



Sen. Donne E. Trotter

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1 AMENDMENT TO HOUSE BILL 7178

2 AMENDMENT NO. _____. Amend House Bill 7178 by replacing
3 everything after the enacting clause with the following:

4 "Section 3. The State Finance Act is amended by changing
5 Section 6z-45 as follows:

6 (30 ILCS 105/6z-45)

7 Sec. 6z-45. The School Infrastructure Fund.

8 (a) The School Infrastructure Fund is created as a special
9 fund in the State Treasury.

10 In addition to any other deposits authorized by law,
11 beginning January 1, 2000, on the first day of each month, or
12 as soon thereafter as may be practical, the State Treasurer and
13 State Comptroller shall transfer the sum of \$5,000,000 from the
14 General Revenue Fund to the School Infrastructure Fund;
15 provided, however, that no such transfers shall be made from
16 July 1, 2001 through June 30, 2003.

17 In addition to any other deposits authorized by this
18 Section or by any other law, beginning July 1, 2004, on the
19 first day of each month, or as soon thereafter as may be
20 practical, the State Treasurer and State Comptroller shall
21 transfer amounts as directed by the Governor up to the sum of
22 \$5,000,000 from the General Revenue Fund to the School
23 Infrastructure Fund.

24 (b) Subject to the transfer provisions set forth below,

1 money in the School Infrastructure Fund shall, if and when the
2 State of Illinois incurs any bonded indebtedness for the
3 construction of school improvements under the School
4 Construction Law, be set aside and used for the purpose of
5 paying and discharging annually the principal and interest on
6 that bonded indebtedness then due and payable, and for no other
7 purpose.

8 In addition to other transfers to the General Obligation
9 Bond Retirement and Interest Fund made pursuant to Section 15
10 of the General Obligation Bond Act, upon each delivery of bonds
11 issued for construction of school improvements under the School
12 Construction Law, the State Comptroller shall compute and
13 certify to the State Treasurer the total amount of principal
14 of, interest on, and premium, if any, on such bonds during the
15 then current and each succeeding fiscal year. With respect to
16 the interest payable on variable rate bonds, such
17 certifications shall be calculated at the maximum rate of
18 interest that may be payable during the fiscal year, after
19 taking into account any credits permitted in the related
20 indenture or other instrument against the amount of such
21 interest required to be appropriated for that period.

22 On or before the last day of each month, the State
23 Treasurer and State Comptroller shall transfer from the School
24 Infrastructure Fund to the General Obligation Bond Retirement
25 and Interest Fund an amount sufficient to pay the aggregate of
26 the principal of, interest on, and premium, if any, on the
27 bonds payable on their next payment date, divided by the number
28 of monthly transfers occurring between the last previous
29 payment date (or the delivery date if no payment date has yet
30 occurred) and the next succeeding payment date. Interest
31 payable on variable rate bonds shall be calculated at the
32 maximum rate of interest that may be payable for the relevant
33 period, after taking into account any credits permitted in the
34 related indenture or other instrument against the amount of

1 such interest required to be appropriated for that period.
2 Interest for which moneys have already been deposited into the
3 capitalized interest account within the General Obligation
4 Bond Retirement and Interest Fund shall not be included in the
5 calculation of the amounts to be transferred under this
6 subsection.

7 (c) The surplus, if any, in the School Infrastructure Fund
8 after the payment of principal and interest on that bonded
9 indebtedness then annually due shall, subject to
10 appropriation, be used as follows:

11 First - to make 3 payments to the School Technology
12 Revolving Loan Fund as follows:

13 Transfer of \$30,000,000 in fiscal year 1999;

14 Transfer of \$20,000,000 in fiscal year 2000; and

15 Transfer of \$10,000,000 in fiscal year 2001.

16 Second - to pay the expenses of the State Board of
17 Education and the Capital Development Board in administering
18 programs under the School Construction Law, the total expenses
19 not to exceed \$1,200,000 in any fiscal year.

20 Third - to pay any amounts due for grants for school
21 construction projects and debt service under the School
22 Construction Law.

23 Fourth - to pay any amounts due for grants for school
24 maintenance projects under the School Construction Law.

25 (Source: P.A. 92-11, eff. 6-11-01; 92-600, eff. 6-28-02; 93-9,
26 eff. 6-3-03.)

27 Section 5. The Use Tax Act is amended by changing Sections
28 2, 3, and 3-25 as follows:

29 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

30 Sec. 2. "Use" means the exercise by any person of any right
31 or power over tangible personal property incident to the
32 ownership of that property, except that it does not include the

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

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

34 "Purchase at retail" means the acquisition of the ownership

1 of or title to tangible personal property through a sale at
2 retail.

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

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

24 "Sale at retail" shall also be construed to include any
25 Illinois florist's sales transaction in which the purchase
26 order is received in Illinois by a florist and the sale is for
27 use or consumption, but the Illinois florist has a florist in
28 another state deliver the property to the purchaser or the
29 purchaser's donee in such other state.

30 Nonreusable tangible personal property that is used by
31 persons engaged in the business of operating a restaurant,
32 cafeteria, or drive-in is a sale for resale when it is
33 transferred to customers in the ordinary course of business as
34 part of the sale of food or beverages and is used to deliver,

1 package, or consume food or beverages, regardless of where
2 consumption of the food or beverages occurs. Examples of those
3 items include, but are not limited to nonreusable, paper and
4 plastic cups, plates, baskets, boxes, sleeves, buckets or other
5 containers, utensils, straws, placemats, napkins, doggie bags,
6 and wrapping or packaging materials that are transferred to
7 customers as part of the sale of food or beverages in the
8 ordinary course of business.

