



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4356

by Rep. Chad Hays

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2	from Ch. 120, par. 439.2
35 ILCS 110/2	from Ch. 120, par. 439.32
35 ILCS 120/1	from Ch. 120, par. 440

Amends the Use Tax Act, the Service Use Tax Act, and the Retailers' Occupation Tax Act. Provides that, with respect to sales of cellular telephones and other wireless cellular devices, the terms "selling price" and "gross receipts" do not include consideration paid by a third-party cellular service provider. Effective immediately.

LRB098 15811 HLH 50848 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 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.

24 Nonreusable tangible personal property that is used by
25 persons engaged in the business of operating a restaurant,
26 cafeteria, or drive-in is a sale for resale when it is

1 transferred to customers in the ordinary course of business as
2 part of the sale of food or beverages and is used to deliver,
3 package, or consume food or beverages, regardless of where
4 consumption of the food or beverages occurs. Examples of those
5 items include, but are not limited to nonreusable, paper and
6 plastic cups, plates, baskets, boxes, sleeves, buckets or other
7 containers, utensils, straws, placemats, napkins, doggie bags,
8 and wrapping or packaging materials that are transferred to
9 customers as part of the sale of food or beverages in the
10 ordinary course of business.

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

15 "Selling price" means the consideration for a sale valued
16 in money whether received in money or otherwise, including
17 cash, credits, property other than as hereinafter provided, and
18 services, but not including the value of or credit given for
19 traded-in tangible personal property where the item that is
20 traded-in is of like kind and character as that which is being
21 sold, and shall be determined without any deduction on account
22 of the cost of the property sold, the cost of materials used,
23 labor or service cost or any other expense whatsoever, but does
24 not include interest or finance charges which appear as
25 separate items on the bill of sale or sales contract nor
26 charges that are added to prices by sellers on account of the

1 seller's tax liability under the "Retailers' Occupation Tax
2 Act", or on account of the seller's duty to collect, from the
3 purchaser, the tax that is imposed by this Act, or, except as
4 otherwise provided with respect to any cigarette tax imposed by
5 a home rule unit, on account of the seller's tax liability
6 under any local occupation tax administered by the Department,
7 or, except as otherwise provided with respect to any cigarette
8 tax imposed by a home rule unit on account of the seller's duty
9 to collect, from the purchasers, the tax that is imposed under
10 any local use tax administered by the Department. Effective
11 December 1, 1985, "selling price" shall include charges that
12 are added to prices by sellers on account of the seller's tax
13 liability under the Cigarette Tax Act, on account of the
14 seller's duty to collect, from the purchaser, the tax imposed
15 under the Cigarette Use Tax Act, and on account of the seller's
16 duty to collect, from the purchaser, any cigarette tax imposed
17 by a home rule unit. With respect to sales of cellular
18 telephones or other wireless cellular devices, the term
19 "selling price" does not include consideration paid by a
20 third-party cellular service provider. The changes made by this
21 amendatory Act of the 98th General Assembly are declarative of
22 existing law.

23 "Wireless cellular device" means any wireless
24 communication device that provides for voice or data
25 communication between 2 or more parties, including, but not
26 limited to, a text messaging device or other device that sends

1 or receives messages or electronic data.

2 The phrase "like kind and character" shall be liberally
3 construed (including but not limited to any form of motor
4 vehicle for any form of motor vehicle, or any kind of farm or
5 agricultural implement for any other kind of farm or
6 agricultural implement), while not including a kind of item
7 which, if sold at retail by that retailer, would be exempt from
8 retailers' occupation tax and use tax as an isolated or
9 occasional sale.

10 "Department" means the Department of Revenue.

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

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

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 retailer hereunder with respect to such
21 sales (and not primarily in a service occupation)
22 notwithstanding the fact that such person designs and produces
23 such tangible personal property on special order for the
24 purchaser and in such a way as to render the property of value
25 only to such purchaser, if such tangible personal property so
26 produced on special order serves substantially the same

1 function as stock or standard items of tangible personal
2 property that are sold at retail.

