

SB2243



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2243

Introduced 2/15/2013, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

35 ILCS 120/2a

from Ch. 120, par. 441a

Amends the Retailers' Occupation Tax Act. In a Section concerning certificates of registration, removes a requirement that an application must contain the social security number of each corporate officer of a corporation and each manager and member of a limited liability company. Effective immediately.

LRB098 09659 HLH 39805 b

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Retailers' Occupation Tax Act is amended by
5 changing Section 2a as follows:

6 (35 ILCS 120/2a) (from Ch. 120, par. 441a)

7 Sec. 2a. It is unlawful for any person to engage in the
8 business of selling tangible personal property at retail in
9 this State without a certificate of registration from the
10 Department. Application for a certificate of registration
11 shall be made to the Department upon forms furnished by it.
12 Each such application shall be signed and verified and shall
13 state: (1) the name and social security number of the
14 applicant; (2) the address of his principal place of business;
15 (3) the address of the principal place of business from which
16 he engages in the business of selling tangible personal
17 property at retail in this State and the addresses of all other
18 places of business, if any (enumerating such addresses, if any,
19 in a separate list attached to and made a part of the
20 application), from which he engages in the business of selling
21 tangible personal property at retail in this State; (4) the
22 name and address of the person or persons who will be
23 responsible for filing returns and payment of taxes due under

1 this Act; (5) in the case of a corporation, the name and 7
2 title, ~~and social security number~~ of each corporate officer;
3 (6) in the case of a limited liability company, the name, 7
4 ~~social security number,~~ and FEIN number of each manager and
5 member; and (7) such other information as the Department may
6 reasonably require. The application shall contain an
7 acceptance of responsibility signed by the person or persons
8 who will be responsible for filing returns and payment of the
9 taxes due under this Act. If the applicant will sell tangible
10 personal property at retail through vending machines, his
11 application to register shall indicate the number of vending
12 machines to be so operated. If requested by the Department at
13 any time, that person shall verify the total number of vending
14 machines he or she uses in his or her business of selling
15 tangible personal property at retail.

16 The Department may deny a certificate of registration to
17 any applicant if the owner, any partner, any manager or member
18 of a limited liability company, or a corporate officer of the
19 applicant, is or has been the owner, a partner, a manager or
20 member of a limited liability company, or a corporate officer,
21 of another retailer that is in default for moneys due under
22 this Act.

23 The Department may require an applicant for a certificate
24 of registration hereunder to, at the time of filing such
25 application, furnish a bond from a surety company authorized to
26 do business in the State of Illinois, or an irrevocable bank

1 letter of credit or a bond signed by 2 personal sureties who
2 have filed, with the Department, sworn statements disclosing
3 net assets equal to at least 3 times the amount of the bond to
4 be required of such applicant, or a bond secured by an
5 assignment of a bank account or certificate of deposit, stocks
6 or bonds, conditioned upon the applicant paying to the State of
7 Illinois all moneys becoming due under this Act and under any
8 other State tax law or municipal or county tax ordinance or
9 resolution under which the certificate of registration that is
10 issued to the applicant under this Act will permit the
11 applicant to engage in business without registering separately
12 under such other law, ordinance or resolution. In making a
13 determination as to whether to require a bond or other
14 security, the Department shall take into consideration whether
15 the owner, any partner, any manager or member of a limited
16 liability company, or a corporate officer of the applicant is
17 or has been the owner, a partner, a manager or member of a
18 limited liability company, or a corporate officer of another
19 retailer that is in default for moneys due under this Act or
20 any other tax or fee Act administered by the Department; and
21 whether the owner, any partner, any manager or member of a
22 limited liability company, or a corporate officer of the
23 applicant is or has been the owner, a partner, a manager or
24 member of a limited liability company, or a corporate officer
25 of another retailer whose certificate of registration has been
26 revoked within the previous 5 years under this Act or any other