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

13 Beginning July 1, 2004, "sale at retail" includes licenses
14 of prewritten computer software and any other transfer, for
15 consideration, of the possession or right to use prewritten
16 computer software, no matter how the transaction is
17 characterized by the parties.

18 "Selling price" means the consideration for a sale valued
19 in money whether received in money or otherwise, including
20 cash, credits, property other than as hereinafter provided, and
21 services, but not including the value of or credit given for
22 traded-in tangible personal property where the item that is
23 traded-in is of like kind and character as that which is being
24 sold, and shall be determined without any deduction on account
25 of the cost of the property sold, the cost of materials used,
26 labor or service cost or any other expense whatsoever, but does
27 not include interest or finance charges which appear as
28 separate items on the bill of sale or sales contract nor
29 charges that are added to prices by sellers on account of the
30 seller's tax liability under the "Retailers' Occupation Tax
31 Act", or on account of the seller's duty to collect, from the
32 purchaser, the tax that is imposed by this Act, or on account
33 of the seller's tax liability under Section 8-11-1 of the
34 Illinois Municipal Code, as heretofore and hereafter amended,

1 or on account of the seller's tax liability under the "County
2 Retailers' Occupation Tax Act". Effective December 1, 1985,
3 "selling price" shall include charges that are added to prices
4 by sellers on account of the seller's tax liability under the
5 Cigarette Tax Act, on account of the seller's duty to collect,
6 from the purchaser, the tax imposed under the Cigarette Use Tax
7 Act, and on account of the seller's duty to collect, from the
8 purchaser, any cigarette tax imposed by a home rule unit.

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

17 "Department" means the Department of Revenue.

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

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

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

1 property that are sold at retail.

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

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

28 Persons who engage in the business of transferring tangible
29 personal property upon the redemption of trading stamps are
30 retailers hereunder when engaged in such business.

31 The isolated or occasional sale of tangible personal
32 property at retail by a person who does not hold himself out as
33 being engaged (or who does not habitually engage) in selling
34 such tangible personal property at retail or a sale through a

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

21 "Retailer maintaining a place of business in this State",
22 or any like term, means and includes any of the following
23 retailers:

24 1. A retailer having or maintaining within this State,
25 directly or by a subsidiary, an office, distribution house,
26 sales house, warehouse or other place of business, or any
27 agent or other representative operating within this State
28 under the authority of the retailer or its subsidiary,
29 irrespective of whether such place of business or agent or
30 other representative is located here permanently or
31 temporarily, or whether such retailer or subsidiary is
32 licensed to do business in this State. However, the
33 ownership of property that is located at the premises of a
34 printer with which the retailer has contracted for printing

1 and that consists of the final printed product, property
2 that becomes a part of the final printed product, or copy
3 from which the printed product is produced shall not result
4 in the retailer being deemed to have or maintain an office,
5 distribution house, sales house, warehouse, or other place
6 of business within this State.

7 2. A retailer soliciting orders for tangible personal
8 property by means of a telecommunication or television
9 shopping system (which utilizes toll free numbers) which is
10 intended by the retailer to be broadcast by cable
11 television or other means of broadcasting, to consumers
12 located in this State.

13 3. A retailer, pursuant to a contract with a
14 broadcaster or publisher located in this State, soliciting
15 orders for tangible personal property by means of
16 advertising which is disseminated primarily to consumers
17 located in this State and only secondarily to bordering
18 jurisdictions.

19 4. A retailer soliciting orders for tangible personal
20 property by mail if the solicitations are substantial and
21 recurring and if the retailer benefits from any banking,
22 financing, debt collection, telecommunication, or
23 marketing activities occurring in this State or benefits
24 from the location in this State of authorized installation,
25 servicing, or repair facilities.

26 5. A retailer that is owned or controlled by the same
27 interests that own or control any retailer engaging in
28 business in the same or similar line of business in this
29 State.

30 6. A retailer having a franchisee or licensee operating
31 under its trade name if the franchisee or licensee is
32 required to collect the tax under this Section.

33 7. A retailer, pursuant to a contract with a cable
34 television operator located in this State, soliciting

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

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

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

14 (Source: P.A. 92-213, eff. 1-1-02.)

15 (35 ILCS 105/3) (from Ch. 120, par. 439.3)

16 Sec. 3. Tax imposed. A tax is imposed upon the privilege of
17 using in this State tangible personal property purchased at
18 retail from a retailer, including computer software, and
19 including photographs, negatives, and positives that are the
20 product of photoprocessing, but not including products of
21 photoprocessing produced for use in motion pictures for
22 commercial exhibition. Beginning January 1, 2001, prepaid
23 telephone calling arrangements shall be considered tangible
24 personal property subject to the tax imposed under this Act
25 regardless of the form in which those arrangements may be
26 embodied, transmitted, or fixed by any method now known or
27 hereafter developed. Beginning July 1, 2004, computer software
28 subject to tax under this Act includes licenses of prewritten
29 computer software and any other transfer, for consideration, of
30 the possession or right to use prewritten computer software, no
31 matter how the transaction is characterized by the parties.

