

1 AN ACT concerning revenue.

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

4 Section 5. The Retailers' Occupation Tax Act is amended by
5 changing Section 2a as follows:

6 (35 ILCS 120/2a) (from Ch. 120, par. 441a)

7 Sec. 2a. It is unlawful for any person to engage in the
8 business of selling tangible personal property at retail in
9 this State without a certificate of registration from the
10 Department. Application for a certificate of registration
11 shall be made to the Department upon forms furnished by it.
12 Each such application shall be signed and verified and shall
13 state: (1) the name and social security number of the
14 applicant; (2) the address of his principal place of business;
15 (3) the address of the principal place of business from which
16 he engages in the business of selling tangible personal
17 property at retail in this State and the addresses of all other
18 places of business, if any (enumerating such addresses, if any,
19 in a separate list attached to and made a part of the
20 application), from which he engages in the business of selling
21 tangible personal property at retail in this State; (4) the
22 name and address of the person or persons who will be
23 responsible for filing returns and payment of taxes due under

1 this Act; (5) in the case of a publicly-traded corporation, the
2 name and title of each corporate officer and in the case of all
3 other corporations ~~a corporation~~, the name, title, and social
4 security number of each corporate officer; (6) in the case of a
5 limited liability company, the name, social security number,
6 and FEIN number of each manager and member; and (7) such other
7 information as the Department may reasonably require. The
8 application shall contain an acceptance of responsibility
9 signed by the person or persons who will be responsible for
10 filing returns and payment of the taxes due under this Act. If
11 the applicant will sell tangible personal property at retail
12 through vending machines, his application to register shall
13 indicate the number of vending machines to be so operated; and
14 thereafter, he shall notify the Department by January 31 of the
15 number of vending machines which such person was using in his
16 business of selling tangible personal property at retail on the
17 preceding December 31.

18 Notwithstanding any other rulemaking authority that may
19 exist, neither the Governor nor any agency or agency head under
20 the jurisdiction of the Governor has any authority to make or
21 promulgate rules to implement or enforce the provisions of this
22 amendatory Act of the 95th General Assembly. If, however, the
23 Governor believes that rules are necessary to implement or
24 enforce the provisions of this amendatory Act of the 95th
25 General Assembly, the Governor may suggest rules to the General
26 Assembly by filing them with the Clerk of the House and the

1 Secretary of the Senate and by requesting that the General
2 Assembly authorize such rulemaking by law, enact those
3 suggested rules into law, or take any other appropriate action
4 in the General Assembly's discretion. Nothing contained in this
5 amendatory Act of the 95th General Assembly shall be
6 interpreted to grant rulemaking authority under any other
7 Illinois statute where such authority is not otherwise
8 explicitly given. For the purposes of this paragraph, "rules"
9 is given the meaning contained in Section 1-70 of the Illinois
10 Administrative Procedure Act, and "agency" and "agency head"
11 are given the meanings contained in Sections 1-20 and 1-25 of
12 the Illinois Administrative Procedure Act to the extent that
13 such definitions apply to agencies or agency heads under the
14 jurisdiction of the Governor.

15 The Department may deny a certificate of registration to
16 any applicant if the owner, any partner, any manager or member
17 of a limited liability company, or a corporate officer of the
18 applicant, is or has been the owner, a partner, a manager or
19 member of a limited liability company, or a corporate officer,
20 of another retailer that is in default for moneys due under
21 this Act.

