

1 AN ACT in relation to taxes, amending named Acts.

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  
5 Section 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  
8 right or power over tangible personal property incident to  
9 the ownership of that property, except that it does not  
10 include the sale of such property in any form as tangible  
11 personal property in the regular course of business to the  
12 extent that such property is not first subjected to a use for  
13 which it was purchased, and does not include the use of such  
14 property by its owner for demonstration purposes: Provided  
15 that the property purchased is deemed to be purchased for the  
16 purpose of resale, despite first being used, to the extent to  
17 which it is resold as an ingredient of an intentionally  
18 produced product or by-product of manufacturing. "Use" does  
19 not mean the demonstration use or interim use of tangible  
20 personal property by a retailer before he sells that tangible  
21 personal property. For watercraft or aircraft, if the period  
22 of demonstration use or interim use by the retailer exceeds  
23 18 months, the retailer shall pay on the retailers' original  
24 cost price the tax imposed by this Act, and no credit for  
25 that tax is permitted if the watercraft or aircraft is  
26 subsequently sold by the retailer. "Use" does not mean the  
27 physical incorporation of tangible personal property, to the  
28 extent not first subjected to a use for which it was  
29 purchased, as an ingredient or constituent, into other  
30 tangible personal property (a) which is sold in the regular  
31 course of business or (b) which the person incorporating such

1 ingredient or constituent therein has undertaken at the time  
2 of such purchase to cause to be transported in interstate  
3 commerce to destinations outside the State of Illinois:  
4 Provided that the property purchased is deemed to be  
5 purchased for the purpose of resale, despite first being  
6 used, to the extent to which it is resold as an ingredient of  
7 an intentionally produced product or by-product of  
8 manufacturing.

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

13 "Purchase at retail" means the acquisition of the  
14 ownership of or title to tangible personal property through a  
15 sale at retail.

16 "Purchaser" means anyone who, through a sale at retail,  
17 acquires the ownership of tangible personal property for a  
18 valuable consideration.

19 "Sale at retail" means any transfer of the ownership of  
20 or title to tangible personal property to a purchaser, for  
21 the purpose of use, and not for the purpose of resale in any  
22 form as tangible personal property to the extent not first  
23 subjected to a use for which it was purchased, for a valuable  
24 consideration: Provided that the property purchased is deemed  
25 to be purchased for the purpose of resale, despite first  
26 being used, to the extent to which it is resold as an  
27 ingredient of an intentionally produced product or by-product  
28 of manufacturing. For this purpose, slag produced as an  
29 incident to manufacturing pig iron or steel and sold is  
30 considered to be an intentionally produced by-product of  
31 manufacturing. "Sale at retail" includes any such transfer  
32 made for resale unless made in compliance with Section 2c of  
33 the Retailers' Occupation Tax Act, as incorporated by  
34 reference into Section 12 of this Act. Transactions whereby

1 the possession of the property is transferred but the seller  
2 retains the title as security for payment of the selling  
3 price are sales.

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

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

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

27 "Selling price" means the consideration for a sale valued  
28 in money whether received in money or otherwise, including  
29 cash, credits, property other than as hereinafter provided,  
30 and services, but not including the value of or credit given  
31 for traded-in tangible personal property where the item that  
32 is traded-in is of like kind and character as that which is  
33 being sold, and shall be determined without any deduction on  
34 account of the cost of the property sold, the cost of

1 materials used, labor or service cost or any other expense  
2 whatsoever, but does not include interest or finance charges  
3 which appear as separate items on the bill of sale or sales  
4 contract nor charges that are added to prices by sellers on  
5 account of the seller's tax liability under the "Retailers'  
6 Occupation Tax Act", or on account of the seller's duty to  
7 collect, from the purchaser, the tax that is imposed by this  
8 Act, or on account of the seller's tax liability under  
9 Section 8-11-1 of the Illinois Municipal Code, as heretofore  
10 and hereafter amended, or on account of the seller's tax  
11 liability under the "County Retailers' Occupation Tax Act".  
12 Effective December 1, 1985, "selling price" shall include  
13 charges that are added to prices by sellers on account of the  
14 seller's tax liability under the Cigarette Tax Act, on  
15 account of the seller's duty to collect, from the purchaser,  
16 the tax imposed under the Cigarette Use Tax Act, and on  
17 account of the seller's duty to collect, from the purchaser,  
18 any cigarette tax imposed by a home rule unit.

