



Adopted in House Comm. on Feb 04, 2004

09300HB0412ham001

LRB093 04932 SJM 46174 a

1 AMENDMENT TO HOUSE BILL 412

2 AMENDMENT NO. _____. Amend House Bill 412 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by
5 changing Section 215 as follows:

6 (35 ILCS 5/215)

7 Sec. 215. Transportation Employee Credit.

8 (a) For each taxable year beginning on or after January 1,
9 2004 and on or before the effective date of this amendatory Act
10 of the 93rd General Assembly, a qualified employer shall be
11 allowed a credit against the tax imposed by subsections (a) and
12 (b) of Section 201 of this Act in the amount of \$50 for each
13 eligible employee employed by the taxpayer as of the last day
14 of the taxable year.

15 (a-5) A qualified employer who receives a refund of the
16 commercial distribution fee paid under Section 3-815.1 of the
17 Illinois Vehicle Code is not eligible for the tax credit under
18 this Section.

19 (b) For purposes of this Section, "qualified employer"
20 means:

21 (1) any employer who pays a commercial distribution fee
22 under Section 3-815.1 of the Illinois Vehicle Code during
23 the taxable year; or

24 (2) any employer who, as of the end of the taxable

1 year, has one or more employees whose compensation is
2 subject to tax only by the employee's state of residence
3 pursuant to 49 U.S.C 14503(a) (1).

4 (c) For purposes of this Section, "employee" includes an
5 individual who is treated as an employee of the taxpayer under
6 Section 401(c) of the Internal Revenue Code and whose actual
7 assigned duties are such that, if the individual were a
8 common-law employee performing such duties in 2 or more states,
9 the individual's compensation would be subject to tax only by
10 the individual's state of residence pursuant to 49 U.S.C.
11 14503(a) (1).

12 (d) An employee is an "eligible employee" only if all of
13 the following criteria are met:

14 (1) The employee is an operator of a motor vehicle;

15 (2) The employee's compensation, pursuant to 49 U.S.C.
16 14503(a) (1), is subject to tax only by the employee's state
17 of residence, or would be subject to tax only by the
18 employee's state of residence if the employee's actual
19 duties were performed in 2 or more states;

20 (3) As of the end of the taxable year for which the
21 credit is claimed, the employee is a resident of this State
22 for purposes of this Act and 49 U.S.C. 14503(a) (1); and

23 (4) The employee is a full-time employee working 30 or
24 more hours per week for 180 consecutive days; provided that
25 such 180-day period may be completed after the end of the
26 taxable year for which the credit under this Section is
27 claimed.

28 (e) For partners, shareholders of subchapter S
29 corporations, and owners of limited liability companies, if the
30 limited liability company is treated as a partnership for
31 purposes of federal and State income taxation, there shall be
32 allowed a credit under this Section to be determined in
33 accordance with the determination of income and distributive
34 share of income under Sections 702 and 704 and subchapter S of

1 the Internal Revenue Code.

2 (f) Any credit allowed under this Section which is unused
3 in the year the credit is earned may be carried forward to each
4 of the 5 taxable years following the year for which the credit
5 is first computed until it is used. This credit shall be
6 applied first to the earliest year for which there is a
7 liability. If there is a credit under this Section from more
8 than one tax year that is available to offset a liability, the
9 earliest credit arising under this Section shall be applied
10 first.

11 (g) (Blank) ~~This Section is exempt from the provisions of~~
12 ~~Section 250 of this Act.~~

13 (h) The Department of Revenue shall promulgate such rules
14 and regulations as may be deemed necessary to carry out the
15 purposes of this Section.

16 (Source: P.A. 93-23, eff. 6-20-03.)

17 Section 10. The Use Tax Act is amended by changing
18 Sections 3-5 and 3-61 as follows:

19 (35 ILCS 105/3-5) (from Ch. 120, par. 439.3-5)

20 Sec. 3-5. Exemptions. Use of the following tangible
21 personal property is exempt from the tax imposed by this Act:

22 (1) Personal property purchased from a corporation,
23 society, association, foundation, institution, or
24 organization, other than a limited liability company, that is
25 organized and operated as a not-for-profit service enterprise
26 for the benefit of persons 65 years of age or older if the
27 personal property was not purchased by the enterprise for the
28 purpose of resale by the enterprise.

29 (2) Personal property purchased by a not-for-profit
30 Illinois county fair association for use in conducting,
31 operating, or promoting the county fair.

32 (3) Personal property purchased by a not-for-profit arts or

1 cultural organization that establishes, by proof required by
2 the Department by rule, that it has received an exemption under
3 Section 501(c)(3) of the Internal Revenue Code and that is
4 organized and operated primarily for the presentation or
5 support of arts or cultural programming, activities, or
6 services. These organizations include, but are not limited to,
7 music and dramatic arts organizations such as symphony
8 orchestras and theatrical groups, arts and cultural service
9 organizations, local arts councils, visual arts organizations,
10 and media arts organizations. On and after the effective date
11 of this amendatory Act of the 92nd General Assembly, however,
12 an entity otherwise eligible for this exemption shall not make
13 tax-free purchases unless it has an active identification
14 number issued by the Department.

15 (4) Personal property purchased by a governmental body, by
16 a corporation, society, association, foundation, or
17 institution organized and operated exclusively for charitable,
18 religious, or educational purposes, or by a not-for-profit
19 corporation, society, association, foundation, institution, or
20 organization that has no compensated officers or employees and
21 that is organized and operated primarily for the recreation of
22 persons 55 years of age or older. A limited liability company
23 may qualify for the exemption under this paragraph only if the
24 limited liability company is organized and operated
25 exclusively for educational purposes. On and after July 1,
26 1987, however, no entity otherwise eligible for this exemption
27 shall make tax-free purchases unless it has an active exemption
28 identification number issued by the Department.

29 (5) Until July 1, 2003, a passenger car that is a
30 replacement vehicle to the extent that the purchase price of
31 the car is subject to the Replacement Vehicle Tax.

32 (6) Until July 1, 2003, graphic arts machinery and
33 equipment, including repair and replacement parts, both new and
34 used, and including that manufactured on special order,

1 certified by the purchaser to be used primarily for graphic
2 arts production, and including machinery and equipment
3 purchased for lease. Equipment includes chemicals or chemicals
4 acting as catalysts but only if the chemicals or chemicals
5 acting as catalysts effect a direct and immediate change upon a
6 graphic arts product.

7 (7) Farm chemicals.

8 (8) Legal tender, currency, medallions, or gold or silver
9 coinage issued by the State of Illinois, the government of the
10 United States of America, or the government of any foreign
11 country, and bullion.

12 (9) Personal property purchased from a teacher-sponsored
13 student organization affiliated with an elementary or
14 secondary school located in Illinois.

15 (10) A motor vehicle of the first division, a motor vehicle
16 of the second division that is a self-contained motor vehicle
17 designed or permanently converted to provide living quarters
18 for recreational, camping, or travel use, with direct walk
19 through to the living quarters from the driver's seat, or a
20 motor vehicle of the second division that is of the van
21 configuration designed for the transportation of not less than
22 7 nor more than 16 passengers, as defined in Section 1-146 of
23 the Illinois Vehicle Code, that is used for automobile renting,
24 as defined in the Automobile Renting Occupation and Use Tax
25 Act.

26 (11) Farm machinery and equipment, both new and used,
27 including that manufactured on special order, certified by the
28 purchaser to be used primarily for production agriculture or
29 State or federal agricultural programs, including individual
30 replacement parts for the machinery and equipment, including
31 machinery and equipment purchased for lease, and including
32 implements of husbandry defined in Section 1-130 of the
33 Illinois Vehicle Code, farm machinery and agricultural
34 chemical and fertilizer spreaders, and nurse wagons required to

1 be registered under Section 3-809 of the Illinois Vehicle Code,
2 but excluding other motor vehicles required to be registered
3 under the Illinois Vehicle Code. Horticultural polyhouses or
4 hoop houses used for propagating, growing, or overwintering
5 plants shall be considered farm machinery and equipment under
6 this item (11). Agricultural chemical tender tanks and dry
7 boxes shall include units sold separately from a motor vehicle
8 required to be licensed and units sold mounted on a motor
9 vehicle required to be licensed if the selling price of the
10 tender is separately stated.

11 Farm machinery and equipment shall include precision
12 farming equipment that is installed or purchased to be
13 installed on farm machinery and equipment including, but not
14 limited to, tractors, harvesters, sprayers, planters, seeders,
15 or spreaders. Precision farming equipment includes, but is not
16 limited to, soil testing sensors, computers, monitors,
17 software, global positioning and mapping systems, and other
18 such equipment.

19 Farm machinery and equipment also includes computers,
20 sensors, software, and related equipment used primarily in the
21 computer-assisted operation of production agriculture
22 facilities, equipment, and activities such as, but not limited
23 to, the collection, monitoring, and correlation of animal and
24 crop data for the purpose of formulating animal diets and
25 agricultural chemicals. This item (11) is exempt from the
26 provisions of Section 3-90.

27 (12) Fuel and petroleum products sold to or used by an air
28 common carrier, certified by the carrier to be used for
29 consumption, shipment, or storage in the conduct of its
30 business as an air common carrier, for a flight destined for or
31 returning from a location or locations outside the United
32 States without regard to previous or subsequent domestic
33 stopovers.

