



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by Patrick Welch

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 115/2	from Ch. 120, par. 439.102
35 ILCS 120/1	from Ch. 120, par. 440

Amends the Use Tax Act, Service Use Tax Act, Service Occupation Tax Act, and Retailers' Occupation Tax Act. Includes Internet sales within the Act's provisions.

LRB093 21094 SJM 47139 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning taxation.

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
24 by this Act, and no credit for that tax is permitted if the
25 watercraft or aircraft is subsequently sold by the retailer.
26 "Use" does not mean the physical incorporation of tangible
27 personal property, to the extent not first subjected to a use
28 for which it was purchased, as an ingredient or constituent,
29 into other tangible personal property (a) which is sold in the
30 regular course of business or (b) which the person
31 incorporating such ingredient or constituent therein has
32 undertaken at the time of such purchase to cause to be

1 transported in interstate commerce to destinations outside the
2 State of Illinois: Provided that the property purchased is
3 deemed to be purchased for the purpose of resale, despite first
4 being used, to the extent to which it is resold as an
5 ingredient of an intentionally produced product or by-product
6 of manufacturing.

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

11 "Purchase at retail" means the acquisition of the ownership
12 of or title to tangible personal property through a sale at
13 retail.

14 "Purchaser" means anyone who, through a sale at retail,
15 acquires the ownership of tangible personal property for a
16 valuable consideration.

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

36 "Sale at retail" shall also be construed to include any

1 Illinois florist's sales transaction in which the purchase
2 order is received in Illinois by a florist and the sale is for
3 use or consumption, but the Illinois florist has a florist in
4 another state deliver the property to the purchaser or the
5 purchaser's donee in such other state.

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

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

23 "Selling price" means the consideration for a sale valued
24 in money whether received in money or otherwise, including
25 cash, credits, property other than as hereinafter provided, and
26 services, but not including the value of or credit given for
27 traded-in tangible personal property where the item that is
28 traded-in is of like kind and character as that which is being
29 sold, and shall be determined without any deduction on account
30 of the cost of the property sold, the cost of materials used,
31 labor or service cost or any other expense whatsoever, but does
32 not include interest or finance charges which appear as
33 separate items on the bill of sale or sales contract nor
34 charges that are added to prices by sellers on account of the
35 seller's tax liability under the "Retailers' Occupation Tax
36 Act", or on account of the seller's duty to collect, from the

1 purchaser, the tax that is imposed by this Act, or on account
2 of the seller's tax liability under Section 8-11-1 of the
3 Illinois Municipal Code, as heretofore and hereafter amended,
4 or on account of the seller's tax liability under the "County
5 Retailers' Occupation Tax Act". Effective December 1, 1985,
6 "selling price" shall include charges that are added to prices
7 by sellers on account of the seller's tax liability under the
8 Cigarette Tax Act, on account of the seller's duty to collect,
9 from the purchaser, the tax imposed under the Cigarette Use Tax
10 Act, and on account of the seller's duty to collect, from the
11 purchaser, any cigarette tax imposed by a home rule unit.

12 The phrase "like kind and character" shall be liberally
13 construed (including but not limited to any form of motor
14 vehicle for any form of motor vehicle, or any kind of farm or
15 agricultural implement for any other kind of farm or
16 agricultural implement), while not including a kind of item
17 which, if sold at retail by that retailer, would be exempt from
18 retailers' occupation tax and use tax as an isolated or
19 occasional sale.

20 "Department" means the Department of Revenue.

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

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

28 A person who holds himself or herself out as being engaged
29 (or who habitually engages) in selling tangible personal
30 property at retail is a retailer hereunder with respect to such
31 sales (and not primarily in a service occupation)
32 notwithstanding the fact that such person designs and produces
33 such tangible personal property on special order for the
34 purchaser and in such a way as to render the property of value
35 only to such purchaser, if such tangible personal property so
36 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
27 suggested fees as provided for in the federal Act is not a
28 retailer under this Act with respect to such transactions.

