

**HB6647**



**95TH GENERAL ASSEMBLY**

**State of Illinois**

**2007 and 2008**

**HB6647**

by Rep. Sandra M. Pihos - Patricia R. Bellock

**SYNOPSIS AS INTRODUCED:**

35 ILCS 105/2  
35 ILCS 120/1

from Ch. 120, par. 439.2  
from Ch. 120, par. 440

Amends the Use Tax Act and the Retailers' Occupation Tax Act. Makes changes to the definition of "sale at retail" concerning florists.

LRB095 21438 HLH 50858 b

**A BILL FOR**

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 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

1 by this Act, and no credit for that tax is permitted if the  
2 watercraft or aircraft is subsequently sold by the retailer.

3 "Use" does not mean the physical incorporation of tangible  
4 personal property, to the extent not first subjected to a use  
5 for which it was purchased, as an ingredient or constituent,  
6 into other tangible personal property (a) which is sold in the  
7 regular course of business or (b) which the person  
8 incorporating such ingredient or constituent therein has  
9 undertaken at the time of such purchase to cause to be  
10 transported in interstate commerce to destinations outside the  
11 State of Illinois: Provided that the property purchased is  
12 deemed to be purchased for the purpose of resale, despite first  
13 being used, to the extent to which it is resold as an  
14 ingredient of an intentionally produced product or by-product  
15 of manufacturing.

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

20 "Purchase at retail" means the acquisition of the ownership  
21 of or title to tangible personal property through a sale at  
22 retail.

23 "Purchaser" means anyone who, through a sale at retail,  
24 acquires the ownership of tangible personal property for a  
25 valuable consideration.

26 "Sale at retail" means any transfer of the ownership of or

1 title to tangible personal property to a purchaser, for the  
2 purpose of use, and not for the purpose of resale in any form  
3 as tangible personal property to the extent not first subjected  
4 to a use for which it was purchased, for a valuable  
5 consideration: Provided that the property purchased is deemed  
6 to be purchased for the purpose of resale, despite first being  
7 used, to the extent to which it is resold as an ingredient of  
8 an intentionally produced product or by-product of  
9 manufacturing. For this purpose, slag produced as an incident  
10 to manufacturing pig iron or steel and sold is considered to be  
11 an intentionally produced by-product of manufacturing. "Sale  
12 at retail" includes any such transfer made for resale unless  
13 made in compliance with Section 2c of the Retailers' Occupation  
14 Tax Act, as incorporated by reference into Section 12 of this  
15 Act. Transactions whereby the possession of the property is  
16 transferred but the seller retains the title as security for  
17 payment of the selling price are sales.

18 "Sale at retail" shall also be construed to include any  
19 Illinois florist's sales transaction in which the purchase  
20 order is received in Illinois by a florist and the sale is for  
21 use or consumption, but the Illinois florist has a florist in  
22 another state deliver the property to the purchaser or the  
23 purchaser's donee in such other state. For purposes of this  
24 item, "florist" means a retailer who conducts transactions for  
25 the delivery of flowers, wreaths, etc. through a florists'  
26 delivery association using telephonic, electronic, or other

1 means for the transmission of orders, except that the term  
2 "florist" shall not include any retailer who does not fulfill  
3 other florists' orders for the delivery of flowers, wreaths,  
4 etc.

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

22 "Selling price" means the consideration for a sale valued  
23 in money whether received in money or otherwise, including  
24 cash, credits, property other than as hereinafter provided, and  
25 services, but not including the value of or credit given for  
26 traded-in tangible personal property where the item that is

1 traded-in is of like kind and character as that which is being  
2 sold, and shall be determined without any deduction on account  
3 of the cost of the property sold, the cost of materials used,  
4 labor or service cost or any other expense whatsoever, but does  
5 not include interest or finance charges which appear as  
6 separate items on the bill of sale or sales contract nor  
7 charges that are added to prices by sellers on account of the  
8 seller's tax liability under the "Retailers' Occupation Tax  
9 Act", or on account of the seller's duty to collect, from the  
10 purchaser, the tax that is imposed by this Act, or on account  
11 of the seller's tax liability under Section 8-11-1 of the  
12 Illinois Municipal Code, as heretofore and hereafter amended,  
13 or on account of the seller's tax liability under the "County  
14 Retailers' Occupation Tax Act". Effective December 1, 1985,  
15 "selling price" shall include charges that are added to prices  
16 by sellers on account of the seller's tax liability under the  
17 Cigarette Tax Act, on account of the seller's duty to collect,  
18 from the purchaser, the tax imposed under the Cigarette Use Tax  
19 Act, and on account of the seller's duty to collect, from the  
20 purchaser, any cigarette tax imposed by a home rule unit.

21 The phrase "like kind and character" shall be liberally  
22 construed (including but not limited to any form of motor  
23 vehicle for any form of motor vehicle, or any kind of farm or  
24 agricultural implement for any other kind of farm or  
25 agricultural implement), while not including a kind of item  
26 which, if sold at retail by that retailer, would be exempt from

1 retailers' occupation tax and use tax as an isolated or  
2 occasional sale.

3 "Department" means the Department of Revenue.

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

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

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

22 A person whose activities are organized and conducted  
23 primarily as a not-for-profit service enterprise, and who  
24 engages in selling tangible personal property at retail  
25 (whether to the public or merely to members and their guests)  
26 is a retailer with respect to such transactions, excepting only

1 a person organized and operated exclusively for charitable,  
2 religious or educational purposes either (1), to the extent of  
3 sales by such person to its members, students, patients or  
4 inmates of tangible personal property to be used primarily for  
5 the purposes of such person, or (2), to the extent of sales by  
6 such person of tangible personal property which is not sold or  
7 offered for sale by persons organized for profit. The selling  
8 of school books and school supplies by schools at retail to  
9 students is not "primarily for the purposes of" the school  
10 which does such selling. This paragraph does not apply to nor  
11 subject to taxation occasional dinners, social or similar  
12 activities of a person organized and operated exclusively for  
13 charitable, religious or educational purposes, whether or not  
14 such activities are open to the public.

