**Section 150.201 General Definitions**

"Act" means the Use Tax Act [35 ILCS 105]

*"Department" means the Department of Revenue.*

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

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

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

For purposes of this Part, "remote retailer" has the same meaning as defined in 86 Ill. Adm. Code 131.105.

*"Retailer" means and includes every person engaged in the business of* selling tangible personal property for use and not for resale.

Effective October 1, 1974, *a person who is the recipient of a grant or contract under Title VII of the Older Americans Act of 1965* [42 U.S.C. 3001 et seq.] *and serves meals to participants in the federal Nutrition Program for the Elderly in return for contributions established in amount by the individual participant pursuant to a schedule of suggested fees as provided for in the federal Act is not a retailer under* the Act *with respect to such transactions.* [35 ILCS 105/2]

Nonprofit Sellers

*A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) is a retailer with respect to such transactions, excepting only a person organized and operated exclusively for charitable, religious or educational purposes either:*

*to the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person, or*

*to the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit. The selling of* schoolbooks *and school supplies by schools at retail to students is not "primarily for the purposes of" the school which does such selling.*

This definition *does not apply to nor subject to taxation occasional dinners, social or similar activities of a person organized and operated exclusively for charitable, religious or educational purposes, whether or not such activities are open to the public.*

Special Order Sales

*A person who holds* oneself *out as being engaged (or who habitually engages) in selling tangible personal property at retail is a retailer* under the Act *with respect to such sales (and not primarily in a service occupation) notwithstanding the fact that such person designs and produces such tangible personal property on special order for the purchaser and in such a way as to render the property of value only to such purchaser, if such tangible personal property so produced on special order serves substantially the same function as stock or standard items of tangible personal property that are sold at retail.*

When Construction Contractor or Real Estate Developer is a Retailer

A construction contractor or real estate developer *who, in the course of conducting such business, transfers tangible personal property to users or consumers in the finished form in which it was purchased, and which does not become real estate, under any provision of a construction contract or real estate sale or real estate sales agreement entered into with some other person arising out of or because of nontaxable business, is a retailer to the extent of the value of the tangible personal property so transferred.* [35 ILCS 105/2] See also 86 Ill. Adm. Code 130.1940.

Isolated or Occasional Sales

*The isolated or occasional sale of tangible personal property at retail by a person who does not hold* oneself *out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail or a sale through a bulk vending machine does not make such person a retailer* under the Act. [35 ILCS 105/2]

Leasing or Renting Motor Vehicles

*A person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for* the purchaser's *use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under* the Act *to the extent of the value of the vehicle sold. For the purpose of* this paragraph, *"motor vehicle" has the meaning prescribed in Section 1-157 of the Illinois Vehicle Code* [625 ILCS 5]*, as now or hereafter amended. (Nothing provided herein shall affect liability incurred under* the Act *because of the use of such motor vehicles as a lessor.)* [35 ILCS 105/1a]

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

*A retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State. However, the ownership of property that is located at the premises of a printer with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, or other place of business within this State.* [35 ILCS 105/2(1)]

It does not matter that an agent may engage in business on the agent's own account in other transactions, nor that the agent may act as an agent for other persons in other transactions, nor that the agent is not an employee but is an independent contractor acting as an agent. The term "agent" is broader than the term "employee". "Agent" includes anyone acting under the principal's authority in an agency capacity.

*Beginning July 1, 2011, a retailer having a contract with a person located in this State under which:*

*the retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and*

*the retailer provides a commission or other consideration to the person located in this State based upon the sale of tangible personal property by the retailer.*

*The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers in this State under all such contracts exceed $10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December.* [35 ILCS 105/2(1.2)]

Beginning January 1, 2015, *a retailer having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer by providing to the potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons. Examples of mechanisms that allow the retailer to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. The provisions of this paragraph shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers who are referred to the retailer by all persons in this State under such contracts exceed $10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. A retailer meeting the requirements of this paragraph shall be presumed to be maintaining a place of business in this State but may rebut this presumption by submitting proof that the referrals or other activities pursued within this State by such persons were not sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods.* [35 ILCS 105/2(1.1)]

The following documentation is required in order to rebut this presumption:

Retailer Agreement. The retailer must have an agreement that prohibits persons operating under the agreement from engaging in any solicitation activities in Illinois that refer potential customers to the retailer, including, but not limited to, distributing flyers, coupons, newsletters, and other printed promotional materials or electronic equivalents, verbal soliciting, initiating telephone calls, and sending e-mails or text messages. If the person in Illinois with whom the retailer has an agreement is an organization or corporation, such as a club or nonprofit group, the agreement must provide that the organization will maintain on its website information alerting its members to the prohibition against each of the solicitation activities described in this paragraph. The agreement must be maintained in the retailer's records and shall be made available to the Department for inspection or audit.

