

1 AN ACT concerning taxation.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Use Tax Act is amended by changing  
5 Section 2 as follows:

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

7 Sec. 2. "Use" means the exercise by any person of any  
8 right or power over tangible personal property incident to  
9 the ownership of that property, except that it does not  
10 include the sale of such property in any form as tangible  
11 personal property in the regular course of business to the  
12 extent that such property is not first subjected to a use for  
13 which it was purchased, and does not include the use of such  
14 property by its owner for demonstration purposes: Provided  
15 that the property purchased is deemed to be purchased for the  
16 purpose of resale, despite first being used, to the extent to  
17 which it is resold as an ingredient of an intentionally  
18 produced product or by-product of manufacturing. "Use" does  
19 not mean the demonstration use or interim use of tangible  
20 personal property by a retailer before he sells that tangible  
21 personal property. For watercraft or aircraft, if the period  
22 of demonstration use or interim use by the retailer exceeds  
23 18 months, the retailer shall pay on the retailers' original  
24 cost price the tax imposed by this Act, and no credit for  
25 that tax is permitted if the watercraft or aircraft is  
26 subsequently sold by the retailer. "Use" does not mean the  
27 physical incorporation of tangible personal property, to the  
28 extent not first subjected to a use for which it was  
29 purchased, as an ingredient or constituent, into other  
30 tangible personal property (a) which is sold in the regular  
31 course of business or (b) which the person incorporating such

1 ingredient or constituent therein has undertaken at the time  
2 of such purchase to cause to be transported in interstate  
3 commerce to destinations outside the State of Illinois:  
4 Provided that the property purchased is deemed to be  
5 purchased for the purpose of resale, despite first being  
6 used, to the extent to which it is resold as an ingredient of  
7 an intentionally produced product or by-product of  
8 manufacturing.

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

13 "Purchase at retail" means the acquisition of the  
14 ownership of or title to tangible personal property through a  
15 sale at retail.

16 "Purchaser" means anyone who, through a sale at retail,  
17 acquires the ownership of tangible personal property for a  
18 valuable consideration.

19 "Sale at retail" means any transfer of the ownership of  
20 or title to tangible personal property to a purchaser,  
21 including an Internet transfer, for the purpose of use, and  
22 not for the purpose of resale in any form as tangible  
23 personal property to the extent not first subjected to a use  
24 for which it was purchased, for a valuable consideration:  
25 Provided that the property purchased is deemed to be  
26 purchased for the purpose of resale, despite first being  
27 used, to the extent to which it is resold as an ingredient of  
28 an intentionally produced product or by-product of  
29 manufacturing. For this purpose, slag produced as an  
30 incident to manufacturing pig iron or steel and sold is  
31 considered to be an intentionally produced by-product of  
32 manufacturing. "Sale at retail" includes any such transfer  
33 made for resale unless made in compliance with Section 2c of  
34 the Retailers' Occupation Tax Act, as incorporated by

1 reference into Section 12 of this Act. Transactions whereby  
2 the possession of the property is transferred but the seller  
3 retains the title as security for payment of the selling  
4 price are sales.

5 "Sale at retail" shall also be construed to include any  
6 Illinois florist's sales transaction in which the purchase  
7 order is received in Illinois by a florist and the sale is  
8 for use or consumption, but the Illinois florist has a  
9 florist in another state deliver the property to the  
10 purchaser or the purchaser's donee in such other state.

11 Nonreusable tangible personal property that is used by  
12 persons engaged in the business of operating a restaurant,  
13 cafeteria, or drive-in is a sale for resale when it is  
14 transferred to customers in the ordinary course of business  
15 as part of the sale of food or beverages and is used to  
16 deliver, package, or consume food or beverages, regardless of  
17 where consumption of the food or beverages occurs. Examples  
18 of those items include, but are not limited to nonreusable,  
19 paper and plastic cups, plates, baskets, boxes, sleeves,  
20 buckets or other containers, utensils, straws, placemats,  
21 napkins, doggie bags, and wrapping or packaging materials  
22 that are transferred to customers as part of the sale of food  
23 or beverages in the ordinary course of business.