34 (13) Proceeds of mandatory service charges separately

1 stated on customers' bills for the purchase and consumption of
2 food and beverages purchased at retail from a retailer, to the
3 extent that the proceeds of the service charge are in fact
4 turned over as tips or as a substitute for tips to the
5 employees who participate directly in preparing, serving,
6 hosting or cleaning up the food or beverage function with
7 respect to which the service charge is imposed.

8 (14) Until July 1, 2003, oil field exploration, drilling,
9 and production equipment, including (i) rigs and parts of rigs,
10 rotary rigs, cable tool rigs, and workover rigs, (ii) pipe and
11 tubular goods, including casing and drill strings, (iii) pumps
12 and pump-jack units, (iv) storage tanks and flow lines, (v) any
13 individual replacement part for oil field exploration,
14 drilling, and production equipment, and (vi) machinery and
15 equipment purchased for lease; but excluding motor vehicles
16 required to be registered under the Illinois Vehicle Code.

17 (15) Photoprocessing machinery and equipment, including
18 repair and replacement parts, both new and used, including that
19 manufactured on special order, certified by the purchaser to be
20 used primarily for photoprocessing, and including
21 photoprocessing machinery and equipment purchased for lease.

22 (16) Until July 1, 2003, coal exploration, mining,
23 offhighway hauling, processing, maintenance, and reclamation
24 equipment, including replacement parts and equipment, and
25 including equipment purchased for lease, but excluding motor
26 vehicles required to be registered under the Illinois Vehicle
27 Code.

28 (17) Until July 1, 2003, distillation machinery and
29 equipment, sold as a unit or kit, assembled or installed by the
30 retailer, certified by the user to be used only for the
31 production of ethyl alcohol that will be used for consumption
32 as motor fuel or as a component of motor fuel for the personal
33 use of the user, and not subject to sale or resale.

34 (18) Manufacturing and assembling machinery and equipment

1 used primarily in the process of manufacturing or assembling
2 tangible personal property for wholesale or retail sale or
3 lease, whether that sale or lease is made directly by the
4 manufacturer or by some other person, whether the materials
5 used in the process are owned by the manufacturer or some other
6 person, or whether that sale or lease is made apart from or as
7 an incident to the seller's engaging in the service occupation
8 of producing machines, tools, dies, jigs, patterns, gauges, or
9 other similar items of no commercial value on special order for
10 a particular purchaser.

11 (19) Personal property delivered to a purchaser or
12 purchaser's donee inside Illinois when the purchase order for
13 that personal property was received by a florist located
14 outside Illinois who has a florist located inside Illinois
15 deliver the personal property.

16 (20) Semen used for artificial insemination of livestock
17 for direct agricultural production.

18 (21) Horses, or interests in horses, registered with and
19 meeting the requirements of any of the Arabian Horse Club
20 Registry of America, Appaloosa Horse Club, American Quarter
21 Horse Association, United States Trotting Association, or
22 Jockey Club, as appropriate, used for purposes of breeding or
23 racing for prizes.

24 (22) Computers and communications equipment utilized for
25 any hospital purpose and equipment used in the diagnosis,
26 analysis, or treatment of hospital patients purchased by a
27 lessor who leases the equipment, under a lease of one year or
28 longer executed or in effect at the time the lessor would
29 otherwise be subject to the tax imposed by this Act, to a
30 hospital that has been issued an active tax exemption
31 identification number by the Department under Section 1g of the
32 Retailers' Occupation Tax Act. If the equipment is leased in a
33 manner that does not qualify for this exemption or is used in
34 any other non-exempt manner, the lessor shall be liable for the

1 tax imposed under this Act or the Service Use Tax Act, as the
2 case may be, based on the fair market value of the property at
3 the time the non-qualifying use occurs. No lessor shall collect
4 or attempt to collect an amount (however designated) that
5 purports to reimburse that lessor for the tax imposed by this
6 Act or the Service Use Tax Act, as the case may be, if the tax
7 has not been paid by the lessor. If a lessor improperly
8 collects any such amount from the lessee, the lessee shall have
9 a legal right to claim a refund of that amount from the lessor.
10 If, however, that amount is not refunded to the lessee for any
11 reason, the lessor is liable to pay that amount to the
12 Department.

13 (23) Personal property purchased by a lessor who leases the
14 property, under a lease of one year or longer executed or in
15 effect at the time the lessor would otherwise be subject to the
16 tax imposed by this Act, to a governmental body that has been
17 issued an active sales tax exemption identification number by
18 the Department under Section 1g of the Retailers' Occupation
19 Tax Act. If the property is leased in a manner that does not
20 qualify for this exemption or used in any other non-exempt
21 manner, the lessor shall be liable for the tax imposed under
22 this Act or the Service Use Tax Act, as the case may be, based
23 on the fair market value of the property at the time the
24 non-qualifying use occurs. No lessor shall collect or attempt
25 to collect an amount (however designated) that purports to
26 reimburse that lessor for the tax imposed by this Act or the
27 Service Use Tax Act, as the case may be, if the tax has not been
28 paid by the lessor. If a lessor improperly collects any such
29 amount from the lessee, the lessee shall have a legal right to
30 claim a refund of that amount from the lessor. If, however,
31 that amount is not refunded to the lessee for any reason, the
32 lessor is liable to pay that amount to the Department.

33 (24) Beginning with taxable years ending on or after
34 December 31, 1995 and ending with taxable years ending on or

1 before December 31, 2004, personal property that is donated for
2 disaster relief to be used in a State or federally declared
3 disaster area in Illinois or bordering Illinois by a
4 manufacturer or retailer that is registered in this State to a
5 corporation, society, association, foundation, or institution
6 that has been issued a sales tax exemption identification
7 number by the Department that assists victims of the disaster
8 who reside within the declared disaster area.

9 (25) Beginning with taxable years ending on or after
10 December 31, 1995 and ending with taxable years ending on or
11 before December 31, 2004, personal property that is used in the
12 performance of infrastructure repairs in this State, including
13 but not limited to municipal roads and streets, access roads,
14 bridges, sidewalks, waste disposal systems, water and sewer
15 line extensions, water distribution and purification
16 facilities, storm water drainage and retention facilities, and
17 sewage treatment facilities, resulting from a State or
18 federally declared disaster in Illinois or bordering Illinois
19 when such repairs are initiated on facilities located in the
20 declared disaster area within 6 months after the disaster.

21 (26) Beginning July 1, 1999, game or game birds purchased
22 at a "game breeding and hunting preserve area" or an "exotic
23 game hunting area" as those terms are used in the Wildlife Code
24 or at a hunting enclosure approved through rules adopted by the
25 Department of Natural Resources. This paragraph is exempt from
26 the provisions of Section 3-90.

27 (27) A motor vehicle, as that term is defined in Section
28 1-146 of the Illinois Vehicle Code, that is donated to a
29 corporation, limited liability company, society, association,
30 foundation, or institution that is determined by the Department
31 to be organized and operated exclusively for educational
32 purposes. For purposes of this exemption, "a corporation,
33 limited liability company, society, association, foundation,
34 or institution organized and operated exclusively for

1 educational purposes" means all tax-supported public schools,
2 private schools that offer systematic instruction in useful
3 branches of learning by methods common to public schools and
4 that compare favorably in their scope and intensity with the
5 course of study presented in tax-supported schools, and
6 vocational or technical schools or institutes organized and
7 operated exclusively to provide a course of study of not less
8 than 6 weeks duration and designed to prepare individuals to
9 follow a trade or to pursue a manual, technical, mechanical,
10 industrial, business, or commercial occupation.

11 (28) Beginning January 1, 2000, personal property,
12 including food, purchased through fundraising events for the
13 benefit of a public or private elementary or secondary school,
14 a group of those schools, or one or more school districts if
15 the events are sponsored by an entity recognized by the school
16 district that consists primarily of volunteers and includes
17 parents and teachers of the school children. This paragraph
18 does not apply to fundraising events (i) for the benefit of
19 private home instruction or (ii) for which the fundraising
20 entity purchases the personal property sold at the events from
21 another individual or entity that sold the property for the
22 purpose of resale by the fundraising entity and that profits
23 from the sale to the fundraising entity. This paragraph is
24 exempt from the provisions of Section 3-90.

25 (29) Beginning January 1, 2000 and through December 31,
26 2001, new or used automatic vending machines that prepare and
27 serve hot food and beverages, including coffee, soup, and other
28 items, and replacement parts for these machines. Beginning
29 January 1, 2002 and through June 30, 2003, machines and parts
30 for machines used in commercial, coin-operated amusement and
31 vending business if a use or occupation tax is paid on the
32 gross receipts derived from the use of the commercial,
33 coin-operated amusement and vending machines. This paragraph
34 is exempt from the provisions of Section 3-90.

1 (30) Food for human consumption that is to be consumed off
2 the premises where it is sold (other than alcoholic beverages,
3 soft drinks, and food that has been prepared for immediate
4 consumption) and prescription and nonprescription medicines,
5 drugs, medical appliances, and insulin, urine testing
6 materials, syringes, and needles used by diabetics, for human
7 use, when purchased for use by a person receiving medical
8 assistance under Article 5 of the Illinois Public Aid Code who
9 resides in a licensed long-term care facility, as defined in
10 the Nursing Home Care Act.