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

1 (35 ILCS 105/3-25) (from Ch. 120, par. 439.3-25)

2 Sec. 3-25. Computer software; prewritten computer
3 software.

4 (a) For the purposes of this Act, "computer software" means
5 a set of statements, data, or instructions to be used directly
6 or indirectly in a computer in order to bring about a certain
7 result in any form in which those statements, data, or
8 instructions may be embodied, transmitted, or fixed, by any
9 method now known or hereafter developed, regardless of whether
10 the statements, data, or instructions are capable of being
11 perceived by or communicated to humans, and includes prewritten
12 or canned software that is held for repeated sale or lease, and
13 all associated documentation and materials, if any, whether
14 contained on magnetic tapes, discs, cards, or other devices or
15 media, but does not include (i) until July 1, 2004, software
16 that is adapted to specific individualized requirements of a
17 purchaser, custom-made and modified software designed for a
18 particular or limited use by a purchaser, or (ii) software used
19 to operate exempt machinery and equipment used in the process
20 of manufacturing or assembling tangible personal property for
21 wholesale or retail sale or lease.

22 (b) Beginning on July 1, 2004, "prewritten computer
23 software" means computer software, including upgrades, that is
24 not designed and developed by the author or other creator to
25 the specifications of a specific purchaser. The combining of 2
26 or more "prewritten computer software" programs or prewritten
27 portions thereof does not cause the combination to be other
28 than "prewritten computer software". "Prewritten computer
29 software" includes software designed and developed by the
30 author or other creator to the specifications of a specific
31 purchaser when it is sold to a person other than the specific
32 purchaser. When a person modifies or enhances computer software
33 of which the person is not the author or creator, the person
34 shall be deemed to be the author or creator only of that

1 person's modifications or enhancements. "Prewritten computer
2 software" or a prewritten portion thereof that is modified or
3 enhanced to any degree, when the modification or enhancement
4 according to Department rules is designed and developed to the
5 specifications of a specific purchaser, remains "prewritten
6 computer software", except that when there is a reasonable
7 separately stated charge or an invoice or other statement of
8 the price given to the purchaser for the modification or
9 enhancement, the modification or enhancement does not
10 constitute "prewritten computer software".

11 For the purposes of this Act, computer software shall be
12 considered to be tangible personal property.

13 (Source: P.A. 91-51, eff. 6-30-99.)

14 Section 10. The Service Use Tax Act is amended by changing
15 Sections 2 and 3-25 as follows:

16 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

17 Sec. 2. "Use" means the exercise by any person of any right
18 or power over tangible personal property incident to the
19 ownership of that property, but does not include the sale or
20 use for demonstration by him of that property in any form as
21 tangible personal property in the regular course of business.
22 "Use" does not mean the interim use of tangible personal
23 property nor the physical incorporation of tangible personal
24 property, as an ingredient or constituent, into other tangible
25 personal property, (a) which is sold in the regular course of
26 business or (b) which the person incorporating such ingredient
27 or constituent therein has undertaken at the time of such
28 purchase to cause to be transported in interstate commerce to
29 destinations outside the State of Illinois. Beginning July 1,
30 2004, the use of licenses of prewritten computer software and
31 any other transfer, for consideration, of the possession or
32 right to use prewritten computer software, no matter how the

1 transaction is characterized by the parties, is considered a
2 use of tangible personal property under this Act.

3 "Purchased from a serviceman" means the acquisition of the
4 ownership of, or title to, tangible personal property through a
5 sale of service.

6 "Purchaser" means any person who, through a sale of
7 service, acquires the ownership of, or title to, any tangible
8 personal property.

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

21 "Selling price" means the consideration for a sale valued
22 in money whether received in money or otherwise, including
23 cash, credits and service, and shall be determined without any
24 deduction on account of the serviceman's cost of the property
25 sold, the cost of materials used, labor or service cost or any
26 other expense whatsoever, but does not include interest or
27 finance charges which appear as separate items on the bill of
28 sale or sales contract nor charges that are added to prices by
29 sellers on account of the seller's duty to collect, from the
30 purchaser, the tax that is imposed by this Act.

31 "Department" means the Department of Revenue.

32 "Person" means any natural individual, firm, partnership,
33 association, joint stock company, joint venture, public or
34 private corporation, limited liability company, and any

1 receiver, executor, trustee, guardian or other representative
2 appointed by order of any court.

3 "Sale of service" means any transaction except:

4 (1) a retail sale of tangible personal property taxable
5 under the Retailers' Occupation Tax Act or under the Use
6 Tax Act.

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

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

24 (4) a sale or transfer of tangible personal property as
25 an incident to the rendering of service for interstate
26 carriers for hire for use as rolling stock moving in
27 interstate commerce or by lessors under a lease of one year
28 or longer, executed or in effect at the time of purchase of
29 personal property, to interstate carriers for hire for use
30 as rolling stock moving in interstate commerce so long as
31 so used by such interstate carriers for hire, and equipment
32 operated by a telecommunications provider, licensed as a
33 common carrier by the Federal Communications Commission,
34 which is permanently installed in or affixed to aircraft

1 moving in interstate commerce.

2 (4a) a sale or transfer of tangible personal property
3 as an incident to the rendering of service for owners,
4 lessors, or shippers of tangible personal property which is
5 utilized by interstate carriers for hire for use as rolling
6 stock moving in interstate commerce so long as so used by
7 interstate carriers for hire, and equipment operated by a
8 telecommunications provider, licensed as a common carrier
9 by the Federal Communications Commission, which is
10 permanently installed in or affixed to aircraft moving in
11 interstate commerce.

12 (4a-5) on and after July 1, 2003, a sale or transfer of
13 a motor vehicle of the second division with a gross vehicle
14 weight in excess of 8,000 pounds as an incident to the
15 rendering of service if that motor vehicle is subject to
16 the commercial distribution fee imposed under Section
17 3-815.1 of the Illinois Vehicle Code. This exemption
18 applies to repair and replacement parts added after the
19 initial purchase of such a motor vehicle if that motor
20 vehicle is used in a manner that would qualify for the
21 rolling stock exemption otherwise provided for in this Act.