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

28 "Selling price" means the consideration for a sale valued  
29 in money whether received in money or otherwise, including  
30 cash, credits, property other than as hereinafter provided,  
31 and services, but not including the value of or credit given  
32 for traded-in tangible personal property where the item that  
33 is traded-in is of like kind and character as that which is  
34 being sold, and shall be determined without any deduction on

1 account of the cost of the property sold, the cost of  
2 materials used, labor or service cost or any other expense  
3 whatsoever, but does not include interest or finance charges  
4 which appear as separate items on the bill of sale or sales  
5 contract nor charges that are added to prices by sellers on  
6 account of the seller's tax liability under the "Retailers'  
7 Occupation Tax Act", or on account of the seller's duty to  
8 collect, from the purchaser, the tax that is imposed by this  
9 Act, or on account of the seller's tax liability under  
10 Section 8-11-1 of the Illinois Municipal Code, as heretofore  
11 and hereafter amended, or on account of the seller's tax  
12 liability under the "County Retailers' Occupation Tax Act".  
13 Effective December 1, 1985, "selling price" shall include  
14 charges that are added to prices by sellers on account of the  
15 seller's tax liability under the Cigarette Tax Act, on  
16 account of the seller's duty to collect, from the purchaser,  
17 the tax imposed under the Cigarette Use Tax Act, and on  
18 account of the seller's duty to collect, from the purchaser,  
19 any cigarette tax imposed by a home rule unit.

20 The phrase "like kind and character" shall be liberally  
21 construed (including but not limited to any form of motor  
22 vehicle for any form of motor vehicle, or any kind of farm or  
23 agricultural implement for any other kind of farm or  
24 agricultural implement), while not including a kind of item  
25 which, if sold at retail by that retailer, would be exempt  
26 from retailers' occupation tax and use tax as an isolated or  
27 occasional sale.

28 "Department" means the Department of Revenue.

29 "Person" means any natural individual, firm, partnership,  
30 association, joint stock company, joint adventure, public or  
31 private corporation, limited liability company, or a  
32 receiver, executor, trustee, guardian or other representative  
33 appointed by order of any court.

34 "Retailer" means and includes every person engaged in the

1 business of making sales at retail as defined in this  
2 Section.

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

14 A person whose activities are organized and conducted  
15 primarily as a not-for-profit service enterprise, and who  
16 engages in selling tangible personal property at retail  
17 (whether to the public or merely to members and their guests)  
18 is a retailer with respect to such transactions, excepting  
19 only a person organized and operated exclusively for  
20 charitable, religious or educational purposes either (1), to  
21 the extent of sales by such person to its members, students,  
22 patients or inmates of tangible personal property to be used  
23 primarily for the purposes of such person, or (2), to the  
24 extent of sales by such person of tangible personal property  
25 which is not sold or offered for sale by persons organized  
26 for profit. The selling of school books and school supplies  
27 by schools at retail to students is not "primarily for the  
28 purposes of" the school which does such selling. This  
29 paragraph does not apply to nor subject to taxation  
30 occasional dinners, social or similar activities of a person  
31 organized and operated exclusively for charitable, religious  
32 or educational purposes, whether or not such activities are  
33 open to the public.

34 A person who is the recipient of a grant or contract

1 under Title VII of the Older Americans Act of 1965 (P.L.  
2 92-258) and serves meals to participants in the federal  
3 Nutrition Program for the Elderly in return for contributions  
4 established in amount by the individual participant pursuant  
5 to a schedule of suggested fees as provided for in the  
6 federal Act is not a retailer under this Act with respect to  
7 such transactions.

8 Persons who engage in the business of transferring  
9 tangible personal property upon the redemption of trading  
10 stamps are retailers hereunder when engaged in such business.

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

1 transferor of such tangible personal property.

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

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

23 2. A retailer soliciting orders for tangible  
24 personal property by means of a telecommunication or  
25 television shopping system (which utilizes toll free  
26 numbers) which is intended by the retailer to be  
27 broadcast by cable television or other means of  
28 broadcasting, to consumers located in this State.

29 3. A retailer, pursuant to a contract with a  
30 broadcaster or publisher located in this State,  
31 soliciting orders for tangible personal property by means  
32 of advertising which is disseminated primarily to  
33 consumers located in this State and only secondarily to  
34 bordering jurisdictions.