Annual Certification. The person or persons operating under the agreement in Illinois shall certify by January 1 of each year, under penalty of perjury, that they have not engaged in any prohibited solicitation activities in Illinois at any time during the previous year. If the person in Illinois with whom the retailer has an agreement is an organization or corporation, the annual certification shall also include a statement from the organization or corporation, signed by an officer of the organization or corporation, certifying that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described in this paragraph. The certification should be made on forms prescribed by the Department, must be completed and provided to the retailer, must be maintained in the retailer's records, and shall be made available to the Department for inspection or audit. If the retailer accepts a properly and timely completed certification in good faith and the retailer does not know or have reason to know that the certification is false or fraudulent, that certification will be conclusive proof that the person that provided the certification was in compliance with the agreement for the year covered by the certification. If the retailer fails to obtain the certifications from all persons operating under the agreements and fails to make those records available upon the Department's request, the presumption that the retailer is maintaining a place of business in Illinois will not be rebutted.

*Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois if:*

*the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are $100,000 or more; or*

*the retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.*

*Beginning January 1, 2020, neither the gross receipts from nor the number of separate transactions for sales of tangible personal property to purchasers in Illinois that a retailer makes through a marketplace facilitator and for which the retailer has received a certification from the marketplace facilitator pursuant to Section 2d of* the Act *shall be included for purposes of determining whether the retailer has met the thresholds of this paragraph.* [35 ILCS 105/2(9)]

*Beginning January 1, 2020, a marketplace facilitator who meets either of the following thresholds is considered the retailer for each sale of tangible personal property made through its marketplace:*

*the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois by the marketplace facilitator and by marketplace sellers selling through the marketplace are $100,000 or more; or*

*the marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.*  [35 ILCS 105/2(10) and 35 ILCS 105/2d]

For purposes of this definition, a *retailer* without physical presence in this State *or* a marketplace facilitator *shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether* it *meets either of* the foregoing *criteria for the preceding 12-month period. If the retailer* or marketplace facilitator *meets the threshold of either* criteria *for a 12-month period,* it *is considered a retailer maintaining a place of business in this State and is required to collect and remit* use tax *and file returns for one year.*

*At the end of that one-year period, the retailer* or marketplace facilitator *shall determine whether* it *met the threshold of either* criteria *during the preceding 12-month period. If the retailer* or marketplace facilitator *met either of the criteria for the preceding 12-month period,* it *is considered a retailer maintaining a place of business in this State and is required to collect and remit* use tax *and file returns for the subsequent year.*

*If, at the end of a one-year period, a retailer* or marketplace facilitator *that was required to collect and remit the* use tax *determines that* it *did not meet the threshold in either* criteria *during the preceding 12-month period, the retailer* or marketplace facilitator *shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether* it *meets the threshold of either* criteria *for the preceding 12-month period.* [35 ILCS 105/2(9) and 35 ILCS 105/2d]

NOTE: Beginning January 1, 2021, retailers without physical presence in this State and marketplace facilitators meeting either tax remittance threshold as set out in 86 Ill. Adm. Code 131.115(a) and 131.135(a), respectively, are liable for all applicable State and locally imposed retailers' occupation taxes administered by the Department of Revenue on all sales made to Illinois purchasers and are no longer only mandatory Use Tax collectors. (See 86 Ill. Adm. Code 131.115 and 131.135).

*"Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing.*

*For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced by-product of manufacturing.*

*"Sale at retail" includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act* [35 ILCS 120]*, as incorporated by reference into Section 12 of* the Act*. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price are sales.*

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

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

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

*"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as provided* in this definition, *and services, but, prior to January 1, 2020 and beginning again on January 1, 2022, not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold; beginning January 1, 2020 and until January 1, 2022, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code* [625 ILCS 5] *of like kind and character as that which is being sold that exceeds $10,000. "Selling price" shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges which appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by* the Act, *or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's tax liability under any local occupation tax administered by the Department, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's duty to collect, from the purchasers, the tax that is imposed under any local use tax administered by the Department. "Selling price" shall include charges that are added to prices by sellers on account of the seller's tax liability under the Cigarette Tax Act, on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette Tax Act, and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit.*

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

*"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing. "Use" does not mean demonstration use or interim use of tangible personal property by a retailer before* the retailer *sells that tangible personal property. For watercraft or aircraft, if the period of demonstration use or interim use by the retailer exceeds 18 months, the retailer shall pay on the* retailer's *original cost price the tax imposed by* the Act*, and no credit for that tax is permitted if the watercraft or aircraft is subsequently sold by the retailer. "Use" does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property*

*which is sold in the regular course of business or*

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

*"Watercraft" means a Class 2, Class 3, or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act* [625 ILCS 45]*, a personal watercraft, or any boat equipped with an inboard motor.* [35 ILCS 105/2]

(Source: Amended at 48 Ill. Reg. 6836, effective April 24, 2024)