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

27 "Department" means the Department of Revenue.

28 "Person" means any natural individual, firm, partnership,  
29 association, joint stock company, joint adventure, public or  
30 private corporation, limited liability company, or a  
31 receiver, executor, trustee, guardian or other representative  
32 appointed by order of any court.

33 "Retailer" means and includes every person engaged in the  
34 business of making sales at retail as defined in this

1 Section.

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

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

33 A person who is the recipient of a grant or contract  
34 under Title VII of the Older Americans Act of 1965 (P.L.

1 92-258) and serves meals to participants in the federal  
2 Nutrition Program for the Elderly in return for contributions  
3 established in amount by the individual participant pursuant  
4 to a schedule of suggested fees as provided for in the  
5 federal Act is not a retailer under this Act with respect to  
6 such transactions.

7 Persons who engage in the business of transferring  
8 tangible personal property upon the redemption of trading  
9 stamps are retailers hereunder when engaged in such business.

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

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

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

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

28 3. A retailer, pursuant to a contract with a  
29 broadcaster or publisher located in this State,  
30 soliciting orders for tangible personal property by means  
31 of advertising which is disseminated primarily to  
32 consumers located in this State and only secondarily to  
33 bordering jurisdictions.

34 4. A retailer soliciting orders for tangible

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

7 5. A retailer that is owned or controlled by the  
 8 same interests that own or control any retailer engaging  
 9 in business in the same or similar line of business in  
 10 this State.

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

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

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

24 "Bulk vending machine" means a ~~nonelectrically--operated~~  
 25 vending machine, containing unsorted confections, nuts, toys,  
 26 or other items designed primarily to be used or played with  
 27 by children ~~or other merchandise~~ which, when a coin or coins  
 28 of a denomination not larger than \$0.50 ~~are one-cent-is~~  
 29 inserted, are dispensed in equal portions, at random and  
 30 without selection by the customer.

31 (Source: P.A. 90-289, eff. 8-1-97.)

32 Section 10. The Retailers' Occupation Tax Act is amended  
 33 by changing Section 1 as follows:



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

2 Sec. 1. Definitions. "Sale at retail" means any  
3 transfer of the ownership of or title to tangible personal  
4 property to a purchaser, for the purpose of use or  
5 consumption, and not for the purpose of resale in any form as  
6 tangible personal property to the extent not first subjected  
7 to a use for which it was purchased, for a valuable  
8 consideration: Provided that the property purchased is  
9 deemed to be purchased for the purpose of resale, despite  
10 first being used, to the extent to which it is resold as an  
11 ingredient of an intentionally produced product or byproduct  
12 of manufacturing. For this purpose, slag produced as an  
13 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  
18 be sales.

19 "Sale at retail" shall be construed to include any  
20 transfer of the ownership of or title to tangible personal  
21 property to a purchaser, for use or consumption by any other  
22 person to whom such purchaser may transfer the tangible  
23 personal property without a valuable consideration, and to  
24 include any transfer, whether made for or without a valuable  
25 consideration, for resale in any form as tangible personal  
26 property unless made in compliance with Section 2c of this  
27 Act.

28 Sales of tangible personal property, which property, to  
29 the extent not first subjected to a use for which it was  
30 purchased, as an ingredient or constituent, goes into and  
31 forms a part of tangible personal property subsequently the  
32 subject of a "Sale at retail", are not sales at retail as  
33 defined in this Act: Provided that the property purchased is  
34 deemed to be purchased for the purpose of resale, despite

1 first being used, to the extent to which it is resold as an  
2 ingredient of an intentionally produced product or byproduct  
3 of manufacturing.

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

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

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

27 A person whose activities are organized and conducted  
28 primarily as a not-for-profit service enterprise, and who  
29 engages in selling tangible personal property at retail  
30 (whether to the public or merely to members and their guests)  
31 is engaged in the business of selling tangible personal  
32 property at retail with respect to such transactions,  
33 excepting only a person organized and operated exclusively  
34 for charitable, religious or educational purposes either (1),

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

14 A person who is the recipient of a grant or contract  
15 under Title VII of the Older Americans Act of 1965 (P.L.  
16 92-258) and serves meals to participants in the federal  
17 Nutrition Program for the Elderly in return for contributions  
18 established in amount by the individual participant pursuant  
19 to a schedule of suggested fees as provided for in the  
20 federal Act is not engaged in the business of selling  
21 tangible personal property at retail with respect to such  
22 transactions.