11 (31) Beginning on the effective date of this amendatory Act
12 of the 92nd General Assembly, computers and communications
13 equipment utilized for any hospital purpose and equipment used
14 in the diagnosis, analysis, or treatment of hospital patients
15 purchased by a lessor who leases the equipment, under a lease
16 of one year or longer executed or in effect at the time the
17 lessor would otherwise be subject to the tax imposed by this
18 Act, to a hospital that has been issued an active tax exemption
19 identification number by the Department under Section 1g of the
20 Retailers' Occupation Tax Act. If the equipment is leased in a
21 manner that does not qualify for this exemption or is used in
22 any other nonexempt manner, the lessor shall be liable for the
23 tax imposed under this Act or the Service Use Tax Act, as the
24 case may be, based on the fair market value of the property at
25 the time the nonqualifying use occurs. No lessor shall collect
26 or attempt to collect an amount (however designated) that
27 purports to reimburse that lessor for the tax imposed by this
28 Act or the Service Use Tax Act, as the case may be, if the tax
29 has not been paid by the lessor. If a lessor improperly
30 collects any such amount from the lessee, the lessee shall have
31 a legal right to claim a refund of that amount from the lessor.
32 If, however, that amount is not refunded to the lessee for any
33 reason, the lessor is liable to pay that amount to the
34 Department. This paragraph is exempt from the provisions of

1 Section 3-90.

2 (32) Beginning on the effective date of this amendatory Act
3 of the 92nd General Assembly, personal property purchased by a
4 lessor who leases the property, under a lease of one year or
5 longer executed or in effect at the time the lessor would
6 otherwise be subject to the tax imposed by this Act, to a
7 governmental body that has been issued an active sales tax
8 exemption identification number by the Department under
9 Section 1g of the Retailers' Occupation Tax Act. If the
10 property is leased in a manner that does not qualify for this
11 exemption or used in any other nonexempt manner, the lessor
12 shall be liable for the tax imposed under this Act or the
13 Service Use Tax Act, as the case may be, based on the fair
14 market value of the property at the time the nonqualifying use
15 occurs. No lessor shall collect or attempt to collect an amount
16 (however designated) that purports to reimburse that lessor for
17 the tax imposed by this Act or the Service Use Tax Act, as the
18 case may be, if the tax has not been paid by the lessor. If a
19 lessor improperly collects any such amount from the lessee, the
20 lessee shall have a legal right to claim a refund of that
21 amount from the lessor. If, however, that amount is not
22 refunded to the lessee for any reason, the lessor is liable to
23 pay that amount to the Department. This paragraph is exempt
24 from the provisions of Section 3-90.

25 (33) On and after July 1, 2003 and until the effective date
26 of this amendatory Act of the 93rd General Assembly, the use in
27 this State of motor vehicles of the second division with a
28 gross vehicle weight in excess of 8,000 pounds and that are
29 subject to the commercial distribution fee imposed under
30 Section 3-815.1 of the Illinois Vehicle Code. This exemption
31 applies to repair and replacement parts added after the initial
32 purchase of such a motor vehicle if that motor vehicle is used
33 in a manner that would qualify for the rolling stock exemption
34 otherwise provided for in this Act.

1 (Source: P.A. 92-35, eff. 7-1-01; 92-227, eff. 8-2-01; 92-337,
2 eff. 8-10-01; 92-484, eff. 8-23-01; 92-651, eff. 7-11-02;
3 93-23, eff. 6-20-03; 93-24, eff. 6-20-03; revised 9-11-03.)

4 (35 ILCS 105/3-61)

5 Sec. 3-61. Motor vehicles; use as rolling stock definition.
6 Through June 30, 2003 and beginning again on the effective date
7 of this amendatory Act of the 93rd General Assembly, "use as
8 rolling stock moving in interstate commerce" in subsections (b)
9 and (c) of Section 3-55 means for motor vehicles, as defined in
10 Section 1-146 of the Illinois Vehicle Code, and trailers, as
11 defined in Section 1-209 of the Illinois Vehicle Code, when on
12 15 or more occasions in a 12-month period the motor vehicle and
13 trailer has carried persons or property for hire in interstate
14 commerce, even just between points in Illinois, if the motor
15 vehicle and trailer transports persons whose journeys or
16 property whose shipments originate or terminate outside
17 Illinois. This definition applies to all property purchased for
18 the purpose of being attached to those motor vehicles or
19 trailers as a part thereof.

20 On and after July 1, 2003 and until the effective date of
21 this amendatory Act of the 93rd General Assembly, "use as
22 rolling stock moving in interstate commerce" in paragraphs (b)
23 and (c) of Section 3-55 occurs for motor vehicles, as defined
24 in Section 1-146 of the Illinois Vehicle Code, when during a
25 12-month period the rolling stock has carried persons or
26 property for hire in interstate commerce for 51% of its total
27 trips and transports persons whose journeys or property whose
28 shipments originate or terminate outside Illinois. On and after
29 July 1, 2003 and until the effective date of this amendatory
30 Act of the 93rd General Assembly, trips that are only between
31 points in Illinois shall not be counted as interstate trips
32 when calculating whether the tangible personal property
33 qualifies for the exemption but such trips shall be included in

1 total trips taken.

2 (Source: P.A. 93-23, eff. 6-20-03.)

3 Section 15. The Service Use Tax Act is amended by changing
4 Sections 2 and 3-51 as follows:

5 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

6 Sec. 2. "Use" means the exercise by any person of any right
7 or power over tangible personal property incident to the
8 ownership of that property, but does not include the sale or
9 use for demonstration by him of that property in any form as
10 tangible personal property in the regular course of business.
11 "Use" does not mean the interim use of tangible personal
12 property nor the physical incorporation of tangible personal
13 property, as an ingredient or constituent, into other tangible
14 personal property, (a) which is sold in the regular course of
15 business or (b) which the person incorporating such ingredient
16 or constituent therein has undertaken at the time of such
17 purchase to cause to be transported in interstate commerce to
18 destinations outside the State of Illinois.

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

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

25 "Cost price" means the consideration paid by the serviceman
26 for a purchase valued in money, whether paid in money or
27 otherwise, including cash, credits and services, and shall be
28 determined without any deduction on account of the supplier's
29 cost of the property sold or on account of any other expense
30 incurred by the supplier. When a serviceman contracts out part
31 or all of the services required in his sale of service, it
32 shall be presumed that the cost price to the serviceman of the

1 property transferred to him or her by his or her subcontractor
2 is equal to 50% of the subcontractor's charges to the
3 serviceman in the absence of proof of the consideration paid by
4 the subcontractor for the purchase of such property.

5 "Selling price" means the consideration for a sale valued
6 in money whether received in money or otherwise, including
7 cash, credits and service, and shall be determined without any
8 deduction on account of the serviceman's cost of the property
9 sold, the cost of materials used, labor or service cost or any
10 other expense whatsoever, but does not include interest or
11 finance charges which appear as separate items on the bill of
12 sale or sales contract nor charges that are added to prices by
13 sellers on account of the seller's duty to collect, from the
14 purchaser, the tax that is imposed by this Act.

15 "Department" means the Department of Revenue.

16 "Person" means any natural individual, firm, partnership,
17 association, joint stock company, joint venture, public or
18 private corporation, limited liability company, and any
19 receiver, executor, trustee, guardian or other representative
20 appointed by order of any court.

21 "Sale of service" means any transaction except:

22 (1) a retail sale of tangible personal property taxable
23 under the Retailers' Occupation Tax Act or under the Use
24 Tax Act.

25 (2) a sale of tangible personal property for the
26 purpose of resale made in compliance with Section 2c of the
27 Retailers' Occupation Tax Act.

28 (3) except as hereinafter provided, a sale or transfer
29 of tangible personal property as an incident to the
30 rendering of service for or by any governmental body, or
31 for or by any corporation, society, association,
32 foundation or institution organized and operated
33 exclusively for charitable, religious or educational
34 purposes or any not-for-profit corporation, society,

1 association, foundation, institution or organization which
2 has no compensated officers or employees and which is
3 organized and operated primarily for the recreation of
4 persons 55 years of age or older. A limited liability
5 company may qualify for the exemption under this paragraph
6 only if the limited liability company is organized and
7 operated exclusively for educational purposes.

8 (4) a sale or transfer of tangible personal property as
9 an incident to the rendering of service for interstate
10 carriers for hire for use as rolling stock moving in
11 interstate commerce or by lessors under a lease of one year
12 or longer, executed or in effect at the time of purchase of
13 personal property, to interstate carriers for hire for use
14 as rolling stock moving in interstate commerce so long as
15 so used by such interstate carriers for hire, and equipment
16 operated by a telecommunications provider, licensed as a
17 common carrier by the Federal Communications Commission,
18 which is permanently installed in or affixed to aircraft
19 moving in interstate commerce.

20 (4a) a sale or transfer of tangible personal property
21 as an incident to the rendering of service for owners,
22 lessors, or shippers of tangible personal property which is
23 utilized by interstate carriers for hire for use as rolling
24 stock moving in interstate commerce so long as so used by
25 interstate carriers for hire, and equipment operated by a
26 telecommunications provider, licensed as a common carrier
27 by the Federal Communications Commission, which is
28 permanently installed in or affixed to aircraft moving in
29 interstate commerce.

