

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 Sections 1, 2, and 2-12 as follows:

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

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

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

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

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

19 "Sale at retail" shall 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 A person whose activities are organized and conducted  
17 primarily as a not-for-profit service enterprise, and who  
18 engages in selling tangible personal property at retail  
19 (whether to the public or merely to members and their guests)  
20 is engaged in the business of selling tangible personal  
21 property at retail with respect to such transactions,  
22 excepting only a person organized and operated exclusively for  
23 charitable, religious or educational purposes either (1), to  
24 the extent of sales by such person to its members, students,  
25 patients or inmates of tangible personal property to be used  
26 primarily for the purposes of such person, or (2), to the

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

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

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

22 "Reseller of motor fuel" means any person engaged in the  
23 business of selling or delivering or transferring title of  
24 motor fuel to another person other than for use or  
25 consumption. No person shall act as a reseller of motor fuel  
26 within this State without first being registered as a reseller

1 pursuant to Section 2c or a retailer pursuant to Section 2a.

2 "Selling price" or the "amount of sale" means the  
3 consideration for a sale valued in money whether received in  
4 money or otherwise, including cash, credits, property, other  
5 than as hereinafter provided, and services, but, prior to  
6 January 1, 2020 and beginning again on January 1, 2022, not  
7 including the value of or credit given for traded-in tangible  
8 personal property where the item that is traded-in is of like  
9 kind and character as that which is being sold; beginning  
10 January 1, 2020 and until January 1, 2022, "selling price"  
11 includes the portion of the value of or credit given for  
12 traded-in motor vehicles of the First Division as defined in  
13 Section 1-146 of the Illinois Vehicle Code of like kind and  
14 character as that which is being sold that exceeds \$10,000.  
15 "Selling price" shall be determined without any deduction on  
16 account of the cost of the property sold, the cost of materials  
17 used, labor or service cost or any other expense whatsoever,  
18 but does not include charges that are added to prices by  
19 sellers on account of the seller's tax liability under this  
20 Act, or on account of the seller's duty to collect, from the  
21 purchaser, the tax that is imposed by the Use Tax Act, or,  
22 except as otherwise provided with respect to any cigarette tax  
23 imposed by a home rule unit, on account of the seller's tax  
24 liability under any local occupation tax administered by the  
25 Department, or, except as otherwise provided with respect to  
26 any cigarette tax imposed by a home rule unit on account of the

1 seller's duty to collect, from the purchasers, the tax that is  
2 imposed under any local use tax administered by the  
3 Department. Effective December 1, 1985, "selling price" shall  
4 include charges that are added to prices by sellers on account  
5 of the seller's tax liability under the Cigarette Tax Act, on  
6 account of the sellers' duty to collect, from the purchaser,  
7 the tax imposed under the Cigarette Use Tax Act, and on account  
8 of the seller's duty to collect, from the purchaser, any  
9 cigarette tax imposed by a home rule unit.

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

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

1 provided in this Act shall be transferred to the lessor with  
2 respect to the tax paid by the lessor for any amount received  
3 by the lessor from the lessee for the leased vehicle that is  
4 not calculated at the time the lease is executed; provided  
5 that the discount is only allowed if the return is timely filed  
6 and for amounts timely paid. The "selling price" of a motor  
7 vehicle that is sold on or after January 1, 2015 for the  
8 purpose of leasing for a defined period of longer than one year  
9 shall not be reduced by the value of or credit given for  
10 traded-in tangible personal property owned by the lessor, nor  
11 shall it be reduced by the value of or credit given for  
12 traded-in tangible personal property owned by the lessee,  
13 regardless of whether the trade-in value thereof is assigned  
14 by the lessee to the lessor. In the case of a motor vehicle  
15 that is sold for the purpose of leasing for a defined period of  
16 longer than one year, the sale occurs at the time of the  
17 delivery of the vehicle, regardless of the due date of any  
18 lease payments. A lessor who incurs a Retailers' Occupation  
19 Tax liability on the sale of a motor vehicle coming off lease  
20 may not take a credit against that liability for the Use Tax  
21 the lessor paid upon the purchase of the motor vehicle (or for  
22 any tax the lessor paid with respect to any amount received by  
23 the lessor from the lessee for the leased vehicle that was not  
24 calculated at the time the lease was executed) if the selling  
25 price of the motor vehicle at the time of purchase was  
26 calculated using the definition of "selling price" as defined

