

SB1281



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1281

Introduced 2/9/2017, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

35 ILCS 120/2a

from Ch. 120, par. 441a

Amends the Retailers' Occupation Tax Act. Provides that certificates of registration that are issued or renewed on or after July 1, 2017 shall expire one year (currently, 5 years) after the issuance or last renewal of that certificate of registration. Effective immediately.

LRB100 08083 HLH 18169 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 Retailers' Occupation Tax Act is amended by
5 changing Section 2a as follows:

6 (35 ILCS 120/2a) (from Ch. 120, par. 441a)

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

1 this Act; (5) in the case of a publicly traded corporation, the
2 name and title of the Chief Financial Officer, Chief Operating
3 Officer, and any other officer or employee with responsibility
4 for preparing tax returns under this Act, along with the last 4
5 digits of each of their social security numbers, and, in the
6 case of all other corporations, the name, title, and social
7 security number of each corporate officer; (6) in the case of a
8 limited liability company, the name, social security number,
9 and FEIN number of each manager and member; and (7) such other
10 information as the Department may reasonably require. The
11 application shall contain an acceptance of responsibility
12 signed by the person or persons who will be responsible for
13 filing returns and payment of the taxes due under this Act. If
14 the applicant will sell tangible personal property at retail
15 through vending machines, his application to register shall
16 indicate the number of vending machines to be so operated. If
17 requested by the Department at any time, that person shall
18 verify the total number of vending machines he or she uses in
19 his or her business of selling tangible personal property at
20 retail.

21 The Department may deny a certificate of registration to
22 any applicant if a person who is named as the owner, a partner,
23 a manager or member of a limited liability company, or a
24 corporate officer of the applicant on the application for the
25 certificate of registration is or has been named as the owner,
26 a partner, a manager or member of a limited liability company,

1 or a corporate officer on the application for the certificate
2 of registration of another retailer that is in default for
3 moneys due under this Act or any other tax or fee Act
4 administered by the Department. For purposes of this paragraph
5 only, in determining whether a person is in default for moneys
6 due, the Department shall include only amounts established as a
7 final liability within the 20 years prior to the date of the
8 Department's notice of denial of a certificate of registration.

9 The Department may require an applicant for a certificate
10 of registration hereunder to, at the time of filing such
11 application, furnish a bond from a surety company authorized to
12 do business in the State of Illinois, or an irrevocable bank
13 letter of credit or a bond signed by 2 personal sureties who
14 have filed, with the Department, sworn statements disclosing
15 net assets equal to at least 3 times the amount of the bond to
16 be required of such applicant, or a bond secured by an
17 assignment of a bank account or certificate of deposit, stocks
18 or bonds, conditioned upon the applicant paying to the State of
19 Illinois all moneys becoming due under this Act and under any
20 other State tax law or municipal or county tax ordinance or
21 resolution under which the certificate of registration that is
22 issued to the applicant under this Act will permit the
23 applicant to engage in business without registering separately
24 under such other law, ordinance or resolution. In making a
25 determination as to whether to require a bond or other
26 security, the Department shall take into consideration whether

1 the owner, any partner, any manager or member of a limited
2 liability company, or a corporate officer of the applicant is
3 or has been the owner, a partner, a manager or member of a
4 limited liability company, or a corporate officer of another
5 retailer that is in default for moneys due under this Act or
6 any other tax or fee Act administered by the Department; and
7 whether the owner, any partner, any manager or member of a
8 limited liability company, or a corporate officer of the
9 applicant is or has been the owner, a partner, a manager or
10 member of a limited liability company, or a corporate officer
11 of another retailer whose certificate of registration has been
12 revoked within the previous 5 years under this Act or any other
13 tax or fee Act administered by the Department. If a bond or
14 other security is required, the Department shall fix the amount
15 of the bond or other security, taking into consideration the
16 amount of money expected to become due from the applicant under
17 this Act and under any other State tax law or municipal or
18 county tax ordinance or resolution under which the certificate
19 of registration that is issued to the applicant under this Act
20 will permit the applicant to engage in business without
21 registering separately under such other law, ordinance, or
22 resolution. The amount of security required by the Department
23 shall be such as, in its opinion, will protect the State of
24 Illinois against failure to pay the amount which may become due
25 from the applicant under this Act and under any other State tax
26 law or municipal or county tax ordinance or resolution under

1 which the certificate of registration that is issued to the
2 applicant under this Act will permit the applicant to engage in
3 business without registering separately under such other law,
4 ordinance or resolution, but the amount of the security
5 required by the Department shall not exceed three times the
6 amount of the applicant's average monthly tax liability, or
7 \$50,000.00, whichever amount is lower.

