

SB2533



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2533

Introduced 2/15/2008, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

35 ILCS 120/6d new

Amends the Retailers' Occupation Tax Act. Provides that a retailer is relieved from liability for Retailers' Occupation Tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off by the retailer. Sets forth requirements for claiming credit memoranda or refunds of such taxes that have previously been paid.

LRB095 19870 BDD 46269 b

FISCAL NOTE ACT
MAY APPLY

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 Retailers' Occupation Tax Act is amended by
5 adding Section 6d as follows:

6 (35 ILCS 120/6d new)

7 Sec. 6d. Bad debt credit memorandum or refund.

8 (a) A retailer is relieved from liability for Retailers'
9 Occupation Tax that became due and payable, insofar as the
10 measure of the tax is represented by accounts that have been
11 found to be worthless and charged off for income tax purposes
12 by the retailer or, if the retailer is not required to file
13 income tax returns, charged off in accordance with generally
14 accepted accounting principles. A retailer that has previously
15 paid the tax may, under rules adopted by the Department, take
16 as a deduction the amount found worthless and charged off by
17 the retailer. If these accounts are thereafter in whole or in
18 part collected by the retailer, the amount collected shall be
19 included in the first return filed after the collection and the
20 tax shall be paid with the return.

21 (b) In the case of accounts held by a lender, a retailer or
22 lender who makes a proper election under subsection (d) is
23 entitled to a deduction or refund of the tax that the retailer

1 has previously reported and paid if all of the following
2 conditions are met:

3 (1) no deduction or refund was previously claimed or
4 allowed on any portion of the accounts;

5 (2) the deduction or refund does not exceed the tax
6 that the retailer has previously reported and paid;

7 (3) the accounts have been found to be worthless and
8 have been charged off for income-tax purposes by a lender
9 or, if the lender is not required to file income tax
10 returns, charged off in accordance with generally accepted
11 accounting principles by the lender; and

12 (4) the claim for the deduction or refund was made in
13 the form and manner required by the Department.

14 (c) If the retailer or the lender thereafter collects, in
15 whole or in part, any accounts, then:

16 (1) if the retailer is entitled to the deduction or
17 refund under the election specified in subsection (d), the
18 retailer shall include the amount collected in its first
19 return filed after the collection and pay tax on that
20 amount with the return; or

21 (2) if the lender is entitled to the deduction or
22 refund under the election specified in subsection (d), the
23 lender shall pay the tax to the Department.

24 (d) Prior to claiming any deduction or refund under this
25 Section, the retailer who reported the tax and the lender shall
26 execute and maintain a written election agreement, signed by

1 both parties, designating which party is entitled to claim the
2 deduction or refund.

3 (e) A retailer or lender may have its deduction or refund
4 for bad debts claimed on a return or refund filed by an
5 affiliated entity.

6 (f) The retailer or a lender shall maintain adequate books,
7 records, or other documentation supporting the charge off of
8 the accounts for which a deduction was taken or refund was
9 claimed under this Section. If a retailer remits any use or
10 occupation tax to this State and one or more other states, then
11 the claimant under this subdivision may use an apportionment
12 method to substantiate the amount of tax imposed under this Act
13 included in the bad debts to which the deduction or refund
14 applies. The apportionment method must use the retailer's
15 Illinois and non-Illinois sales, the retailer's taxable and
16 nontaxable sales, and the amount of tax the retailer remitted
17 to this State. Alternatively, the claimant under this Section
18 may treat a specified percentage of the accounts as giving rise
19 to a deduction or refund under this subdivision. This
20 percentage is derived from a sampling of the retailer's or a
21 lender's records in accordance with a methodology agreed upon
22 by the Department and the claimant.

23 (g) For purposes of this Section:

24 "Affiliated entity" means any entity affiliated with the
25 retailer under Section 1504 of the Internal Revenue Code of
26 1986 or an entity that would be an affiliate under that statute

1 had the entity or entities been corporations.

2 "Lender" means any one or more of the following:

3 (1) any person who holds or who has held a retail
4 account that the person purchased directly from a retailer
5 who reported the tax;

6 (2) any person who holds or who has held a retail
7 account pursuant to that person's contract directly with
8 the retailer who reported the tax; and

9 (3) any person who is either an affiliated entity of a
10 person described in items (1) or (2) or an assignee or
11 other transferee of such a person.

12 "Retailer" includes any affiliated entity.