1 in this paragraph. Notwithstanding any other provision of this  
2 Act to the contrary, lessors shall file all returns and make  
3 all payments required under this paragraph to the Department  
4 by electronic means in the manner and form as required by the  
5 Department. This paragraph does not apply to leases of motor  
6 vehicles for which, at the time the lease is entered into, the  
7 term of the lease is not a defined period, including leases  
8 with a defined initial period with the option to continue the  
9 lease on a month-to-month or other basis beyond the initial  
10 defined period.

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

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

1 the purchaser makes payment on such accounts.

2 "Department" means the Department of Revenue.

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

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

1 is engaged in the business of selling tangible personal  
2 property at retail to the extent of the value of the tangible  
3 personal property so transferred. If, in such a transaction, a  
4 separate charge is made for the tangible personal property so  
5 transferred, the value of such property, for the purpose of  
6 this Act, shall be the amount so separately charged, but not  
7 less than the cost of such property to the transferor; if no  
8 separate charge is made, the value of such property, for the  
9 purposes of this Act, is the cost to the transferor of such  
10 tangible personal property. Construction contracts for the  
11 improvement of real estate consisting of engineering,  
12 installation, and maintenance of voice, data, video, security,  
13 and all telecommunication systems do not constitute engaging  
14 in a business of selling tangible personal property at retail  
15 within the meaning of this Act if they are sold at one  
16 specified contract price.

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

1 same function as stock or standard items of tangible personal  
2 property that are sold at retail.

3 Persons who engage in the business of transferring  
4 tangible personal property upon the redemption of trading  
5 stamps are engaged in the business of selling such property at  
6 retail and shall be liable for and shall pay the tax imposed by  
7 this Act on the basis of the retail value of the property  
8 transferred upon redemption of such stamps.

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

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

24 "Retailer maintaining a place of business in this State"  
25 has the meaning given to that term in Section 2 of the Use Tax  
26 Act.

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

4 "Marketplace facilitator" means a person who, pursuant to  
5 an agreement with an unrelated third-party marketplace seller,  
6 directly or indirectly through one or more affiliates  
7 facilitates a retail sale by an unrelated third party  
8 marketplace seller by:

9 (1) listing or advertising for sale by the marketplace  
10 seller in a marketplace, tangible personal property that  
11 is subject to tax under this Act; and

12 (2) either directly or indirectly, through agreements  
13 or arrangements with third parties, collecting payment  
14 from the customer and transmitting that payment to the  
15 marketplace seller regardless of whether the marketplace  
16 facilitator receives compensation or other consideration  
17 in exchange for its services.

18 A person who provides advertising services, including  
19 listing products for sale, is not considered a marketplace  
20 facilitator, so long as the advertising service platform or  
21 forum does not engage, directly or indirectly through one or  
22 more affiliated persons, in the activities described in  
23 paragraph (2) of this definition of "marketplace facilitator".

24 "Marketplace facilitator" does not include any person  
25 licensed under the Auction License Act. This exemption does  
26 not apply to any person who is an Internet auction listing

1 service, as defined by the Auction License Act.

2 "Marketplace seller" means a person that makes sales  
3 through a marketplace operated by an unrelated third party  
4 marketplace facilitator.

5 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 1-1-20;  
6 102-353, eff. 1-1-22; 102-634, eff. 8-27-21; 102-813, eff.  
7 5-13-22.)