30 (4a-5) on and after July 1, 2003 and until the
31 effective date of this amendatory Act of the 93rd General
32 Assembly, a sale or transfer of a motor vehicle of the
33 second division with a gross vehicle weight in excess of
34 8,000 pounds as an incident to the rendering of service if

1 that motor vehicle is subject to the commercial
2 distribution fee imposed under Section 3-815.1 of the
3 Illinois Vehicle Code. This exemption applies to repair and
4 replacement parts added after the initial purchase of such
5 a motor vehicle if that motor vehicle is used in a manner
6 that would qualify for the rolling stock exemption
7 otherwise provided for in this Act.

8 (5) a sale or transfer of machinery and equipment used
9 primarily in the process of the manufacturing or
10 assembling, either in an existing, an expanded or a new
11 manufacturing facility, of tangible personal property for
12 wholesale or retail sale or lease, whether such sale or
13 lease is made directly by the manufacturer or by some other
14 person, whether the materials used in the process are owned
15 by the manufacturer or some other person, or whether such
16 sale or lease is made apart from or as an incident to the
17 seller's engaging in a service occupation and the
18 applicable tax is a Service Use Tax or Service Occupation
19 Tax, rather than Use Tax or Retailers' Occupation Tax.

20 (5a) the repairing, reconditioning or remodeling, for
21 a common carrier by rail, of tangible personal property
22 which belongs to such carrier for hire, and as to which
23 such carrier receives the physical possession of the
24 repaired, reconditioned or remodeled item of tangible
25 personal property in Illinois, and which such carrier
26 transports, or shares with another common carrier in the
27 transportation of such property, out of Illinois on a
28 standard uniform bill of lading showing the person who
29 repaired, reconditioned or remodeled the property to a
30 destination outside Illinois, for use outside Illinois.

31 (5b) a sale or transfer of tangible personal property
32 which is produced by the seller thereof on special order in
33 such a way as to have made the applicable tax the Service
34 Occupation Tax or the Service Use Tax, rather than the

1 Retailers' Occupation Tax or the Use Tax, for an interstate
2 carrier by rail which receives the physical possession of
3 such property in Illinois, and which transports such
4 property, or shares with another common carrier in the
5 transportation of such property, out of Illinois on a
6 standard uniform bill of lading showing the seller of the
7 property as the shipper or consignor of such property to a
8 destination outside Illinois, for use outside Illinois.

9 (6) until July 1, 2003, a sale or transfer of
10 distillation machinery and equipment, sold as a unit or kit
11 and assembled or installed by the retailer, which machinery
12 and equipment is certified by the user to be used only for
13 the production of ethyl alcohol that will be used for
14 consumption as motor fuel or as a component of motor fuel
15 for the personal use of such user and not subject to sale
16 or resale.

17 (7) at the election of any serviceman not required to
18 be otherwise registered as a retailer under Section 2a of
19 the Retailers' Occupation Tax Act, made for each fiscal
20 year sales of service in which the aggregate annual cost
21 price of tangible personal property transferred as an
22 incident to the sales of service is less than 35%, or 75%
23 in the case of servicemen transferring prescription drugs
24 or servicemen engaged in graphic arts production, of the
25 aggregate annual total gross receipts from all sales of
26 service. The purchase of such tangible personal property by
27 the serviceman shall be subject to tax under the Retailers'
28 Occupation Tax Act and the Use Tax Act. However, if a
29 primary serviceman who has made the election described in
30 this paragraph subcontracts service work to a secondary
31 serviceman who has also made the election described in this
32 paragraph, the primary serviceman does not incur a Use Tax
33 liability if the secondary serviceman (i) has paid or will
34 pay Use Tax on his or her cost price of any tangible

1 personal property transferred to the primary serviceman
2 and (ii) certifies that fact in writing to the primary
3 serviceman.

4 Tangible personal property transferred incident to the
5 completion of a maintenance agreement is exempt from the tax
6 imposed pursuant to this Act.

7 Exemption (5) also includes machinery and equipment used in
8 the general maintenance or repair of such exempt machinery and
9 equipment or for in-house manufacture of exempt machinery and
10 equipment. For the purposes of exemption (5), each of these
11 terms shall have the following meanings: (1) "manufacturing
12 process" shall mean the production of any article of tangible
13 personal property, whether such article is a finished product
14 or an article for use in the process of manufacturing or
15 assembling a different article of tangible personal property,
16 by procedures commonly regarded as manufacturing, processing,
17 fabricating, or refining which changes some existing material
18 or materials into a material with a different form, use or
19 name. In relation to a recognized integrated business composed
20 of a series of operations which collectively constitute
21 manufacturing, or individually constitute manufacturing
22 operations, the manufacturing process shall be deemed to
23 commence with the first operation or stage of production in the
24 series, and shall not be deemed to end until the completion of
25 the final product in the last operation or stage of production
26 in the series; and further, for purposes of exemption (5),
27 photoprocessing is deemed to be a manufacturing process of
28 tangible personal property for wholesale or retail sale; (2)
29 "assembling process" shall mean the production of any article
30 of tangible personal property, whether such article is a
31 finished product or an article for use in the process of
32 manufacturing or assembling a different article of tangible
33 personal property, by the combination of existing materials in
34 a manner commonly regarded as assembling which results in a

1 material of a different form, use or name; (3) "machinery"
2 shall mean major mechanical machines or major components of
3 such machines contributing to a manufacturing or assembling
4 process; and (4) "equipment" shall include any independent
5 device or tool separate from any machinery but essential to an
6 integrated manufacturing or assembly process; including
7 computers used primarily in a manufacturer's computer assisted
8 design, computer assisted manufacturing (CAD/CAM) system; or
9 any subunit or assembly comprising a component of any machinery
10 or auxiliary, adjunct or attachment parts of machinery, such as
11 tools, dies, jigs, fixtures, patterns and molds; or any parts
12 which require periodic replacement in the course of normal
13 operation; but shall not include hand tools. Equipment includes
14 chemicals or chemicals acting as catalysts but only if the
15 chemicals or chemicals acting as catalysts effect a direct and
16 immediate change upon a product being manufactured or assembled
17 for wholesale or retail sale or lease. The purchaser of such
18 machinery and equipment who has an active resale registration
19 number shall furnish such number to the seller at the time of
20 purchase. The user of such machinery and equipment and tools
21 without an active resale registration number shall prepare a
22 certificate of exemption for each transaction stating facts
23 establishing the exemption for that transaction, which
24 certificate shall be available to the Department for inspection
25 or audit. The Department shall prescribe the form of the
26 certificate.

27 Any informal rulings, opinions or letters issued by the
28 Department in response to an inquiry or request for any opinion
29 from any person regarding the coverage and applicability of
30 exemption (5) to specific devices shall be published,
31 maintained as a public record, and made available for public
32 inspection and copying. If the informal ruling, opinion or
33 letter contains trade secrets or other confidential
34 information, where possible the Department shall delete such

1 information prior to publication. Whenever such informal
2 rulings, opinions, or letters contain any policy of general
3 applicability, the Department shall formulate and adopt such
4 policy as a rule in accordance with the provisions of the
5 Illinois Administrative Procedure Act.

6 On and after July 1, 1987, no entity otherwise eligible
7 under exemption (3) of this Section shall make tax free
8 purchases unless it has an active exemption identification
9 number issued by the Department.

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

15 "Serviceman" means any person who is engaged in the
16 occupation of making sales of service.

17 "Sale at retail" means "sale at retail" as defined in the
18 Retailers' Occupation Tax Act.

19 "Supplier" means any person who makes sales of tangible
20 personal property to servicemen for the purpose of resale as an
21 incident to a sale of service.

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

24 1. having or maintaining within this State, directly or
25 by a subsidiary, an office, distribution house, sales
26 house, warehouse or other place of business, or any agent
27 or other representative operating within this State under
28 the authority of the serviceman or its subsidiary,
29 irrespective of whether such place of business or agent or
30 other representative is located here permanently or
31 temporarily, or whether such serviceman or subsidiary is
32 licensed to do business in this State;

33 2. soliciting orders for tangible personal property by
34 means of a telecommunication or television shopping system

1 (which utilizes toll free numbers) which is intended by the
2 retailer to be broadcast by cable television or other means
3 of broadcasting, to consumers located in this State;

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

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

16 5. being owned or controlled by the same interests
17 which own or control any retailer engaging in business in
18 the same or similar line of business in this State;

19 6. having a franchisee or licensee operating under its
20 trade name if the franchisee or licensee is required to
21 collect the tax under this Section;

22 7. pursuant to a contract with a cable television
23 operator located in this State, soliciting orders for
24 tangible personal property by means of advertising which is
25 transmitted or distributed over a cable television system
26 in this State; or

27 8. engaging in activities in Illinois, which
28 activities in the state in which the supply business
29 engaging in such activities is located would constitute
30 maintaining a place of business in that state.

31 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
32 eff. 6-20-03; revised 8-21-03.)