1 tax or fee Act administered by the Department. If a bond or
2 other security is required, the Department shall fix the amount
3 of the bond or other security, taking into consideration the
4 amount of money expected to become due from the applicant under
5 this Act and under any other State tax law or municipal or
6 county tax ordinance or resolution under which the certificate
7 of registration that is issued to the applicant under this Act
8 will permit the applicant to engage in business without
9 registering separately under such other law, ordinance, or
10 resolution. The amount of security required by the Department
11 shall be such as, in its opinion, will protect the State of
12 Illinois against failure to pay the amount which may become due
13 from the applicant under this Act and under any other State tax
14 law or municipal or county tax ordinance or resolution under
15 which the certificate of registration that is issued to the
16 applicant under this Act will permit the applicant to engage in
17 business without registering separately under such other law,
18 ordinance or resolution, but the amount of the security
19 required by the Department shall not exceed three times the
20 amount of the applicant's average monthly tax liability, or
21 \$50,000.00, whichever amount is lower.

22 No certificate of registration under this Act shall be
23 issued by the Department until the applicant provides the
24 Department with satisfactory security, if required, as herein
25 provided for.

26 Upon receipt of the application for certificate of

1 registration in proper form, and upon approval by the
2 Department of the security furnished by the applicant, if
3 required, the Department shall issue to such applicant a
4 certificate of registration which shall permit the person to
5 whom it is issued to engage in the business of selling tangible
6 personal property at retail in this State. The certificate of
7 registration shall be conspicuously displayed at the place of
8 business which the person so registered states in his
9 application to be the principal place of business from which he
10 engages in the business of selling tangible personal property
11 at retail in this State.

12 No certificate of registration issued to a taxpayer who
13 files returns required by this Act on a monthly basis shall be
14 valid after the expiration of 5 years from the date of its
15 issuance or last renewal. The expiration date of a
16 sub-certificate of registration shall be that of the
17 certificate of registration to which the sub-certificate
18 relates. A certificate of registration shall automatically be
19 renewed, subject to revocation as provided by this Act, for an
20 additional 5 years from the date of its expiration unless
21 otherwise notified by the Department as provided by this
22 paragraph. Where a taxpayer to whom a certificate of
23 registration is issued under this Act is in default to the
24 State of Illinois for delinquent returns or for moneys due
25 under this Act or any other State tax law or municipal or
26 county ordinance administered or enforced by the Department,

1 the Department shall, not less than 120 days before the
2 expiration date of such certificate of registration, give
3 notice to the taxpayer to whom the certificate was issued of
4 the account period of the delinquent returns, the amount of
5 tax, penalty and interest due and owing from the taxpayer, and
6 that the certificate of registration shall not be automatically
7 renewed upon its expiration date unless the taxpayer, on or
8 before the date of expiration, has filed and paid the
9 delinquent returns or paid the defaulted amount in full. A
10 taxpayer to whom such a notice is issued shall be deemed an
11 applicant for renewal. The Department shall promulgate
12 regulations establishing procedures for taxpayers who file
13 returns on a monthly basis but desire and qualify to change to
14 a quarterly or yearly filing basis and will no longer be
15 subject to renewal under this Section, and for taxpayers who
16 file returns on a yearly or quarterly basis but who desire or
17 are required to change to a monthly filing basis and will be
18 subject to renewal under this Section.

19 The Department may in its discretion approve renewal by an
20 applicant who is in default if, at the time of application for
21 renewal, the applicant files all of the delinquent returns or
22 pays to the Department such percentage of the defaulted amount
23 as may be determined by the Department and agrees in writing to
24 waive all limitations upon the Department for collection of the
25 remaining defaulted amount to the Department over a period not
26 to exceed 5 years from the date of renewal of the certificate;

1 however, no renewal application submitted by an applicant who
2 is in default shall be approved if the immediately preceding
3 renewal by the applicant was conditioned upon the installment
4 payment agreement described in this Section. The payment
5 agreement herein provided for shall be in addition to and not
6 in lieu of the security that may be required by this Section of
7 a taxpayer who is no longer considered a prior continuous
8 compliance taxpayer. The execution of the payment agreement as
9 provided in this Act shall not toll the accrual of interest at
10 the statutory rate.

11 The Department may suspend a certificate of registration if
12 the Department finds that the person to whom the certificate of
13 registration has been issued knowingly sold contraband
14 cigarettes.