22 (5) a sale or transfer of machinery and equipment used
23 primarily in the process of the manufacturing or
24 assembling, either in an existing, an expanded or a new
25 manufacturing facility, of tangible personal property for
26 wholesale or retail sale or lease, whether such sale or
27 lease is made directly by the manufacturer or by some other
28 person, whether the materials used in the process are owned
29 by the manufacturer or some other person, or whether such
30 sale or lease is made apart from or as an incident to the
31 seller's engaging in a service occupation and the
32 applicable tax is a Service Use Tax or Service Occupation
33 Tax, rather than Use Tax or Retailers' Occupation Tax.

34 (5a) the repairing, reconditioning or remodeling, for

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

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

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

31 (7) at the election of any serviceman not required to
32 be otherwise registered as a retailer under Section 2a of
33 the Retailers' Occupation Tax Act, made for each fiscal
34 year sales of service in which the aggregate annual cost

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

18 Tangible personal property transferred incident to the
19 completion of a maintenance agreement is exempt from the tax
20 imposed pursuant to this Act.

21 Beginning July 1, 2004, prewritten computer software that
22 is modified or enhanced, when that enhancement or modification
23 according to Department rules is designed and developed to the
24 specifications of a specific purchaser, is exempt from the tax
25 imposed under this Act and the transfer of that modified or
26 enhanced computer software is subject to tax under the
27 Retailers' Occupation Tax Act and the Use Tax Act.

28 Exemption (5) also includes machinery and equipment used in
29 the general maintenance or repair of such exempt machinery and
30 equipment or for in-house manufacture of exempt machinery and
31 equipment. For the purposes of exemption (5), each of these
32 terms shall have the following meanings: (1) "manufacturing
33 process" shall mean the production of any article of tangible
34 personal property, whether such article is a finished product

1 or an article for use in the process of manufacturing or
2 assembling a different article of tangible personal property,
3 by procedures commonly regarded as manufacturing, processing,
4 fabricating, or refining which changes some existing material
5 or materials into a material with a different form, use or
6 name. In relation to a recognized integrated business composed
7 of a series of operations which collectively constitute
8 manufacturing, or individually constitute manufacturing
9 operations, the manufacturing process shall be deemed to
10 commence with the first operation or stage of production in the
11 series, and shall not be deemed to end until the completion of
12 the final product in the last operation or stage of production
13 in the series; and further, for purposes of exemption (5),
14 photoprocessing is deemed to be a manufacturing process of
15 tangible personal property for wholesale or retail sale; (2)
16 "assembling process" shall mean the production of any article
17 of tangible personal property, whether such article is a
18 finished product or an article for use in the process of
19 manufacturing or assembling a different article of tangible
20 personal property, by the combination of existing materials in
21 a manner commonly regarded as assembling which results in a
22 material of a different form, use or name; (3) "machinery"
23 shall mean major mechanical machines or major components of
24 such machines contributing to a manufacturing or assembling
25 process; and (4) "equipment" shall include any independent
26 device or tool separate from any machinery but essential to an
27 integrated manufacturing or assembly process; including
28 computers used primarily in a manufacturer's computer assisted
29 design, computer assisted manufacturing (CAD/CAM) system; or
30 any subunit or assembly comprising a component of any machinery
31 or auxiliary, adjunct or attachment parts of machinery, such as
32 tools, dies, jigs, fixtures, patterns and molds; or any parts
33 which require periodic replacement in the course of normal
34 operation; but shall not include hand tools. Equipment includes

1 chemicals or chemicals acting as catalysts but only if the
2 chemicals or chemicals acting as catalysts effect a direct and
3 immediate change upon a product being manufactured or assembled
4 for wholesale or retail sale or lease. The purchaser of such
5 machinery and equipment who has an active resale registration
6 number shall furnish such number to the seller at the time of
7 purchase. The user of such machinery and equipment and tools
8 without an active resale registration number shall prepare a
9 certificate of exemption for each transaction stating facts
10 establishing the exemption for that transaction, which
11 certificate shall be available to the Department for inspection
12 or audit. The Department shall prescribe the form of the
13 certificate.

14 Any informal rulings, opinions or letters issued by the
15 Department in response to an inquiry or request for any opinion
16 from any person regarding the coverage and applicability of
17 exemption (5) to specific devices shall be published,
18 maintained as a public record, and made available for public
19 inspection and copying. If the informal ruling, opinion or
20 letter contains trade secrets or other confidential
21 information, where possible the Department shall delete such
22 information prior to publication. Whenever such informal
23 rulings, opinions, or letters contain any policy of general
24 applicability, the Department shall formulate and adopt such
25 policy as a rule in accordance with the provisions of the
26 Illinois Administrative Procedure Act.

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

31 The purchase, employment and transfer of such tangible
32 personal property as newsprint and ink for the primary purpose
33 of conveying news (with or without other information) is not a
34 purchase, use or sale of service or of tangible personal

1 property within the meaning of this Act.

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

4 "Sale at retail" means "sale at retail" as defined in the
5 Retailers' Occupation Tax Act.