1 Sec. 3-51. Motor vehicles; use as rolling stock definition.
2 Through June 30, 2003 and beginning again on the effective date
3 of this amendatory Act of the 93rd General Assembly, "use as
4 rolling stock moving in interstate commerce" in subsection (b)
5 of Section 3-45 means for motor vehicles, as defined in Section
6 1-46 of the Illinois Vehicle Code, and trailers, as defined in
7 Section 1-209 of the Illinois Vehicle Code, when on 15 or more
8 occasions in a 12-month period the motor vehicle and trailer
9 has carried persons or property for hire in interstate
10 commerce, even just between points in Illinois, if the motor
11 vehicle and trailer transports persons whose journeys or
12 property whose shipments originate or terminate outside
13 Illinois. This definition applies to all property purchased for
14 the purpose of being attached to those motor vehicles or
15 trailers as a part thereof.

16 On and after July 1, 2003 and until the effective date of
17 this amendatory Act of the 93rd General Assembly, "use as
18 rolling stock moving in interstate commerce" in paragraphs (4)
19 and (4a) of the definition of "sale of service" in Section 2
20 and subsection (b) of Section 3-45 occurs for motor vehicles,
21 as defined in Section 1-146 of the Illinois Vehicle Code, when
22 during a 12-month period the rolling stock has carried persons
23 or property for hire in interstate commerce for 51% of its
24 total trips and transports persons whose journeys or property
25 whose shipments originate or terminate outside Illinois. On and
26 after July 1, 2003 and until the effective date of this
27 amendatory Act of the 93rd General Assembly, trips that are
28 only between points in Illinois shall not be counted as
29 interstate trips when calculating whether the tangible
30 personal property qualifies for the exemption but such trips
31 shall be included in total trips taken.

32 (Source: P.A. 93-23, eff. 6-20-03.)

33 Section 20. The Service Occupation Tax Act is amended by

1 changing Sections 2 and 2d as follows:

2 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

3 Sec. 2. "Transfer" means any transfer of the title to
4 property or of the ownership of property whether or not the
5 transferor retains title as security for the payment of amounts
6 due him from the transferee.

7 "Cost Price" means the consideration paid by the serviceman
8 for a purchase valued in money, whether paid in money or
9 otherwise, including cash, credits and services, and shall be
10 determined without any deduction on account of the supplier's
11 cost of the property sold or on account of any other expense
12 incurred by the supplier. When a serviceman contracts out part
13 or all of the services required in his sale of service, it
14 shall be presumed that the cost price to the serviceman of the
15 property transferred to him by his or her subcontractor is
16 equal to 50% of the subcontractor's charges to the serviceman
17 in the absence of proof of the consideration paid by the
18 subcontractor for the purchase of such property.

19 "Department" means the Department of Revenue.

20 "Person" means any natural individual, firm, partnership,
21 association, joint stock company, joint venture, public or
22 private corporation, limited liability company, and any
23 receiver, executor, trustee, guardian or other representative
24 appointed by order of any court.

25 "Sale of Service" means any transaction except:

26 (a) A retail sale of tangible personal property taxable
27 under the Retailers' Occupation Tax Act or under the Use Tax
28 Act.

29 (b) A sale of tangible personal property for the purpose of
30 resale made in compliance with Section 2c of the Retailers'
31 Occupation Tax Act.

32 (c) Except as hereinafter provided, a sale or transfer of
33 tangible personal property as an incident to the rendering of

1 service for or by any governmental body or for or by any
2 corporation, society, association, foundation or institution
3 organized and operated exclusively for charitable, religious
4 or educational purposes or any not-for-profit corporation,
5 society, association, foundation, institution or organization
6 which has no compensated officers or employees and which is
7 organized and operated primarily for the recreation of persons
8 55 years of age or older. A limited liability company may
9 qualify for the exemption under this paragraph only if the
10 limited liability company is organized and operated
11 exclusively for educational purposes.

12 (d) A sale or transfer of tangible personal property as an
13 incident to the rendering of service for interstate carriers
14 for hire for use as rolling stock moving in interstate commerce
15 or lessors under leases of one year or longer, executed or in
16 effect at the time of purchase, to interstate carriers for hire
17 for use as rolling stock moving in interstate commerce, and
18 equipment operated by a telecommunications provider, licensed
19 as a common carrier by the Federal Communications Commission,
20 which is permanently installed in or affixed to aircraft moving
21 in interstate commerce.

22 (d-1) A sale or transfer of tangible personal property as
23 an incident to the rendering of service for owners, lessors or
24 shippers of tangible personal property which is utilized by
25 interstate carriers for hire for use as rolling stock moving in
26 interstate commerce, and equipment operated by a
27 telecommunications provider, licensed as a common carrier by
28 the Federal Communications Commission, which is permanently
29 installed in or affixed to aircraft moving in interstate
30 commerce.

31 (d-1.1) On and after July 1, 2003 and until the effective
32 date of this amendatory Act of the 93rd General Assembly, a
33 sale or transfer of a motor vehicle of the second division with
34 a gross vehicle weight in excess of 8,000 pounds as an incident

1 to the rendering of service if that motor vehicle is subject to
2 the commercial distribution fee imposed under Section 3-815.1
3 of the Illinois Vehicle Code. This exemption applies to repair
4 and replacement parts added after the initial purchase of such
5 a motor vehicle if that motor vehicle is used in a manner that
6 would qualify for the rolling stock exemption otherwise
7 provided for in this Act.

8 (d-2) The repairing, reconditioning or remodeling, for a
9 common carrier by rail, of tangible personal property which
10 belongs to such carrier for hire, and as to which such carrier
11 receives the physical possession of the repaired,
12 reconditioned or remodeled item of tangible personal property
13 in Illinois, and which such carrier transports, or shares with
14 another common carrier in the transportation of such property,
15 out of Illinois on a standard uniform bill of lading showing
16 the person who repaired, reconditioned or remodeled the
17 property as the shipper or consignor of such property to a
18 destination outside Illinois, for use outside Illinois.

19 (d-3) A sale or transfer of tangible personal property
20 which is produced by the seller thereof on special order in
21 such a way as to have made the applicable tax the Service
22 Occupation Tax or the Service Use Tax, rather than the
23 Retailers' Occupation Tax or the Use Tax, for an interstate
24 carrier by rail which receives the physical possession of such
25 property in Illinois, and which transports such property, or
26 shares with another common carrier in the transportation of
27 such property, out of Illinois on a standard uniform bill of
28 lading showing the seller of the property as the shipper or
29 consignor of such property to a destination outside Illinois,
30 for use outside Illinois.

31 (d-4) Until January 1, 1997, a sale, by a registered
32 serviceman paying tax under this Act to the Department, of
33 special order printed materials delivered outside Illinois and
34 which are not returned to this State, if delivery is made by

1 the seller or agent of the seller, including an agent who
2 causes the product to be delivered outside Illinois by a common
3 carrier or the U.S. postal service.

4 (e) A sale or transfer of machinery and equipment used
5 primarily in the process of the manufacturing or assembling,
6 either in an existing, an expanded or a new manufacturing
7 facility, of tangible personal property for wholesale or retail
8 sale or lease, whether such sale or lease is made directly by
9 the manufacturer or by some other person, whether the materials
10 used in the process are owned by the manufacturer or some other
11 person, or whether such sale or lease is made apart from or as
12 an incident to the seller's engaging in a service occupation
13 and the applicable tax is a Service Occupation Tax or Service
14 Use Tax, rather than Retailers' Occupation Tax or Use Tax.

15 (f) Until July 1, 2003, the sale or transfer of
16 distillation machinery and equipment, sold as a unit or kit and
17 assembled or installed by the retailer, which machinery and
18 equipment is certified by the user to be used only for the
19 production of ethyl alcohol that will be used for consumption
20 as motor fuel or as a component of motor fuel for the personal
21 use of such user and not subject to sale or resale.

22 (g) At the election of any serviceman not required to be
23 otherwise registered as a retailer under Section 2a of the
24 Retailers' Occupation Tax Act, made for each fiscal year sales
25 of service in which the aggregate annual cost price of tangible
26 personal property transferred as an incident to the sales of
27 service is less than 35% (75% in the case of servicemen
28 transferring prescription drugs or servicemen engaged in
29 graphic arts production) of the aggregate annual total gross
30 receipts from all sales of service. The purchase of such
31 tangible personal property by the serviceman shall be subject
32 to tax under the Retailers' Occupation Tax Act and the Use Tax
33 Act. However, if a primary serviceman who has made the election
34 described in this paragraph subcontracts service work to a

1 secondary serviceman who has also made the election described
2 in this paragraph, the primary serviceman does not incur a Use
3 Tax liability if the secondary serviceman (i) has paid or will
4 pay Use Tax on his or her cost price of any tangible personal
5 property transferred to the primary serviceman and (ii)
6 certifies that fact in writing to the primary serviceman.

7 Tangible personal property transferred incident to the
8 completion of a maintenance agreement is exempt from the tax
9 imposed pursuant to this Act.

