



Rep. Sara Feigenholtz

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LRB097 19513 HLH 65974 a

1 AMENDMENT TO HOUSE BILL 5423

2 AMENDMENT NO. _____. Amend House Bill 5423 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Use Tax Act is amended by changing Section
5 2 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

1 as an ingredient of an intentionally produced product or
2 by-product of manufacturing. "Use" does not mean the
3 demonstration use or interim use of tangible personal property
4 by a retailer before he sells that tangible personal property.
5 For watercraft or aircraft, if the period of demonstration use
6 or interim use by the retailer exceeds 18 months, the retailer
7 shall pay on the retailers' original cost price the tax imposed
8 by this Act, and no credit for that tax is permitted if the
9 watercraft or aircraft is subsequently sold by the retailer.
10 "Use" does not mean the physical incorporation of tangible
11 personal property, to the extent not first subjected to a use
12 for which it was purchased, as an ingredient or constituent,
13 into other tangible personal property (a) which is sold in the
14 regular course of business or (b) which the person
15 incorporating such ingredient or constituent therein has
16 undertaken at the time of such purchase to cause to be
17 transported in interstate commerce to destinations outside the
18 State of Illinois: Provided that the property purchased is
19 deemed to be purchased for the purpose of resale, despite first
20 being used, to the extent to which it is resold as an
21 ingredient of an intentionally produced product or by-product
22 of manufacturing.

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

1 "Purchase at retail" means the acquisition of the ownership
2 of or title to tangible personal property through a sale at
3 retail.

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

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

25 "Sale at retail" shall also be construed to include any
26 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 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, socials, ~~social~~ or
16 similar activities of a person organized and operated
17 exclusively for charitable, religious or educational purposes,
18 whether or not such activities are open to the public. As used
19 in this paragraph, "occasional" means not more than 2 such
20 activities in any calendar year, to be chosen by the person
21 organized and operated exclusively for charitable, religious,
22 or educational purposes. Any sales of tangible personal
23 property at retail at an activity that would otherwise qualify
24 as an exempt occasional dinner, social, or similar activity are
25 taxable if that activity exceeds the 2-activity limit in a
26 calendar year. Notwithstanding any other provision of this

1 paragraph to the contrary, on and after July 1, 2012, sales of
2 tangible personal property at retail at an occasional dinner,
3 social, or similar activity that falls within the 2-activity
4 limit and is held by a person organized and operated
5 exclusively for charitable, religious, or educational purposes
6 are exempt from taxation under this Act only if 100% of the
7 gross revenues generated from the activity, after reasonable
8 expenses, are paid to that person and used for charitable,
9 religious, or educational purposes. As used in this paragraph,
10 the phrase "gross revenues generated from the activity"
11 includes, but is not limited to, revenues from: admission or
12 ticket sales, sales of tangible personal property,
13 sponsorships, and broadcast rights. As used in this paragraph a
14 "dinner, social, or similar activity" includes, but is not
15 limited to, a dinner, ice cream social, fun fair, carnival,
16 rummage sale, bazaar, bake sale, charity auction or other
17 fundraising event, street fair, indoor or outdoor concert or
18 performance, and the like. If an occasional dinner, social, or
19 similar activity otherwise meets the requirements of this
20 paragraph, then the exemption for sales of tangible personal
21 property at retail at that activity applies whether or not the
22 items that are sold are purchased or donated for the purpose of
23 the sale, and whether or not the activity is open to the
24 public. If an occasional dinner, social, or similar activity
25 otherwise meets the requirements of this paragraph, then the
26 exemption for sales of tangible personal property at retail at

1 that activity applies whether or not items sold at the
2 occasional dinner, social, or similar activity are also sold or
3 offered for sale by persons organized for profit. The
4 Department by rule shall determine what constitutes reasonable
5 expenses under this paragraph.

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

13 Persons who engage in the business of transferring tangible
14 personal property upon the redemption of trading stamps are
15 retailers hereunder when engaged in such business.