29 Persons who engage in the business of transferring tangible
30 personal property upon the redemption of trading stamps are
31 retailers hereunder when engaged in such business.

32 The isolated or occasional sale of tangible personal
33 property at retail by a person who does not hold himself out as
34 being engaged (or who does not habitually engage) in selling
35 such tangible personal property at retail or a sale through a
36 bulk vending machine does not make such person a retailer

1 hereunder. However, any person who is engaged in a business
2 which is not subject to the tax imposed by the "Retailers'
3 Occupation Tax Act" because of involving the sale of or a
4 contract to sell real estate or a construction contract to
5 improve real estate, but who, in the course of conducting such
6 business, transfers tangible personal property to users or
7 consumers in the finished form in which it was purchased, and
8 which does not become real estate, under any provision of a
9 construction contract or real estate sale or real estate sales
10 agreement entered into with some other person arising out of or
11 because of such nontaxable business, is a retailer to the
12 extent of the value of the tangible personal property so
13 transferred. If, in such transaction, a separate charge is made
14 for the tangible personal property so transferred, the value of
15 such property, for the purposes of this Act, is the amount so
16 separately charged, but not less than the cost of such property
17 to the transferor; if no separate charge is made, the value of
18 such property, for the purposes of this Act, is the cost to the
19 transferor of such tangible personal property.

20 "Retailer maintaining a place of business in this State",
21 or any like term, means and includes any of the following
22 retailers:

- 23 1. A retailer having or maintaining within this State,
24 directly or by a subsidiary, an office, distribution house,
25 sales house, warehouse or other place of business, or any
26 agent or other representative operating within this State
27 under the authority of the retailer or its subsidiary,
28 irrespective of whether such place of business or agent or
29 other representative is located here permanently or
30 temporarily, or whether such retailer or subsidiary is
31 licensed to do business in this State. However, the
32 ownership of property that is located at the premises of a
33 printer with which the retailer has contracted for printing
34 and that consists of the final printed product, property
35 that becomes a part of the final printed product, or copy
36 from which the printed product is produced shall not result

1 in the retailer being deemed to have or maintain an office,
2 distribution house, sales house, warehouse, or other place
3 of business within this State.

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

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

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

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

27 6. A retailer having a franchisee or licensee operating
28 under its trade name if the franchisee or licensee is
29 required to collect the tax under this Section.

30 7. A retailer, pursuant to a contract with a cable
31 television operator located in this State, soliciting
32 orders for tangible personal property by means of
33 advertising which is transmitted or distributed over a
34 cable television system in this State.

35 8. A retailer engaging in activities in Illinois, which
36 activities in the state in which the retail business

1 engaging in such activities is located would constitute
2 maintaining a place of business in that state.

3 9. A retailer soliciting orders for tangible personal
4 property by means of the Internet that is intended to be
5 transmitted to consumers located in this State.

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

12 (Source: P.A. 92-213, eff. 1-1-02.)

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

15 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

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

29 "Purchased from a serviceman" means the acquisition of the
30 ownership of, or title to, tangible personal property through a
31 sale of service.

32 "Purchaser" means any person who, through a sale of
33 service, acquires the ownership of, or title to, any tangible
34 personal property.

1 "Cost price" means the consideration paid by the serviceman
2 for a purchase valued in money, whether paid in money or
3 otherwise, including cash, credits and services, and shall be
4 determined without any deduction on account of the supplier's
5 cost of the property sold or on account of any other expense
6 incurred by the supplier. When a serviceman contracts out part
7 or all of the services required in his sale of service, it
8 shall be presumed that the cost price to the serviceman of the
9 property transferred to him or her by his or her subcontractor
10 is equal to 50% of the subcontractor's charges to the
11 serviceman in the absence of proof of the consideration paid by
12 the subcontractor for the purchase of such property.

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

23 "Department" means the Department of Revenue.