10 Exemption (e) also includes machinery and equipment used in
11 the general maintenance or repair of such exempt machinery and
12 equipment or for in-house manufacture of exempt machinery and
13 equipment. For the purposes of exemption (e), each of these
14 terms shall have the following meanings: (1) "manufacturing
15 process" shall mean the production of any article of tangible
16 personal property, whether such article is a finished product
17 or an article for use in the process of manufacturing or
18 assembling a different article of tangible personal property,
19 by procedures commonly regarded as manufacturing, processing,
20 fabricating, or refining which changes some existing material
21 or materials into a material with a different form, use or
22 name. In relation to a recognized integrated business composed
23 of a series of operations which collectively constitute
24 manufacturing, or individually constitute manufacturing
25 operations, the manufacturing process shall be deemed to
26 commence with the first operation or stage of production in the
27 series, and shall not be deemed to end until the completion of
28 the final product in the last operation or stage of production
29 in the series; and further for purposes of exemption (e),
30 photoprocessing is deemed to be a manufacturing process of
31 tangible personal property for wholesale or retail sale; (2)
32 "assembling process" shall mean the production of any article
33 of tangible personal property, whether such article is a
34 finished product or an article for use in the process of

1 manufacturing or assembling a different article of tangible
2 personal property, by the combination of existing materials in
3 a manner commonly regarded as assembling which results in a
4 material of a different form, use or name; (3) "machinery"
5 shall mean major mechanical machines or major components of
6 such machines contributing to a manufacturing or assembling
7 process; and (4) "equipment" shall include any independent
8 device or tool separate from any machinery but essential to an
9 integrated manufacturing or assembly process; including
10 computers used primarily in a manufacturer's computer assisted
11 design, computer assisted manufacturing (CAD/CAM) system; or
12 any subunit or assembly comprising a component of any machinery
13 or auxiliary, adjunct or attachment parts of machinery, such as
14 tools, dies, jigs, fixtures, patterns and molds; or any parts
15 which require periodic replacement in the course of normal
16 operation; but shall not include hand tools. Equipment includes
17 chemicals or chemicals acting as catalysts but only if the
18 chemicals or chemicals acting as catalysts effect a direct and
19 immediate change upon a product being manufactured or assembled
20 for wholesale or retail sale or lease. The purchaser of such
21 machinery and equipment who has an active resale registration
22 number shall furnish such number to the seller at the time of
23 purchase. The purchaser of such machinery and equipment and
24 tools without an active resale registration number shall
25 furnish to the seller a certificate of exemption for each
26 transaction stating facts establishing the exemption for that
27 transaction, which certificate shall be available to the
28 Department for inspection or audit.

29 Except as provided in Section 2d of this Act, the rolling
30 stock exemption applies to rolling stock used by an interstate
31 carrier for hire, even just between points in Illinois, if such
32 rolling stock transports, for hire, persons whose journeys or
33 property whose shipments originate or terminate outside
34 Illinois.

1 Any informal rulings, opinions or letters issued by the
2 Department in response to an inquiry or request for any opinion
3 from any person regarding the coverage and applicability of
4 exemption (e) to specific devices shall be published,
5 maintained as a public record, and made available for public
6 inspection and copying. If the informal ruling, opinion or
7 letter contains trade secrets or other confidential
8 information, where possible the Department shall delete such
9 information prior to publication. Whenever such informal
10 rulings, opinions, or letters contain any policy of general
11 applicability, the Department shall formulate and adopt such
12 policy as a rule in accordance with the provisions of the
13 Illinois Administrative Procedure Act.

14 On and after July 1, 1987, no entity otherwise eligible
15 under exemption (c) of this Section shall make tax free
16 purchases unless it has an active exemption identification
17 number issued by the Department.

18 "Serviceman" means any person who is engaged in the
19 occupation of making sales of service.

20 "Sale at Retail" means "sale at retail" as defined in the
21 Retailers' Occupation Tax Act.

22 "Supplier" means any person who makes sales of tangible
23 personal property to servicemen for the purpose of resale as an
24 incident to a sale of service.

25 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
26 eff. 6-20-03; revised 8-21-03.)

27 (35 ILCS 115/2d)

28 Sec. 2d. Motor vehicles; use as rolling stock definition.
29 Through June 30, 2003 and beginning again on the effective date
30 of this amendatory Act of the 93rd General Assembly, "use as
31 rolling stock moving in interstate commerce" in subsections (d)
32 and (d-1) of the definition of "sale of service" in Section 2
33 means for motor vehicles, as defined in Section 1-146 of the

1 Illinois Vehicle Code, and trailers, as defined in Section
2 1-209 of the Illinois Vehicle Code, when on 15 or more
3 occasions in a 12-month period the motor vehicle and trailer
4 has carried persons or property for hire in interstate
5 commerce, even just between points in Illinois, if the motor
6 vehicle and trailer transports persons whose journeys or
7 property whose shipments originate or terminate outside
8 Illinois. This definition applies to all property purchased for
9 the purpose of being attached to those motor vehicles or
10 trailers as a part thereof.

11 On and after July 1, 2003 and until the effective date of
12 this amendatory Act of the 93rd General Assembly, "use as
13 rolling stock moving in interstate commerce" in paragraphs (d)
14 and (d-1) of the definition of "sale of service" in Section 2
15 occurs for motor vehicles, as defined in Section 1-146 of the
16 Illinois Vehicle Code, when during a 12-month period the
17 rolling stock has carried persons or property for hire in
18 interstate commerce for 51% of its total trips and transports
19 persons whose journeys or property whose shipments originate or
20 terminate outside Illinois. On and after July 1, 2003 and until
21 the effective date of this amendatory Act of the 93rd General
22 Assembly, trips that are only between points in Illinois will
23 not be counted as interstate trips when calculating whether the
24 tangible personal property qualifies for the exemption but such
25 trips will be included in total trips taken.

26 (Source: P.A. 93-23, eff. 6-20-03.)

27 Section 25. The Retailers' Occupation Tax Act is amended
28 by changing Sections 2-5 and 2-51 as follows:

29 (35 ILCS 120/2-5) (from Ch. 120, par. 441-5)

30 Sec. 2-5. Exemptions. Gross receipts from proceeds from the
31 sale of the following tangible personal property are exempt
32 from the tax imposed by this Act:

1 (1) Farm chemicals.

2 (2) Farm machinery and equipment, both new and used,
3 including that manufactured on special order, certified by the
4 purchaser to be used primarily for production agriculture or
5 State or federal agricultural programs, including individual
6 replacement parts for the machinery and equipment, including
7 machinery and equipment purchased for lease, and including
8 implements of husbandry defined in Section 1-130 of the
9 Illinois Vehicle Code, farm machinery and agricultural
10 chemical and fertilizer spreaders, and nurse wagons required to
11 be registered under Section 3-809 of the Illinois Vehicle Code,
12 but excluding other motor vehicles required to be registered
13 under the Illinois Vehicle Code. Horticultural polyhouses or
14 hoop houses used for propagating, growing, or overwintering
15 plants shall be considered farm machinery and equipment under
16 this item (2). Agricultural chemical tender tanks and dry boxes
17 shall include units sold separately from a motor vehicle
18 required to be licensed and units sold mounted on a motor
19 vehicle required to be licensed, if the selling price of the
20 tender is separately stated.

21 Farm machinery and equipment shall include precision
22 farming equipment that is installed or purchased to be
23 installed on farm machinery and equipment including, but not
24 limited to, tractors, harvesters, sprayers, planters, seeders,
25 or spreaders. Precision farming equipment includes, but is not
26 limited to, soil testing sensors, computers, monitors,
27 software, global positioning and mapping systems, and other
28 such equipment.

29 Farm machinery and equipment also includes computers,
30 sensors, software, and related equipment used primarily in the
31 computer-assisted operation of production agriculture
32 facilities, equipment, and activities such as, but not limited
33 to, the collection, monitoring, and correlation of animal and
34 crop data for the purpose of formulating animal diets and

1 agricultural chemicals. This item (7) is exempt from the
2 provisions of Section 2-70.

3 (3) Until July 1, 2003, distillation machinery and
4 equipment, sold as a unit or kit, assembled or installed by the
5 retailer, certified by the user to be used only for the
6 production of ethyl alcohol that will be used for consumption
7 as motor fuel or as a component of motor fuel for the personal
8 use of the user, and not subject to sale or resale.

9 (4) Until July 1, 2003, graphic arts machinery and
10 equipment, including repair and replacement parts, both new and
11 used, and including that manufactured on special order or
12 purchased for lease, certified by the purchaser to be used
13 primarily for graphic arts production. Equipment includes
14 chemicals or chemicals acting as catalysts but only if the
15 chemicals or chemicals acting as catalysts effect a direct and
16 immediate change upon a graphic arts product.

17 (5) A motor vehicle of the first division, a motor vehicle
18 of the second division that is a self-contained motor vehicle
19 designed or permanently converted to provide living quarters
20 for recreational, camping, or travel use, with direct walk
21 through access to the living quarters from the driver's seat,
22 or a motor vehicle of the second division that is of the van
23 configuration designed for the transportation of not less than
24 7 nor more than 16 passengers, as defined in Section 1-146 of
25 the Illinois Vehicle Code, that is used for automobile renting,
26 as defined in the Automobile Renting Occupation and Use Tax
27 Act.

28 (6) Personal property sold by a teacher-sponsored student
29 organization affiliated with an elementary or secondary school
30 located in Illinois.

31 (7) Until July 1, 2003, proceeds of that portion of the
32 selling price of a passenger car the sale of which is subject
33 to the Replacement Vehicle Tax.

34 (8) Personal property sold to an Illinois county fair

1 association for use in conducting, operating, or promoting the
2 county fair.

