

AN ACT concerning revenue.

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

Section 5. The Retailers' Occupation Tax Act is amended by changing Section 2a as follows:

(35 ILCS 120/2a) (from Ch. 120, par. 441a)

Sec. 2a. It is unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration from the Department. Application for a certificate of registration shall be made to the Department upon forms furnished by it. Each such application shall be signed and verified and shall state: (1) the name and social security number of the applicant; (2) the address of his principal place of business; (3) the address of the principal place of business from which he engages in the business of selling tangible personal property at retail in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which he engages in the business of selling tangible personal property at retail in this State; (4) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under

this Act; (5) in the case of a corporation, the name, title, and social security number of each corporate officer; (6) in the case of a limited liability company, the name, social security number, and FEIN number of each manager and member; and (7) such other information as the Department may reasonably require. The application shall contain an acceptance of responsibility signed by the person or persons who will be responsible for filing returns and payment of the taxes due under this Act. If the applicant will sell tangible personal property at retail through vending machines, his application to register shall indicate the number of vending machines to be so operated; and thereafter, he shall notify the Department by January 31 of the number of vending machines which such person was using in his business of selling tangible personal property at retail on the preceding December 31.

The Department may deny a certificate of registration to any applicant if the owner, any partner, any manager or member of a limited liability company, or a corporate officer of the applicant, is or has been the owner, a partner, a manager or member of a limited liability company, or a corporate officer, of another retailer that is in default for moneys due under this Act.

The Department may require an ~~Every~~ applicant for a certificate of registration hereunder to ~~shall~~, at the time of filing such application, furnish a bond from a surety company authorized to do business in the State of Illinois, or an

irrevocable bank letter of credit or a bond signed by 2 personal sureties who have filed, with the Department, sworn statements disclosing net assets equal to at least 3 times the amount of the bond to be required of such applicant, or a bond secured by an assignment of a bank account or certificate of deposit, stocks or bonds, conditioned upon the applicant paying to the State of Illinois all moneys becoming due under this Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution. In making a determination as to whether to require a bond or other security, the Department shall take into consideration whether the owner, any partner, any manager or member of a limited liability company, or a corporate officer of the applicant is or has been the owner, a partner, a manager or member of a limited liability company, or a corporate officer of another retailer that is in default for moneys due under this Act or any other tax or fee Act administered by the Department; and whether the owner, any partner, any manager or member of a limited liability company, or a corporate officer of the applicant is or has been the owner, a partner, a manager or member of a limited liability company, or a corporate officer of another retailer whose certificate of registration has been revoked within the previous 5 years under this Act or

any other tax or fee Act administered by the Department. If a bond or other security is required, the Department shall fix the amount of the bond or other security, taking into consideration the amount of money expected to become due from the applicant under this Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance, or resolution. ~~The Department shall fix the amount of such security in each case, taking into consideration the amount of money expected to become due from the applicant under this Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution.~~ The amount of security required by the Department shall be such as, in its opinion, will protect the State of Illinois against failure to pay the amount which may become due from the applicant under this Act and under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution, but the amount of the security

required by the Department shall not exceed three times the amount of the applicant's average monthly tax liability, or \$50,000.00, whichever amount is lower.

No certificate of registration under this Act shall be issued by the Department until the applicant provides the Department with satisfactory security, if required, as herein provided for.

Upon receipt of the application for certificate of registration in proper form, and upon approval by the Department of the security furnished by the applicant, if required, the Department shall issue to such applicant a certificate of registration which shall permit the person to whom it is issued to engage in the business of selling tangible personal property at retail in this State. The certificate of registration shall be conspicuously displayed at the place of business which the person so registered states in his application to be the principal place of business from which he engages in the business of selling tangible personal property at retail in this State.