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

29 "Sale of service" means any transaction except:

30 (1) a retail sale of tangible personal property taxable
31 under the Retailers' Occupation Tax Act or under the Use
32 Tax Act.

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

36 (3) except as hereinafter provided, a sale or transfer

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

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

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

36 (4a-5) on and after July 1, 2003, a sale or transfer of

1 a motor vehicle of the second division with a gross vehicle
2 weight in excess of 8,000 pounds as an incident to the
3 rendering of service if that motor vehicle is subject to
4 the commercial distribution fee imposed under Section
5 3-815.1 of the Illinois Vehicle Code. This exemption
6 applies to repair and replacement parts added after the
7 initial purchase of such a motor vehicle if that motor
8 vehicle is used in a manner that would qualify for the
9 rolling stock exemption otherwise provided for in this Act.

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

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

33 (5b) a sale or transfer of tangible personal property
34 which is produced by the seller thereof on special order in
35 such a way as to have made the applicable tax the Service
36 Occupation Tax or the Service Use Tax, rather than the

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

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

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

1 serviceman.

2 Tangible personal property transferred incident to the
3 completion of a maintenance agreement is exempt from the tax
4 imposed pursuant to this Act.

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

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

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

36 On and after July 1, 1987, no entity otherwise eligible

1 under exemption (3) of this Section shall make tax free
2 purchases unless it has an active exemption identification
3 number issued by the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 9. soliciting orders for tangible personal property by
24 means of the Internet that is intended to be transmitted to
25 consumers in this State.

26 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
27 eff. 6-20-03; revised 8-21-03.)

28 Section 15. The Service Occupation Tax Act is amended by
29 changing Section 2 as follows:

30 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

31 Sec. 2. "Transfer" means any transfer of the title to
32 property or of the ownership of property, including an Internet
33 transfer, whether or not the transferor retains title as
34 security for the payment of amounts due him from the

1 transferee.

2 "Cost Price" means the consideration paid by the serviceman
3 for a purchase valued in money, whether paid in money or
4 otherwise, including cash, credits and services, and shall be
5 determined without any deduction on account of the supplier's
6 cost of the property sold or on account of any other expense
7 incurred by the supplier. When a serviceman contracts out part
8 or all of the services required in his sale of service, it
9 shall be presumed that the cost price to the serviceman of the
10 property transferred to him by his or her subcontractor is
11 equal to 50% of the subcontractor's charges to the serviceman
12 in the absence of proof of the consideration paid by the
13 subcontractor for the purchase of such property.

14 "Department" means the Department of Revenue.

15 "Person" means any natural individual, firm, partnership,
16 association, joint stock company, joint venture, public or
17 private corporation, limited liability company, and any
18 receiver, executor, trustee, guardian or other representative
19 appointed by order of any court.

20 "Sale of Service" means any transaction except:

21 (a) A retail sale of tangible personal property taxable
22 under the Retailers' Occupation Tax Act or under the Use Tax
23 Act.

24 (b) A sale of tangible personal property for the purpose of
25 resale made in compliance with Section 2c of the Retailers'
26 Occupation Tax Act.

27 (c) Except as hereinafter provided, a sale or transfer of
28 tangible personal property as an incident to the rendering of
29 service for or by any governmental body or for or by any
30 corporation, society, association, foundation or institution
31 organized and operated exclusively for charitable, religious
32 or educational purposes or any not-for-profit corporation,
33 society, association, foundation, institution or organization
34 which has no compensated officers or employees and which is
35 organized and operated primarily for the recreation of persons
36 55 years of age or older. A limited liability company may

1 qualify for the exemption under this paragraph only if the
2 limited liability company is organized and operated
3 exclusively for educational purposes.

