

1 AN ACT concerning taxes.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Service Use Tax Act is amended by  
5 changing Section 2 as follows:

6 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

7 Sec. 2. "Use" means the exercise by any person of any  
8 right or power over tangible personal property incident to  
9 the ownership of that property, but does not include the sale  
10 or use for demonstration by him of that property in any form  
11 as tangible personal property in the regular course of  
12 business. "Use" does not mean the interim use of tangible  
13 personal property nor the physical incorporation of tangible  
14 personal property, as an ingredient or constituent, into  
15 other tangible personal property, (a) which is sold in the  
16 regular course of business or (b) which the person  
17 incorporating such ingredient or constituent therein has  
18 undertaken at the time of such purchase to cause to be  
19 transported in interstate commerce to destinations outside  
20 the State of Illinois.

21 "Purchased from a serviceman" means the acquisition of  
22 the ownership of, or title to, tangible personal property  
23 through a sale of service.

24 "Purchaser" means any person who, through a sale of  
25 service, acquires the ownership of, or title to, any tangible  
26 personal property.

27 "Cost price" means the consideration paid by the  
28 serviceman for a purchase valued in money, whether paid in  
29 money or otherwise, including cash, credits and services, and  
30 shall be determined without any deduction on account of the  
31 supplier's cost of the property sold or on account of any

1 other expense incurred by the supplier. When a serviceman  
2 contracts out part or all of the services required in his  
3 sale of service, it shall be presumed that the cost price to  
4 the serviceman of the property transferred to him or her by  
5 his or her subcontractor is equal to 50% of the  
6 subcontractor's charges to the serviceman in the absence of  
7 proof of the consideration paid by the subcontractor for the  
8 purchase of such property.

9 "Selling price" means the consideration for a sale valued  
10 in money whether received in money or otherwise, including  
11 cash, credits and service, and shall be determined without  
12 any deduction on account of the serviceman's cost of the  
13 property sold, the cost of materials used, labor or service  
14 cost or any other expense whatsoever, but does not include  
15 interest or finance charges which appear as separate items on  
16 the bill of sale or sales contract nor charges that are added  
17 to prices by sellers on account of the seller's duty to  
18 collect, from the purchaser, the tax that is imposed by this  
19 Act.

20 "Department" means the Department of Revenue.

21 "Person" means any natural individual, firm, partnership,  
22 association, joint stock company, joint venture, public or  
23 private corporation, limited liability company, and any  
24 receiver, executor, trustee, guardian or other representative  
25 appointed by order of any court.

26 "Sale of service" means any transaction except:

27 (1) a retail sale of tangible personal property  
28 taxable under the Retailers' Occupation Tax Act or under  
29 the Use Tax Act.

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

33 (3) except as hereinafter provided, a sale or  
34 transfer of tangible personal property as an incident to

1 the rendering of service for or by any governmental body,  
2 or for or by any corporation, society, association,  
3 foundation or institution organized and operated  
4 exclusively for charitable, religious or educational  
5 purposes or any not-for-profit corporation, society,  
6 association, foundation, institution or organization  
7 which has no compensated officers or employees and which  
8 is organized and operated primarily for the recreation of  
9 persons 55 years of age or older. A limited liability  
10 company may qualify for the exemption under this  
11 paragraph only if the limited liability company is  
12 organized and operated exclusively for educational  
13 purposes.

14 (4) a sale or transfer of tangible personal  
15 property as an incident to the rendering of service for  
16 interstate carriers for hire for use as rolling stock  
17 moving in interstate commerce or by lessors under a lease  
18 of one year or longer, executed or in effect at the time  
19 of purchase of personal property, to interstate carriers  
20 for hire for use as rolling stock moving in interstate  
21 commerce so long as so used by such interstate carriers  
22 for hire, and equipment operated by a telecommunications  
23 provider, licensed as a common carrier by the Federal  
24 Communications Commission, which is permanently installed  
25 in or affixed to aircraft moving in interstate commerce.

26 (4a) a sale or transfer of tangible personal  
27 property as an incident to the rendering of service for  
28 owners, lessors, or shippers of tangible personal  
29 property which is utilized by interstate carriers for  
30 hire for use as rolling stock moving in interstate  
31 commerce so long as so used by interstate carriers for  
32 hire, and equipment operated by a telecommunications  
33 provider, licensed as a common carrier by the Federal  
34 Communications Commission, which is permanently installed

1 in or affixed to aircraft moving in interstate commerce.