8 (35 ILCS 120/2) (from Ch. 120, par. 441)

9 Sec. 2. Tax imposed.

10 (a) A tax is imposed upon persons engaged in the business  
11 of selling at retail tangible personal property, including  
12 computer software, and including photographs, negatives, and  
13 positives that are the product of photoprocessing, but not  
14 including products of photoprocessing produced for use in  
15 motion pictures for public commercial exhibition. Beginning  
16 January 1, 2001, prepaid telephone calling arrangements shall  
17 be considered tangible personal property subject to the tax  
18 imposed under this Act regardless of the form in which those  
19 arrangements may be embodied, transmitted, or fixed by any  
20 method now known or hereafter developed. Sales of (1)  
21 electricity delivered to customers by wire; (2) natural or  
22 artificial gas that is delivered to customers through pipes,  
23 pipelines, or mains; and (3) water that is delivered to  
24 customers through pipes, pipelines, or mains are not subject  
25 to tax under this Act. The provisions of this amendatory Act of

1 the 98th General Assembly are declaratory of existing law as  
2 to the meaning and scope of this Act.

3 (b) Beginning on January 1, 2021, a remote retailer is  
4 engaged in the occupation of selling at retail in Illinois for  
5 purposes of this Act, if:

6 (1) the cumulative gross receipts from sales of  
7 tangible personal property to purchasers in Illinois are  
8 \$100,000 or more; or

9 (2) the retailer enters into 200 or more separate  
10 transactions for the sale of tangible personal property to  
11 purchasers in Illinois.

12 Remote retailers that meet or exceed the threshold in  
13 either paragraph (1) or (2) above shall be liable for all  
14 applicable State retailers' and locally imposed retailers'  
15 occupation taxes administered by the Department on all retail  
16 sales to Illinois purchasers.

17 The remote retailer shall determine on a quarterly basis,  
18 ending on the last day of March, June, September, and  
19 December, whether he or she meets the criteria of either  
20 paragraph (1) or (2) of this subsection for the preceding  
21 12-month period. If the retailer meets the criteria of either  
22 paragraph (1) or (2) for a 12-month period, he or she is  
23 considered a retailer maintaining a place of business in this  
24 State and is required to collect and remit the tax imposed  
25 under this Act and all retailers' occupation tax imposed by  
26 local taxing jurisdictions in Illinois, provided such local

1 taxes are administered by the Department, and to file all  
2 applicable returns for one year. At the end of that one-year  
3 period, the retailer shall determine whether the retailer met  
4 the criteria of either paragraph (1) or (2) for the preceding  
5 12-month period. If the retailer met the criteria in either  
6 paragraph (1) or (2) for the preceding 12-month period, he or  
7 she is considered a retailer maintaining a place of business  
8 in this State and is required to collect and remit all  
9 applicable State and local retailers' occupation taxes and  
10 file returns for the subsequent year. If, at the end of a  
11 one-year period, a retailer that was required to collect and  
12 remit the tax imposed under this Act determines that he or she  
13 did not meet the criteria in either paragraph (1) or (2) during  
14 the preceding 12-month period, then the retailer shall  
15 subsequently determine on a quarterly basis, ending on the  
16 last day of March, June, September, and December, whether he  
17 or she meets the criteria of either paragraph (1) or (2) for  
18 the preceding 12-month period.

19 (b-2) Beginning on January 1, 2025, a retailer maintaining  
20 a place of business in this State that makes retail sales of  
21 tangible personal property to Illinois customers from a  
22 location or locations outside of Illinois is engaged in the  
23 occupation of selling at retail in Illinois for the purposes  
24 of this Act. Those retailers are liable for all applicable  
25 State and locally imposed retailers' occupation taxes  
26 administered by the Department on retail sales made by those

1 retailers to Illinois customers from locations outside of  
2 Illinois.

3 (b-5) For the purposes of this Section, neither the gross  
4 receipts from nor the number of separate transactions for  
5 sales of tangible personal property to purchasers in Illinois  
6 that a remote retailer makes through a marketplace facilitator  
7 shall be included for the purposes of determining whether he  
8 or she has met the thresholds of subsection (b) of this Section  
9 so long as the remote retailer has received certification from  
10 the marketplace facilitator that the marketplace facilitator  
11 is legally responsible for payment of tax on such sales.