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

26 "Reseller of motor fuel" means any person engaged in the  
27 business of selling or delivering or transferring title of  
28 motor fuel to another person other than for use or  
29 consumption. No person shall act as a reseller of motor fuel  
30 within this State without first being registered as a  
31 reseller pursuant to Section 2c or a retailer pursuant to  
32 Section 2a.

33 "Selling price" or the "amount of sale" means the  
34 consideration for a sale valued in money whether received in

1 money or otherwise, including cash, credits, property, other  
2 than as hereinafter provided, and services, but not including  
3 the value of or credit given for traded-in tangible personal  
4 property where the item that is traded-in is of like kind and  
5 character as that which is being sold, and shall be  
6 determined without any deduction on account of the cost of  
7 the property sold, the cost of materials used, labor or  
8 service cost or any other expense whatsoever, but does not  
9 include charges that are added to prices by sellers on  
10 account of the seller's tax liability under this Act, or on  
11 account of the seller's duty to collect, from the purchaser,  
12 the tax that is imposed by the Use Tax Act, or on account of  
13 the seller's tax liability under Section 8-11-1 of the  
14 Illinois Municipal Code, as heretofore and hereafter amended,  
15 or on account of the seller's tax liability under the County  
16 Retailers' Occupation Tax Act, or on account of the seller's  
17 tax liability under the Home Rule Municipal Soft Drink  
18 Retailers' Occupation Tax, or on account of the seller's tax  
19 liability under any tax imposed under the "Regional  
20 Transportation Authority Act", approved December 12, 1973.  
21 Effective December 1, 1985, "selling price" shall include  
22 charges that are added to prices by sellers on account of the  
23 seller's tax liability under the Cigarette Tax Act, on  
24 account of the sellers' duty to collect, from the purchaser,  
25 the tax imposed under the Cigarette Use Tax Act, and on  
26 account of the seller's duty to collect, from the purchaser,  
27 any cigarette tax imposed by a home rule unit.

28 The phrase "like kind and character" shall be liberally  
29 construed (including but not limited to any form of motor  
30 vehicle for any form of motor vehicle, or any kind of farm or  
31 agricultural implement for any other kind of farm or  
32 agricultural implement), while not including a kind of item  
33 which, if sold at retail by that retailer, would be exempt  
34 from retailers' occupation tax and use tax as an isolated or

1 occasional sale.

2 "Gross receipts" from the sales of tangible personal  
3 property at retail means the total selling price or the  
4 amount of such sales, as hereinbefore defined. In the case  
5 of charge and time sales, the amount thereof shall be  
6 included only as and when payments are received by the  
7 seller. Receipts or other consideration derived by a seller  
8 from the sale, transfer or assignment of accounts receivable  
9 to a wholly owned subsidiary will not be deemed payments  
10 prior to the time the purchaser makes payment on such  
11 accounts.

12 "Department" means the Department of Revenue.

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

18 The isolated or occasional sale of tangible personal  
19 property at retail by a person who does not hold himself out  
20 as being engaged (or who does not habitually engage) in  
21 selling such tangible personal property at retail, or a sale  
22 through a bulk vending machine, does not constitute engaging  
23 in a business of selling such tangible personal property at  
24 retail within the meaning of this Act; provided that any  
25 person who is engaged in a business which is not subject to  
26 the tax imposed by this Act because of involving the sale of  
27 or a contract to sell real estate or a construction contract  
28 to improve real estate or a construction contract to  
29 engineer, install, and maintain an integrated system of  
30 products, but who, in the course of conducting such business,  
31 transfers tangible personal property to users or consumers in  
32 the finished form in which it was purchased, and which does  
33 not become real estate or was not engineered and installed,  
34 under any provision of a construction contract or real estate

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

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

32 Persons who engage in the business of transferring  
33 tangible personal property upon the redemption of trading  
34 stamps are engaged in the business of selling such property

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

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

11 (Source: P.A. 90-289, eff. 8-1-97.)

12 Section 99. Effective date. This Act takes effect on  
13 January 1, 2002.