2 (5) a sale or transfer of machinery and equipment  
3 used primarily in the process of the manufacturing or  
4 assembling, either in an existing, an expanded or a new  
5 manufacturing facility, of tangible personal property for  
6 wholesale or retail sale or lease, whether such sale or  
7 lease is made directly by the manufacturer or by some  
8 other person, whether the materials used in the process  
9 are owned by the manufacturer or some other person, or  
10 whether such sale or lease is made apart from or as an  
11 incident to the seller's engaging in a service occupation  
12 and the applicable tax is a Service Use Tax or Service  
13 Occupation Tax, rather than Use Tax or Retailers'  
14 Occupation Tax.

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

26 (5b) a sale or transfer of tangible personal  
27 property which is produced by the seller thereof on  
28 special order in such a way as to have made the  
29 applicable tax the Service Occupation Tax or the Service  
30 Use Tax, rather than the Retailers' Occupation Tax or the  
31 Use Tax, for an interstate carrier by rail which receives  
32 the physical possession of such property in Illinois, and  
33 which transports such property, or shares with another  
34 common carrier in the transportation of such property,

1 out of Illinois on a standard uniform bill of lading  
2 showing the seller of the property as the shipper or  
3 consignor of such property to a destination outside  
4 Illinois, for use outside Illinois.

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

13 (7) at the election ~~election~~ of any serviceman not  
14 required to be otherwise registered as a retailer under  
15 Section 2a of the Retailers' Occupation Tax Act, made for  
16 each fiscal year sales of service in which the aggregate  
17 annual cost price of tangible personal property  
18 transferred as an incident to the sales of service is  
19 less than 35%, or 75% in the case of servicemen  
20 transferring prescription drugs or servicemen engaged in  
21 graphic arts production, of the aggregate annual total  
22 gross receipts from all sales of service. The purchase of  
23 such tangible personal property by the serviceman shall  
24 be subject to tax under the Retailers' Occupation Tax Act  
25 and the Use Tax Act. However, if a primary serviceman who  
26 has made the election described in this paragraph  
27 subcontracts service work to a secondary serviceman who  
28 has also made the election described in this paragraph,  
29 the primary serviceman does not incur a Use Tax liability  
30 if the secondary serviceman (i) has paid or will pay Use  
31 Tax on his or her cost price of any tangible personal  
32 property transferred to the primary serviceman and (ii)  
33 certifies that fact in writing to the primary serviceman.  
34 Tangible personal property transferred incident to the

1 completion of a maintenance agreement is exempt from the tax  
2 imposed pursuant to this Act.

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

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

24 Any informal rulings, opinions or letters issued by the  
25 Department in response to an inquiry or request for any  
26 opinion from any person regarding the coverage and  
27 applicability of exemption (5) to specific devices shall be  
28 published, maintained as a public record, and made available  
29 for public inspection and copying. If the informal ruling,  
30 opinion or letter contains trade secrets or other  
31 confidential information, where possible the Department shall  
32 delete such information prior to publication. Whenever such  
33 informal rulings, opinions, or letters contain any policy of  
34 general applicability, the Department shall formulate and

1 adopt such policy as a rule in accordance with the provisions  
2 of the Illinois Administrative Procedure Act.

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

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

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

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

16 "Supplier" means any person who makes sales of tangible  
17 personal property to servicemen for the purpose of resale as  
18 an incident to a sale of service.

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

21 1. having or maintaining within this State,  
22 directly or by a subsidiary, an office, distribution  
23 house, sales house, warehouse or other place of business,  
24 or any agent or other representative operating within  
25 this State under the authority of the serviceman or its  
26 subsidiary, irrespective of whether such place of  
27 business or agent or other representative is located here  
28 permanently or temporarily, or whether such serviceman or  
29 subsidiary is licensed to do business in this State;

30 2. soliciting orders for tangible personal property  
31 by means of a telecommunication or television shopping  
32 system (which utilizes toll free numbers) which is  
33 intended by the retailer to be broadcast by cable  
34 television or other means of broadcasting, to consumers



1 located in this State;

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

7 4. soliciting orders for tangible personal property  
8 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  
13 installation, servicing, or repair facilities;

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

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

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

25 8. engaging in activities in Illinois, which  
26 activities in the state in which the supply business  
27 engaging in such activities is located would constitute  
28 maintaining a place of business in that state.

29 (Source: P.A. 91-51, eff. 6-30-99; 92-484, eff. 8-23-01.)