1           4. A retailer soliciting orders for tangible  
2 personal property by mail if the solicitations are  
3 substantial and recurring and if the retailer benefits  
4 from any banking, financing, debt collection,  
5 telecommunication, or marketing activities occurring in  
6 this State or benefits from the location in this State of  
7 authorized installation, servicing, or repair facilities.

8           5. A retailer that is owned or controlled by the  
9 same interests that own or control any retailer engaging  
10 in business in the same or similar line of business in  
11 this State.

12           6. A retailer having a franchisee or licensee  
13 operating under its trade name if the franchisee or  
14 licensee is required to collect the tax under this  
15 Section.

16           7. A retailer, pursuant to a contract with a cable  
17 television operator located in this State, soliciting  
18 orders for tangible personal property by means of  
19 advertising which is transmitted or distributed over a  
20 cable television system in this State.

21           8. A retailer engaging in activities in Illinois,  
22 which activities in the state in which the retail  
23 business engaging in such activities is located would  
24 constitute maintaining a place of business in that state.

25           9. A retailer soliciting orders for tangible  
26 personal property by means of the Internet that is  
27 intended to be transmitted to consumers located in this  
28 State.

29 "Bulk vending machine" means a vending machine,  
30 containing unsorted confections, nuts, toys, or other items  
31 designed primarily to be used or played with by children  
32 which, when a coin or coins of a denomination not larger than  
33 \$0.50 are inserted, are dispensed in equal portions, at  
34 random and without selection by the customer.

1 (Source: P.A. 92-213, eff. 1-1-02.)

2 Section 10. The Service Use Tax Act is amended by  
3 changing Section 2 as follows:

4 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

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

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

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

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

17 "Department" means the Department of Revenue.

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

23 "Sale of service" means any transaction except:

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

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

30 (3) except as hereinafter provided, a sale or  
31 transfer of tangible personal property as an incident to  
32 the rendering of service for or by any governmental body,  
33 or for or by any corporation, society, association,  
34 foundation or institution organized and operated

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

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

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

33 (5) a sale or transfer of machinery and equipment  
34 used primarily in the process of the manufacturing or

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

12 (5a) the repairing, reconditioning or remodeling,  
13 for a common carrier by rail, of tangible personal  
14 property which belongs to such carrier for hire, and as  
15 to which such carrier receives the physical possession of  
16 the repaired, reconditioned or remodeled item of tangible  
17 personal property in Illinois, and which such carrier  
18 transports, or shares with another common carrier in the  
19 transportation of such property, out of Illinois on a  
20 standard uniform bill of lading showing the person who  
21 repaired, reconditioned or remodeled the property to a  
22 destination outside Illinois, for use outside Illinois.

23 (5b) a sale or transfer of tangible personal  
24 property which is produced by the seller thereof on  
25 special order in such a way as to have made the  
26 applicable tax the Service Occupation Tax or the Service  
27 Use Tax, rather than the Retailers' Occupation Tax or the  
28 Use Tax, for an interstate carrier by rail which receives  
29 the physical possession of such property in Illinois, and  
30 which transports such property, or shares with another  
31 common carrier in the transportation of such property,  
32 out of Illinois on a standard uniform bill of lading  
33 showing the seller of the property as the shipper or  
34 consignor of such property to a destination outside

1 Illinois, for use outside Illinois.

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

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

34 Exemption (5) also includes machinery and equipment used

1 in the general maintenance or repair of such exempt machinery  
2 and equipment or for in-house manufacture of exempt machinery  
3 and equipment. For the purposes of exemption (5), each of  
4 these terms shall have the following meanings: (1)  
5 "manufacturing process" shall mean the production of any  
6 article of tangible personal property, whether such article  
7 is a finished product or an article for use in the process of  
8 manufacturing or assembling a different article of tangible  
9 personal property, by procedures commonly regarded as  
10 manufacturing, processing, fabricating, or refining which  
11 changes some existing material or materials into a material  
12 with a different form, use or name. In relation to a  
13 recognized integrated business composed of a series of  
14 operations which collectively constitute manufacturing, or  
15 individually constitute manufacturing operations, the  
16 manufacturing process shall be deemed to commence with the  
17 first operation or stage of production in the series, and  
18 shall not be deemed to end until the completion of the final  
19 product in the last operation or stage of production in the  
20 series; and further, for purposes of exemption (5),  
21 photoprocessing is deemed to be a manufacturing process of  
22 tangible personal property for wholesale or retail sale; (2)  
23 "assembling process" shall mean the production of any article  
24 of tangible personal property, whether such article is a  
25 finished product or an article for use in the process of  
26 manufacturing or assembling a different article of tangible  
27 personal property, by the combination of existing materials  
28 in a manner commonly regarded as assembling which results in  
29 a material of a different form, use or name; (3) "machinery"  
30 shall mean major mechanical machines or major components of  
31 such machines contributing to a manufacturing or assembling  
32 process; and (4) "equipment" shall include any independent  
33 device or tool separate from any machinery but essential to  
34 an integrated manufacturing or assembly process; including