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

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

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

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

25 3. pursuant to a contract with a broadcaster or
26 publisher located in this State, soliciting orders for
27 tangible personal property by means of advertising which is
28 disseminated primarily to consumers located in this State
29 and only secondarily to bordering jurisdictions;

30 4. soliciting orders for tangible personal property by
31 mail if the solicitations are substantial and recurring and
32 if the retailer benefits from any banking, financing, debt
33 collection, telecommunication, or marketing activities
34 occurring in this State or benefits from the location in

1 this State of authorized installation, servicing, or
2 repair facilities;

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

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

9 7. pursuant to a contract with a cable television
10 operator located in this State, soliciting orders for
11 tangible personal property by means of advertising which is
12 transmitted or distributed over a cable television system
13 in this State; or

14 8. engaging in activities in Illinois, which
15 activities in the state in which the supply business
16 engaging in such activities is located would constitute
17 maintaining a place of business in that state.

18 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
19 eff. 6-20-03; revised 8-21-03.)

20 (35 ILCS 110/3-25) (from Ch. 120, par. 439.33-25)

21 Sec. 3-25. Computer software.

22 (a) On and before June 30, 2004, for ~~For~~ the purposes of
23 this Act, "computer software" means a set of statements, data,
24 or instructions to be used directly or indirectly in a computer
25 in order to bring about a certain result in any form in which
26 those statements, data, or instructions may be embodied,
27 transmitted, or fixed, by any method now known or hereafter
28 developed, regardless of whether the statements, data, or
29 instructions are capable of being perceived by or communicated
30 to humans, and includes prewritten or canned software that is
31 held for repeated sale or lease, and all associated
32 documentation and materials, if any, whether contained on
33 magnetic tapes, discs, cards, or other devices or media, but

1 does not include software that is adapted to specific
2 individualized requirements of a purchaser, custom-made and
3 modified software designed for a particular or limited use by a
4 purchaser, or software used to operate exempt machinery and
5 equipment used in the process of manufacturing or assembling
6 tangible personal property for wholesale or retail sale or
7 lease.

8 (b) On and after July 1, 2004, for the purposes of this
9 Act, "computer software" has the same meaning as that term is
10 defined in Section 3-25 of the Use Tax Act.

11 (c) For the purposes of this Act, computer software shall
12 be considered to be tangible personal property.

13 (Source: P.A. 91-51, eff. 6-30-99.)

14 Section 15. The Service Occupation Tax Act is amended by
15 changing Sections 2 and 3-25 as follows:

16 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

17 Sec. 2. "Transfer" means any transfer of the title to
18 property or of the ownership of property whether or not the
19 transferor retains title as security for the payment of amounts
20 due him from the transferee. Beginning July 1, 2004, the
21 transfer of licenses of prewritten computer software and any
22 other transfer, for consideration, of the possession or right
23 to use prewritten computer software, no matter how the
24 transaction is characterized by the parties, is considered a
25 transfer of tangible personal property under this Act.

26 "Cost Price" means the consideration paid by the serviceman
27 for a purchase valued in money, whether paid in money or
28 otherwise, including cash, credits and services, and shall be
29 determined without any deduction on account of the supplier's
30 cost of the property sold or on account of any other expense
31 incurred by the supplier. When a serviceman contracts out part
32 or all of the services required in his sale of service, it

1 shall be presumed that the cost price to the serviceman of the
2 property transferred to him by his or her subcontractor is
3 equal to 50% of the subcontractor's charges to the serviceman
4 in the absence of proof of the consideration paid by the
5 subcontractor for the purchase of such property.

6 "Department" means the Department of Revenue.

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

12 "Sale of Service" means any transaction except:

13 (a) A retail sale of tangible personal property taxable
14 under the Retailers' Occupation Tax Act or under the Use Tax
15 Act.

16 (b) A sale of tangible personal property for the purpose of
17 resale made in compliance with Section 2c of the Retailers'
18 Occupation Tax Act.

19 (c) Except as hereinafter provided, a sale or transfer of
20 tangible personal property as an incident to the rendering of
21 service for or by any governmental body or for or by any
22 corporation, society, association, foundation or institution
23 organized and operated exclusively for charitable, religious
24 or educational purposes or any not-for-profit corporation,
25 society, association, foundation, institution or organization
26 which has no compensated officers or employees and which is
27 organized and operated primarily for the recreation of persons
28 55 years of age or older. A limited liability company may
29 qualify for the exemption under this paragraph only if the
30 limited liability company is organized and operated
31 exclusively for educational purposes.

32 (d) A sale or transfer of tangible personal property as an
33 incident to the rendering of service for interstate carriers
34 for hire for use as rolling stock moving in interstate commerce

1 or lessors under leases of one year or longer, executed or in
2 effect at the time of purchase, to interstate carriers for hire
3 for use as rolling stock moving in interstate commerce, and
4 equipment operated by a telecommunications provider, licensed
5 as a common carrier by the Federal Communications Commission,
6 which is permanently installed in or affixed to aircraft moving
7 in interstate commerce.

8 (d-1) A sale or transfer of tangible personal property as
9 an incident to the rendering of service for owners, lessors or
10 shippers of tangible personal property which is utilized by
11 interstate carriers for hire for use as rolling stock moving in
12 interstate commerce, and equipment operated by a
13 telecommunications provider, licensed as a common carrier by
14 the Federal Communications Commission, which is permanently
15 installed in or affixed to aircraft moving in interstate
16 commerce.

17 (d-1.1) On and after July 1, 2003, a sale or transfer of a
18 motor vehicle of the second division with a gross vehicle
19 weight in excess of 8,000 pounds as an incident to the
20 rendering of service if that motor vehicle is subject to the
21 commercial distribution fee imposed under Section 3-815.1 of
22 the Illinois Vehicle Code. This exemption applies to repair and
23 replacement parts added after the initial purchase of such a
24 motor vehicle if that motor vehicle is used in a manner that
25 would qualify for the rolling stock exemption otherwise
26 provided for in this Act.