22 Every applicant for a certificate of registration
23 hereunder shall, at the time of filing such application,
24 furnish a bond from a surety company authorized to do business
25 in the State of Illinois, or an irrevocable bank letter of
26 credit or a bond signed by 2 personal sureties who have filed,

1 with the Department, sworn statements disclosing net assets
2 equal to at least 3 times the amount of the bond to be required
3 of such applicant, or a bond secured by an assignment of a bank
4 account or certificate of deposit, stocks or bonds, conditioned
5 upon the applicant paying to the State of Illinois all moneys
6 becoming due under this Act and under any other State tax law
7 or municipal or county tax ordinance or resolution under which
8 the certificate of registration that is issued to the applicant
9 under this Act will permit the applicant to engage in business
10 without registering separately under such other law, ordinance
11 or resolution. The Department shall fix the amount of such
12 security in each case, taking into consideration the amount of
13 money expected to become due from the applicant under this Act
14 and under any other State tax law or municipal or county tax
15 ordinance or resolution under which the certificate of
16 registration that is issued to the applicant under this Act
17 will permit the applicant to engage in business without
18 registering separately under such other law, ordinance or
19 resolution. The amount of security required by the Department
20 shall be such as, in its opinion, will protect the State of
21 Illinois against failure to pay the amount which may become due
22 from the applicant under this Act and under any other State tax
23 law or municipal or county tax ordinance or resolution under
24 which the certificate of registration that is issued to the
25 applicant under this Act will permit the applicant to engage in
26 business without registering separately under such other law,

1 ordinance or resolution, but the amount of the security
2 required by the Department shall not exceed three times the
3 amount of the applicant's average monthly tax liability, or
4 \$50,000.00, whichever amount is lower.

5 No certificate of registration under this Act shall be
6 issued by the Department until the applicant provides the
7 Department with satisfactory security as herein provided for.

8 Upon receipt of the application for certificate of
9 registration in proper form, and upon approval by the
10 Department of the security furnished by the applicant, the
11 Department shall issue to such applicant a certificate of
12 registration which shall permit the person to whom it is issued
13 to engage in the business of selling tangible personal property
14 at retail in this State. The certificate of registration shall
15 be conspicuously displayed at the place of business which the
16 person so registered states in his application to be the
17 principal place of business from which he engages in the
18 business of selling tangible personal property at retail in
19 this State.

20 No certificate of registration issued to a taxpayer who
21 files returns required by this Act on a monthly basis shall be
22 valid after the expiration of 5 years from the date of its
23 issuance or last renewal. The expiration date of a
24 sub-certificate of registration shall be that of the
25 certificate of registration to which the sub-certificate
26 relates. A certificate of registration shall automatically be

1 renewed, subject to revocation as provided by this Act, for an
2 additional 5 years from the date of its expiration unless
3 otherwise notified by the Department as provided by this
4 paragraph. Where a taxpayer to whom a certificate of
5 registration is issued under this Act is in default to the
6 State of Illinois for delinquent returns or for moneys due
7 under this Act or any other State tax law or municipal or
8 county ordinance administered or enforced by the Department,
9 the Department shall, not less than 120 days before the
10 expiration date of such certificate of registration, give
11 notice to the taxpayer to whom the certificate was issued of
12 the account period of the delinquent returns, the amount of
13 tax, penalty and interest due and owing from the taxpayer, and
14 that the certificate of registration shall not be automatically
15 renewed upon its expiration date unless the taxpayer, on or
16 before the date of expiration, has filed and paid the
17 delinquent returns or paid the defaulted amount in full. A
18 taxpayer to whom such a notice is issued shall be deemed an
19 applicant for renewal. The Department shall promulgate
20 regulations establishing procedures for taxpayers who file
21 returns on a monthly basis but desire and qualify to change to
22 a quarterly or yearly filing basis and will no longer be
23 subject to renewal under this Section, and for taxpayers who
24 file returns on a yearly or quarterly basis but who desire or
25 are required to change to a monthly filing basis and will be
26 subject to renewal under this Section.

1 The Department may in its discretion approve renewal by an
2 applicant who is in default if, at the time of application for
3 renewal, the applicant files all of the delinquent returns or
4 pays to the Department such percentage of the defaulted amount
5 as may be determined by the Department and agrees in writing to
6 waive all limitations upon the Department for collection of the
7 remaining defaulted amount to the Department over a period not
8 to exceed 5 years from the date of renewal of the certificate;
9 however, no renewal application submitted by an applicant who
10 is in default shall be approved if the immediately preceding
11 renewal by the applicant was conditioned upon the installment
12 payment agreement described in this Section. The payment
13 agreement herein provided for shall be in addition to and not
14 in lieu of the security required by this Section of a taxpayer
15 who is no longer considered a prior continuous compliance
16 taxpayer. The execution of the payment agreement as provided in
17 this Act shall not toll the accrual of interest at the
18 statutory rate.