3 (9) Personal property sold to a not-for-profit arts or
4 cultural organization that establishes, by proof required by
5 the Department by rule, that it has received an exemption under
6 Section 501(c)(3) of the Internal Revenue Code and that is
7 organized and operated primarily for the presentation or
8 support of arts or cultural programming, activities, or
9 services. These organizations include, but are not limited to,
10 music and dramatic arts organizations such as symphony
11 orchestras and theatrical groups, arts and cultural service
12 organizations, local arts councils, visual arts organizations,
13 and media arts organizations. On and after the effective date
14 of this amendatory Act of the 92nd General Assembly, however,
15 an entity otherwise eligible for this exemption shall not make
16 tax-free purchases unless it has an active identification
17 number issued by the Department.

18 (10) Personal property sold by a corporation, society,
19 association, foundation, institution, or organization, other
20 than a limited liability company, that is organized and
21 operated as a not-for-profit service enterprise for the benefit
22 of persons 65 years of age or older if the personal property
23 was not purchased by the enterprise for the purpose of resale
24 by the enterprise.

25 (11) Personal property sold to a governmental body, to a
26 corporation, society, association, foundation, or institution
27 organized and operated exclusively for charitable, religious,
28 or educational purposes, or to a not-for-profit corporation,
29 society, association, foundation, institution, or organization
30 that has no compensated officers or employees and that is
31 organized and operated primarily for the recreation of persons
32 55 years of age or older. A limited liability company may
33 qualify for the exemption under this paragraph only if the
34 limited liability company is organized and operated

1 exclusively for educational purposes. On and after July 1,
2 1987, however, no entity otherwise eligible for this exemption
3 shall make tax-free purchases unless it has an active
4 identification number issued by the Department.

5 (12) Tangible personal property sold to interstate
6 carriers for hire for use as rolling stock moving in interstate
7 commerce or to lessors under leases of one year or longer
8 executed or in effect at the time of purchase by interstate
9 carriers for hire for use as rolling stock moving in interstate
10 commerce and equipment operated by a telecommunications
11 provider, licensed as a common carrier by the Federal
12 Communications Commission, which is permanently installed in
13 or affixed to aircraft moving in interstate commerce.

14 (12-5) On and after July 1, 2003 and until the effective
15 date of this amendatory Act of the 93rd General Assembly, motor
16 vehicles of the second division with a gross vehicle weight in
17 excess of 8,000 pounds that are subject to the commercial
18 distribution fee imposed under Section 3-815.1 of the Illinois
19 Vehicle Code. This exemption applies to repair and replacement
20 parts added after the initial purchase of such a motor vehicle
21 if that motor vehicle is used in a manner that would qualify
22 for the rolling stock exemption otherwise provided for in this
23 Act.

24 (13) Proceeds from sales to owners, lessors, or shippers of
25 tangible personal property that is utilized by interstate
26 carriers for hire for use as rolling stock moving in interstate
27 commerce and equipment operated by a telecommunications
28 provider, licensed as a common carrier by the Federal
29 Communications Commission, which is permanently installed in
30 or affixed to aircraft moving in interstate commerce.

31 (14) Machinery and equipment that will be used by the
32 purchaser, or a lessee of the purchaser, primarily in the
33 process of manufacturing or assembling tangible personal
34 property for wholesale or retail sale or lease, whether the

1 sale or lease is made directly by the manufacturer or by some
2 other person, whether the materials used in the process are
3 owned by the manufacturer or some other person, or whether the
4 sale or lease is made apart from or as an incident to the
5 seller's engaging in the service occupation of producing
6 machines, tools, dies, jigs, patterns, gauges, or other similar
7 items of no commercial value on special order for a particular
8 purchaser.

9 (15) Proceeds of mandatory service charges separately
10 stated on customers' bills for purchase and consumption of food
11 and beverages, to the extent that the proceeds of the service
12 charge are in fact turned over as tips or as a substitute for
13 tips to the employees who participate directly in preparing,
14 serving, hosting or cleaning up the food or beverage function
15 with respect to which the service charge is imposed.

16 (16) Petroleum products sold to a purchaser if the seller
17 is prohibited by federal law from charging tax to the
18 purchaser.

19 (17) Tangible personal property sold to a common carrier by
20 rail or motor that receives the physical possession of the
21 property in Illinois and that transports the property, or
22 shares with another common carrier in the transportation of the
23 property, out of Illinois on a standard uniform bill of lading
24 showing the seller of the property as the shipper or consignor
25 of the property to a destination outside Illinois, for use
26 outside Illinois.

27 (18) Legal tender, currency, medallions, or gold or silver
28 coinage issued by the State of Illinois, the government of the
29 United States of America, or the government of any foreign
30 country, and bullion.

31 (19) Until July 1 2003, oil field exploration, drilling,
32 and production equipment, including (i) rigs and parts of rigs,
33 rotary rigs, cable tool rigs, and workover rigs, (ii) pipe and
34 tubular goods, including casing and drill strings, (iii) pumps

1 and pump-jack units, (iv) storage tanks and flow lines, (v) any
2 individual replacement part for oil field exploration,
3 drilling, and production equipment, and (vi) machinery and
4 equipment purchased for lease; but excluding motor vehicles
5 required to be registered under the Illinois Vehicle Code.

6 (20) Photoprocessing machinery and equipment, including
7 repair and replacement parts, both new and used, including that
8 manufactured on special order, certified by the purchaser to be
9 used primarily for photoprocessing, and including
10 photoprocessing machinery and equipment purchased for lease.

11 (21) Until July 1, 2003, coal exploration, mining,
12 offhighway hauling, processing, maintenance, and reclamation
13 equipment, including replacement parts and equipment, and
14 including equipment purchased for lease, but excluding motor
15 vehicles required to be registered under the Illinois Vehicle
16 Code.

17 (22) Fuel and petroleum products sold to or used by an air
18 carrier, certified by the carrier to be used for consumption,
19 shipment, or storage in the conduct of its business as an air
20 common carrier, for a flight destined for or returning from a
21 location or locations outside the United States without regard
22 to previous or subsequent domestic stopovers.

23 (23) A transaction in which the purchase order is received
24 by a florist who is located outside Illinois, but who has a
25 florist located in Illinois deliver the property to the
26 purchaser or the purchaser's donee in Illinois.

27 (24) Fuel consumed or used in the operation of ships,
28 barges, or vessels that are used primarily in or for the
29 transportation of property or the conveyance of persons for
30 hire on rivers bordering on this State if the fuel is delivered
31 by the seller to the purchaser's barge, ship, or vessel while
32 it is afloat upon that bordering river.

33 (25) A motor vehicle sold in this State to a nonresident
34 even though the motor vehicle is delivered to the nonresident

1 in this State, if the motor vehicle is not to be titled in this
2 State, and if a drive-away permit is issued to the motor
3 vehicle as provided in Section 3-603 of the Illinois Vehicle
4 Code or if the nonresident purchaser has vehicle registration
5 plates to transfer to the motor vehicle upon returning to his
6 or her home state. The issuance of the drive-away permit or
7 having the out-of-state registration plates to be transferred
8 is prima facie evidence that the motor vehicle will not be
9 titled in this State.

10 (26) Semen used for artificial insemination of livestock
11 for direct agricultural production.

12 (27) Horses, or interests in horses, registered with and
13 meeting the requirements of any of the Arabian Horse Club
14 Registry of America, Appaloosa Horse Club, American Quarter
15 Horse Association, United States Trotting Association, or
16 Jockey Club, as appropriate, used for purposes of breeding or
17 racing for prizes.

18 (28) Computers and communications equipment utilized for
19 any hospital purpose and equipment used in the diagnosis,
20 analysis, or treatment of hospital patients sold to a lessor
21 who leases the equipment, under a lease of one year or longer
22 executed or in effect at the time of the purchase, to a
23 hospital that has been issued an active tax exemption
24 identification number by the Department under Section 1g of
25 this Act.

26 (29) Personal property sold to a lessor who leases the
27 property, under a lease of one year or longer executed or in
28 effect at the time of the purchase, to a governmental body that
29 has been issued an active tax exemption identification number
30 by the Department under Section 1g of this Act.

31 (30) Beginning with taxable years ending on or after
32 December 31, 1995 and ending with taxable years ending on or
33 before December 31, 2004, personal property that is donated for
34 disaster relief to be used in a State or federally declared

1 disaster area in Illinois or bordering Illinois by a
2 manufacturer or retailer that is registered in this State to a
3 corporation, society, association, foundation, or institution
4 that has been issued a sales tax exemption identification
5 number by the Department that assists victims of the disaster
6 who reside within the declared disaster area.

7 (31) Beginning with taxable years ending on or after
8 December 31, 1995 and ending with taxable years ending on or
9 before December 31, 2004, personal property that is used in the
10 performance of infrastructure repairs in this State, including
11 but not limited to municipal roads and streets, access roads,
12 bridges, sidewalks, waste disposal systems, water and sewer
13 line extensions, water distribution and purification
14 facilities, storm water drainage and retention facilities, and
15 sewage treatment facilities, resulting from a State or
16 federally declared disaster in Illinois or bordering Illinois
17 when such repairs are initiated on facilities located in the
18 declared disaster area within 6 months after the disaster.

19 (32) Beginning July 1, 1999, game or game birds sold at a
20 "game breeding and hunting preserve area" or an "exotic game
21 hunting area" as those terms are used in the Wildlife Code or
22 at a hunting enclosure approved through rules adopted by the
23 Department of Natural Resources. This paragraph is exempt from
24 the provisions of Section 2-70.

