

# HB2934



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

**HB2934**

Introduced 2/19/2021, by Rep. Chris Bos

#### SYNOPSIS AS INTRODUCED:

35 ILCS 105/2  
35 ILCS 120/1

from Ch. 120, par. 439.2  
from Ch. 120, par. 440

Amends the Use Tax Act and the Retailers' Occupation Tax Act. Provides that the term "selling price" does not include the value of or credit given for traded-in tangible personal property (currently, beginning on January 1, 2020, with respect to motor vehicles, "selling price" does include the trade-in value). Effective immediately.

LRB102 10995 HLH 16327 b

FISCAL 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 Use Tax Act is amended by changing Section 2  
5 as follows:

6 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

7 Sec. 2. Definitions.

8 "Use" means the exercise by any person of any right or  
9 power over tangible personal property incident to the  
10 ownership of that property, except that it does not include  
11 the sale of such property in any form as tangible personal  
12 property in the regular course of business to the extent that  
13 such property is not first subjected to a use for which it was  
14 purchased, and does not include the use of such property by its  
15 owner for demonstration purposes: Provided that the property  
16 purchased is deemed to be purchased for the purpose of resale,  
17 despite first being used, to the extent to which it is resold  
18 as an ingredient of an intentionally produced product or  
19 by-product of manufacturing. "Use" does not mean the  
20 demonstration use or interim use of tangible personal property  
21 by a retailer before he sells that tangible personal property.  
22 For watercraft or aircraft, if the period of demonstration use  
23 or interim use by the retailer exceeds 18 months, the retailer

1 shall pay on the retailers' original cost price the tax  
2 imposed by this Act, and no credit for that tax is permitted if  
3 the watercraft or aircraft is subsequently sold by the  
4 retailer. "Use" does not mean the physical incorporation of  
5 tangible personal property, to the extent not first subjected  
6 to a use for which it was purchased, as an ingredient or  
7 constituent, into other tangible personal property (a) which  
8 is sold in the regular course of business or (b) which the  
9 person incorporating such ingredient or constituent therein  
10 has undertaken at the time of such purchase to cause to be  
11 transported in interstate commerce to destinations outside the  
12 State of Illinois: Provided that the property purchased is  
13 deemed to be purchased for the purpose of resale, despite  
14 first being used, to the extent to which it is resold as an  
15 ingredient of an intentionally produced product or by-product  
16 of manufacturing.

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

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

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

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

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

25 Nonreusable tangible personal property that is used by  
26 persons engaged in the business of operating a restaurant,

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

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

16 "Selling price" means the consideration for a sale valued  
17 in money whether received in money or otherwise, including  
18 cash, credits, property other than as hereinafter provided,  
19 and services, but, ~~prior to January 1, 2020,~~ not including the  
20 value of or credit given for traded-in tangible personal  
21 property where the item that is traded-in is of like kind and  
22 character as that which is being sold; ~~beginning January 1,~~  
23 ~~2020, "selling price" includes the portion of the value of or~~  
24 ~~credit given for traded-in motor vehicles of the First~~  
25 ~~Division as defined in Section 1-146 of the Illinois Vehicle~~  
26 ~~Code of like kind and character as that which is being sold~~

1 ~~that exceeds \$10,000.~~ "Selling price" shall be determined  
2 without any deduction on account of the cost of the property  
3 sold, the cost of materials used, labor or service cost or any  
4 other expense whatsoever, but does not include interest or  
5 finance charges which appear as separate items on the bill of  
6 sale or sales contract nor charges that are added to prices by  
7 sellers on account of the seller's tax liability under the  
8 Retailers' Occupation Tax Act, or on account of the seller's  
9 duty to collect, from the purchaser, the tax that is imposed by  
10 this Act, or, except as otherwise provided with respect to any  
11 cigarette tax imposed by a home rule unit, on account of the  
12 seller's tax liability under any local occupation tax  
13 administered by the Department, or, except as otherwise  
14 provided with respect to any cigarette tax imposed by a home  
15 rule unit on account of the seller's duty to collect, from the  
16 purchasers, the tax that is imposed under any local use tax  
17 administered by the Department. Effective December 1, 1985,  
18 "selling price" shall include charges that are added to prices  
19 by sellers on account of the seller's tax liability under the  
20 Cigarette Tax Act, on account of the seller's duty to collect,  
21 from the purchaser, the tax imposed under the Cigarette Use  
22 Tax Act, and on account of the seller's duty to collect, from  
23 the purchaser, any cigarette tax imposed by a home rule unit.