19 A certificate of registration issued under this Act more
20 than 5 years before the effective date of this amendatory Act
21 of 1989 shall expire and be subject to the renewal provisions
22 of this Section on the next anniversary of the date of issuance
23 of such certificate which occurs more than 6 months after the
24 effective date of this amendatory Act of 1989. A certificate of
25 registration issued less than 5 years before the effective date
26 of this amendatory Act of 1989 shall expire and be subject to

1 the renewal provisions of this Section on the 5th anniversary
2 of the issuance of the certificate.

3 If the person so registered states that he operates other
4 places of business from which he engages in the business of
5 selling tangible personal property at retail in this State, the
6 Department shall furnish him with a sub-certificate of
7 registration for each such place of business, and the applicant
8 shall display the appropriate sub-certificate of registration
9 at each such place of business. All sub-certificates of
10 registration shall bear the same registration number as that
11 appearing upon the certificate of registration to which such
12 sub-certificates relate.

13 If the applicant will sell tangible personal property at
14 retail through vending machines, the Department shall furnish
15 him with a sub-certificate of registration for each such
16 vending machine, and the applicant shall display the
17 appropriate sub-certificate of registration on each such
18 vending machine by attaching the sub-certificate of
19 registration to a conspicuous part of such vending machine.

20 Where the same person engages in 2 or more businesses of
21 selling tangible personal property at retail in this State,
22 which businesses are substantially different in character or
23 engaged in under different trade names or engaged in under
24 other substantially dissimilar circumstances (so that it is
25 more practicable, from an accounting, auditing or bookkeeping
26 standpoint, for such businesses to be separately registered),

1 the Department may require or permit such person (subject to
2 the same requirements concerning the furnishing of security as
3 those that are provided for hereinbefore in this Section as to
4 each application for a certificate of registration) to apply
5 for and obtain a separate certificate of registration for each
6 such business or for any of such businesses, under a single
7 certificate of registration supplemented by related
8 sub-certificates of registration.

9 Any person who is registered under the "Retailers'
10 Occupation Tax Act" as of March 8, 1963, and who, during the
11 3-year period immediately prior to March 8, 1963, or during a
12 continuous 3-year period part of which passed immediately
13 before and the remainder of which passes immediately after
14 March 8, 1963, has been so registered continuously and who is
15 determined by the Department not to have been either delinquent
16 or deficient in the payment of tax liability during that period
17 under this Act or under any other State tax law or municipal or
18 county tax ordinance or resolution under which the certificate
19 of registration that is issued to the registrant under this Act
20 will permit the registrant to engage in business without
21 registering separately under such other law, ordinance or
22 resolution, shall be considered to be a Prior Continuous
23 Compliance taxpayer. Also any taxpayer who has, as verified by
24 the Department, faithfully and continuously complied with the
25 condition of his bond or other security under the provisions of
26 this Act for a period of 3 consecutive years shall be

1 considered to be a Prior Continuous Compliance taxpayer.

2 Every Prior Continuous Compliance taxpayer shall be exempt
3 from all requirements under this Act concerning the furnishing
4 of security as a condition precedent to his being authorized to
5 engage in the business of selling tangible personal property at
6 retail in this State. This exemption shall continue for each
7 such taxpayer until such time as he may be determined by the
8 Department to be delinquent in the filing of any returns, or is
9 determined by the Department (either through the Department's
10 issuance of a final assessment which has become final under the
11 Act, or by the taxpayer's filing of a return which admits tax
12 that is not paid to be due) to be delinquent or deficient in
13 the paying of any tax under this Act or under any other State
14 tax law or municipal or county tax ordinance or resolution
15 under which the certificate of registration that is issued to
16 the registrant under this Act will permit the registrant to
17 engage in business without registering separately under such
18 other law, ordinance or resolution, at which time that taxpayer
19 shall become subject to all the financial responsibility
20 requirements of this Act and, as a condition of being allowed
21 to continue to engage in the business of selling tangible
22 personal property at retail, shall be required to post bond or
23 other acceptable security with the Department covering
24 liability which such taxpayer may thereafter incur. Any
25 taxpayer who fails to pay an admitted or established liability
26 under this Act may also be required to post bond or other

1 acceptable security with this Department guaranteeing the
2 payment of such admitted or established liability.

