



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/09/04, by Larry McKeon

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2	from Ch. 120, par. 439.2
35 ILCS 110/2	from Ch. 120, par. 439.32
35 ILCS 120/1	from Ch. 120, par. 440

Amends the Use Tax Act, the Service Use Tax Act, and the Retailers' Occupation Tax Act. On the effective date of this amendatory Act, ends the exclusion of the purchase, employment, and transfer of such tangible personal property as newsprint and ink for the primary purpose of conveying news (with or without other information) as a purchase, use, or sale of service or of tangible personal property under the Acts.

LRB093 18464 SJM 44177 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning taxes.

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

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

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

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

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

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

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

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

17 "Sale at retail" means any transfer of the ownership of or
18 title to tangible personal property to a purchaser, for the
19 purpose of use, and not for the purpose of resale in any form
20 as tangible personal property to the extent not first subjected
21 to a use for which it was purchased, for a valuable
22 consideration: Provided that the property purchased is deemed
23 to be purchased for the purpose of resale, despite first being
24 used, to the extent to which it is resold as an ingredient of
25 an intentionally produced product or by-product of
26 manufacturing. For this purpose, slag produced as an incident
27 to manufacturing pig iron or steel and sold is considered to be
28 an intentionally produced by-product of manufacturing. "Sale
29 at retail" includes any such transfer made for resale unless
30 made in compliance with Section 2c of the Retailers' Occupation
31 Tax Act, as incorporated by reference into Section 12 of this
32 Act. Transactions whereby the possession of the property is
33 transferred but the seller retains the title as security for
34 payment of the selling price are sales.

35 "Sale at retail" shall also be construed to include any
36 Illinois florist's sales transaction in which the purchase

1 order is received in Illinois by a florist and the sale is for
2 use or consumption, but the Illinois florist has a florist in
3 another state deliver the property to the purchaser or the
4 purchaser's donee in such other state.

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

18 Until the effective date of this amendatory Act of the 93rd
19 General Assembly, the purchase, employment and transfer of such
20 tangible personal property as newsprint and ink for the primary
21 purpose of conveying news (with or without other information)
22 is not a purchase, use or sale of tangible personal property.

23 "Selling price" means the consideration for a sale valued
24 in money whether received in money or otherwise, including
25 cash, credits, property other than as hereinafter provided, and
26 services, but not including the value of or credit given for
27 traded-in tangible personal property where the item that is
28 traded-in is of like kind and character as that which is being
29 sold, and shall be determined without any deduction on account
30 of the cost of the property sold, the cost of materials used,
31 labor or service cost or any other expense whatsoever, but does
32 not include interest or finance charges which appear as
33 separate items on the bill of sale or sales contract nor
34 charges that are added to prices by sellers on account of the
35 seller's tax liability under the "Retailers' Occupation Tax
36 Act", or on account of the seller's duty to collect, from the

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

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

20 "Department" means the Department of Revenue.

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

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

28 A person who holds himself or herself out as being engaged
29 (or who habitually engages) in selling tangible personal
30 property at retail is a retailer hereunder with respect to such
31 sales (and not primarily in a service occupation)
32 notwithstanding the fact that such person designs and produces
33 such tangible personal property on special order for the
34 purchaser and in such a way as to render the property of value
35 only to such purchaser, if such tangible personal property so
36 produced on special order serves substantially the same

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

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

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

29 Persons who engage in the business of transferring tangible
30 personal property upon the redemption of trading stamps are
31 retailers hereunder when engaged in such business.

