

SB1755



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1755

Introduced 2/15/2019, by Sen. Dan McConchie

SYNOPSIS AS INTRODUCED:

35 ILCS 120/1

from Ch. 120, par. 440

Amends the Retailers' Occupation Tax Act. Provides that "sale at retail" does not include the selling of food at retail to students, teachers, or staff during a school district designated breakfast or lunch period, serving some or all of grades kindergarten through 12.

LRB101 04562 HLH 55881 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

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 1 as follows:

6 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

23 "Sale at retail" shall be construed to include any transfer

1 of the ownership of or title to tangible personal property to a
2 purchaser, for use or consumption by any other person to whom
3 such purchaser may transfer the tangible personal property
4 without a valuable consideration, and to include any transfer,
5 whether made for or without a valuable consideration, for
6 resale in any form as tangible personal property unless made in
7 compliance with Section 2c of this Act.

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

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

23 Nonreusable tangible personal property that is used by
24 persons engaged in the business of operating a restaurant,
25 cafeteria, or drive-in is a sale for resale when it is
26 transferred to customers in the ordinary course of business as

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

10 "Sale at retail" does not include the selling of food at
11 retail to students, teachers, or staff during a school district
12 designated breakfast or lunch period, serving some or all of
13 grades kindergarten through 12.

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

18 A person whose activities are organized and conducted
19 primarily as a not-for-profit service enterprise, and who
20 engages in selling tangible personal property at retail
21 (whether to the public or merely to members and their guests)
22 is engaged in the business of selling tangible personal
23 property at retail with respect to such transactions, excepting
24 only a person organized and operated exclusively for
25 charitable, religious or educational purposes either (1), to
26 the extent of sales by such person to its members, students,

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

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

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

24 "Reseller of motor fuel" means any person engaged in the
25 business of selling or delivering or transferring title of
26 motor fuel to another person other than for use or consumption.

1 No person shall act as a reseller of motor fuel within this
2 State without first being registered as a reseller pursuant to
3 Section 2c or a retailer pursuant to Section 2a.

4 "Selling price" or the "amount of sale" means the
5 consideration for a sale valued in money whether received in
6 money or otherwise, including cash, credits, property, other
7 than as hereinafter provided, and services, but not including
8 the value of or credit given for traded-in tangible personal
9 property where the item that is traded-in is of like kind and
10 character as that which is being sold, and shall be determined
11 without any deduction on account of the cost of the property
12 sold, the cost of materials used, labor or service cost or any
13 other expense whatsoever, but does not include charges that are
14 added to prices by sellers on account of the seller's tax
15 liability under this Act, or on account of the seller's duty to
16 collect, from the purchaser, the tax that is imposed by the Use
17 Tax Act, or, except as otherwise provided with respect to any
18 cigarette tax imposed by a home rule unit, on account of the
19 seller's tax liability under any local occupation tax
20 administered by the Department, or, except as otherwise
21 provided with respect to any cigarette tax imposed by a home
22 rule unit on account of the seller's duty to collect, from the
23 purchasers, the tax that is imposed under any local use tax
24 administered by the Department. Effective December 1, 1985,
25 "selling price" shall include charges that are added to prices
26 by sellers on account of the seller's tax liability under the

1 Cigarette Tax Act, on account of the sellers' duty to collect,
2 from the purchaser, the tax imposed under the Cigarette Use Tax
3 Act, and on account of the seller's duty to collect, from the
4 purchaser, any cigarette tax imposed by a home rule unit.

5 Notwithstanding any law to the contrary, for any motor
6 vehicle, as defined in Section 1-146 of the Vehicle Code, that
7 is sold on or after January 1, 2015 for the purpose of leasing
8 the vehicle for a defined period that is longer than one year
9 and (1) is a motor vehicle of the second division that: (A) is
10 a self-contained motor vehicle designed or permanently
11 converted to provide living quarters for recreational,
12 camping, or travel use, with direct walk through access to the
13 living quarters from the driver's seat; (B) is of the van
14 configuration designed for the transportation of not less than
15 7 nor more than 16 passengers; or (C) has a gross vehicle
16 weight rating of 8,000 pounds or less or (2) is a motor vehicle
17 of the first division, "selling price" or "amount of sale"
18 means the consideration received by the lessor pursuant to the
19 lease contract, including amounts due at lease signing and all
20 monthly or other regular payments charged over the term of the
21 lease. Also included in the selling price is any amount
22 received by the lessor from the lessee for the leased vehicle
23 that is not calculated at the time the lease is executed,
24 including, but not limited to, excess mileage charges and
25 charges for excess wear and tear. For sales that occur in
26 Illinois, with respect to any amount received by the lessor

