defined. In the case of charge
10 and time sales, the amount thereof shall be included only as
11 and when payments are received by the seller. Receipts or other
12 consideration derived by a seller from the sale, transfer or
13 assignment of accounts receivable to a wholly owned subsidiary
14 will not be deemed payments prior to the time the purchaser
15 makes payment on such accounts. With respect to sales of
16 cellular telephones or other wireless cellular devices, the
17 term "gross receipts" does not include consideration paid by a
18 third-party cellular service provider.

19 "Wireless cellular device" means any wireless
20 communication device that provides for voice or data
21 communication between 2 or more parties, including, but not
22 limited to, a text messaging device or other device that sends
23 or receives messages or electronic data.

24 "Department" means the Department of Revenue.

25 "Person" means any natural individual, firm, partnership,
26 association, joint stock company, joint adventure, public or

1 private corporation, limited liability company, or a receiver,
2 executor, trustee, guardian or other representative appointed
3 by order of any court.

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 constitute engaging in a
9 business of selling such tangible personal property at retail
10 within the meaning of this Act; provided that any person who is
11 engaged in a business which is not subject to the tax imposed
12 by this Act because of involving the sale of or a contract to
13 sell real estate or a construction contract to improve real
14 estate or a construction contract to engineer, install, and
15 maintain an integrated system of products, but who, in the
16 course of conducting such business, transfers tangible
17 personal property to users or consumers in the finished form in
18 which it was purchased, and which does not become real estate
19 or was not engineered and installed, under any provision of a
20 construction contract or real estate sale or real estate sales
21 agreement entered into with some other person arising out of or
22 because of such nontaxable business, is engaged in the business
23 of selling tangible personal property at retail to the extent
24 of the value of the tangible personal property so transferred.
25 If, in such a transaction, a separate charge is made for the
26 tangible personal property so transferred, the value of such

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

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

24 Persons who engage in the business of transferring tangible
25 personal property upon the redemption of trading stamps are
26 engaged in the business of selling such property at retail and

1 shall be liable for and shall pay the tax imposed by this Act
2 on the basis of the retail value of the property transferred
3 upon redemption of such stamps.

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

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.