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

21 Any informal rulings, opinions or letters issued by the  
22 Department in response to an inquiry or request for any  
23 opinion from any person regarding the coverage and  
24 applicability of exemption (5) to specific devices shall be  
25 published, maintained as a public record, and made available  
26 for public inspection and copying. If the informal ruling,  
27 opinion or letter contains trade secrets or other  
28 confidential information, where possible the Department shall  
29 delete such information prior to publication. Whenever such  
30 informal rulings, opinions, or letters contain any policy of  
31 general applicability, the Department shall formulate and  
32 adopt such policy as a rule in accordance with the provisions  
33 of the Illinois Administrative Procedure Act.

34 On and after July 1, 1987, no entity otherwise eligible

1 under exemption (3) of this Section shall make tax free  
2 purchases unless it has an active exemption identification  
3 number issued by the Department.

4 The purchase, employment and transfer of such tangible  
5 personal property as newsprint and ink for the primary  
6 purpose of conveying news (with or without other information)  
7 is not a purchase, use or sale of service or of tangible  
8 personal property within the meaning of this Act.

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

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

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

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

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

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

33 3. pursuant to a contract with a broadcaster or  
34 publisher located in this State, soliciting orders for

1 tangible personal property by means of advertising which  
2 is disseminated primarily to consumers located in this  
3 State and only secondarily to bordering jurisdictions;

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

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

14 6. having a franchisee or licensee operating under  
15 its trade name if the franchisee or licensee is required  
16 to collect the tax under this Section;

17 7. pursuant to a contract with a cable television  
18 operator located in this State, soliciting orders for  
19 tangible personal property by means of advertising which  
20 is transmitted or distributed over a cable television  
21 system in this State; ~~or~~

22 8. engaging in activities in Illinois, which  
23 activities in the state in which the supply business  
24 engaging in such activities is located would constitute  
25 maintaining a place of business in that state; or

26 9. soliciting orders for tangible personal property  
27 by means of the Internet that is intended to be  
28 transmitted to consumers in this State.

29 (Source: P.A. 91-51, eff. 6-30-99; 92-484, eff. 8-23-01.)

30 Section 15. The Service Occupation Tax Act is amended by  
31 changing Section 2 as follows:

32 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

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

6           "Cost Price" means the consideration paid by the  
7 serviceman for a purchase valued in money, whether paid in  
8 money or otherwise, including cash, credits and services, and  
9 shall be determined without any deduction on account of the  
10 supplier's cost of the property sold or on account of any  
11 other expense incurred by the supplier. When a serviceman  
12 contracts out part or all of the services required in his  
13 sale of service, it shall be presumed that the cost price to  
14 the serviceman of the property transferred to him by his or  
15 her subcontractor is equal to 50% of the subcontractor's  
16 charges to the serviceman in the absence of proof of the  
17 consideration paid by the subcontractor for the purchase of  
18 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  
30 of resale made in compliance with Section 2c of the  
31 Retailers' Occupation Tax Act.

32           (c) Except as hereinafter provided, a sale or transfer  
33 of tangible personal property as an incident to the rendering  
34 of service for or by any governmental body or for or by any

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

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

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

31 (d-2) The repairing, reconditioning or remodeling, for a  
32 common carrier by rail, of tangible personal property which  
33 belongs to such carrier for hire, and as to which such  
34 carrier receives the physical possession of the repaired,

1 reconditioned or remodeled item of tangible personal property  
2 in Illinois, and which such carrier transports, or shares  
3 with another common carrier in the transportation of such  
4 property, out of Illinois on a standard uniform bill of  
5 lading showing the person who repaired, reconditioned or  
6 remodeled the property as the shipper or consignor of such  
7 property to a destination outside Illinois, for use outside  
8 Illinois.