27 (d-2) The repairing, reconditioning or remodeling, for a
28 common carrier by rail, of tangible personal property which
29 belongs to such carrier for hire, and as to which such carrier
30 receives the physical possession of the repaired,
31 reconditioned or remodeled item of tangible personal property
32 in Illinois, and which such carrier transports, or shares with
33 another common carrier in the transportation of such property,
34 out of Illinois on a standard uniform bill of lading showing

1 the person who repaired, reconditioned or remodeled the
2 property as the shipper or consignor of such property to a
3 destination outside Illinois, for use outside Illinois.

4 (d-3) A sale or transfer of tangible personal property
5 which is produced by the seller thereof on special order in
6 such a way as to have made the applicable tax the Service
7 Occupation Tax or the Service Use Tax, rather than the
8 Retailers' Occupation Tax or the Use Tax, for an interstate
9 carrier by rail which receives the physical possession of such
10 property in Illinois, and which transports such property, or
11 shares with another common carrier in the transportation of
12 such property, out of Illinois on a standard uniform bill of
13 lading showing the seller of the property as the shipper or
14 consignor of such property to a destination outside Illinois,
15 for use outside Illinois.

16 (d-4) Until January 1, 1997, a sale, by a registered
17 serviceman paying tax under this Act to the Department, of
18 special order printed materials delivered outside Illinois and
19 which are not returned to this State, if delivery is made by
20 the seller or agent of the seller, including an agent who
21 causes the product to be delivered outside Illinois by a common
22 carrier or the U.S. postal service.

23 (e) A sale or transfer of machinery and equipment used
24 primarily in the process of the manufacturing or assembling,
25 either in an existing, an expanded or a new manufacturing
26 facility, of tangible personal property for wholesale or retail
27 sale or lease, whether such sale or lease is made directly by
28 the manufacturer or by some other person, whether the materials
29 used in the process are owned by the manufacturer or some other
30 person, or whether such sale or lease is made apart from or as
31 an incident to the seller's engaging in a service occupation
32 and the applicable tax is a Service Occupation Tax or Service
33 Use Tax, rather than Retailers' Occupation Tax or Use Tax.

34 (f) Until July 1, 2003, the sale or transfer of

1 distillation machinery and equipment, sold as a unit or kit and
2 assembled or installed by the retailer, which machinery and
3 equipment is certified by the user to be used only for the
4 production of ethyl alcohol that will be used for consumption
5 as motor fuel or as a component of motor fuel for the personal
6 use of such user and not subject to sale or resale.

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

26 Tangible personal property transferred incident to the
27 completion of a maintenance agreement is exempt from the tax
28 imposed pursuant to this Act.

29 Beginning July 1, 2004, prewritten computer software that
30 is modified or enhanced, when the enhancement or modification
31 according to Department rules is designed and developed to the
32 specifications of a specific purchaser, is exempt from the tax
33 imposed under this Act and the transfer of that modified or
34 enhanced computer software is subject to tax under the

1 Retailers' Occupation Tax Act and the Use Tax Act.

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

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

21 Except as provided in Section 2d of this Act, the rolling
22 stock exemption applies to rolling stock used by an interstate
23 carrier for hire, even just between points in Illinois, if such
24 rolling stock transports, for hire, persons whose journeys or
25 property whose shipments originate or terminate outside
26 Illinois.

27 Any informal rulings, opinions or letters issued by the
28 Department in response to an inquiry or request for any opinion
29 from any person regarding the coverage and applicability of
30 exemption (e) to specific devices shall be published,
31 maintained as a public record, and made available for public
32 inspection and copying. If the informal ruling, opinion or
33 letter contains trade secrets or other confidential
34 information, where possible the Department shall delete such

1 information prior to publication. Whenever such informal
2 rulings, opinions, or letters contain any policy of general
3 applicability, the Department shall formulate and adopt such
4 policy as a rule in accordance with the provisions of the
5 Illinois Administrative Procedure Act.

6 On and after July 1, 1987, no entity otherwise eligible
7 under exemption (c) of this Section shall make tax free
8 purchases unless it has an active exemption identification
9 number issued by the Department.

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

12 "Sale at Retail" means "sale at retail" as defined in the
13 Retailers' Occupation Tax Act.

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

17 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
18 eff. 6-20-03; revised 8-21-03.)

19 (35 ILCS 115/3-25) (from Ch. 120, par. 439.103-25)

20 Sec. 3-25. Computer software.

21 (a) On and before June 30, 2004, for ~~For~~ the purposes of this
22 Act, "computer software" means a set of statements, data, or
23 instructions to be used directly or indirectly in a computer in
24 order to bring about a certain result in any form in which
25 those statements, data, or instructions may be embodied,
26 transmitted, or fixed, by any method now known or hereafter
27 developed, regardless of whether the statements, data, or
28 instructions are capable of being perceived by or communicated
29 to humans, and includes prewritten or canned software that is
30 held for repeated sale or lease, and all associated
31 documentation and materials, if any, whether contained on
32 magnetic tapes, discs, cards, or other devices or media, but
33 does not include software that is adapted to specific

1 individualized requirements of a purchaser, custom-made and
2 modified software designed for a particular or limited use by a
3 purchaser, or software used to operate exempt machinery and
4 equipment used in the process of manufacturing or assembling
5 tangible personal property for wholesale or retail sale or
6 lease.