32 The isolated or occasional sale of tangible personal
33 property at retail by a person who does not hold himself out as
34 being engaged (or who does not habitually engage) in selling
35 such tangible personal property at retail or a sale through a
36 bulk vending machine does not make such person a retailer

1 hereunder. However, any person who is engaged in a business
2 which is not subject to the tax imposed by the "Retailers'
3 Occupation Tax Act" because of involving the sale of or a
4 contract to sell real estate or a construction contract to
5 improve real estate, but who, in the course of conducting such
6 business, transfers tangible personal property to users or
7 consumers in the finished form in which it was purchased, and
8 which does not become real estate, under any provision of a
9 construction contract or real estate sale or real estate sales
10 agreement entered into with some other person arising out of or
11 because of such nontaxable business, is a retailer to the
12 extent of the value of the tangible personal property so
13 transferred. If, in such transaction, a separate charge is made
14 for the tangible personal property so transferred, the value of
15 such property, for the purposes of this Act, is the amount so
16 separately charged, but not less than the cost of such property
17 to the transferor; if no separate charge is made, the value of
18 such property, for the purposes of this Act, is the cost to the
19 transferor of such tangible personal property.

20 "Retailer maintaining a place of business in this State",
21 or any like term, means and includes any of the following
22 retailers:

- 23 1. A retailer having or maintaining within this State,
24 directly or by a subsidiary, an office, distribution house,
25 sales house, warehouse or other place of business, or any
26 agent or other representative operating within this State
27 under the authority of the retailer or its subsidiary,
28 irrespective of whether such place of business or agent or
29 other representative is located here permanently or
30 temporarily, or whether such retailer or subsidiary is
31 licensed to do business in this State. However, the
32 ownership of property that is located at the premises of a
33 printer with which the retailer has contracted for printing
34 and that consists of the final printed product, property
35 that becomes a part of the final printed product, or copy
36 from which the printed product is produced shall not result

1 in the retailer being deemed to have or maintain an office,
2 distribution house, sales house, warehouse, or other place
3 of business within this State.

4 2. A retailer soliciting orders for tangible personal
5 property by means of a telecommunication or television
6 shopping system (which utilizes toll free numbers) which is
7 intended by the retailer to be broadcast by cable
8 television or other means of broadcasting, to consumers
9 located in this State.

10 3. A retailer, pursuant to a contract with a
11 broadcaster or publisher located in this State, soliciting
12 orders for tangible personal property by means of
13 advertising which is disseminated primarily to consumers
14 located in this State and only secondarily to bordering
15 jurisdictions.

16 4. A retailer soliciting orders for tangible personal
17 property by mail if the solicitations are substantial and
18 recurring and if the retailer benefits from any banking,
19 financing, debt collection, telecommunication, or
20 marketing activities occurring in this State or benefits
21 from the location in this State of authorized installation,
22 servicing, or repair facilities.

23 5. A retailer that is owned or controlled by the same
24 interests that own or control any retailer engaging in
25 business in the same or similar line of business in this
26 State.

27 6. A retailer having a franchisee or licensee operating
28 under its trade name if the franchisee or licensee is
29 required to collect the tax under this Section.

30 7. A retailer, pursuant to a contract with a cable
31 television operator located in this State, soliciting
32 orders for tangible personal property by means of
33 advertising which is transmitted or distributed over a
34 cable television system in this State.

35 8. A retailer engaging in activities in Illinois, which
36 activities in the state in which the retail business

1 engaging in such activities is located would constitute
2 maintaining a place of business in that state.

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

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

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

12 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

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

26 "Purchased from a serviceman" means the acquisition of the
27 ownership of, or title to, tangible personal property through a
28 sale of service.

29 "Purchaser" means any person who, through a sale of
30 service, acquires the ownership of, or title to, any tangible
31 personal property.

32 "Cost price" means the consideration paid by the serviceman
33 for a purchase valued in money, whether paid in money or
34 otherwise, including cash, credits and services, and shall be

1 determined without any deduction on account of the supplier's
2 cost of the property sold or on account of any other expense
3 incurred by the supplier. When a serviceman contracts out part
4 or all of the services required in his sale of service, it
5 shall be presumed that the cost price to the serviceman of the
6 property transferred to him or her by his or her subcontractor
7 is equal to 50% of the subcontractor's charges to the
8 serviceman in the absence of proof of the consideration paid by
9 the subcontractor for the purchase of such property.