24 Notwithstanding any law to the contrary, for any motor  
25 vehicle, as defined in Section 1-146 of the Vehicle Code, that  
26 is sold on or after January 1, 2015 for the purpose of leasing

1 the vehicle for a defined period that is longer than one year  
2 and (1) is a motor vehicle of the second division that: (A) is  
3 a self-contained motor vehicle designed or permanently  
4 converted to provide living quarters for recreational,  
5 camping, or travel use, with direct walk through access to the  
6 living quarters from the driver's seat; (B) is of the van  
7 configuration designed for the transportation of not less than  
8 7 nor more than 16 passengers; or (C) has a gross vehicle  
9 weight rating of 8,000 pounds or less or (2) is a motor vehicle  
10 of the first division, "selling price" or "amount of sale"  
11 means the consideration received by the lessor pursuant to the  
12 lease contract, including amounts due at lease signing and all  
13 monthly or other regular payments charged over the term of the  
14 lease. Also included in the selling price is any amount  
15 received by the lessor from the lessee for the leased vehicle  
16 that is not calculated at the time the lease is executed,  
17 including, but not limited to, excess mileage charges and  
18 charges for excess wear and tear. For sales that occur in  
19 Illinois, with respect to any amount received by the lessor  
20 from the lessee for the leased vehicle that is not calculated  
21 at the time the lease is executed, the lessor who purchased the  
22 motor vehicle does not incur the tax imposed by the Use Tax Act  
23 on those amounts, and the retailer who makes the retail sale of  
24 the motor vehicle to the lessor is not required to collect the  
25 tax imposed by this Act or to pay the tax imposed by the  
26 Retailers' Occupation Tax Act on those amounts. However, the

1 lessor who purchased the motor vehicle assumes the liability  
2 for reporting and paying the tax on those amounts directly to  
3 the Department in the same form (Illinois Retailers'  
4 Occupation Tax, and local retailers' occupation taxes, if  
5 applicable) in which the retailer would have reported and paid  
6 such tax if the retailer had accounted for the tax to the  
7 Department. For amounts received by the lessor from the lessee  
8 that are not calculated at the time the lease is executed, the  
9 lessor must file the return and pay the tax to the Department  
10 by the due date otherwise required by this Act for returns  
11 other than transaction returns. If the retailer is entitled  
12 under this Act to a discount for collecting and remitting the  
13 tax imposed under this Act to the Department with respect to  
14 the sale of the motor vehicle to the lessor, then the right to  
15 the discount provided in this Act shall be transferred to the  
16 lessor with respect to the tax paid by the lessor for any  
17 amount received by the lessor from the lessee for the leased  
18 vehicle that is not calculated at the time the lease is  
19 executed; provided that the discount is only allowed if the  
20 return is timely filed and for amounts timely paid. The  
21 "selling price" of a motor vehicle that is sold on or after  
22 January 1, 2015 for the purpose of leasing for a defined period  
23 of longer than one year shall not be reduced by the value of or  
24 credit given for traded-in tangible personal property owned by  
25 the lessor, nor shall it be reduced by the value of or credit  
26 given for traded-in tangible personal property owned by the



1 lessee, regardless of whether the trade-in value thereof is  
2 assigned by the lessee to the lessor. In the case of a motor  
3 vehicle that is sold for the purpose of leasing for a defined  
4 period of longer than one year, the sale occurs at the time of  
5 the delivery of the vehicle, regardless of the due date of any  
6 lease payments. A lessor who incurs a Retailers' Occupation  
7 Tax liability on the sale of a motor vehicle coming off lease  
8 may not take a credit against that liability for the Use Tax  
9 the lessor paid upon the purchase of the motor vehicle (or for  
10 any tax the lessor paid with respect to any amount received by  
11 the lessor from the lessee for the leased vehicle that was not  
12 calculated at the time the lease was executed) if the selling  
13 price of the motor vehicle at the time of purchase was  
14 calculated using the definition of "selling price" as defined  
15 in this paragraph. Notwithstanding any other provision of this  
16 Act to the contrary, lessors shall file all returns and make  
17 all payments required under this paragraph to the Department  
18 by electronic means in the manner and form as required by the  
19 Department. This paragraph does not apply to leases of motor  
20 vehicles for which, at the time the lease is entered into, the  
21 term of the lease is not a defined period, including leases  
22 with a defined initial period with the option to continue the  
23 lease on a month-to-month or other basis beyond the initial  
24 defined period.