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

22 A person who is the recipient of a grant or contract under
23 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
24 serves meals to participants in the federal Nutrition Program
25 for the Elderly in return for contributions established in
26 amount by the individual participant pursuant to a schedule of

1 suggested fees as provided for in the federal Act is not a
2 retailer under this Act with respect to such transactions.

3 Persons who engage in the business of transferring tangible
4 personal property upon the redemption of trading stamps are
5 retailers hereunder when engaged in such business.

6 The isolated or occasional sale of tangible personal
7 property at retail by a person who does not hold himself out as
8 being engaged (or who does not habitually engage) in selling
9 such tangible personal property at retail or a sale through a
10 bulk vending machine does not make such person a retailer
11 hereunder. However, any person who is engaged in a business
12 which is not subject to the tax imposed by the "Retailers'
13 Occupation Tax Act" because of involving the sale of or a
14 contract to sell real estate or a construction contract to
15 improve real estate, but who, in the course of conducting such
16 business, transfers tangible personal property to users or
17 consumers in the finished form in which it was purchased, and
18 which does not become real estate, under any provision of a
19 construction contract or real estate sale or real estate sales
20 agreement entered into with some other person arising out of or
21 because of such nontaxable business, is a retailer to the
22 extent of the value of the tangible personal property so
23 transferred. If, in such transaction, a separate charge is made
24 for the tangible personal property so transferred, the value of
25 such property, for the purposes of this Act, is the amount so
26 separately charged, but not less than the cost of such property

1 to the transferor; if no separate charge is made, the value of
2 such property, for the purposes of this Act, is the cost to the
3 transferor of such tangible personal property.

4 "Retailer maintaining a place of business in this State",
5 or any like term, means and includes any of the following
6 retailers:

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

24 1.1. Beginning July 1, 2011, a retailer having a
25 contract with a person located in this State under which
26 the person, for a commission or other consideration based

1 upon the sale of tangible personal property by the
2 retailer, directly or indirectly refers potential
3 customers to the retailer by a link on the person's
4 Internet website. The provisions of this paragraph 1.1
5 shall apply only if the cumulative gross receipts from
6 sales of tangible personal property by the retailer to
7 customers who are referred to the retailer by all persons
8 in this State under such contracts exceed \$10,000 during
9 the preceding 4 quarterly periods ending on the last day of
10 March, June, September, and December.

11 1.2. Beginning July 1, 2011, a retailer having a
12 contract with a person located in this State under which:

13 A. the retailer sells the same or substantially
14 similar line of products as the person located in this
15 State and does so using an identical or substantially
16 similar name, trade name, or trademark as the person
17 located in this State; and

18 B. the retailer provides a commission or other
19 consideration to the person located in this State based
20 upon the sale of tangible personal property by the
21 retailer.

22 The provisions of this paragraph 1.2 shall apply only if
23 the cumulative gross receipts from sales of tangible
24 personal property by the retailer to customers in this
25 State under all such contracts exceed \$10,000 during the
26 preceding 4 quarterly periods ending on the last day of

1 March, June, September, and December.

2 2. A retailer soliciting orders for tangible personal
3 property by means of a telecommunication or television
4 shopping system (which utilizes toll free numbers) which is
5 intended by the retailer to be broadcast by cable
6 television or other means of broadcasting, to consumers
7 located in this State.

8 3. A retailer, pursuant to a contract with a
9 broadcaster or publisher located in this State, soliciting
10 orders for tangible personal property by means of
11 advertising which is disseminated primarily to consumers
12 located in this State and only secondarily to bordering
13 jurisdictions.

14 4. A retailer soliciting orders for tangible personal
15 property by mail if the solicitations are substantial and
16 recurring and if the retailer benefits from any banking,
17 financing, debt collection, telecommunication, or
18 marketing activities occurring in this State or benefits
19 from the location in this State of authorized installation,
20 servicing, or repair facilities.

21 5. A retailer that is owned or controlled by the same
22 interests that own or control any retailer engaging in
23 business in the same or similar line of business in this
24 State.

25 6. A retailer having a franchisee or licensee operating
26 under its trade name if the franchisee or licensee is

1 required to collect the tax under this Section.