15 A certificate of registration issued under this Act more
16 than 5 years before the effective date of this amendatory Act
17 of 1989 shall expire and be subject to the renewal provisions
18 of this Section on the next anniversary of the date of issuance
19 of such certificate which occurs more than 6 months after the
20 effective date of this amendatory Act of 1989. A certificate of
21 registration issued less than 5 years before the effective date
22 of this amendatory Act of 1989 shall expire and be subject to
23 the renewal provisions of this Section on the 5th anniversary
24 of the issuance of the certificate.

25 If the person so registered states that he operates other
26 places of business from which he engages in the business of

1 selling tangible personal property at retail in this State, the
2 Department shall furnish him with a sub-certificate of
3 registration for each such place of business, and the applicant
4 shall display the appropriate sub-certificate of registration
5 at each such place of business. All sub-certificates of
6 registration shall bear the same registration number as that
7 appearing upon the certificate of registration to which such
8 sub-certificates relate.

9 If the applicant will sell tangible personal property at
10 retail through vending machines, the Department shall furnish
11 him with a sub-certificate of registration for each such
12 vending machine, and the applicant shall display the
13 appropriate sub-certificate of registration on each such
14 vending machine by attaching the sub-certificate of
15 registration to a conspicuous part of such vending machine. If
16 a person who is registered to sell tangible personal property
17 at retail through vending machines adds an additional vending
18 machine or additional vending machines to the number of vending
19 machines he or she uses in his or her business of selling
20 tangible personal property at retail, he or she shall notify
21 the Department, on a form prescribed by the Department, to
22 request an additional sub-certificate or additional
23 sub-certificates of registration, as applicable. With each
24 such request, the applicant shall report the number of
25 sub-certificates of registration he or she is requesting as
26 well as the total number of vending machines from which he or

1 she makes retail sales.

2 Where the same person engages in 2 or more businesses of
3 selling tangible personal property at retail in this State,
4 which businesses are substantially different in character or
5 engaged in under different trade names or engaged in under
6 other substantially dissimilar circumstances (so that it is
7 more practicable, from an accounting, auditing or bookkeeping
8 standpoint, for such businesses to be separately registered),
9 the Department may require or permit such person (subject to
10 the same requirements concerning the furnishing of security as
11 those that are provided for hereinbefore in this Section as to
12 each application for a certificate of registration) to apply
13 for and obtain a separate certificate of registration for each
14 such business or for any of such businesses, under a single
15 certificate of registration supplemented by related
16 sub-certificates of registration.

17 Any person who is registered under the "Retailers'
18 Occupation Tax Act" as of March 8, 1963, and who, during the
19 3-year period immediately prior to March 8, 1963, or during a
20 continuous 3-year period part of which passed immediately
21 before and the remainder of which passes immediately after
22 March 8, 1963, has been so registered continuously and who is
23 determined by the Department not to have been either delinquent
24 or deficient in the payment of tax liability during that period
25 under this Act or under any other State tax law or municipal or
26 county tax ordinance or resolution under which the certificate

1 of registration that is issued to the registrant under this Act
2 will permit the registrant to engage in business without
3 registering separately under such other law, ordinance or
4 resolution, shall be considered to be a Prior Continuous
5 Compliance taxpayer. Also any taxpayer who has, as verified by
6 the Department, faithfully and continuously complied with the
7 condition of his bond or other security under the provisions of
8 this Act for a period of 3 consecutive years shall be
9 considered to be a Prior Continuous Compliance taxpayer.

10 Every Prior Continuous Compliance taxpayer shall be exempt
11 from all requirements under this Act concerning the furnishing
12 of a bond or other security as a condition precedent to his
13 being authorized to engage in the business of selling tangible
14 personal property at retail in this State. This exemption shall
15 continue for each such taxpayer until such time as he may be
16 determined by the Department to be delinquent in the filing of
17 any returns, or is determined by the Department (either through
18 the Department's issuance of a final assessment which has
19 become final under the Act, or by the taxpayer's filing of a
20 return which admits tax that is not paid to be due) to be
21 delinquent or deficient in the paying of any tax under this Act
22 or under any other State tax law or municipal or county tax
23 ordinance or resolution under which the certificate of
24 registration that is issued to the registrant under this Act
25 will permit the registrant to engage in business without
26 registering separately under such other law, ordinance or