12 (b-10) A remote retailer that is required to collect taxes  
13 imposed under the Use Tax Act on retail sales made to Illinois  
14 purchasers or a retailer maintaining a place of business in  
15 this State that is required to collect taxes imposed under the  
16 Use Tax Act on retail sales made to Illinois purchasers shall  
17 be liable to the Department for such taxes, except when the  
18 remote retailer or retailer maintaining a place of business in  
19 this State is relieved of the duty to remit such taxes by  
20 virtue of having paid to the Department taxes imposed by this  
21 Act in accordance with this Section upon his or her gross  
22 receipts from such sales.

23 (c) Marketplace facilitators engaged in the business of  
24 selling at retail tangible personal property in Illinois.  
25 Beginning January 1, 2021, a marketplace facilitator is  
26 engaged in the occupation of selling at retail tangible

1 personal property in Illinois for purposes of this Act if,  
2 during the previous 12-month period:

3 (1) the cumulative gross receipts from sales of  
4 tangible personal property on its own behalf or on behalf  
5 of marketplace sellers to purchasers in Illinois equals  
6 \$100,000 or more; or

7 (2) the marketplace facilitator enters into 200 or  
8 more separate transactions on its own behalf or on behalf  
9 of marketplace sellers for the sale of tangible personal  
10 property to purchasers in Illinois, regardless of whether  
11 the marketplace facilitator or marketplace sellers for  
12 whom such sales are facilitated are registered as  
13 retailers in this State.

14 A marketplace facilitator who meets either paragraph (1)  
15 or (2) of this subsection is required to remit the applicable  
16 State retailers' occupation taxes under this Act and local  
17 retailers' occupation taxes administered by the Department on  
18 all taxable sales of tangible personal property made by the  
19 marketplace facilitator or facilitated for marketplace sellers  
20 to customers in this State. A marketplace facilitator selling  
21 or facilitating the sale of tangible personal property to  
22 customers in this State is subject to all applicable  
23 procedures and requirements of this Act.

24 The marketplace facilitator shall determine on a quarterly  
25 basis, ending on the last day of March, June, September, and  
26 December, whether he or she meets the criteria of either

1 paragraph (1) or (2) of this subsection for the preceding  
2 12-month period. If the marketplace facilitator meets the  
3 criteria of either paragraph (1) or (2) for a 12-month period,  
4 he or she is considered a retailer maintaining a place of  
5 business in this State and is required to remit the tax imposed  
6 under this Act and all retailers' occupation tax imposed by  
7 local taxing jurisdictions in Illinois, provided such local  
8 taxes are administered by the Department, and to file all  
9 applicable returns for one year. At the end of that one-year  
10 period, the marketplace facilitator shall determine whether it  
11 met the criteria of either paragraph (1) or (2) for the  
12 preceding 12-month period. If the marketplace facilitator met  
13 the criteria in either paragraph (1) or (2) for the preceding  
14 12-month period, it is considered a retailer maintaining a  
15 place of business in this State and is required to collect and  
16 remit all applicable State and local retailers' occupation  
17 taxes and file returns for the subsequent year. If at the end  
18 of a one-year period a marketplace facilitator that was  
19 required to collect and remit the tax imposed under this Act  
20 determines that he or she did not meet the criteria in either  
21 paragraph (1) or (2) during the preceding 12-month period, the  
22 marketplace facilitator shall subsequently determine on a  
23 quarterly basis, ending on the last day of March, June,  
24 September, and December, whether he or she meets the criteria  
25 of either paragraph (1) or (2) for the preceding 12-month  
26 period.

1           A marketplace facilitator shall be entitled to any  
2 credits, deductions, or adjustments to the sales price  
3 otherwise provided to the marketplace seller, in addition to  
4 any such adjustments provided directly to the marketplace  
5 facilitator. This Section pertains to, but is not limited to,  
6 adjustments such as discounts, coupons, and rebates. In  
7 addition, a marketplace facilitator shall be entitled to the  
8 retailers' discount provided in Section 3 of the Retailers'  
9 Occupation Tax Act on all marketplace sales, and the  
10 marketplace seller shall not include sales made through a  
11 marketplace facilitator when computing any retailers' discount  
12 on remaining sales. Marketplace facilitators shall report and  
13 remit the applicable State and local retailers' occupation  
14 taxes on sales facilitated for marketplace sellers separately  
15 from any sales or use tax collected on taxable retail sales  
16 made directly by the marketplace facilitator or its  
17 affiliates.