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

20 "Department" means the Department of Revenue.

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

26 "Sale of service" means any transaction except:

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

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

33 (3) except as hereinafter provided, a sale or transfer
34 of tangible personal property as an incident to the
35 rendering of service for or by any governmental body, or
36 for or by any corporation, society, association,

1 foundation or institution organized and operated
2 exclusively for charitable, religious or educational
3 purposes or any not-for-profit corporation, society,
4 association, foundation, institution or organization which
5 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
8 company may qualify for the exemption under this paragraph
9 only if the limited liability company is organized and
10 operated exclusively for educational purposes.

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

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

33 (4a-5) on and after July 1, 2003, a sale or transfer of
34 a motor vehicle of the second division with a gross vehicle
35 weight in excess of 8,000 pounds as an incident to the
36 rendering of service if that motor vehicle is subject to

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

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

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

30 (5b) a sale or transfer of tangible personal property
31 which is produced by the seller thereof on special order in
32 such a way as to have made the applicable tax the Service
33 Occupation Tax or the Service Use Tax, rather than the
34 Retailers' Occupation Tax or the Use Tax, for an interstate
35 carrier by rail which receives the physical possession of
36 such property in Illinois, and which transports such

1 property, or shares with another common carrier in the
2 transportation of such property, out of Illinois on a
3 standard uniform bill of lading showing the seller of the
4 property as the shipper or consignor of such property to a
5 destination outside Illinois, for use outside Illinois.

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

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

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

1 imposed pursuant to this Act.

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

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

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

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

1 Until the effective date of this amendatory Act of the 93rd
2 General Assembly, the purchase, employment and transfer of such
3 tangible personal property as newsprint and ink for the primary
4 purpose of conveying news (with or without other information)
5 is not a purchase, use or sale of service or of tangible
6 personal property within the meaning of this Act.

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

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

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

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

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

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

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

35 4. soliciting orders for tangible personal property by
36 mail if the solicitations are substantial and recurring and

1 if the retailer benefits from any banking, financing, debt
2 collection, telecommunication, or marketing activities
3 occurring in this State or benefits from the location in
4 this State of authorized installation, servicing, or
5 repair facilities;

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

9 6. having a franchisee or licensee operating under its
10 trade name if the franchisee or licensee is required to
11 collect the tax under this Section;

12 7. pursuant to a contract with a cable television
13 operator located in this State, soliciting orders for
14 tangible personal property by means of advertising which is
15 transmitted or distributed over a cable television system
16 in this State; or

17 8. engaging in activities in Illinois, which
18 activities in the state in which the supply business
19 engaging in such activities is located would constitute
20 maintaining a place of business in that state.

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

23 Section 15. The Retailers' Occupation Tax Act is amended by
24 changing Section 1 as follows:

25 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

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

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

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

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

31 Nonreusable tangible personal property that is used by
32 persons engaged in the business of operating a restaurant,
33 cafeteria, or drive-in is a sale for resale when it is
34 transferred to customers in the ordinary course of business as
35 part of the sale of food or beverages and is used to deliver,
36 package, or consume food or beverages, regardless of where

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

8 Until the effective date of this amendatory Act of the 93rd
9 General Assembly, the purchase, employment and transfer of such
10 tangible personal property as newsprint and ink for the primary
11 purpose of conveying news (with or without other information)
12 is not a purchase, use or sale of tangible personal property.

13 A person whose activities are organized and conducted
14 primarily as a not-for-profit service enterprise, and who
15 engages in selling tangible personal property at retail
16 (whether to the public or merely to members and their guests)
17 is engaged in the business of selling tangible personal
18 property at retail 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 for
26 profit. The selling of school books and school supplies by
27 schools at retail to students is not "primarily for the
28 purposes of" the school which does such selling. The provisions
29 of this paragraph shall not apply to nor subject to taxation
30 occasional dinners, socials 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 under
35 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
36 serves meals to participants in the federal Nutrition Program

1 for the Elderly in return for contributions established in
2 amount by the individual participant pursuant to a schedule of
3 suggested fees as provided for in the federal Act is not
4 engaged in the business of selling tangible personal property
5 at retail with respect to such transactions.