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

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

24 No certificate of registration issued prior to July 1, 2017
25 to a taxpayer who files returns required by this Act on a
26 monthly basis or renewed prior to July 1, 2017 by a taxpayer

1 who files returns required by this Act on a monthly basis shall
2 be valid after the expiration of 5 years from the date of its
3 issuance or last renewal. No certificate of registration issued
4 on or after July 1, 2017 to a taxpayer who files returns
5 required by this Act on a monthly basis or renewed on or after
6 July 1, 2017 by a taxpayer who files returns required by this
7 Act on a monthly basis shall be valid after the expiration of
8 one year from the date of its issuance or last renewal. The
9 expiration date of a sub-certificate of registration shall be
10 that of the certificate of registration to which the
11 sub-certificate relates. Prior to July 1, 2017, a certificate
12 of registration shall automatically be renewed, subject to
13 revocation as provided by this Act, for an additional 5 years
14 from the date of its expiration unless otherwise notified by
15 the Department as provided by this paragraph. On and after July
16 1, 2017, a certificate of registration shall automatically be
17 renewed, subject to revocation as provided by this Act, for an
18 additional one year from the date of its expiration unless
19 otherwise notified by the Department as provided by this
20 paragraph.

21 Where a taxpayer to whom a certificate of registration is
22 issued under this Act is in default to the State of Illinois
23 for delinquent returns or for moneys due under this Act or any
24 other State tax law or municipal or county ordinance
25 administered or enforced by the Department, the Department
26 shall, not less than 60 days before the expiration date of such

1 certificate of registration, give notice to the taxpayer to
2 whom the certificate was issued of the account period of the
3 delinquent returns, the amount of tax, penalty and interest due
4 and owing from the taxpayer, and that the certificate of
5 registration shall not be automatically renewed upon its
6 expiration date unless the taxpayer, on or before the date of
7 expiration, has filed and paid the delinquent returns or paid
8 the defaulted amount in full. A taxpayer to whom such a notice
9 is issued shall be deemed an applicant for renewal. The
10 Department shall promulgate regulations establishing
11 procedures for taxpayers who file returns on a monthly basis
12 but desire and qualify to change to a quarterly or yearly
13 filing basis and will no longer be subject to renewal under
14 this Section, and for taxpayers who file returns on a yearly or
15 quarterly basis but who desire or are required to change to a
16 monthly filing basis and will be subject to renewal under this
17 Section.

18 The Department may in its discretion approve renewal by an
19 applicant who is in default if, at the time of application for
20 renewal, the applicant files all of the delinquent returns or
21 pays to the Department such percentage of the defaulted amount
22 as may be determined by the Department and agrees in writing to
23 waive all limitations upon the Department for collection of the
24 remaining defaulted amount to the Department over a period not
25 to exceed 5 years from the date of renewal of the certificate;
26 however, no renewal application submitted by an applicant who

1 is in default shall be approved if the immediately preceding
2 renewal by the applicant was conditioned upon the installment
3 payment agreement described in this Section. The payment
4 agreement herein provided for shall be in addition to and not
5 in lieu of the security that may be required by this Section of
6 a taxpayer who is no longer considered a prior continuous
7 compliance taxpayer. The execution of the payment agreement as
8 provided in this Act shall not toll the accrual of interest at
9 the statutory rate.

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

14 A certificate of registration issued under this Act more
15 than 5 years before the effective date of this amendatory Act
16 of 1989 shall expire and be subject to the renewal provisions
17 of this Section on the next anniversary of the date of issuance
18 of such certificate which occurs more than 6 months after the
19 effective date of this amendatory Act of 1989. A certificate of
20 registration issued less than 5 years before the effective date
21 of this amendatory Act of 1989 shall expire and be subject to
22 the renewal provisions of this Section on the 5th anniversary
23 of the issuance of the certificate.

24 If the person so registered states that he operates other
25 places of business from which he engages in the business of
26 selling tangible personal property at retail in this State, the

1 Department shall furnish him with a sub-certificate of
2 registration for each such place of business, and the applicant
3 shall display the appropriate sub-certificate of registration
4 at each such place of business. All sub-certificates of
5 registration shall bear the same registration number as that
6 appearing upon the certificate of registration to which such
7 sub-certificates relate.

8 If the applicant will sell tangible personal property at
9 retail through vending machines, the Department shall furnish
10 him with a sub-certificate of registration for each such
11 vending machine, and the applicant shall display the
12 appropriate sub-certificate of registration on each such
13 vending machine by attaching the sub-certificate of
14 registration to a conspicuous part of such vending machine. If
15 a person who is registered to sell tangible personal property
16 at retail through vending machines adds an additional vending
17 machine or additional vending machines to the number of vending
18 machines he or she uses in his or her business of selling
19 tangible personal property at retail, he or she shall notify
20 the Department, on a form prescribed by the Department, to
21 request an additional sub-certificate or additional
22 sub-certificates of registration, as applicable. With each
23 such request, the applicant shall report the number of
24 sub-certificates of registration he or she is requesting as
25 well as the total number of vending machines from which he or
26 she makes retail sales.