9 (d-3) A sale or transfer of tangible personal property  
10 which is produced by the seller thereof on special order in  
11 such a way as to have made the applicable tax the Service  
12 Occupation Tax or the Service Use Tax, rather than the  
13 Retailers' Occupation Tax or the Use Tax, for an interstate  
14 carrier by rail which receives the physical possession of  
15 such property in Illinois, and which transports such  
16 property, or shares with another common carrier in the  
17 transportation of such property, out of Illinois on a  
18 standard uniform bill of lading showing the seller of the  
19 property as the shipper or consignor of such property to a  
20 destination outside Illinois, for use outside Illinois.

21 (d-4) Until January 1, 1997, a sale, by a registered  
22 serviceman paying tax under this Act to the Department, of  
23 special order printed materials delivered outside Illinois  
24 and which are not returned to this State, if delivery is made  
25 by the seller or agent of the seller, including an agent who  
26 causes the product to be delivered outside Illinois by a  
27 common carrier or the U.S. postal service.

28 (e) A sale or transfer of machinery and equipment used  
29 primarily in the process of the manufacturing or assembling,  
30 either in an existing, an expanded or a new manufacturing  
31 facility, of tangible personal property for wholesale or  
32 retail sale or lease, whether such sale or lease is made  
33 directly by the manufacturer or by some other person, whether  
34 the materials used in the process are owned by the

1 manufacturer or some other person, or whether such sale or  
2 lease is made apart from or as an incident to the seller's  
3 engaging in a service occupation and the applicable tax is a  
4 Service Occupation Tax or Service Use Tax, rather than  
5 Retailers' Occupation Tax or Use Tax.

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

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

33 Tangible personal property transferred incident to the  
34 completion of a maintenance agreement is exempt from the tax

1 imposed pursuant to this Act.

2 Exemption (e) also includes machinery and equipment used  
3 in the general maintenance or repair of such exempt machinery  
4 and equipment or for in-house manufacture of exempt machinery  
5 and equipment. For the purposes of exemption (e), each of  
6 these terms shall have the following meanings: (1)  
7 "manufacturing process" shall mean the production of any  
8 article of tangible personal property, whether such article  
9 is a finished product or an article for use in the process of  
10 manufacturing or assembling a different article of tangible  
11 personal property, by procedures commonly regarded as  
12 manufacturing, processing, fabricating, or refining which  
13 changes some existing material or materials into a material  
14 with a different form, use or name. In relation to a  
15 recognized integrated business composed of a series of  
16 operations which collectively constitute manufacturing, or  
17 individually constitute manufacturing operations, the  
18 manufacturing process shall be deemed to commence with the  
19 first operation or stage of production in the series, and  
20 shall not be deemed to end until the completion of the final  
21 product in the last operation or stage of production in the  
22 series; and further for purposes of exemption (e),  
23 photoprocessing is deemed to be a manufacturing process of  
24 tangible personal property for wholesale or retail sale; (2)  
25 "assembling process" shall mean the production of any article  
26 of tangible personal property, whether such article is a  
27 finished product or an article for use in the process of  
28 manufacturing or assembling a different article of tangible  
29 personal property, by the combination of existing materials  
30 in a manner commonly regarded as assembling which results in  
31 a material of a different form, use or name; (3) "machinery"  
32 shall mean major mechanical machines or major components of  
33 such machines contributing to a manufacturing or assembling  
34 process; and (4) "equipment" shall include any independent

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

23 The rolling stock exemption applies to rolling stock used  
24 by an interstate carrier for hire, even just between points  
25 in Illinois, if such rolling stock transports, for hire,  
26 persons whose journeys or property whose shipments originate  
27 or terminate outside Illinois.

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

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

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

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

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

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

18 (Source: P.A. 91-51, eff. 6-30-99; 92-484, eff. 8-23-01;  
19 revised 11-22-02.)