2 7. A retailer, pursuant to a contract with a cable
3 television operator located in this State, soliciting
4 orders for tangible personal property by means of
5 advertising which is transmitted or distributed over a
6 cable television system in this State.

7 8. A retailer engaging in activities in Illinois, which
8 activities in the state in which the retail business
9 engaging in such activities is located would constitute
10 maintaining a place of business in that state.

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

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

18 Section 10. The Service Use Tax Act is amended by changing
19 Section 2 as follows:

20 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

21 Sec. 2. "Use" means the exercise by any person of any right
22 or power over tangible personal property incident to the
23 ownership of that property, but does not include the sale or
24 use for demonstration by him of that property in any form as

1 tangible personal property in the regular course of business.

2 "Use" does not mean the interim use of tangible personal
3 property nor the physical incorporation of tangible personal
4 property, as an ingredient or constituent, into other tangible
5 personal property, (a) which is sold in the regular course of
6 business or (b) which the person incorporating such ingredient
7 or constituent therein has undertaken at the time of such
8 purchase to cause to be transported in interstate commerce to
9 destinations outside the State of Illinois.

10 "Purchased from a serviceman" means the acquisition of the
11 ownership of, or title to, tangible personal property through a
12 sale of service.

13 "Purchaser" means any person who, through a sale of
14 service, acquires the ownership of, or title to, any tangible
15 personal property.

16 "Cost price" means the consideration paid by the serviceman
17 for a purchase valued in money, whether paid in money or
18 otherwise, including cash, credits and services, and shall be
19 determined without any deduction on account of the supplier's
20 cost of the property sold or on account of any other expense
21 incurred by the supplier. When a serviceman contracts out part
22 or all of the services required in his sale of service, it
23 shall be presumed that the cost price to the serviceman of the
24 property transferred to him or her by his or her subcontractor
25 is equal to 50% of the subcontractor's charges to the
26 serviceman in the absence of proof of the consideration paid by

1 the subcontractor for the purchase of such property.

2 "Selling price" means the consideration for a sale valued
3 in money whether received in money or otherwise, including
4 cash, credits and service, and shall be determined without any
5 deduction on account of the serviceman's cost of the property
6 sold, the cost of materials used, labor or service cost or any
7 other expense whatsoever, but does not include interest or
8 finance charges which appear as separate items on the bill of
9 sale or sales contract nor charges that are added to prices by
10 sellers on account of the seller's duty to collect, from the
11 purchaser, the tax that is imposed by this Act. With respect to
12 sales of cellular telephones or other wireless cellular
13 devices, the term "selling price" does not include
14 consideration paid by a third-party cellular service provider.
15 The changes made by this amendatory Act of the 98th General
16 Assembly are declarative of existing law.

17 "Wireless cellular device" means any wireless
18 communication device that provides for voice or data
19 communication between 2 or more parties, including, but not
20 limited to, a text messaging device or other device that sends
21 or receives messages or electronic data.

22 "Department" means the Department of Revenue.

23 "Person" means any natural individual, firm, partnership,
24 association, joint stock company, joint venture, public or
25 private corporation, limited liability company, and any
26 receiver, executor, trustee, guardian or other representative

1 appointed by order of any court.

2 "Sale of service" means any transaction except:

3 (1) a retail sale of tangible personal property taxable
4 under the Retailers' Occupation Tax Act or under the Use
5 Tax Act.

6 (2) a sale of tangible personal property for the
7 purpose of resale made in compliance with Section 2c of the
8 Retailers' Occupation Tax Act.

9 (3) except as hereinafter provided, a sale or transfer
10 of tangible personal property as an incident to the
11 rendering of service for or by any governmental body, or
12 for or by any corporation, society, association,
13 foundation or institution organized and operated
14 exclusively for charitable, religious or educational
15 purposes or any not-for-profit corporation, society,
16 association, foundation, institution or organization which
17 has no compensated officers or employees and which is
18 organized and operated primarily for the recreation of
19 persons 55 years of age or older. A limited liability
20 company may qualify for the exemption under this paragraph
21 only if the limited liability company is organized and
22 operated exclusively for educational purposes.