16 The isolated or occasional sale of tangible personal
17 property at retail by a person who does not hold himself out as
18 being engaged (or who does not habitually engage) in selling
19 such tangible personal property at retail or a sale through a
20 bulk vending machine does not make such person a retailer
21 hereunder. However, any person who is engaged in a business
22 which is not subject to the tax imposed by the "Retailers'
23 Occupation Tax Act" because of involving the sale of or a
24 contract to sell real estate or a construction contract to
25 improve real estate, but who, in the course of conducting such
26 business, transfers tangible personal property to users or

1 consumers in the finished form in which it was purchased, and
2 which does not become real estate, under any provision of a
3 construction contract or real estate sale or real estate sales
4 agreement entered into with some other person arising out of or
5 because of such nontaxable business, is a retailer to the
6 extent of the value of the tangible personal property so
7 transferred. If, in such transaction, a separate charge is made
8 for the tangible personal property so transferred, the value of
9 such property, for the purposes of this Act, is the amount so
10 separately charged, but not less than the cost of such property
11 to the transferor; if no separate charge is made, the value of
12 such property, for the purposes of this Act, is the cost to the
13 transferor of such tangible personal property.

14 "Retailer maintaining a place of business in this State",
15 or any like term, means and includes any of the following
16 retailers:

- 17 1. A retailer having or maintaining within this State,
18 directly or by a subsidiary, an office, distribution house,
19 sales house, warehouse or other place of business, or any
20 agent or other representative operating within this State
21 under the authority of the retailer or its subsidiary,
22 irrespective of whether such place of business or agent or
23 other representative is located here permanently or
24 temporarily, or whether such retailer or subsidiary is
25 licensed to do business in this State. However, the
26 ownership of property that is located at the premises of a

1 printer with which the retailer has contracted for printing
2 and that consists of the final printed product, property
3 that becomes a part of the final printed product, or copy
4 from which the printed product is produced shall not result
5 in the retailer being deemed to have or maintain an office,
6 distribution house, sales house, warehouse, or other place
7 of business within this State.

8 1.1. Beginning July 1, 2011, a retailer having a
9 contract with a person located in this State under which
10 the person, for a commission or other consideration based
11 upon the sale of tangible personal property by the
12 retailer, directly or indirectly refers potential
13 customers to the retailer by a link on the person's
14 Internet website. The provisions of this paragraph 1.1
15 shall apply only if the cumulative gross receipts from
16 sales of tangible personal property by the retailer to
17 customers who are referred to the retailer by all persons
18 in this State under such contracts exceed \$10,000 during
19 the preceding 4 quarterly periods ending on the last day of
20 March, June, September, and December.

21 1.2. Beginning July 1, 2011, a retailer having a
22 contract with a person located in this State under which:

23 A. the retailer sells the same or substantially
24 similar line of products as the person located in this
25 State and does so using an identical or substantially
26 similar name, trade name, or trademark as the person

1 located in this State; and

2 B. the retailer provides a commission or other
3 consideration to the person located in this State based
4 upon the sale of tangible personal property by the
5 retailer.

6 The provisions of this paragraph 1.2 shall apply only if
7 the cumulative gross receipts from sales of tangible
8 personal property by the retailer to customers in this
9 State under all such contracts exceed \$10,000 during the
10 preceding 4 quarterly periods ending on the last day of
11 March, June, September, and December.

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

18 3. A retailer, pursuant to a contract with a
19 broadcaster or publisher located in this State, soliciting
20 orders for tangible personal property by means of
21 advertising which is disseminated primarily to consumers
22 located in this State and only secondarily to bordering
23 jurisdictions.

24 4. A retailer soliciting orders for tangible personal
25 property by mail if the solicitations are substantial and
26 recurring and if the retailer benefits from any banking,

1 financing, debt collection, telecommunication, or
2 marketing activities occurring in this State or benefits
3 from the location in this State of authorized installation,
4 servicing, or repair facilities.

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

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

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

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

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

1 (Source: P.A. 95-723, eff. 6-23-08; 96-1544, eff. 3-10-11.)

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

4 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

21 "Sale at retail" shall be construed to include any transfer
22 of the ownership of or title to tangible personal property to a
23 purchaser, for use or consumption by any other person to whom
24 such purchaser may transfer the tangible personal property

1 without a valuable consideration, and to include any transfer,
2 whether made for or without a valuable consideration, for
3 resale in any form as tangible personal property unless made in
4 compliance with Section 2c of this Act.