18           The marketplace facilitator is liable for the remittance  
19 of all applicable State retailers' occupation taxes under this  
20 Act and local retailers' occupation taxes administered by the  
21 Department on sales through the marketplace and is subject to  
22 audit on all such sales. The Department shall not audit  
23 marketplace sellers for their marketplace sales where a  
24 marketplace facilitator remitted the applicable State and  
25 local retailers' occupation taxes unless the marketplace  
26 facilitator seeks relief as a result of incorrect information

1 provided to the marketplace facilitator by a marketplace  
2 seller as set forth in this Section. The marketplace  
3 facilitator shall not be held liable for tax on any sales made  
4 by a marketplace seller that take place outside of the  
5 marketplace and which are not a part of any agreement between a  
6 marketplace facilitator and a marketplace seller. In addition,  
7 marketplace facilitators shall not be held liable to State and  
8 local governments of Illinois for having charged and remitted  
9 an incorrect amount of State and local retailers' occupation  
10 tax if, at the time of the sale, the tax is computed based on  
11 erroneous data provided by the State in database files on tax  
12 rates, boundaries, or taxing jurisdictions or incorrect  
13 information provided to the marketplace facilitator by the  
14 marketplace seller.

15 (d) A marketplace facilitator shall:

16 (1) certify to each marketplace seller that the  
17 marketplace facilitator assumes the rights and duties of a  
18 retailer under this Act with respect to sales made by the  
19 marketplace seller through the marketplace; and

20 (2) remit taxes imposed by this Act as required by  
21 this Act for sales made through the marketplace.

22 (e) A marketplace seller shall retain books and records  
23 for all sales made through a marketplace in accordance with  
24 the requirements of this Act.

25 (f) A marketplace facilitator is subject to audit on all  
26 marketplace sales for which it is considered to be the

1 retailer, but shall not be liable for tax or subject to audit  
2 on sales made by marketplace sellers outside of the  
3 marketplace.

4 (g) A marketplace facilitator required to collect taxes  
5 imposed under the Use Tax Act on marketplace sales made to  
6 Illinois purchasers shall be liable to the Department for such  
7 taxes, except when the marketplace facilitator is relieved of  
8 the duty to remit such taxes by virtue of having paid to the  
9 Department taxes imposed by this Act in accordance with this  
10 Section upon his or her gross receipts from such sales.

11 (h) Nothing in this Section shall allow the Department to  
12 collect retailers' occupation taxes from both the marketplace  
13 facilitator and marketplace seller on the same transaction.

14 (i) If, for any reason, the Department is prohibited from  
15 enforcing the marketplace facilitator's duty under this Act to  
16 remit taxes pursuant to this Section, the duty to remit such  
17 taxes remains with the marketplace seller.

18 (j) Nothing in this Section affects the obligation of any  
19 consumer to remit use tax for any taxable transaction for  
20 which a certified service provider acting on behalf of a  
21 remote retailer or a marketplace facilitator does not collect  
22 and remit the appropriate tax.

23 (k) Nothing in this Section shall allow the Department to  
24 collect the retailers' occupation tax from both the  
25 marketplace facilitator and the marketplace seller.

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

1 (35 ILCS 120/2-12)

2 Sec. 2-12. Location where retailer is deemed to be engaged  
3 in the business of selling. The purpose of this Section is to  
4 specify where a retailer is deemed to be engaged in the  
5 business of selling tangible personal property for the  
6 purposes of this Act, the Use Tax Act, the Service Use Tax Act,  
7 and the Service Occupation Tax Act, and for the purpose of  
8 collecting any other local retailers' occupation tax  
9 administered by the Department. This Section applies only with  
10 respect to the particular selling activities described in the  
11 following paragraphs. The provisions of this Section are not  
12 intended to, and shall not be interpreted to, affect where a  
13 retailer is deemed to be engaged in the business of selling  
14 with respect to any activity that is not specifically  
15 described in the following paragraphs.