25 The phrase "like kind and character" shall be liberally  
26 construed (including but not limited to any form of motor

1 vehicle for any form of motor vehicle, or any kind of farm or  
2 agricultural implement for any other kind of farm or  
3 agricultural implement), while not including a kind of item  
4 which, if sold at retail by that retailer, would be exempt from  
5 retailers' occupation tax and use tax as an isolated or  
6 occasional sale.

7 "Department" means the Department of Revenue.

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

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

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

26 A person whose activities are organized and conducted

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

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

1           Persons who engage in the business of transferring  
2 tangible personal property upon the redemption of trading  
3 stamps are retailers hereunder when engaged in such business.

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

1 is the cost to the transferor of such tangible personal  
2 property.

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

6 (1) A retailer having or maintaining within this  
7 State, directly or by a subsidiary, an office,  
8 distribution house, sales house, warehouse or other place  
9 of business, or any agent or other representative  
10 operating within this State under the authority of the  
11 retailer or its subsidiary, irrespective of whether such  
12 place of business or agent or other representative is  
13 located here permanently or temporarily, or whether such  
14 retailer or subsidiary is licensed to do business in this  
15 State. However, the ownership of property that is located  
16 at the premises of a printer with which the retailer has  
17 contracted for printing and that consists of the final  
18 printed product, property that becomes a part of the final  
19 printed product, or copy from which the printed product is  
20 produced shall not result in the retailer being deemed to  
21 have or maintain an office, distribution house, sales  
22 house, warehouse, or other place of business within this  
23 State.

24 (1.1) A retailer having a contract with a person  
25 located in this State under which the person, for a  
26 commission or other consideration based upon the sale of

1       tangible personal property by the retailer, directly or  
2       indirectly refers potential customers to the retailer by  
3       providing to the potential customers a promotional code or  
4       other mechanism that allows the retailer to track  
5       purchases referred by such persons. Examples of mechanisms  
6       that allow the retailer to track purchases referred by  
7       such persons include but are not limited to the use of a  
8       link on the person's Internet website, promotional codes  
9       distributed through the person's hand-delivered or mailed  
10      material, and promotional codes distributed by the person  
11      through radio or other broadcast media. The provisions of  
12      this paragraph (1.1) shall apply only if the cumulative  
13      gross receipts from sales of tangible personal property by  
14      the retailer to customers who are referred to the retailer  
15      by all persons in this State under such contracts exceed  
16      \$10,000 during the preceding 4 quarterly periods ending on  
17      the last day of March, June, September, and December. A  
18      retailer meeting the requirements of this paragraph (1.1)  
19      shall be presumed to be maintaining a place of business in  
20      this State but may rebut this presumption by submitting  
21      proof that the referrals or other activities pursued  
22      within this State by such persons were not sufficient to  
23      meet the nexus standards of the United States Constitution  
24      during the preceding 4 quarterly periods.

25           (1.2) Beginning July 1, 2011, a retailer having a  
26      contract with a person located in this State under which:

1 (A) the retailer sells the same or substantially  
2 similar line of products as the person located in this  
3 State and does so using an identical or substantially  
4 similar name, trade name, or trademark as the person  
5 located in this State; and

6 (B) the retailer provides a commission or other  
7 consideration to the person located in this State  
8 based upon the sale of tangible personal property by  
9 the retailer.

10 The provisions of this paragraph (1.2) shall apply  
11 only if the cumulative gross receipts from sales of  
12 tangible personal property by the retailer to customers in  
13 this State under all such contracts exceed \$10,000 during  
14 the preceding 4 quarterly periods ending on the last day  
15 of March, June, September, and December.

16 (2) (Blank).

17 (3) (Blank).

18 (4) (Blank).

19 (5) (Blank).

20 (6) (Blank).

21 (7) (Blank).

22 (8) (Blank).