23 (4) a sale or transfer of tangible personal property as
24 an incident to the rendering of service for interstate
25 carriers for hire for use as rolling stock moving in
26 interstate commerce or by lessors under a lease of one year

1 or longer, executed or in effect at the time of purchase of
2 personal property, to interstate carriers for hire for use
3 as rolling stock moving in interstate commerce so long as
4 so used by such interstate carriers for hire, and equipment
5 operated by a telecommunications provider, licensed as a
6 common carrier by the Federal Communications Commission,
7 which is permanently installed in or affixed to aircraft
8 moving in interstate commerce.

9 (4a) a sale or transfer of tangible personal property
10 as an incident to the rendering of service for owners,
11 lessors, or shippers of tangible personal property which is
12 utilized by interstate carriers for hire for use as rolling
13 stock moving in interstate commerce so long as so used by
14 interstate carriers for hire, and equipment operated by a
15 telecommunications provider, licensed as a common carrier
16 by the Federal Communications Commission, which is
17 permanently installed in or affixed to aircraft moving in
18 interstate commerce.

19 (4a-5) on and after July 1, 2003 and through June 30,
20 2004, a sale or transfer of a motor vehicle of the second
21 division with a gross vehicle weight in excess of 8,000
22 pounds as an incident to the rendering of service if that
23 motor vehicle is subject to the commercial distribution fee
24 imposed under Section 3-815.1 of the Illinois Vehicle Code.
25 Beginning on July 1, 2004 and through June 30, 2005, the
26 use in this State of motor vehicles of the second division:

1 (i) with a gross vehicle weight rating in excess of 8,000
2 pounds; (ii) that are subject to the commercial
3 distribution fee imposed under Section 3-815.1 of the
4 Illinois Vehicle Code; and (iii) that are primarily used
5 for commercial purposes. Through June 30, 2005, this
6 exemption applies to repair and replacement parts added
7 after the initial purchase of such a motor vehicle if that
8 motor vehicle is used in a manner that would qualify for
9 the rolling stock exemption otherwise provided for in this
10 Act. For purposes of this paragraph, "used for commercial
11 purposes" means the transportation of persons or property
12 in furtherance of any commercial or industrial enterprise
13 whether for-hire or not.

14 (5) a sale or transfer of machinery and equipment used
15 primarily in the process of the manufacturing or
16 assembling, either in an existing, an expanded or a new
17 manufacturing facility, of tangible personal property for
18 wholesale or retail sale or lease, whether such sale or
19 lease is made directly by the manufacturer or by some other
20 person, whether the materials used in the process are owned
21 by the manufacturer or some other person, or whether such
22 sale or lease is made apart from or as an incident to the
23 seller's engaging in a service occupation and the
24 applicable tax is a Service Use Tax or Service Occupation
25 Tax, rather than Use Tax or Retailers' Occupation Tax. The
26 exemption provided by this paragraph (5) does not include

1 machinery and equipment used in (i) the generation of
2 electricity for wholesale or retail sale; (ii) the
3 generation or treatment of natural or artificial gas for
4 wholesale or retail sale that is delivered to customers
5 through pipes, pipelines, or mains; or (iii) the treatment
6 of water for wholesale or retail sale that is delivered to
7 customers through pipes, pipelines, or mains. The
8 provisions of this amendatory Act of the 98th General
9 Assembly are declaratory of existing law as to the meaning
10 and scope of this exemption.

11 (5a) the repairing, reconditioning or remodeling, for
12 a common carrier by rail, of tangible personal property
13 which belongs to such carrier for hire, and as to which
14 such carrier receives the physical possession of the
15 repaired, reconditioned or remodeled item of tangible
16 personal property in Illinois, and which such carrier
17 transports, or shares with another common carrier in the
18 transportation of such property, out of Illinois on a
19 standard uniform bill of lading showing the person who
20 repaired, reconditioned or remodeled the property to a
21 destination outside Illinois, for use outside Illinois.

22 (5b) a sale or transfer of tangible personal property
23 which is produced by the seller thereof on special order in
24 such a way as to have made the applicable tax the Service
25 Occupation Tax or the Service Use Tax, rather than the
26 Retailers' Occupation Tax or the Use Tax, for an interstate

1 carrier by rail which receives the physical possession of
2 such property in Illinois, and which transports such
3 property, or shares with another common carrier in the
4 transportation of such property, out of Illinois on a
5 standard uniform bill of lading showing the seller of the
6 property as the shipper or consignor of such property to a
7 destination outside Illinois, for use outside Illinois.