16 (1) If a purchaser who is present at the retailer's  
17 place of business, having no prior commitment to the  
18 retailer, agrees to purchase and makes payment for  
19 tangible personal property at the retailer's place of  
20 business, then the transaction shall be deemed an  
21 over-the-counter sale occurring at the retailer's same  
22 place of business where the purchaser was present and made  
23 payment for that tangible personal property if the  
24 retailer regularly stocks the purchased tangible personal  
25 property or similar tangible personal property in the

1 quantity, or similar quantity, for sale at the retailer's  
2 same place of business and then either (i) the purchaser  
3 takes possession of the tangible personal property at the  
4 same place of business or (ii) the retailer delivers or  
5 arranges for the tangible personal property to be  
6 delivered to the purchaser.

7 (2) If a purchaser, having no prior commitment to the  
8 retailer, agrees to purchase tangible personal property  
9 and makes payment over the phone, in writing, or via the  
10 Internet and takes possession of the tangible personal  
11 property at the retailer's place of business, then the  
12 sale shall be deemed to have occurred at the retailer's  
13 place of business where the purchaser takes possession of  
14 the property if the retailer regularly stocks the item or  
15 similar items in the quantity, or similar quantities,  
16 purchased by the purchaser.

17 (3) A retailer is deemed to be engaged in the business  
18 of selling food, beverages, or other tangible personal  
19 property through a vending machine at the location where  
20 the vending machine is located at the time the sale is made  
21 if (i) the vending machine is a device operated by coin,  
22 currency, credit card, token, coupon or similar device;  
23 (2) the food, beverage or other tangible personal property  
24 is contained within the vending machine and dispensed from  
25 the vending machine; and (3) the purchaser takes  
26 possession of the purchased food, beverage or other

1           tangible personal property immediately.

2           (4) Minerals. A producer of coal or other mineral  
3           mined in Illinois is deemed to be engaged in the business  
4           of selling at the place where the coal or other mineral  
5           mined in Illinois is extracted from the earth. With  
6           respect to minerals (i) the term "extracted from the  
7           earth" means the location at which the coal or other  
8           mineral is extracted from the mouth of the mine, and (ii) a  
9           "mineral" includes not only coal, but also oil, sand,  
10          stone taken from a quarry, gravel and any other thing  
11          commonly regarded as a mineral and extracted from the  
12          earth. This paragraph does not apply to coal or another  
13          mineral when it is delivered or shipped by the seller to  
14          the purchaser at a point outside Illinois so that the sale  
15          is exempt under the United States Constitution as a sale  
16          in interstate or foreign commerce.

17          (5) A retailer selling tangible personal property to a  
18          nominal lessee or bailee pursuant to a lease with a dollar  
19          or other nominal option to purchase is engaged in the  
20          business of selling at the location where the property is  
21          first delivered to the lessee or bailee for its intended  
22          use.

23          (6) Beginning on January 1, 2021, a remote retailer  
24          making retail sales of tangible personal property that  
25          meet or exceed the thresholds established in paragraph (1)  
26          or (2) of subsection (b) of Section 2 of this Act is

1 engaged in the business of selling at the Illinois  
2 location to which the tangible personal property is  
3 shipped or delivered or at which possession is taken by  
4 the purchaser.

5 (7) Beginning January 1, 2021, a marketplace  
6 facilitator facilitating sales of tangible personal  
7 property that meet or exceed one of the thresholds  
8 established in paragraph (1) or (2) of subsection (c) of  
9 Section 2 of this Act is deemed to be engaged in the  
10 business of selling at the Illinois location to which the  
11 tangible personal property is shipped or delivered or at  
12 which possession is taken by the purchaser when the sale  
13 is made by a marketplace seller on the marketplace  
14 facilitator's marketplace.

15 (8) Beginning on January 1, 2025, for sales that would  
16 otherwise be sourced outside of this State, a retailer  
17 maintaining a place of business in this State that makes  
18 retail sales of tangible personal property to Illinois  
19 customers from a location or locations outside of Illinois  
20 is engaged in the business of selling at the Illinois  
21 location to which the tangible personal property is  
22 shipped or delivered or at which possession is taken by  
23 the purchaser.

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

25 Section 99. Effective date. This Act takes effect January  
26 1, 2025.