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

9 "Reseller of motor fuel" means any person engaged in the
10 business of selling or delivering or transferring title of
11 motor fuel to another person other than for use or consumption.
12 No person shall act as a reseller of motor fuel within this
13 State without first being registered as a reseller pursuant to
14 Section 2c or a retailer pursuant to Section 2a.

15 "Selling price" or the "amount of sale" means the
16 consideration for a sale valued in money whether received in
17 money or otherwise, including cash, credits, property, other
18 than as hereinafter provided, and services, but not including
19 the value of or credit given for traded-in tangible personal
20 property where the item that is traded-in is of like kind and
21 character as that which is being sold, and shall be determined
22 without any deduction on account of the cost of the property
23 sold, the cost of materials used, labor or service cost or any
24 other expense whatsoever, but does not include charges that are
25 added to prices by sellers on account of the seller's tax
26 liability under this Act, or on account of the seller's duty to
27 collect, from the purchaser, the tax that is imposed by the Use
28 Tax Act, or on account of the seller's tax liability under
29 Section 8-11-1 of the Illinois Municipal Code, as heretofore
30 and hereafter amended, or on account of the seller's tax
31 liability under the County Retailers' Occupation Tax Act, or on
32 account of the seller's tax liability under the Home Rule
33 Municipal Soft Drink Retailers' Occupation Tax, or on account
34 of the seller's tax liability under any tax imposed under the
35 "Regional Transportation Authority Act", approved December 12,
36 1973. Effective December 1, 1985, "selling price" shall include

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

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

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

24 "Department" means the Department of Revenue.

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

30 The isolated or occasional sale of tangible personal
31 property at retail by a person who does not hold himself out as
32 being engaged (or who does not habitually engage) in selling
33 such tangible personal property at retail, or a sale through a
34 bulk vending machine, does not constitute engaging in a
35 business of selling such tangible personal property at retail
36 within the meaning of this Act; provided that any person who is

1 engaged in a business which is not subject to the tax imposed
2 by this Act because of involving the sale of or a contract to
3 sell real estate or a construction contract to improve real
4 estate or a construction contract to engineer, install, and
5 maintain an integrated system of products, but who, in the
6 course of conducting such business, transfers tangible
7 personal property to users or consumers in the finished form in
8 which it was purchased, and which does not become real estate
9 or was not engineered and installed, under any provision of a
10 construction contract or real estate sale or real estate sales
11 agreement entered into with some other person arising out of or
12 because of such nontaxable business, is engaged in the business
13 of selling tangible personal property at retail to the extent
14 of the value of the tangible personal property so transferred.
15 If, in such a transaction, a separate charge is made for the
16 tangible personal property so transferred, the value of such
17 property, for the purpose of this Act, shall be the amount so
18 separately charged, but not less than the cost of such property
19 to the transferor; if no separate charge is made, the value of
20 such property, for the purposes of this Act, is the cost to the
21 transferor of such tangible personal property. Construction
22 contracts for the improvement of real estate consisting of
23 engineering, installation, and maintenance of voice, data,
24 video, security, and all telecommunication systems do not
25 constitute engaging in a business of selling tangible personal
26 property at retail within the meaning of this Act if they are
27 sold at one specified contract price.

28 A person who holds himself or herself out as being engaged
29 (or who habitually engages) in selling tangible personal
30 property at retail is a person engaged in the business of
31 selling tangible personal property at retail hereunder with
32 respect to such sales (and not primarily in a service
33 occupation) notwithstanding the fact that such person designs
34 and produces such tangible personal property on special order
35 for the purchaser and in such a way as to render the property
36 of value only to such purchaser, if such tangible personal

1 property so produced on special order serves substantially the
2 same function as stock or standard items of tangible personal
3 property that are sold at retail.

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

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

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