1 from the lessee for the leased vehicle that is not calculated
2 at the time the lease is executed, the lessor who purchased the
3 motor vehicle does not incur the tax imposed by the Use Tax Act
4 on those amounts, and the retailer who makes the retail sale of
5 the motor vehicle to the lessor is not required to collect the
6 tax imposed by the Use Tax Act or to pay the tax imposed by this
7 Act on those amounts. However, the lessor who purchased the
8 motor vehicle assumes the liability for reporting and paying
9 the tax on those amounts directly to the Department in the same
10 form (Illinois Retailers' Occupation Tax, and local retailers'
11 occupation taxes, if applicable) in which the retailer would
12 have reported and paid such tax if the retailer had accounted
13 for the tax to the Department. For amounts received by the
14 lessor from the lessee that are not calculated at the time the
15 lease is executed, the lessor must file the return and pay the
16 tax to the Department by the due date otherwise required by
17 this Act for returns other than transaction returns. If the
18 retailer is entitled under this Act to a discount for
19 collecting and remitting the tax imposed under this Act to the
20 Department with respect to the sale of the motor vehicle to the
21 lessor, then the right to the discount provided in this Act
22 shall be transferred to the lessor with respect to the tax paid
23 by the lessor for any amount received by the lessor from the
24 lessee for the leased vehicle that is not calculated at the
25 time the lease is executed; provided that the discount is only
26 allowed if the return is timely filed and for amounts timely

1 paid. The "selling price" of a motor vehicle that is sold on or
2 after January 1, 2015 for the purpose of leasing for a defined
3 period of longer than one year shall not be reduced by the
4 value of or credit given for traded-in tangible personal
5 property owned by the lessor, nor shall it be reduced by the
6 value of or credit given for traded-in tangible personal
7 property owned by the lessee, regardless of whether the
8 trade-in value thereof is assigned by the lessee to the lessor.
9 In the case of a motor vehicle that is sold for the purpose of
10 leasing for a defined period of longer than one year, the sale
11 occurs at the time of the delivery of the vehicle, regardless
12 of the due date of any lease payments. A lessor who incurs a
13 Retailers' Occupation Tax liability on the sale of a motor
14 vehicle coming off lease may not take a credit against that
15 liability for the Use Tax the lessor paid upon the purchase of
16 the motor vehicle (or for any tax the lessor paid with respect
17 to any amount received by the lessor from the lessee for the
18 leased vehicle that was not calculated at the time the lease
19 was executed) if the selling price of the motor vehicle at the
20 time of purchase was calculated using the definition of
21 "selling price" as defined in this paragraph. Notwithstanding
22 any other provision of this Act to the contrary, lessors shall
23 file all returns and make all payments required under this
24 paragraph to the Department by electronic means in the manner
25 and form as required by the Department. This paragraph does not
26 apply to leases of motor vehicles for which, at the time the

1 lease is entered into, the term of the lease is not a defined
2 period, including leases with a defined initial period with the
3 option to continue the lease on a month-to-month or other basis
4 beyond the initial defined period.

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

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

22 "Department" means the Department of Revenue.

23 "Person" means any natural individual, firm, partnership,
24 association, joint stock company, joint adventure, public or
25 private corporation, limited liability company, or a receiver,
26 executor, trustee, guardian or other representative appointed

1 by order of any court.

2 The isolated or occasional sale of tangible personal
3 property at retail by a person who does not hold himself out as
4 being engaged (or who does not habitually engage) in selling
5 such tangible personal property at retail, or a sale through a
6 bulk vending machine, does not constitute engaging in a
7 business of selling such tangible personal property at retail
8 within the meaning of this Act; provided that any person who is
9 engaged in a business which is not subject to the tax imposed
10 by this Act because of involving the sale of or a contract to
11 sell real estate or a construction contract to improve real
12 estate or a construction contract to engineer, install, and
13 maintain an integrated system of products, but who, in the
14 course of conducting such business, transfers tangible
15 personal property to users or consumers in the finished form in
16 which it was purchased, and which does not become real estate
17 or was not engineered and installed, under any provision of a
18 construction contract or real estate sale or real estate sales
19 agreement entered into with some other person arising out of or
20 because of such nontaxable business, is engaged in the business
21 of selling tangible personal property at retail to the extent
22 of the value of the tangible personal property so transferred.
23 If, in such a transaction, a separate charge is made for the
24 tangible personal property so transferred, the value of such
25 property, for the purpose of this Act, shall be the amount so
26 separately charged, but not less than the cost of such property

1 to the transferor; if no separate charge is made, the value of
2 such property, for the purposes of this Act, is the cost to the
3 transferor of such tangible personal property. Construction
4 contracts for the improvement of real estate consisting of
5 engineering, installation, and maintenance of voice, data,
6 video, security, and all telecommunication systems do not
7 constitute engaging in a business of selling tangible personal
8 property at retail within the meaning of this Act if they are
9 sold at one specified contract price.

10 A person who holds himself or herself out as being engaged
11 (or who habitually engages) in selling tangible personal
12 property at retail is a person engaged in the business of
13 selling tangible personal property at retail hereunder with
14 respect to such sales (and not primarily in a service
15 occupation) notwithstanding the fact that such person designs
16 and produces such tangible personal property on special order
17 for the purchaser and in such a way as to render the property
18 of value only to such purchaser, if such tangible personal
19 property so produced on special order serves substantially the
20 same function as stock or standard items of tangible personal
21 property that are sold at retail.

22 Persons who engage in the business of transferring tangible
23 personal property upon the redemption of trading stamps are
24 engaged in the business of selling such property at retail and
25 shall be liable for and shall pay the tax imposed by this Act
26 on the basis of the retail value of the property transferred

1 upon redemption of such stamps.

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

8 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14.)