25 (33) A motor vehicle, as that term is defined in Section
26 1-146 of the Illinois Vehicle Code, that is donated to a
27 corporation, limited liability company, society, association,
28 foundation, or institution that is determined by the Department
29 to be organized and operated exclusively for educational
30 purposes. For purposes of this exemption, "a corporation,
31 limited liability company, society, association, foundation,
32 or institution organized and operated exclusively for
33 educational purposes" means all tax-supported public schools,
34 private schools that offer systematic instruction in useful

1 branches of learning by methods common to public schools and
2 that compare favorably in their scope and intensity with the
3 course of study presented in tax-supported schools, and
4 vocational or technical schools or institutes organized and
5 operated exclusively to provide a course of study of not less
6 than 6 weeks duration and designed to prepare individuals to
7 follow a trade or to pursue a manual, technical, mechanical,
8 industrial, business, or commercial occupation.

9 (34) Beginning January 1, 2000, personal property,
10 including food, purchased through fundraising events for the
11 benefit of a public or private elementary or secondary school,
12 a group of those schools, or one or more school districts if
13 the events are sponsored by an entity recognized by the school
14 district that consists primarily of volunteers and includes
15 parents and teachers of the school children. This paragraph
16 does not apply to fundraising events (i) for the benefit of
17 private home instruction or (ii) for which the fundraising
18 entity purchases the personal property sold at the events from
19 another individual or entity that sold the property for the
20 purpose of resale by the fundraising entity and that profits
21 from the sale to the fundraising entity. This paragraph is
22 exempt from the provisions of Section 2-70.

23 (35) Beginning January 1, 2000 and through December 31,
24 2001, new or used automatic vending machines that prepare and
25 serve hot food and beverages, including coffee, soup, and other
26 items, and replacement parts for these machines. Beginning
27 January 1, 2002 and through June 30, 2003, machines and parts
28 for machines used in commercial, coin-operated amusement and
29 vending business if a use or occupation tax is paid on the
30 gross receipts derived from the use of the commercial,
31 coin-operated amusement and vending machines. This paragraph
32 is exempt from the provisions of Section 2-70.

33 (35-5) Food for human consumption that is to be consumed
34 off the premises where it is sold (other than alcoholic

1 beverages, soft drinks, and food that has been prepared for
2 immediate consumption) and prescription and nonprescription
3 medicines, drugs, medical appliances, and insulin, urine
4 testing materials, syringes, and needles used by diabetics, for
5 human use, when purchased for use by a person receiving medical
6 assistance under Article 5 of the Illinois Public Aid Code who
7 resides in a licensed long-term care facility, as defined in
8 the Nursing Home Care Act.

9 (36) Beginning August 2, 2001, computers and
10 communications equipment utilized for any hospital purpose and
11 equipment used in the diagnosis, analysis, or treatment of
12 hospital patients sold to a lessor who leases the equipment,
13 under a lease of one year or longer executed or in effect at
14 the time of the purchase, to a hospital that has been issued an
15 active tax exemption identification number by the Department
16 under Section 1g of this Act. This paragraph is exempt from the
17 provisions of Section 2-70.

18 (37) Beginning August 2, 2001, personal property sold to a
19 lessor who leases the property, under a lease of one year or
20 longer executed or in effect at the time of the purchase, to a
21 governmental body that has been issued an active tax exemption
22 identification number by the Department under Section 1g of
23 this Act. This paragraph is exempt from the provisions of
24 Section 2-70.

25 (38) Beginning on January 1, 2002, tangible personal
26 property purchased from an Illinois retailer by a taxpayer
27 engaged in centralized purchasing activities in Illinois who
28 will, upon receipt of the property in Illinois, temporarily
29 store the property in Illinois (i) for the purpose of
30 subsequently transporting it outside this State for use or
31 consumption thereafter solely outside this State or (ii) for
32 the purpose of being processed, fabricated, or manufactured
33 into, attached to, or incorporated into other tangible personal
34 property to be transported outside this State and thereafter

1 used or consumed solely outside this State. The Director of
2 Revenue shall, pursuant to rules adopted in accordance with the
3 Illinois Administrative Procedure Act, issue a permit to any
4 taxpayer in good standing with the Department who is eligible
5 for the exemption under this paragraph (38). The permit issued
6 under this paragraph (38) shall authorize the holder, to the
7 extent and in the manner specified in the rules adopted under
8 this Act, to purchase tangible personal property from a
9 retailer exempt from the taxes imposed by this Act. Taxpayers
10 shall maintain all necessary books and records to substantiate
11 the use and consumption of all such tangible personal property
12 outside of the State of Illinois.

13 (Source: P.A. 92-16, eff. 6-28-01; 92-35, eff. 7-1-01; 92-227,
14 eff. 8-2-01; 92-337, eff. 8-10-01; 92-484, eff. 8-23-01;
15 92-488, eff. 8-23-01; 92-651, eff. 7-11-02; 92-680, eff.
16 7-16-02; 93-23, eff. 6-20-03; 93-24, eff. 6-20-03; revised
17 9-11-03.)

18 (35 ILCS 120/2-51)

19 Sec. 2-51. Motor vehicles; use as rolling stock definition.
20 Through June 30, 2003 and beginning again on the effective date
21 of this amendatory Act of the 93rd General Assembly, "use as
22 rolling stock moving in interstate commerce" in paragraphs (12)
23 and (13) of Section 2-5 means for motor vehicles, as defined in
24 Section 1-146 of the Illinois Vehicle Code, and trailers, as
25 defined in Section 1-209 of the Illinois Vehicle Code, when on
26 15 or more occasions in a 12-month period the motor vehicle and
27 trailer has carried persons or property for hire in interstate
28 commerce, even just between points in Illinois, if the motor
29 vehicle and trailer transports persons whose journeys or
30 property whose shipments originate or terminate outside
31 Illinois. This definition applies to all property purchased for
32 the purpose of being attached to those motor vehicles or
33 trailers as a part thereof.

1 On and after July 1, 2003 and until the effective date of
2 this amendatory Act of the 93rd General Assembly, "use as
3 rolling stock moving in interstate commerce" in paragraphs (12)
4 and (13) of Section 2-5 occurs for motor vehicles, as defined
5 in Section 1-146 of the Illinois Vehicle Code, when during a
6 12-month period the rolling stock has carried persons or
7 property for hire in interstate commerce for 51% of its total
8 trips and transports persons whose journeys or property whose
9 shipments originate or terminate outside Illinois. On and after
10 July 1, 2003 and until the effective date of this amendatory
11 Act of the 93rd General Assembly, trips that are only between
12 points in Illinois shall not be counted as interstate trips
13 when calculating whether the tangible personal property
14 qualifies for the exemption but such trips shall be included in
15 total trips taken.

16 (Source: P.A. 93-23, eff. 6-20-03.)

17 Section 30. The Illinois Vehicle Code is amended by
18 changing Section 3-815.1 as follows:

19 (625 ILCS 5/3-815.1)

20 Sec. 3-815.1. Commercial distribution fee. Beginning July
21 1, 2003 and ending on the effective date of this amendatory Act
22 of the 93rd General Assembly, in addition to any tax or fee
23 imposed under this Code:

24 (a) Vehicles of the second division with a gross
25 vehicle weight that exceeds 8,000 pounds and that incur any
26 tax or fee under subsection (a) of Section 3-815 of this
27 Code or subsection (a) of Section 3-818 of this Code, as
28 applicable, ~~and~~ shall pay to the Secretary of State a
29 commercial distribution fee, for each registration year,
30 for the use of the public highways, State infrastructure,
31 and State services, in an amount equal to 36% of the taxes
32 and fees incurred under subsection (a) of Section 3-815 of

1 this Code, or subsection (a) of Section 3-818 of this Code,
2 as applicable, rounded up to the nearest whole dollar.

3 (b) Vehicles of the second division with a gross
4 vehicle weight of 8,000 pounds or less and that incur any
5 tax or fee under subsection (a) of Section 3-815 of this
6 Code or subsection (a) of Section 3-818 of this Code, as
7 applicable, and have claimed the rolling stock exemption
8 under the Retailers' Occupation Tax Act, Use Tax Act,
9 Service Occupation Tax Act, or Service Use Tax Act shall
10 pay to the Illinois Department of Revenue (or the Secretary
11 of State under an intergovernmental agreement) a
12 commercial distribution fee, for each registration year,
13 for the use of the public highways, State infrastructure,
14 and State services, in an amount equal to 36% of the taxes
15 and fees incurred under subsection (a) of Section 3-815 of
16 this Code or subsection (a) of Section 3-818 of this Code,
17 as applicable, rounded up to the nearest whole dollar.

18 The fees paid under this Section shall be deposited by the
19 Secretary of State into the General Revenue Fund.

20 Any person who has paid the fee imposed under this Section
21 is entitled to a refund of the amount paid. The Secretary of
22 State shall establish a procedure by which a person who has
23 paid the fee imposed under this Section may apply for and
24 receive a refund of the amount paid.

25 (Source: P.A. 93-23, eff. 6-20-03; revised 10-9-03.)

26 Section 99. Effective date. This Act takes effect upon
27 becoming law."