7 (b) On and after July 1, 2004, for the purposes of this
8 Act, "computer software" has the same meaning as that term is
9 defined in Section 2-25 of the Retailers' Occupation Tax Act.

10 (c) For the purposes of this Act, computer software shall
11 be considered to be tangible personal property.

12 (Source: P.A. 91-51, eff. 6-30-99.)

13 Section 20. The Retailers' Occupation Tax Act is amended by
14 changing Sections 1, 2, and 2-25 as follows:

15 (35 ILCS 120/1) (from Ch. 120, par. 440)

16 Sec. 1. Definitions. "Sale at retail" means any transfer of
17 the ownership of or title to tangible personal property to a
18 purchaser, for the purpose of use or consumption, and not for
19 the purpose of resale in any form as tangible personal property
20 to the extent not first subjected to a use for which it was
21 purchased, for a valuable consideration: Provided that the
22 property purchased is deemed to be purchased for the purpose of
23 resale, despite first being used, to the extent to which it is
24 resold as an ingredient of an intentionally produced product or
25 byproduct of manufacturing. For this purpose, slag produced as
26 an incident to manufacturing pig iron or steel and sold is
27 considered to be an intentionally produced byproduct of
28 manufacturing. Transactions whereby the possession of the
29 property is transferred but the seller retains the title as
30 security for payment of the selling price shall be deemed to be
31 sales.

32 Beginning July 1, 2004, "sale at retail" includes licenses

1 of prewritten computer software and any other transfer, for
2 consideration, of the possession or right to use prewritten
3 computer software, no matter how the transaction is
4 characterized by the parties.

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

13 Sales of tangible personal property, which property, to the
14 extent not first subjected to a use for which it was purchased,
15 as an ingredient or constituent, goes into and forms a part of
16 tangible personal property subsequently the subject of a "Sale
17 at retail", are not sales at retail as defined in this Act:
18 Provided that the property purchased is deemed to be purchased
19 for the purpose of resale, despite first being used, to the
20 extent to which it is resold as an ingredient of an
21 intentionally produced product or byproduct of manufacturing.

22 "Sale at retail" shall be construed to include any Illinois
23 florist's sales transaction in which the purchase order is
24 received in Illinois by a florist and the sale is for use or
25 consumption, but the Illinois florist has a florist in another
26 state deliver the property to the purchaser or the purchaser's
27 donee in such other state.

28 Nonreusable tangible personal property that is used by
29 persons engaged in the business of operating a restaurant,
30 cafeteria, or drive-in is a sale for resale when it is
31 transferred to customers in the ordinary course of business as
32 part of the sale of food or beverages and is used to deliver,
33 package, or consume food or beverages, regardless of where
34 consumption of the food or beverages occurs. Examples of those

1 items include, but are not limited to nonreusable, paper and
2 plastic cups, plates, baskets, boxes, sleeves, buckets or other
3 containers, utensils, straws, placemats, napkins, doggie bags,
4 and wrapping or packaging materials that are transferred to
5 customers as part of the sale of food or beverages in the
6 ordinary course of business.

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

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

32 A person who is the recipient of a grant or contract under
33 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
34 serves meals to participants in the federal Nutrition Program

1 for the Elderly in return for contributions established in
2 amount by the individual participant pursuant to a schedule of
3 suggested fees as provided for in the federal Act is not
4 engaged in the business of selling tangible personal property
5 at retail with respect to such transactions.

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

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

15 "Selling price" or the "amount of sale" means the
16 consideration for a sale valued in money whether received in
17 money or otherwise, including cash, credits, property, other
18 than as hereinafter provided, and services, but not including
19 the value of or credit given for traded-in tangible personal
20 property where the item that is traded-in is of like kind and
21 character as that which is being sold, and shall be determined
22 without any deduction on account of the cost of the property
23 sold, the cost of materials used, labor or service cost or any
24 other expense whatsoever, but does not include charges that are
25 added to prices by sellers on account of the seller's tax
26 liability under this Act, or on account of the seller's duty to
27 collect, from the purchaser, the tax that is imposed by the Use
28 Tax Act, or on account of the seller's tax liability under
29 Section 8-11-1 of the Illinois Municipal Code, as heretofore
30 and hereafter amended, or on account of the seller's tax
31 liability under the County Retailers' Occupation Tax Act, or on
32 account of the seller's tax liability under the Home Rule
33 Municipal Soft Drink Retailers' Occupation Tax, or on account
34 of the seller's tax liability under any tax imposed under the

1 "Regional Transportation Authority Act", approved December 12,
2 1973. Effective December 1, 1985, "selling price" shall include
3 charges that are added to prices by sellers on account of the
4 seller's tax liability under the Cigarette Tax Act, on account
5 of the sellers' duty to collect, from the purchaser, the tax
6 imposed under the Cigarette Use Tax Act, and on account of the
7 seller's duty to collect, from the purchaser, any cigarette tax
8 imposed by a home rule unit.

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

17 "Gross receipts" from the sales of tangible personal
18 property at retail means the total selling price or the amount
19 of such sales, as hereinbefore defined. In the case of charge
20 and time sales, the amount thereof shall be included only as
21 and when payments are received by the seller. Receipts or other
22 consideration derived by a seller from the sale, transfer or
23 assignment of accounts receivable to a wholly owned subsidiary
24 will not be deemed payments prior to the time the purchaser
25 makes payment on such accounts.

26 "Department" means the Department of Revenue.