20 Section 20. The Retailers' Occupation Tax Act is amended  
21 by changing Section 1 as follows:

22 (35 ILCS 120/1) (from Ch. 120, par. 440)

23 Sec. 1. Definitions. "Sale at retail" means any  
24 transfer of the ownership of or title to tangible personal  
25 property to a purchaser, including an Internet transfer, for  
26 the purpose of use or consumption, and not for the purpose of  
27 resale in any form as tangible personal property to the  
28 extent not first subjected to a use for which it was  
29 purchased, for a valuable consideration: Provided that the  
30 property purchased is deemed to be purchased for the purpose  
31 of resale, despite first being used, to the extent to which  
32 it is resold as an ingredient of an intentionally produced

1 product or byproduct of manufacturing. For this purpose,  
2 slag produced as an incident to manufacturing pig iron or  
3 steel and sold is considered to be an intentionally produced  
4 byproduct of manufacturing. Transactions whereby the  
5 possession of the property is transferred but the seller  
6 retains the title as security for payment of the selling  
7 price shall be deemed to be sales.

8 "Sale at retail" shall be construed to include any  
9 transfer of the ownership of or title to tangible personal  
10 property to a purchaser, for use or consumption by any other  
11 person to whom such purchaser may transfer the tangible  
12 personal property without a valuable consideration, and to  
13 include any transfer, whether made for or without a valuable  
14 consideration, for resale in any form as tangible personal  
15 property unless made in compliance with Section 2c of this  
16 Act.

17 Sales of tangible personal property, which property, to  
18 the extent not first subjected to a use for which it was  
19 purchased, as an ingredient or constituent, goes into and  
20 forms a part of tangible personal property subsequently the  
21 subject of a "Sale at retail", are not sales at retail as  
22 defined in this Act: Provided that the property purchased is  
23 deemed to be purchased for the purpose of resale, despite  
24 first being used, to the extent to which it is resold as an  
25 ingredient of an intentionally produced product or byproduct  
26 of manufacturing.

27 "Sale at retail" shall be construed to include any  
28 Illinois florist's sales transaction in which the purchase  
29 order is received in Illinois by a florist and the sale is  
30 for use or consumption, but the Illinois florist has a  
31 florist in another state deliver the property to the  
32 purchaser or the purchaser's donee in such other state.

33 Nonreusable tangible personal property that is used by  
34 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  
3 as part of the sale of food or beverages and is used to  
4 deliver, package, or consume food or beverages, regardless of  
5 where consumption of the food or beverages occurs. Examples  
6 of those items include, but are not limited to nonreusable,  
7 paper and plastic cups, plates, baskets, boxes, sleeves,  
8 buckets or other containers, utensils, straws, placemats,  
9 napkins, doggie bags, and wrapping or packaging materials  
10 that are transferred to customers as part of the sale of food  
11 or beverages in the ordinary course of business.

12 The purchase, employment and transfer of such tangible  
13 personal property as newsprint and ink for the primary  
14 purpose of conveying news (with or without other information)  
15 is not a 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  
23 for charitable, religious or educational purposes either (1),  
24 to the extent of sales by such person to its members,  
25 students, patients or inmates of tangible personal property  
26 to be used primarily for the purposes of such person, or (2),  
27 to the extent of sales by such person of tangible personal  
28 property which is not sold or offered for sale by persons  
29 organized for profit. The selling of school books and school  
30 supplies by schools at retail to students is not "primarily  
31 for the purposes of" the school which does such selling. The  
32 provisions of this paragraph shall not apply to nor subject  
33 to taxation occasional dinners, socials or similar activities  
34 of a person organized and operated exclusively for

1 charitable, religious or educational purposes, whether or not  
2 such activities are open to the public.

3 A person who is the recipient of a grant or contract  
4 under Title VII of the Older Americans Act of 1965 (P.L.  
5 92-258) and serves meals to participants in the federal  
6 Nutrition Program for the Elderly in return for contributions  
7 established in amount by the individual participant pursuant  
8 to a schedule of suggested fees as provided for in the  
9 federal Act is not engaged in the business of selling  
10 tangible personal property at retail with respect to such  
11 transactions.