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

14 "Sale at retail" shall be construed to include any Illinois
15 florist's sales transaction in which the purchase order is
16 received in Illinois by a florist and the sale is for use or
17 consumption, but the Illinois florist has a florist in another
18 state deliver the property to the purchaser or the purchaser's
19 donee in such other state.

20 Nonreusable tangible personal property that is used by
21 persons engaged in the business of operating a restaurant,
22 cafeteria, or drive-in is a sale for resale when it is
23 transferred to customers in the ordinary course of business as
24 part of the sale of food or beverages and is used to deliver,
25 package, or consume food or beverages, regardless of where
26 consumption of the food or beverages occurs. Examples of those

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

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

11 A person whose activities are organized and conducted
12 primarily as a not-for-profit service enterprise, and who
13 engages in selling tangible personal property at retail
14 (whether to the public or merely to members and their guests)
15 is engaged in the business of selling tangible personal
16 property at retail with respect to such transactions, excepting
17 only a person organized and operated exclusively for
18 charitable, religious or educational purposes either (1), to
19 the extent of sales by such person to its members, students,
20 patients or inmates of tangible personal property to be used
21 primarily for the purposes of such person, or (2), to the
22 extent of sales by such person of tangible personal property
23 which is not sold or offered for sale by persons organized for
24 profit. The selling of school books and school supplies by
25 schools at retail to students is not "primarily for the
26 purposes of" the school which does such selling. The provisions

1 of this paragraph shall not apply to nor subject to taxation
2 occasional dinners, socials or similar activities of a person
3 organized and operated exclusively for charitable, religious
4 or educational purposes, whether or not such activities are
5 open to the public. As used in this paragraph, "occasional"
6 means not more than 2 such activities in any calendar year, to
7 be chosen by the person organized and operated exclusively for
8 charitable, religious, or educational purposes. Any sales of
9 tangible personal property at retail at an activity that would
10 otherwise qualify as an exempt occasional dinner, social, or
11 similar activity are taxable if that activity exceeds the
12 2-activity limit in a calendar year. Notwithstanding any other
13 provision of this paragraph to the contrary, on and after July
14 1, 2012, sales of tangible personal property at retail at an
15 occasional dinner, social, or similar activity that falls
16 within the 2-activity limit and is held by a person organized
17 and operated exclusively for charitable, religious, or
18 educational purposes are exempt from taxation under this Act
19 only if 100% of the gross revenues generated from the activity,
20 after reasonable expenses, are paid to that person and used for
21 charitable, religious, or educational purposes. As used in this
22 paragraph, the phrase "gross revenues generated from the
23 activity" includes, but is not limited to, revenues from:
24 admission or ticket sales, sales of tangible personal property,
25 sponsorships, and broadcast rights. As used in this paragraph a
26 "dinner, social, or similar activity" includes, but is not

1 limited to, a dinner, ice cream social, fun fair, carnival,
2 rummage sale, bazaar, bake sale, charity auction or other
3 fundraising event, street fair, indoor or outdoor concert or
4 performance, and the like. If an occasional dinner, social, or
5 similar activity otherwise meets the requirements of this
6 paragraph, then the exemption for sales of tangible personal
7 property at retail at that activity applies whether or not the
8 items that are sold are purchased or donated for the purpose of
9 the sale, and whether or not the activity is open to the
10 public. If an occasional dinner, social, or similar activity
11 otherwise meets the requirements of this paragraph, then the
12 exemption for sales of tangible personal property at retail at
13 that activity applies whether or not items sold at the
14 occasional dinner, social, or similar activity are also sold or
15 offered for sale by persons organized for profit. The
16 Department by rule shall determine what constitutes reasonable
17 expenses under this paragraph.

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

26 "Purchaser" means anyone who, through a sale at retail,

1 acquires the ownership of or title to tangible personal
2 property for a valuable consideration.

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

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

1 rule unit on account of the seller's duty to collect, from the
2 purchasers, the tax that is imposed under any local use tax
3 administered by the Department. Effective December 1, 1985,
4 "selling price" shall include charges that are added to prices
5 by sellers on account of the seller's tax liability under the
6 Cigarette Tax Act, on account of the sellers' duty to collect,
7 from the purchaser, the tax imposed under the Cigarette Use Tax
8 Act, and on account of the seller's duty to collect, from the
9 purchaser, any cigarette tax 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. 95-723, eff. 6-23-08.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law."