**Section 160.105 Definitions**

For definitions of terms other than "Use", "Purchased from a Serviceman", "Purchaser", "Sale of Service", "Selling Price", and "Serviceman maintaining a place of business in this State", see Section 140.201 of the Service Occupation Tax Regulations (86 Ill. Adm. Code 140.201).

"Act" means the Service Use Tax Act [35 ILCS 110].

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

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

*"Sale of service" means any transaction except:*

*a retail sale of tangible personal property taxable under the Retailers' Occupation Tax Act or under the Use Tax Act;*

*a sale of tangible personal property for the purpose of resale made in compliance with Section 2c of the Retailers' Occupation Tax Act;*

*except as hereinafter provided, a sale or transfer of tangible personal property as an incident to the rendering of service for or by any governmental body, or for or by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older that has an active exemption identification number issued by the Department*. *A limited liability company may qualify under this* exception *only if the limited liability company is organized and operated exclusively for educational purposes;*

*a sale or transfer of tangible personal property as an incident to the rendering of service for owners, lessors, or shippers of tangible personal property which is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce so long as so used by interstate carriers for hire, and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce;*

*a sale or transfer of machinery and equipment used primarily in the process of the manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease.* (See Section 160.110(h))*;*

*the repairing, reconditioning or remodeling, for a common carrier by rail, of tangible personal property which belongs to such carrier for hire, and as to which such carrier receives the physical possession of the repaired, reconditioned or remodeled item of tangible personal property in Illinois, and which such carrier transports, or shares with another common carrier in the transportation of such property, out of Illinois on a standard uniform bill of lading showing the person who repaired, reconditioned or remodeled the property to a destination outside Illinois, for use outside Illinois;*

*a sale or transfer of tangible personal property which is produced by the seller thereof on special order in such a way as to have made the applicable tax the Service Occupation Tax or the Service Use Tax, rather than the Retailers' Occupation Tax or the Use Tax, for an interstate carrier by rail which receives the physical possession of such property in Illinois, and which transports such property, or shares with another common carrier in the transportation of such property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of such property to a destination outside Illinois, for use outside Illinois;*

*at the election of any serviceman not required to be otherwise registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, made for each fiscal year sales of service in which the aggregate annual cost price of tangible personal property transferred as an incident to the sales of service is less than 35%, or 75% in the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production, of the aggregate annual total gross receipts from all sales of service. The purchase of such tangible personal property by the serviceman shall be subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act. However, if a primary serviceman who has made the election described in this paragraph subcontracts service work to a secondary serviceman who has also made the election described in this paragraph, the primary serviceman does not incur a Use Tax liability if the secondary serviceman:*

*has paid or will pay Use Tax on* the secondary serviceman's *cost price of any tangible personal property transferred to the primary serviceman; and*

*certifies that fact in writing to the primary serviceman;*

*tangible personal property transferred incident to the completion of a maintenance agreement; and*

*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).*

*"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits and service, and shall be determined without any deduction on account of the serviceman's 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 duty to collect, from the purchaser, the tax that is imposed by the Act.* For purposes of calculating the serviceman's tax base, the selling price shall not be less than the cost price to the serviceman of the tangible personal property transferred to the service customer.

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

*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 serviceman or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such serviceman or subsidiary is licensed to do business in this State;*

*having a contract with a person located in this State under which the person, for a commission or other consideration based on the sale of service by the serviceman, directly or indirectly refers potential customers to the serviceman by providing to the potential customers a promotional code or other mechanism that allows the serviceman to track purchases referred by such persons. Examples of mechanisms that allow the serviceman 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 service by the serviceman to customers who are referred to the serviceman 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 serviceman 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;*

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

*the serviceman sells the same or substantially similar line of services 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;*

*the serviceman provides a commission or other consideration to the person located in this State based upon the sale of services by the serviceman; and*

*the cumulative gross receipts from sales of service by the serviceman 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;*

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

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

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

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

*having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this* Part*;*

*pursuant to a contract with a cable television operator located in this State, soliciting orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this State;*

*engaging in activities in Illinois, which activities in the state in which the supply business engaging in such activities is located would constitute maintaining a place of business in that state; or*

*beginning October 1, 2018, making sales of service to purchasers in Illinois from outside of Illinois if:*

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

*the serviceman enters into 200 or more separate transactions for sales of service to purchasers in Illinois; and*

*beginning January 1, 2020, a marketplace facilitator, as defined in Section 2d of* the *Act.*

*"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, but does not include the sale or use for demonstration by* the person *of that property in any form as tangible personal property in the regular course of business. "Use" does not mean the interim use of tangible personal property nor the physical incorporation of tangible personal property, 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 such purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois.* [35 ILCS 110/2]

(Source: Amended at 48 Ill. Reg. 10710, effective July 2, 2024)