23 (9) Beginning October 1, 2018, a retailer making sales  
24 of tangible personal property to purchasers in Illinois  
25 from outside of Illinois if:

26 (A) the cumulative gross receipts from sales of

1           tangible personal property to purchasers in Illinois  
2           are \$100,000 or more; or

3                   (B) the retailer enters into 200 or more separate  
4           transactions for the sale of tangible personal  
5           property to purchasers in Illinois.

6           The retailer shall determine on a quarterly basis,  
7           ending on the last day of March, June, September, and  
8           December, whether he or she meets the criteria of either  
9           subparagraph (A) or (B) of this paragraph (9) for the  
10          preceding 12-month period. If the retailer meets the  
11          threshold of either subparagraph (A) or (B) for a 12-month  
12          period, he or she is considered a retailer maintaining a  
13          place of business in this State and is required to collect  
14          and remit the tax imposed under this Act and file returns  
15          for one year. At the end of that one-year period, the  
16          retailer shall determine whether he or she met the  
17          threshold of either subparagraph (A) or (B) during the  
18          preceding 12-month period. If the retailer met the  
19          criteria in either subparagraph (A) or (B) for the  
20          preceding 12-month period, he or she is considered a  
21          retailer maintaining a place of business in this State and  
22          is required to collect and remit the tax imposed under  
23          this Act and file returns for the subsequent year. If at  
24          the end of a one-year period a retailer that was required  
25          to collect and remit the tax imposed under this Act  
26          determines that he or she did not meet the threshold in



1       either subparagraph (A) or (B) during the preceding  
2       12-month period, the retailer shall subsequently determine  
3       on a quarterly basis, ending on the last day of March,  
4       June, September, and December, whether he or she meets the  
5       threshold of either subparagraph (A) or (B) for the  
6       preceding 12-month period.

7               Beginning January 1, 2020, neither the gross receipts  
8       from nor the number of separate transactions for sales of  
9       tangible personal property to purchasers in Illinois that  
10      a retailer makes through a marketplace facilitator and for  
11      which the retailer has received a certification from the  
12      marketplace facilitator pursuant to Section 2d of this Act  
13      shall be included for purposes of determining whether he  
14      or she has met the thresholds of this paragraph (9).

15              (10) Beginning January 1, 2020, a marketplace  
16      facilitator that meets a threshold set forth in subsection  
17      (b) of Section 2d of this Act.

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

24      (Source: P.A. 100-587, eff. 6-4-18; 101-9, eff. 6-5-19;  
25      101-31, eff. 1-1-20; 101-604, eff. 1-1-20.)

1           Section 10. The Retailers' Occupation Tax Act is amended  
2 by changing Section 1 as follows:

3           (35 ILCS 120/1) (from Ch. 120, par. 440)

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

20           "Sale at retail" shall be construed to include any  
21 transfer of the ownership of or title to tangible personal  
22 property to a purchaser, for use or consumption by any other  
23 person to whom such purchaser may transfer the tangible  
24 personal property without a valuable consideration, and to  
25 include any transfer, whether made for or without a valuable

1 consideration, for resale in any form as tangible personal  
2 property unless made in compliance with Section 2c of this  
3 Act.

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

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

20 Nonreusable tangible personal property that is used by  
21 persons engaged in the business of operating a restaurant,  
22 cafeteria, or drive-in is a sale for resale when it is  
23 transferred to customers in the ordinary course of business as  
24 part of the sale of food or beverages and is used to deliver,  
25 package, or consume food or beverages, regardless of where  
26 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  
3 other containers, utensils, straws, placemats, napkins, doggie  
4 bags, and wrapping or packaging materials that are transferred  
5 to 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,  
17 excepting 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

1 provisions of this paragraph shall not apply to nor subject to  
2 taxation occasional dinners, socials or similar activities of  
3 a person organized and operated exclusively for charitable,  
4 religious or educational purposes, whether or not such  
5 activities are open to the public.

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

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

17 "Reseller of motor fuel" means any person engaged in the  
18 business of selling or delivering or transferring title of  
19 motor fuel to another person other than for use or  
20 consumption. No person shall act as a reseller of motor fuel  
21 within this State without first being registered as a reseller  
22 pursuant to Section 2c or a retailer pursuant to Section 2a.