No certificate of registration issued to a taxpayer who files returns required by this Act on a monthly basis shall be valid after the expiration of 5 years from the date of its issuance or last renewal. The expiration date of a sub-certificate of registration shall be that of the certificate of registration to which the sub-certificate relates. A certificate of registration shall automatically be

renewed, subject to revocation as provided by this Act, for an additional 5 years from the date of its expiration unless otherwise notified by the Department as provided by this paragraph. Where a taxpayer to whom a certificate of registration is issued under this Act is in default to the State of Illinois for delinquent returns or for moneys due under this Act or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 120 days before the expiration date of such certificate of registration, give notice to the taxpayer to whom the certificate was issued of the account period of the delinquent returns, the amount of tax, penalty and interest due and owing from the taxpayer, and that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full. A taxpayer to whom such a notice is issued shall be deemed an applicant for renewal. The Department shall promulgate regulations establishing procedures for taxpayers who file returns on a monthly basis but desire and qualify to change to a quarterly or yearly filing basis and will no longer be subject to renewal under this Section, and for taxpayers who file returns on a yearly or quarterly basis but who desire or are required to change to a monthly filing basis and will be subject to renewal under this Section.

The Department may in its discretion approve renewal by an applicant who is in default if, at the time of application for renewal, the applicant files all of the delinquent returns or pays to the Department such percentage of the defaulted amount as may be determined by the Department and agrees in writing to waive all limitations upon the Department for collection of the remaining defaulted amount to the Department over a period not to exceed 5 years from the date of renewal of the certificate; however, no renewal application submitted by an applicant who is in default shall be approved if the immediately preceding renewal by the applicant was conditioned upon the installment payment agreement described in this Section. The payment agreement herein provided for shall be in addition to and not in lieu of the security that may be required by this Section of a taxpayer who is no longer considered a prior continuous compliance taxpayer. The execution of the payment agreement as provided in this Act shall not toll the accrual of interest at the statutory rate.

The Department may suspend a certificate of registration if the Department finds that the person to whom the certificate of registration has been issued knowingly sold contraband cigarettes.

A certificate of registration issued under this Act more than 5 years before the effective date of this amendatory Act of 1989 shall expire and be subject to the renewal provisions of this Section on the next anniversary of the date of issuance

of such certificate which occurs more than 6 months after the effective date of this amendatory Act of 1989. A certificate of registration issued less than 5 years before the effective date of this amendatory Act of 1989 shall expire and be subject to the renewal provisions of this Section on the 5th anniversary of the issuance of the certificate.

If the person so registered states that he operates other places of business from which he engages in the business of selling tangible personal property at retail in this State, the Department shall furnish him with a sub-certificate of registration for each such place of business, and the applicant shall display the appropriate sub-certificate of registration at each such place of business. All sub-certificates of registration shall bear the same registration number as that appearing upon the certificate of registration to which such sub-certificates relate.

If the applicant will sell tangible personal property at retail through vending machines, the Department shall furnish him with a sub-certificate of registration for each such vending machine, and the applicant shall display the appropriate sub-certificate of registration on each such vending machine by attaching the sub-certificate of registration to a conspicuous part of such vending machine.

Where the same person engages in 2 or more businesses of selling tangible personal property at retail in this State, which businesses are substantially different in character or

engaged in under different trade names or engaged in under other substantially dissimilar circumstances (so that it is more practicable, from an accounting, auditing or bookkeeping standpoint, for such businesses to be separately registered), the Department may require or permit such person (subject to the same requirements concerning the furnishing of security as those that are provided for hereinbefore in this Section as to each application for a certificate of registration) to apply for and obtain a separate certificate of registration for each such business or for any of such businesses, under a single certificate of registration supplemented by related sub-certificates of registration.

Any person who is registered under the "Retailers' Occupation Tax Act" as of March 8, 1963, and who, during the 3-year period immediately prior to March 8, 1963, or during a continuous 3-year period part of which passed immediately before and the remainder of which passes immediately after March 8, 1963, has been so registered continuously and who is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period under this Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the registrant under this Act will permit the registrant to engage in business without registering separately under such other law, ordinance or resolution, shall be considered to be a Prior Continuous

Compliance taxpayer. Also any taxpayer who has, as verified by the Department, faithfully and continuously complied with the condition of his bond or other security under the provisions of this Act for a period of 3 consecutive years shall be considered to be a Prior Continuous Compliance taxpayer.