3 No certificate of registration shall be issued to any
4 person who is in default to the State of Illinois for moneys
5 due under this Act or under any other State tax law or
6 municipal or county tax ordinance or resolution under which the
7 certificate of registration that is issued to the applicant
8 under this Act will permit the applicant to engage in business
9 without registering separately under such other law, ordinance
10 or resolution.

11 Any person aggrieved by any decision of the Department
12 under this Section may, within 20 days after notice of such
13 decision, protest and request a hearing, whereupon the
14 Department shall give notice to such person of the time and
15 place fixed for such hearing and shall hold a hearing in
16 conformity with the provisions of this Act and then issue its
17 final administrative decision in the matter to such person. In
18 the absence of such a protest within 20 days, the Department's
19 decision shall become final without any further determination
20 being made or notice given.

21 With respect to security other than bonds (upon which the
22 Department may sue in the event of a forfeiture), if the
23 taxpayer fails to pay, when due, any amount whose payment such
24 security guarantees, the Department shall, after such
25 liability is admitted by the taxpayer or established by the
26 Department through the issuance of a final assessment that has

1 become final under the law, convert the security which that
2 taxpayer has furnished into money for the State, after first
3 giving the taxpayer at least 10 days' written notice, by
4 registered or certified mail, to pay the liability or forfeit
5 such security to the Department. If the security consists of
6 stocks or bonds or other securities which are listed on a
7 public exchange, the Department shall sell such securities
8 through such public exchange. If the security consists of an
9 irrevocable bank letter of credit, the Department shall convert
10 the security in the manner provided for in the Uniform
11 Commercial Code. If the security consists of a bank certificate
12 of deposit, the Department shall convert the security into
13 money by demanding and collecting the amount of such bank
14 certificate of deposit from the bank which issued such
15 certificate. If the security consists of a type of stocks or
16 other securities which are not listed on a public exchange, the
17 Department shall sell such security to the highest and best
18 bidder after giving at least 10 days' notice of the date, time
19 and place of the intended sale by publication in the "State
20 Official Newspaper". If the Department realizes more than the
21 amount of such liability from the security, plus the expenses
22 incurred by the Department in converting the security into
23 money, the Department shall pay such excess to the taxpayer who
24 furnished such security, and the balance shall be paid into the
25 State Treasury.

26 The Department shall discharge any surety and shall release

1 and return any security deposited, assigned, pledged or
2 otherwise provided to it by a taxpayer under this Section
3 within 30 days after:

4 (1) such taxpayer becomes a Prior Continuous
5 Compliance taxpayer; or

6 (2) such taxpayer has ceased to collect receipts on
7 which he is required to remit tax to the Department, has
8 filed a final tax return, and has paid to the Department an
9 amount sufficient to discharge his remaining tax
10 liability, as determined by the Department, under this Act
11 and under every other State tax law or municipal or county
12 tax ordinance or resolution under which the certificate of
13 registration issued under this Act permits the registrant
14 to engage in business without registering separately under
15 such other law, ordinance or resolution. The Department
16 shall make a final determination of the taxpayer's
17 outstanding tax liability as expeditiously as possible
18 after his final tax return has been filed; if the
19 Department cannot make such final determination within 45
20 days after receiving the final tax return, within such
21 period it shall so notify the taxpayer, stating its reasons
22 therefor.

23 (Source: P.A. 90-491, eff. 1-1-98; 91-357, eff. 7-29-99.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.