8 (6) until July 1, 2003, a sale or transfer of
9 distillation machinery and equipment, sold as a unit or kit
10 and assembled or installed by the retailer, which machinery
11 and equipment is certified by the user to be used only for
12 the production of ethyl alcohol that will be used for
13 consumption as motor fuel or as a component of motor fuel
14 for the personal use of such user and not subject to sale
15 or resale.

16 (7) at the election of any serviceman not required to
17 be otherwise registered as a retailer under Section 2a of
18 the Retailers' Occupation Tax Act, made for each fiscal
19 year sales of service in which the aggregate annual cost
20 price of tangible personal property transferred as an
21 incident to the sales of service is less than 35%, or 75%
22 in the case of servicemen transferring prescription drugs
23 or servicemen engaged in graphic arts production, of the
24 aggregate annual total gross receipts from all sales of
25 service. The purchase of such tangible personal property by
26 the serviceman shall be subject to tax under the Retailers'

1 Occupation Tax Act and the Use Tax Act. However, if a
2 primary serviceman who has made the election described in
3 this paragraph subcontracts service work to a secondary
4 serviceman who has also made the election described in this
5 paragraph, the primary serviceman does not incur a Use Tax
6 liability if the secondary serviceman (i) has paid or will
7 pay Use Tax on his or her cost price of any tangible
8 personal property transferred to the primary serviceman
9 and (ii) certifies that fact in writing to the primary
10 serviceman.

11 Tangible personal property transferred incident to the
12 completion of a maintenance agreement is exempt from the tax
13 imposed pursuant to this Act.

14 Exemption (5) also includes machinery and equipment used in
15 the general maintenance or repair of such exempt machinery and
16 equipment or for in-house manufacture of exempt machinery and
17 equipment. The machinery and equipment exemption does not
18 include machinery and equipment used in (i) the generation of
19 electricity for wholesale or retail sale; (ii) the generation
20 or treatment of natural or artificial gas for wholesale or
21 retail sale that is delivered to customers through pipes,
22 pipelines, or mains; or (iii) the treatment of water for
23 wholesale or retail sale that is delivered to customers through
24 pipes, pipelines, or mains. The provisions of this amendatory
25 Act of the 98th General Assembly are declaratory of existing
26 law as to the meaning and scope of this exemption. For the

1 purposes of exemption (5), each of these terms shall have the
2 following meanings: (1) "manufacturing process" shall mean the
3 production of any article of tangible personal property,
4 whether such article is a finished product or an article for
5 use in the process of manufacturing or assembling a different
6 article of tangible personal property, by procedures commonly
7 regarded as manufacturing, processing, fabricating, or
8 refining which changes some existing material or materials into
9 a material with a different form, use or name. In relation to a
10 recognized integrated business composed of a series of
11 operations which collectively constitute manufacturing, or
12 individually constitute manufacturing operations, the
13 manufacturing process shall be deemed to commence with the
14 first operation or stage of production in the series, and shall
15 not be deemed to end until the completion of the final product
16 in the last operation or stage of production in the series; and
17 further, for purposes of exemption (5), photoprocessing is
18 deemed to be a manufacturing process of tangible personal
19 property for wholesale or retail sale; (2) "assembling process"
20 shall mean the production of any article of tangible personal
21 property, whether such article is a finished product or an
22 article for use in the process of manufacturing or assembling a
23 different article of tangible personal property, by the
24 combination of existing materials in a manner commonly regarded
25 as assembling which results in a material of a different form,
26 use or name; (3) "machinery" shall mean major mechanical