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

32 The isolated or occasional sale of tangible personal
33 property at retail by a person who does not hold himself out as
34 being engaged (or who does not habitually engage) in selling

1 such tangible personal property at retail, or a sale through a
2 bulk vending machine, does not constitute engaging in a
3 business of selling such tangible personal property at retail
4 within the meaning of this Act; provided that any person who is
5 engaged in a business which is not subject to the tax imposed
6 by this Act because of involving the sale of or a contract to
7 sell real estate or a construction contract to improve real
8 estate or a construction contract to engineer, install, and
9 maintain an integrated system of products, but who, in the
10 course of conducting such business, transfers tangible
11 personal property to users or consumers in the finished form in
12 which it was purchased, and which does not become real estate
13 or was not engineered and installed, under any provision of a
14 construction contract or real estate sale or real estate sales
15 agreement entered into with some other person arising out of or
16 because of such nontaxable business, is engaged in the business
17 of selling tangible personal property at retail to the extent
18 of the value of the tangible personal property so transferred.
19 If, in such a transaction, a separate charge is made for the
20 tangible personal property so transferred, the value of such
21 property, for the purpose of this Act, shall be the amount so
22 separately charged, but not less than the cost of such property
23 to the transferor; if no separate charge is made, the value of
24 such property, for the purposes of this Act, is the cost to the
25 transferor of such tangible personal property. Construction
26 contracts for the improvement of real estate consisting of
27 engineering, installation, and maintenance of voice, data,
28 video, security, and all telecommunication systems do not
29 constitute engaging in a business of selling tangible personal
30 property at retail within the meaning of this Act if they are
31 sold at one specified contract price.

32 A person who holds himself or herself out as being engaged
33 (or who habitually engages) in selling tangible personal
34 property at retail is a person engaged in the business of

1 selling tangible personal property at retail hereunder with
2 respect to such sales (and not primarily in a service
3 occupation) notwithstanding the fact that such person designs
4 and produces such tangible personal property on special order
5 for the purchaser and in such a way as to render the property
6 of value only to such purchaser, if such tangible personal
7 property so produced on special order serves substantially the
8 same function as stock or standard items of tangible personal
9 property that are sold at retail.

10 Persons who engage in the business of transferring tangible
11 personal property upon the redemption of trading stamps are
12 engaged in the business of selling such property at retail and
13 shall be liable for and shall pay the tax imposed by this Act
14 on the basis of the retail value of the property transferred
15 upon redemption of such stamps.

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

22 (Source: P.A. 92-213, eff. 1-1-02.)

23 (35 ILCS 120/2) (from Ch. 120, par. 441)

24 Sec. 2. Tax imposed. A tax is imposed upon persons engaged
25 in the business of selling at retail tangible personal
26 property, including computer software, and including
27 photographs, negatives, and positives that are the product of
28 photoprocessing, but not including products of photoprocessing
29 produced for use in motion pictures for public commercial
30 exhibition. Beginning January 1, 2001, prepaid telephone
31 calling arrangements shall be considered tangible personal
32 property subject to the tax imposed under this Act regardless
33 of the form in which those arrangements may be embodied,

1 transmitted, or fixed by any method now known or hereafter
2 developed. Beginning July 1, 2004, computer software subject to
3 tax under this Act includes licenses of prewritten computer
4 software and any other transfer, for consideration, of the
5 possession or right to use prewritten computer software, no
6 matter how the transaction is characterized by the parties.

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

8 (35 ILCS 120/2-25) (from Ch. 120, par. 441-25)

9 Sec. 2-25. Computer software. For the purposes of this Act,
10 "computer software" means a set of statements, data, or
11 instructions to be used directly or indirectly in a computer in
12 order to bring about a certain result in any form in which
13 those statements, data, or instructions may be embodied,
14 transmitted, or fixed, by any method now known or hereafter
15 developed, regardless of whether the statements, data, or
16 instructions are capable of being perceived by or communicated
17 to humans, and includes prewritten or canned software that is
18 held for repeated sale or lease, and all associated
19 documentation and materials, if any, whether contained on
20 magnetic tapes, discs, cards, or other devices or media, but
21 does not include (i) on and before June 30, 2004, software that
22 is adapted to specific individualized requirements of a
23 purchaser, custom-made and modified software designed for a
24 particular or limited use by a purchaser, or (ii) software used
25 to operate exempt machinery and equipment used in the process
26 of manufacturing or assembling tangible personal property for
27 wholesale or retail sale or lease.

28 Beginning on July 1, 2004, "prewritten computer software"
29 means computer software, including upgrades, that is not
30 designed and developed by the author or other creator to the
31 specifications of a specific purchaser. The combining of 2 or
32 more "prewritten computer software" programs or prewritten
33 portions thereof does not cause the combination to be other

1 than "prewritten computer software". "Prewritten computer
2 software" includes software designed and developed by the
3 author or other creator to the specifications of a specific
4 purchaser when it is sold to a person other than the specific
5 purchaser. If a person modifies or enhances computer software
6 of which the person is not the author or creator, the person
7 shall be deemed to be the author or creator only of that
8 person's modifications or enhancements. "Prewritten computer
9 software" or a prewritten portion thereof that is modified or
10 enhanced to any degree, when the modification or enhancement
11 according to Department rules is designed and developed to the
12 specifications of a specific purchaser, remains "prewritten
13 computer software", except that when there is a reasonable
14 separately stated charge or an invoice or other statement of
15 the price given to the purchaser for the modification or
16 enhancement, the modification or enhancement does not
17 constitute "prewritten computer software".

18 For the purposes of this Act, computer software shall be
19 considered to be tangible personal property.

20 (Source: P.A. 91-51, eff. 6-30-99.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."