23 "Selling price" or the "amount of sale" means the  
24 consideration for a sale valued in money whether received in  
25 money or otherwise, including cash, credits, property, other  
26 than as hereinafter provided, and services, but, ~~prior to~~

1 ~~January 1, 2020,~~ not including the value of or credit given for  
2 traded-in tangible personal property where the item that is  
3 traded-in is of like kind and character as that which is being  
4 sold; ~~beginning January 1, 2020, "selling price" includes the~~  
5 ~~portion of the value of or credit given for traded in motor~~  
6 ~~vehicles of the First Division as defined in Section 1-146 of~~  
7 ~~the Illinois Vehicle Code of like kind and character as that~~  
8 ~~which is being sold that exceeds \$10,000.~~ "Selling price"  
9 shall be determined without any deduction on account of the  
10 cost of the property sold, the cost of materials used, labor or  
11 service cost or any other expense whatsoever, but does not  
12 include charges that are added to prices by sellers on account  
13 of the seller's tax liability under this Act, or on account of  
14 the seller's duty to collect, from the purchaser, the tax that  
15 is imposed by the Use Tax Act, or, except as otherwise provided  
16 with respect to any cigarette tax imposed by a home rule unit,  
17 on account of the seller's tax liability under any local  
18 occupation tax administered by the Department, or, except as  
19 otherwise provided with respect to any cigarette tax imposed  
20 by a home rule unit on account of the seller's duty to collect,  
21 from the purchasers, the tax that is imposed under any local  
22 use tax administered by the Department. Effective December 1,  
23 1985, "selling price" shall include charges that are added to  
24 prices by sellers on account of the seller's tax liability  
25 under the Cigarette Tax Act, on account of the sellers' duty to  
26 collect, from the purchaser, the tax imposed under the

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

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

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



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

1 term of the lease is not a defined period, including leases  
2 with a defined initial period with the option to continue the  
3 lease on a month-to-month or other basis beyond the initial  
4 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  
18 other consideration derived by a seller from the sale,  
19 transfer or assignment of accounts receivable to a wholly  
20 owned subsidiary will not be deemed payments prior to the time  
21 the purchaser 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  
16 in which it was purchased, and which does not become real  
17 estate or was not engineered and installed, under any  
18 provision of a construction contract or real estate sale or  
19 real estate sales agreement entered into with some other  
20 person arising out of or because of such nontaxable business,  
21 is engaged in the business of selling tangible personal  
22 property at retail to the extent of the value of the tangible  
23 personal property so transferred. If, in such a transaction, a  
24 separate charge is made for the tangible personal property so  
25 transferred, the value of such property, for the purpose of  
26 this Act, shall be the amount so separately charged, but not

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

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

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

1 this Act on the basis of the retail value of the property  
2 transferred upon redemption of such stamps.

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

9 "Remote retailer" means a retailer that does not maintain  
10 within this State, directly or by a subsidiary, an office,  
11 distribution house, sales house, warehouse or other place of  
12 business, or any agent or other representative operating  
13 within this State under the authority of the retailer or its  
14 subsidiary, irrespective of whether such place of business or  
15 agent is located here permanently or temporarily or whether  
16 such retailer or subsidiary is licensed to do business in this  
17 State.

18 "Marketplace" means a physical or electronic place, forum,  
19 platform, application, or other method by which a marketplace  
20 seller sells or offers to sell items.

21 "Marketplace facilitator" means a person who, pursuant to  
22 an agreement with an unrelated third-party marketplace seller,  
23 directly or indirectly through one or more affiliates  
24 facilitates a retail sale by an unrelated third party  
25 marketplace seller by:

26 (1) listing or advertising for sale by the marketplace

1 seller in a marketplace, tangible personal property that  
2 is subject to tax under this Act; and

3 (2) either directly or indirectly, through agreements  
4 or arrangements with third parties, collecting payment  
5 from the customer and transmitting that payment to the  
6 marketplace seller regardless of whether the marketplace  
7 facilitator receives compensation or other consideration  
8 in exchange for its services.

9 A person who provides advertising services, including  
10 listing products for sale, is not considered a marketplace  
11 facilitator, so long as the advertising service platform or  
12 forum does not engage, directly or indirectly through one or  
13 more affiliated persons, in the activities described in  
14 paragraph (2) of this definition of "marketplace facilitator".

15 "Marketplace seller" means a person that makes sales  
16 through a marketplace operated by an unrelated third party  
17 marketplace facilitator.

18 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 1-1-20.)

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law.