1 Where the same person engages in 2 or more businesses of
2 selling tangible personal property at retail in this State,
3 which businesses are substantially different in character or
4 engaged in under different trade names or engaged in under
5 other substantially dissimilar circumstances (so that it is
6 more practicable, from an accounting, auditing or bookkeeping
7 standpoint, for such businesses to be separately registered),
8 the Department may require or permit such person (subject to
9 the same requirements concerning the furnishing of security as
10 those that are provided for hereinbefore in this Section as to
11 each application for a certificate of registration) to apply
12 for and obtain a separate certificate of registration for each
13 such business or for any of such businesses, under a single
14 certificate of registration supplemented by related
15 sub-certificates of registration.

16 Any person who is registered under the "Retailers'
17 Occupation Tax Act" as of March 8, 1963, and who, during the
18 3-year period immediately prior to March 8, 1963, or during a
19 continuous 3-year period part of which passed immediately
20 before and the remainder of which passes immediately after
21 March 8, 1963, has been so registered continuously and who is
22 determined by the Department not to have been either delinquent
23 or deficient in the payment of tax liability during that period
24 under this Act or under any other State tax law or municipal or
25 county tax ordinance or resolution under which the certificate
26 of registration that is issued to the registrant under this Act

1 will permit the registrant to engage in business without
2 registering separately under such other law, ordinance or
3 resolution, shall be considered to be a Prior Continuous
4 Compliance taxpayer. Also any taxpayer who has, as verified by
5 the Department, faithfully and continuously complied with the
6 condition of his bond or other security under the provisions of
7 this Act for a period of 3 consecutive years shall be
8 considered to be a Prior Continuous Compliance taxpayer.

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

1 all the financial responsibility requirements of this Act and,
2 as a condition of being allowed to continue to engage in the
3 business of selling tangible personal property at retail, may
4 be required to post bond or other acceptable security with the
5 Department covering liability which such taxpayer may
6 thereafter incur. Any taxpayer who fails to pay an admitted or
7 established liability under this Act may also be required to
8 post bond or other acceptable security with this Department
9 guaranteeing the payment of such admitted or established
10 liability.

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

19 Any person aggrieved by any decision of the Department
20 under this Section may, within 20 days after notice of such
21 decision, protest and request a hearing, whereupon the
22 Department shall give notice to such person of the time and
23 place fixed for such hearing and shall hold a hearing in
24 conformity with the provisions of this Act and then issue its
25 final administrative decision in the matter to such person. In
26 the absence of such a protest within 20 days, the Department's

1 decision shall become final without any further determination
2 being made or notice given.

3 With respect to security other than bonds (upon which the
4 Department may sue in the event of a forfeiture), if the
5 taxpayer fails to pay, when due, any amount whose payment such
6 security guarantees, the Department shall, after such
7 liability is admitted by the taxpayer or established by the
8 Department through the issuance of a final assessment that has
9 become final under the law, convert the security which that
10 taxpayer has furnished into money for the State, after first
11 giving the taxpayer at least 10 days' written notice, by
12 registered or certified mail, to pay the liability or forfeit
13 such security to the Department. If the security consists of
14 stocks or bonds or other securities which are listed on a
15 public exchange, the Department shall sell such securities
16 through such public exchange. If the security consists of an
17 irrevocable bank letter of credit, the Department shall convert
18 the security in the manner provided for in the Uniform
19 Commercial Code. If the security consists of a bank certificate
20 of deposit, the Department shall convert the security into
21 money by demanding and collecting the amount of such bank
22 certificate of deposit from the bank which issued such
23 certificate. If the security consists of a type of stocks or
24 other securities which are not listed on a public exchange, the
25 Department shall sell such security to the highest and best
26 bidder after giving at least 10 days' notice of the date, time

1 and place of the intended sale by publication in the "State
2 Official Newspaper". If the Department realizes more than the
3 amount of such liability from the security, plus the expenses
4 incurred by the Department in converting the security into
5 money, the Department shall pay such excess to the taxpayer who
6 furnished such security, and the balance shall be paid into the
7 State Treasury.

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

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

14 (2) such taxpayer has ceased to collect receipts on
15 which he is required to remit tax to the Department, has
16 filed a final tax return, and has paid to the Department an
17 amount sufficient to discharge his remaining tax
18 liability, as determined by the Department, under this Act
19 and under every other State tax law or municipal or county
20 tax ordinance or resolution under which the certificate of
21 registration issued under this Act permits the registrant
22 to engage in business without registering separately under
23 such other law, ordinance or resolution. The Department
24 shall make a final determination of the taxpayer's
25 outstanding tax liability as expeditiously as possible
26 after his final tax return has been filed; if the

1 Department cannot make such final determination within 45
2 days after receiving the final tax return, within such
3 period it shall so notify the taxpayer, stating its reasons
4 therefor.

5 (Source: P.A. 97-335, eff. 1-1-12; 98-496, eff. 1-1-14; 98-583,
6 eff. 1-1-14; 98-756, eff. 7-16-14; 98-974, eff. 1-1-15.)

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