1 machines or major components of such machines contributing to a
2 manufacturing or assembling process; and (4) "equipment" shall
3 include any independent device or tool separate from any
4 machinery but essential to an integrated manufacturing or
5 assembly process; including computers used primarily in a
6 manufacturer's computer assisted design, computer assisted
7 manufacturing (CAD/CAM) system; or any subunit or assembly
8 comprising a component of any machinery or auxiliary, adjunct
9 or attachment parts of machinery, such as tools, dies, jigs,
10 fixtures, patterns and molds; or any parts which require
11 periodic replacement in the course of normal operation; but
12 shall not include hand tools. Equipment includes chemicals or
13 chemicals acting as catalysts but only if the chemicals or
14 chemicals acting as catalysts effect a direct and immediate
15 change upon a product being manufactured or assembled for
16 wholesale or retail sale or lease. The purchaser of such
17 machinery and equipment who has an active resale registration
18 number shall furnish such number to the seller at the time of
19 purchase. The user of such machinery and equipment and tools
20 without an active resale registration number shall prepare a
21 certificate of exemption for each transaction stating facts
22 establishing the exemption for that transaction, which
23 certificate shall be available to the Department for inspection
24 or audit. The Department shall prescribe the form of the
25 certificate.

26 Any informal rulings, opinions or letters issued by the

1 Department in response to an inquiry or request for any opinion
2 from any person regarding the coverage and applicability of
3 exemption (5) to specific devices shall be published,
4 maintained as a public record, and made available for public
5 inspection and copying. If the informal ruling, opinion or
6 letter contains trade secrets or other confidential
7 information, where possible the Department shall delete such
8 information prior to publication. Whenever such informal
9 rulings, opinions, or letters contain any policy of general
10 applicability, the Department shall formulate and adopt such
11 policy as a rule in accordance with the provisions of the
12 Illinois Administrative Procedure Act.

13 On and after July 1, 1987, no entity otherwise eligible
14 under exemption (3) of this Section shall make tax free
15 purchases unless it has an active exemption identification
16 number issued by the Department.

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

22 "Serviceman" means any person who is engaged in the
23 occupation of making sales of service.

24 "Sale at retail" means "sale at retail" as defined in the
25 Retailers' Occupation Tax Act.

26 "Supplier" means any person who makes sales of tangible

1 personal property to servicemen for the purpose of resale as an
2 incident to a sale of service.

3 "Serviceman maintaining a place of business in this State",
4 or any like term, means and includes any serviceman:

5 1. having or maintaining within this State, directly or
6 by a subsidiary, an office, distribution house, sales
7 house, warehouse or other place of business, or any agent
8 or other representative operating within this State under
9 the authority of the serviceman or its subsidiary,
10 irrespective of whether such place of business or agent or
11 other representative is located here permanently or
12 temporarily, or whether such serviceman or subsidiary is
13 licensed to do business in this State;

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

26 1.2. beginning July 1, 2011, having a contract with a

1 person located in this State under which:

2 A. the serviceman sells the same or substantially
3 similar line of services as the person located in this
4 State and does so using an identical or substantially
5 similar name, trade name, or trademark as the person
6 located in this State; and

7 B. the serviceman provides a commission or other
8 consideration to the person located in this State based
9 upon the sale of services by the serviceman.

10 The provisions of this paragraph 1.2 shall apply only if
11 the cumulative gross receipts from sales of service by the
12 serviceman to customers in this State under all such
13 contracts exceed \$10,000 during the preceding 4 quarterly
14 periods ending on the last day of March, June, September,
15 and December;

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

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

26 4. soliciting orders for tangible personal property by

1 mail if the solicitations are substantial and recurring and
2 if the retailer benefits from any banking, financing, debt
3 collection, telecommunication, or marketing activities
4 occurring in this State or benefits from the location in
5 this State of authorized installation, servicing, or
6 repair facilities;

7 5. being owned or controlled by the same interests
8 which own or control any retailer engaging in business in
9 the same or similar line of business in this State;

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

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

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

22 (Source: P.A. 98-583, eff. 1-1-14.)

23 Section 15. The Retailers' Occupation Tax Act is amended by
24 changing Section 1 as follows:

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

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

18 "Sale at retail" shall be construed to include any transfer
19 of the ownership of or title to tangible personal property to a
20 purchaser, for use or consumption by any other person to whom
21 such purchaser may transfer the tangible personal property
22 without a valuable consideration, and to include any transfer,
23 whether made for or without a valuable consideration, for
24 resale in any form as tangible personal property unless made in
25 compliance with Section 2c of this Act.