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

22 Persons who engage in the business of transferring tangible  
23 personal property upon the redemption of trading stamps are  
24 retailers hereunder when engaged in such business.

25 The isolated or occasional sale of tangible personal  
26 property at retail by a person who does not hold himself out as



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

23 "Retailer maintaining a place of business in this State",  
24 or any like term, means and includes any of the following  
25 retailers:

- 26 1. A retailer having or maintaining within this State,

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

17 2. A retailer soliciting orders for tangible personal  
18 property by means of a telecommunication or television  
19 shopping system (which utilizes toll free numbers) which is  
20 intended by the retailer to be broadcast by cable  
21 television or other means of broadcasting, to consumers  
22 located in this State.

23 3. A retailer, pursuant to a contract with a  
24 broadcaster or publisher located in this State, soliciting  
25 orders for tangible personal property by means of  
26 advertising which is disseminated primarily to consumers

1 located in this State and only secondarily to bordering  
2 jurisdictions.

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

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

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

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

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

26 "Bulk vending machine" means a vending machine, containing

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

6 (Source: P.A. 94-1074, eff. 12-26-06.)

7 Section 10. The Retailers' Occupation Tax Act is amended by  
8 changing Section 1 as follows:

9 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

1 sales.

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

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

19 "Sale at retail" shall be construed to include any Illinois  
20 florist's sales transaction in which the purchase order is  
21 received in Illinois by a florist and the sale is for use or  
22 consumption, but the Illinois florist has a florist in another  
23 state deliver the property to the purchaser or the purchaser's  
24 donee in such other state. For purposes of this item, "florist"  
25 means a retailer who conducts transactions for the delivery of  
26 flowers, wreaths, etc. through a florists' delivery

1 association using telephonic, electronic, or other means for  
2 the transmission of orders, except that the term "florist"  
3 shall not include any retailer who does not fulfill other  
4 florists' orders for the delivery of flowers, wreaths, etc.

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

22 A person whose activities are organized and conducted  
23 primarily as a not-for-profit service enterprise, and who  
24 engages in selling tangible personal property at retail  
25 (whether to the public or merely to members and their guests)  
26 is engaged in the business of selling tangible personal

1 property at retail with respect to such transactions, excepting  
2 only a person organized and operated exclusively for  
3 charitable, religious or educational purposes either (1), to  
4 the extent of sales by such person to its members, students,  
5 patients or inmates of tangible personal property to be used  
6 primarily for the purposes of such person, or (2), to the  
7 extent of sales by such person of tangible personal property  
8 which is not sold or offered for sale by persons organized for  
9 profit. The selling of school books and school supplies by  
10 schools at retail to students is not "primarily for the  
11 purposes of" the school which does such selling. The provisions  
12 of this paragraph shall not apply to nor subject to taxation  
13 occasional dinners, socials or similar activities of a person  
14 organized and operated exclusively for charitable, religious  
15 or educational purposes, whether or not such activities are  
16 open to the public.

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

25 "Purchaser" means anyone who, through a sale at retail,  
26 acquires the ownership of or title to tangible personal

1 property for a valuable consideration.

2 "Reseller of motor fuel" means any person engaged in the  
3 business of selling or delivering or transferring title of  
4 motor fuel to another person other than for use or consumption.  
5 No person shall act as a reseller of motor fuel within this  
6 State without first being registered as a reseller pursuant to  
7 Section 2c or a retailer pursuant to Section 2a.

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



1 of the seller's tax liability under any tax imposed under the  
2 "Regional Transportation Authority Act", approved December 12,  
3 1973. Effective December 1, 1985, "selling price" shall include  
4 charges that are added to prices by sellers on account of the  
5 seller's tax liability under the Cigarette Tax Act, on account  
6 of the sellers' duty to collect, from the purchaser, the tax  
7 imposed under the Cigarette Use Tax Act, and on account of the  
8 seller's duty to collect, from the purchaser, any cigarette tax  
9 imposed by a home rule unit.

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

18 "Gross receipts" from the sales of tangible personal  
19 property at retail means the total selling price or the amount  
20 of such sales, as hereinbefore defined. In the case of charge  
21 and time sales, the amount thereof shall be included only as  
22 and when payments are received by the seller. Receipts or other  
23 consideration derived by a seller from the sale, transfer or  
24 assignment of accounts receivable to a wholly owned subsidiary  
25 will not be deemed payments prior to the time the purchaser  
26 makes payment on such 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 receiver,  
5 executor, trustee, guardian or other representative appointed  
6 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 as  
9 being engaged (or who does not habitually engage) in selling  
10 such tangible personal property at retail, or a sale through a  
11 bulk vending machine, does not constitute engaging in a  
12 business of selling such tangible personal property at retail  
13 within the meaning of this Act; provided that any person who is  
14 engaged in a business which is not subject to the tax imposed  
15 by this Act because of involving the sale of or a contract to  
16 sell real estate or a construction contract to improve real  
17 estate or a construction contract to engineer, install, and  
18 maintain an integrated system of products, but who, in the  
19 course of conducting such business, transfers tangible  
20 personal property to users or consumers in the finished form in  
21 which it was purchased, and which does not become real estate  
22 or was not engineered and installed, under any provision of a  
23 construction contract or real estate sale or real estate sales  
24 agreement entered into with some other person arising out of or  
25 because of such nontaxable business, is engaged in the business  
26 of selling tangible personal property at retail to the extent

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

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

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

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

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