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

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

22 "Selling price" or the "amount of sale" means the  
23 consideration for a sale valued in money whether received in  
24 money or otherwise, including cash, credits, property, other  
25 than as hereinafter provided, and services, but not including  
26 the value of or credit given for traded-in tangible personal  
27 property where the item that is traded-in is of like kind and  
28 character as that which is being sold, and shall be  
29 determined without any deduction on account of the cost of  
30 the property sold, the cost of materials used, labor or  
31 service cost or any other expense whatsoever, but does not  
32 include charges that are added to prices by sellers on  
33 account of the seller's tax liability under this Act, or on  
34 account of the seller's duty to collect, from the purchaser,

1 the tax that is imposed by the Use Tax Act, or on account of  
2 the seller's tax liability under Section 8-11-1 of the  
3 Illinois Municipal Code, as heretofore and hereafter amended,  
4 or on account of the seller's tax liability under the County  
5 Retailers' Occupation Tax Act, or on account of the seller's  
6 tax liability under the Home Rule Municipal Soft Drink  
7 Retailers' Occupation Tax, or on account of the seller's tax  
8 liability under any tax imposed under the "Regional  
9 Transportation Authority Act", approved December 12, 1973.  
10 Effective December 1, 1985, "selling price" shall include  
11 charges that are added to prices by sellers on account of the  
12 seller's tax liability under the Cigarette Tax Act, on  
13 account of the sellers' duty to collect, from the purchaser,  
14 the tax imposed under the Cigarette Use Tax Act, and on  
15 account of the seller's duty to collect, from the purchaser,  
16 any cigarette tax imposed by a home rule unit.

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

25 "Gross receipts" from the sales of tangible personal  
26 property at retail means the total selling price or the  
27 amount of such sales, as hereinbefore defined. In the case  
28 of charge and time sales, the amount thereof shall be  
29 included only as and when payments are received by the  
30 seller. Receipts or other consideration derived by a seller  
31 from the sale, transfer or assignment of accounts receivable  
32 to a wholly owned subsidiary will not be deemed payments  
33 prior to the time the purchaser makes payment on such  
34 accounts.

1 "Department" means the Department of Revenue.

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

7 The isolated or occasional sale of tangible personal  
8 property at retail by a person who does not hold himself out  
9 as being engaged (or who does not habitually engage) in  
10 selling such tangible personal property at retail, or a sale  
11 through a bulk vending machine, does not constitute engaging  
12 in a business of selling such tangible personal property at  
13 retail within the meaning of this Act; provided that any  
14 person who is engaged in a business which is not subject to  
15 the tax imposed by this Act because of involving the sale of  
16 or a contract to sell real estate or a construction contract  
17 to improve real estate or a construction contract to  
18 engineer, install, and maintain an integrated system of  
19 products, but who, in the course of conducting such business,  
20 transfers tangible personal property to users or consumers in  
21 the finished form in which it was purchased, and which does  
22 not become real estate or was not engineered and installed,  
23 under any provision of a construction contract or real estate  
24 sale or real estate sales agreement entered into with some  
25 other person arising out of or because of such nontaxable  
26 business, is engaged in the business of selling tangible  
27 personal property at retail to the extent of the value of the  
28 tangible personal property so transferred. If, in such a  
29 transaction, a separate charge is made for the tangible  
30 personal property so transferred, the value of such property,  
31 for the purpose of this Act, shall be the amount so  
32 separately charged, but not less than the cost of such  
33 property to the transferor; if no separate charge is made,  
34 the value of such property, for the purposes of this Act, is

1 the cost to the transferor of such tangible personal  
2 property. Construction contracts for the improvement of real  
3 estate consisting of engineering, installation, and  
4 maintenance of voice, data, video, security, and all  
5 telecommunication systems do not constitute engaging in a  
6 business of selling tangible personal property at retail  
7 within the meaning of this Act if they are sold at one  
8 specified contract price.

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

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

27 "Bulk vending machine" means a vending machine,  
28 containing unsorted confections, nuts, toys, or other items  
29 designed primarily to be used or played with by children  
30 which, when a coin or coins of a denomination not larger than  
31 \$0.50 are inserted, are dispensed in equal portions, at  
32 random and without selection by the customer.

33 (Source: P.A. 92-213, eff. 1-1-02.)