26 Sales of tangible personal property, which property, to the

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

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

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

1 ordinary course of business.

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

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

1 A person who is the recipient of a grant or contract under
2 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
3 serves meals to participants in the federal Nutrition Program
4 for the Elderly in return for contributions established in
5 amount by the individual participant pursuant to a schedule of
6 suggested fees as provided for in the federal Act is not
7 engaged in the business of selling tangible personal property
8 at retail with respect to such transactions.

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

12 "Reseller of motor fuel" means any person engaged in the
13 business of selling or delivering or transferring title of
14 motor fuel to another person other than for use or consumption.
15 No person shall act as a reseller of motor fuel within this
16 State without first being registered as a reseller pursuant to
17 Section 2c or a retailer pursuant to Section 2a.

18 "Selling price" or the "amount of sale" means the
19 consideration for a sale valued in money whether received in
20 money or otherwise, including cash, credits, property, other
21 than as hereinafter provided, and services, but not including
22 the value of or credit given for traded-in tangible personal
23 property where the item that is traded-in is of like kind and
24 character as that which is being sold, and shall be determined
25 without any deduction on account of the cost of the property
26 sold, the cost of materials used, labor or service cost or any

1 other expense whatsoever, but does not include charges that are
2 added to prices by sellers on account of the seller's tax
3 liability under this Act, or on account of the seller's duty to
4 collect, from the purchaser, the tax that is imposed by the Use
5 Tax Act, or, except as otherwise provided with respect to any
6 cigarette tax imposed by a home rule unit, on account of the
7 seller's tax liability under any local occupation tax
8 administered by the Department, or, except as otherwise
9 provided with respect to any cigarette tax imposed by a home
10 rule unit on account of the seller's duty to collect, from the
11 purchasers, the tax that is imposed under any local use tax
12 administered by the Department. Effective December 1, 1985,
13 "selling price" shall include charges that are added to prices
14 by sellers on account of the seller's tax liability under the
15 Cigarette Tax Act, on account of the sellers' duty to collect,
16 from the purchaser, the tax imposed under the Cigarette Use Tax
17 Act, and on account of the seller's duty to collect, from the
18 purchaser, any cigarette tax imposed by a home rule unit. With
19 respect to sales of cellular telephones or other wireless
20 cellular devices, the term "selling price" does not include
21 consideration paid by a third-party cellular service provider.
22 The changes made by this amendatory Act of the 98th General
23 Assembly are declarative of existing law.

24 The phrase "like kind and character" shall be liberally
25 construed (including but not limited to any form of motor
26 vehicle for any form of motor vehicle, or any kind of farm or

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

6 "Gross receipts" from the sales of tangible personal
7 property at retail means the total selling price or the amount
8 of such sales, as hereinbefore defined. In the case of charge
9 and time sales, the amount thereof shall be included only as
10 and when payments are received by the seller. Receipts or other
11 consideration derived by a seller from the sale, transfer or
12 assignment of accounts receivable to a wholly owned subsidiary
13 will not be deemed payments prior to the time the purchaser
14 makes payment on such accounts. With respect to sales of
15 cellular telephones or other wireless cellular devices, the
16 term "gross receipts" does not include consideration paid by a
17 third-party cellular service provider. The changes made by this
18 amendatory Act of the 98th General Assembly are declarative of
19 existing law.

20 "Wireless cellular device" means any wireless
21 communication device that provides for voice or data
22 communication between 2 or more parties, including, but not
23 limited to, a text messaging device or other device that sends
24 or receives messages or electronic data.

25 "Department" means the Department of Revenue.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or
2 private corporation, limited liability company, or a receiver,
3 executor, trustee, guardian or other representative appointed
4 by order of any court.

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

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

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

25 Persons who engage in the business of transferring tangible
26 personal property upon the redemption of trading stamps are

1 engaged in the business of selling such property at retail and
2 shall be liable for and shall pay the tax imposed by this Act
3 on the basis of the retail value of the property transferred
4 upon redemption of such stamps.

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

11 (Source: P.A. 95-723, eff. 6-23-08.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.