



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4052

Introduced 2/27/2009, by Rep. Sandra M. Pihos

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.

LRB096 11747 HLH 22503 b

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, except as
11 otherwise provided with respect to any cigarette tax imposed by
12 a home rule unit, on account of the seller's tax liability
13 under any local occupation tax administered by the Department,
14 or, except as otherwise provided with respect to any cigarette
15 tax imposed by a home rule unit on account of the seller's duty
16 to collect, from the purchasers, the tax that is imposed under
17 any local use tax administered by the Department. Effective
18 December 1, 1985, "selling price" shall include charges that
19 are added to prices by sellers on account of the seller's tax
20 liability under the Cigarette Tax Act, on account of the
21 seller's duty to collect, from the purchaser, the tax imposed
22 under the Cigarette Use Tax Act, and on account of the seller's
23 duty to collect, from the purchaser, any cigarette tax imposed
24 by a home rule unit.

25 The phrase "like kind and character" shall be liberally
26 construed (including but not limited to any form of motor

1 vehicle for any form of motor vehicle, or any kind of farm or
2 agricultural implement for any other kind of farm or
3 agricultural implement), while not including a kind of item
4 which, if sold at retail by that retailer, would be exempt from
5 retailers' occupation tax and use tax as an isolated or
6 occasional sale.

7 "Department" means the Department of Revenue.

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

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

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 retailer hereunder with respect to such
18 sales (and not primarily in a service occupation)
19 notwithstanding the fact that such person designs and produces
20 such tangible personal property on special order for the
21 purchaser and in such a way as to render the property of value
22 only to such purchaser, if such tangible personal property so
23 produced on special order serves substantially the same
24 function as stock or standard items of tangible personal
25 property that are sold at retail.

26 A person whose activities are organized and conducted

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

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

26 Persons who engage in the business of transferring tangible

1 personal property upon the redemption of trading stamps are
2 retailers hereunder when engaged in such business.

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

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

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

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

1 3. A retailer, pursuant to a contract with a
2 broadcaster or publisher located in this State, soliciting
3 orders for tangible personal property by means of
4 advertising which is disseminated primarily to consumers
5 located in this State and only secondarily to bordering
6 jurisdictions.

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

14 5. A retailer that is owned or controlled by the same
15 interests that own or control any retailer engaging in
16 business in the same or similar line of business in this
17 State.

18 6. A retailer having a franchisee or licensee operating
19 under its trade name if the franchisee or licensee is
20 required to collect the tax under this Section.

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

26 8. A retailer engaging in activities in Illinois, which

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

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

10 (Source: P.A. 94-1074, eff. 12-26-06; 95-723, eff. 6-23-08.)

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

13 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

1 considered to be an intentionally produced byproduct of
2 manufacturing. Transactions whereby the possession of the
3 property is transferred but the seller retains the title as
4 security for payment of the selling price shall be deemed to be
5 sales.

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

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

23 "Sale at retail" shall be construed to include any Illinois
24 florist's sales transaction in which the purchase order is
25 received in Illinois by a florist and the sale is for use or
26 consumption, but the Illinois florist has a florist in another

1 state deliver the property to the purchaser or the purchaser's
2 donee in such other state. For purposes of this item, "florist"
3 means a retailer who conducts transactions for the delivery of
4 flowers, wreaths, etc. through a florists' delivery
5 association using telephonic, electronic, or other means for
6 the transmission of orders, except that the term "florist"
7 shall not include any retailer who does not fulfill other
8 florists' orders for the delivery of flowers, wreaths, etc.

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

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

26 A person whose activities are organized and conducted

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

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

1 engaged in the business of selling tangible personal property
2 at retail with respect to such transactions.

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

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

12 "Selling price" or the "amount of sale" means the
13 consideration for a sale valued in money whether received in
14 money or otherwise, including cash, credits, property, other
15 than as hereinafter provided, and services, but not including
16 the value of or credit given for traded-in tangible personal
17 property where the item that is traded-in is of like kind and
18 character as that which is being sold, and shall be determined
19 without any deduction on account of the cost of the property
20 sold, the cost of materials used, labor or service cost or any
21 other expense whatsoever, but does not include charges that are
22 added to prices by sellers on account of the seller's tax
23 liability under this Act, or on account of the seller's duty to
24 collect, from the purchaser, the tax that is imposed by the Use
25 Tax Act, or, except as otherwise provided with respect to any
26 cigarette tax imposed by a home rule unit, on account of the

1 seller's tax liability under any local occupation tax
2 administered by the Department, or, except as otherwise
3 provided with respect to any cigarette tax imposed by a home
4 rule unit on account of the seller's duty to collect, from the
5 purchasers, the tax that is imposed under any local use tax
6 administered by the Department. Effective December 1, 1985,
7 "selling price" shall include charges that are added to prices
8 by sellers on account of the seller's tax liability under the
9 Cigarette Tax Act, on account of the sellers' duty to collect,
10 from the purchaser, the tax imposed under the Cigarette Use Tax
11 Act, and on account of the seller's duty to collect, from the
12 purchaser, any cigarette tax imposed by a home rule unit.

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

21 "Gross receipts" from the sales of tangible personal
22 property at retail means the total selling price or the amount
23 of such sales, as hereinbefore defined. In the case of charge
24 and time sales, the amount thereof shall be included only as
25 and when payments are received by the seller. Receipts or other
26 consideration derived by a seller from the sale, transfer or

1 assignment of accounts receivable to a wholly owned subsidiary
2 will not be deemed payments prior to the time the purchaser
3 makes payment on such accounts.

4 "Department" means the Department of Revenue.

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

10 The isolated or occasional sale of tangible personal
11 property at retail by a person who does not hold himself out as
12 being engaged (or who does not habitually engage) in selling
13 such tangible personal property at retail, or a sale through a
14 bulk vending machine, does not constitute engaging in a
15 business of selling such tangible personal property at retail
16 within the meaning of this Act; provided that any person who is
17 engaged in a business which is not subject to the tax imposed
18 by this Act because of involving the sale of or a contract to
19 sell real estate or a construction contract to improve real
20 estate or a construction contract to engineer, install, and
21 maintain an integrated system of products, but who, in the
22 course of conducting such business, transfers tangible
23 personal property to users or consumers in the finished form in
24 which it was purchased, and which does not become real estate
25 or was not engineered and installed, under any provision of a
26 construction contract or real estate sale or real estate sales

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

18 A person who holds himself or herself out as being engaged
19 (or who habitually engages) in selling tangible personal
20 property at retail is a person engaged in the business of
21 selling tangible personal property at retail hereunder with
22 respect to such sales (and not primarily in a service
23 occupation) notwithstanding the fact that such person designs
24 and produces such tangible personal property on special order
25 for the purchaser and in such a way as to render the property
26 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. 95-723, eff. 6-23-08.)