Every Prior Continuous Compliance taxpayer shall be exempt from all requirements under this Act concerning the furnishing of a bond or other security as a condition precedent to his being authorized to engage in the business of selling tangible personal property at retail in this State. This exemption shall continue for each such taxpayer until such time as he may be determined by the Department to be delinquent in the filing of any returns, or is determined by the Department (either through the Department's issuance of a final assessment which has become final under the Act, or by the taxpayer's filing of a return which admits tax that is not paid to be due) to be delinquent or deficient in the paying of any tax under this Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the registrant under this Act will permit the registrant to engage in business without registering separately under such other law, ordinance or resolution, at which time that taxpayer shall become subject to all the financial responsibility requirements of this Act and, as a condition of being allowed to continue to engage in the business of selling tangible personal property at retail, may

~~shall~~ be required to post bond or other acceptable security with the Department covering liability which such taxpayer may thereafter incur. Any taxpayer who fails to pay an admitted or established liability under this Act may also be required to post bond or other acceptable security with this Department guaranteeing the payment of such admitted or established liability.

No certificate of registration shall be issued to any person who is in default to the State of Illinois for moneys due under this Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution.

Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

With respect to security other than bonds (upon which the

Department may sue in the event of a forfeiture), if the taxpayer fails to pay, when due, any amount whose payment such security guarantees, the Department shall, after such liability is admitted by the taxpayer or established by the Department through the issuance of a final assessment that has become final under the law, convert the security which that taxpayer has furnished into money for the State, after first giving the taxpayer at least 10 days' written notice, by registered or certified mail, to pay the liability or forfeit such security to the Department. If the security consists of stocks or bonds or other securities which are listed on a public exchange, the Department shall sell such securities through such public exchange. If the security consists of an irrevocable bank letter of credit, the Department shall convert the security in the manner provided for in the Uniform Commercial Code. If the security consists of a bank certificate of deposit, the Department shall convert the security into money by demanding and collecting the amount of such bank certificate of deposit from the bank which issued such certificate. If the security consists of a type of stocks or other securities which are not listed on a public exchange, the Department shall sell such security to the highest and best bidder after giving at least 10 days' notice of the date, time and place of the intended sale by publication in the "State Official Newspaper". If the Department realizes more than the amount of such liability from the security, plus the expenses

incurred by the Department in converting the security into money, the Department shall pay such excess to the taxpayer who furnished such security, and the balance shall be paid into the State Treasury.

The Department shall discharge any surety and shall release and return any security deposited, assigned, pledged or otherwise provided to it by a taxpayer under this Section within 30 days after:

(1) such taxpayer becomes a Prior Continuous Compliance taxpayer; or

(2) such taxpayer has ceased to collect receipts on which he is required to remit tax to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge his remaining tax liability, as determined by the Department, under this Act and under every other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration issued under this Act permits the registrant to engage in business without registering separately under such other law, ordinance or resolution. The Department shall make a final determination of the taxpayer's outstanding tax liability as expeditiously as possible after his final tax return has been filed; if the Department cannot make such final determination within 45 days after receiving the final tax return, within such period it shall so notify the taxpayer, stating its reasons

therefor.

(Source: P.A. 95-1053, eff. 1-1-10.)

Section 10. The Transient Merchant Act of 1987 is amended by changing Section 3 as follows:

(225 ILCS 465/3) (from Ch. 121 1/2, par. 1653)

Sec. 3. It is a violation of this Act for any person, either as principal or agent, to conduct business as a transient merchant or itinerant vendor in this State without first complying with the requirements of Section 2a of the Retailers' Occupation Tax Act by obtaining a certificate of registration and, if a bond or other security is required, by posting bond or other approved security, and without having obtained a license under this Act.

(Source: P.A. 85-600.)

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