1 resolution, at which time that taxpayer shall become subject to
2 all the financial responsibility requirements of this Act and,
3 as a condition of being allowed to continue to engage in the
4 business of selling tangible personal property at retail, may
5 be required to post bond or other acceptable security with the
6 Department covering liability which such taxpayer may
7 thereafter incur. Any taxpayer who fails to pay an admitted or
8 established liability under this Act may also be required to
9 post bond or other acceptable security with this Department
10 guaranteeing the payment of such admitted or established
11 liability.

12 No certificate of registration shall be issued to any
13 person who is in default to the State of Illinois for moneys
14 due under this Act or under any other State tax law or
15 municipal or county tax ordinance or resolution under which the
16 certificate of registration that is issued to the applicant
17 under this Act will permit the applicant to engage in business
18 without registering separately under such other law, ordinance
19 or resolution.

20 Any person aggrieved by any decision of the Department
21 under this Section may, within 20 days after notice of such
22 decision, protest and request a hearing, whereupon the
23 Department shall give notice to such person of the time and
24 place fixed for such hearing and shall hold a hearing in
25 conformity with the provisions of this Act and then issue its
26 final administrative decision in the matter to such person. In

1 the absence of such a protest within 20 days, the Department's
2 decision shall become final without any further determination
3 being made or notice given.

4 With respect to security other than bonds (upon which the
5 Department may sue in the event of a forfeiture), if the
6 taxpayer fails to pay, when due, any amount whose payment such
7 security guarantees, the Department shall, after such
8 liability is admitted by the taxpayer or established by the
9 Department through the issuance of a final assessment that has
10 become final under the law, convert the security which that
11 taxpayer has furnished into money for the State, after first
12 giving the taxpayer at least 10 days' written notice, by
13 registered or certified mail, to pay the liability or forfeit
14 such security to the Department. If the security consists of
15 stocks or bonds or other securities which are listed on a
16 public exchange, the Department shall sell such securities
17 through such public exchange. If the security consists of an
18 irrevocable bank letter of credit, the Department shall convert
19 the security in the manner provided for in the Uniform
20 Commercial Code. If the security consists of a bank certificate
21 of deposit, the Department shall convert the security into
22 money by demanding and collecting the amount of such bank
23 certificate of deposit from the bank which issued such
24 certificate. If the security consists of a type of stocks or
25 other securities which are not listed on a public exchange, the
26 Department shall sell such security to the highest and best

1 bidder after giving at least 10 days' notice of the date, time
2 and place of the intended sale by publication in the "State
3 Official Newspaper". If the Department realizes more than the
4 amount of such liability from the security, plus the expenses
5 incurred by the Department in converting the security into
6 money, the Department shall pay such excess to the taxpayer who
7 furnished such security, and the balance shall be paid into the
8 State Treasury.

9 The Department shall discharge any surety and shall release
10 and return any security deposited, assigned, pledged or
11 otherwise provided to it by a taxpayer under this Section
12 within 30 days after:

13 (1) such taxpayer becomes a Prior Continuous
14 Compliance taxpayer; or

15 (2) such taxpayer has ceased to collect receipts on
16 which he is required to remit tax to the Department, has
17 filed a final tax return, and has paid to the Department an
18 amount sufficient to discharge his remaining tax
19 liability, as determined by the Department, under this Act
20 and under every other State tax law or municipal or county
21 tax ordinance or resolution under which the certificate of
22 registration issued under this Act permits the registrant
23 to engage in business without registering separately under
24 such other law, ordinance or resolution. The Department
25 shall make a final determination of the taxpayer's
26 outstanding tax liability as expeditiously as possible

1 after his final tax return has been filed; if the
2 Department cannot make such final determination within 45
3 days after receiving the final tax return, within such
4 period it shall so notify the taxpayer, stating its reasons
5 therefor.

6 (Source: P.A. 96-1355, eff. 7-28-10; 97-335, eff. 1-1-12.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.