4 (d) A sale or transfer of tangible personal property as an
5 incident to the rendering of service for interstate carriers
6 for hire for use as rolling stock moving in interstate commerce
7 or lessors under leases of one year or longer, executed or in
8 effect at the time of purchase, to interstate carriers for hire
9 for use as rolling stock moving in interstate commerce, and
10 equipment operated by a telecommunications provider, licensed
11 as a common carrier by the Federal Communications Commission,
12 which is permanently installed in or affixed to aircraft moving
13 in interstate commerce.

14 (d-1) A sale or transfer of tangible personal property as
15 an incident to the rendering of service for owners, lessors or
16 shippers of tangible personal property which is utilized by
17 interstate carriers for hire for use as rolling stock moving in
18 interstate commerce, and equipment operated by a
19 telecommunications provider, licensed as a common carrier by
20 the Federal Communications Commission, which is permanently
21 installed in or affixed to aircraft moving in interstate
22 commerce.

23 (d-1.1) On and after July 1, 2003, a sale or transfer of a
24 motor vehicle of the second division with a gross vehicle
25 weight in excess of 8,000 pounds as an incident to the
26 rendering of service if that motor vehicle is subject to the
27 commercial distribution fee imposed under Section 3-815.1 of
28 the Illinois Vehicle Code. This exemption applies to repair and
29 replacement parts added after the initial purchase of such a
30 motor vehicle if that motor vehicle is used in a manner that
31 would qualify for the rolling stock exemption otherwise
32 provided for in this Act.

33 (d-2) The repairing, reconditioning or remodeling, for a
34 common carrier by rail, of tangible personal property which
35 belongs to such carrier for hire, and as to which such carrier
36 receives the physical possession of the repaired,

1 reconditioned or remodeled item of tangible personal property
2 in Illinois, and which such carrier transports, or shares with
3 another common carrier in the transportation of such property,
4 out of Illinois on a standard uniform bill of lading showing
5 the person who repaired, reconditioned or remodeled the
6 property as the shipper or consignor of such property to a
7 destination outside Illinois, for use outside Illinois.

8 (d-3) A sale or transfer of tangible personal property
9 which is produced by the seller thereof on special order in
10 such a way as to have made the applicable tax the Service
11 Occupation Tax or the Service Use Tax, rather than the
12 Retailers' Occupation Tax or the Use Tax, for an interstate
13 carrier by rail which receives the physical possession of such
14 property in Illinois, and which transports such property, or
15 shares with another common carrier in the transportation of
16 such property, out of Illinois on a standard uniform bill of
17 lading showing the seller of the property as the shipper or
18 consignor of such property to a destination outside Illinois,
19 for use outside Illinois.

20 (d-4) Until January 1, 1997, a sale, by a registered
21 serviceman paying tax under this Act to the Department, of
22 special order printed materials delivered outside Illinois and
23 which are not returned to this State, if delivery is made by
24 the seller or agent of the seller, including an agent who
25 causes the product to be delivered outside Illinois by a common
26 carrier or the U.S. postal service.

27 (e) A sale or transfer of machinery and equipment used
28 primarily in the process of the manufacturing or assembling,
29 either in an existing, an expanded or a new manufacturing
30 facility, of tangible personal property for wholesale or retail
31 sale or lease, whether such sale or lease is made directly by
32 the manufacturer or by some other person, whether the materials
33 used in the process are owned by the manufacturer or some other
34 person, or whether such sale or lease is made apart from or as
35 an incident to the seller's engaging in a service occupation
36 and the applicable tax is a Service Occupation Tax or Service

1 Use Tax, rather than Retailers' Occupation Tax or Use Tax.

2 (f) Until July 1, 2003, the sale or transfer of
3 distillation machinery and equipment, sold as a unit or kit and
4 assembled or installed by the retailer, which machinery and
5 equipment is certified by the user to be used only for the
6 production of ethyl alcohol that will be used for consumption
7 as motor fuel or as a component of motor fuel for the personal
8 use of such user and not subject to sale or resale.

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

28 Tangible personal property transferred incident to the
29 completion of a maintenance agreement is exempt from the tax
30 imposed pursuant to this Act.

31 Exemption (e) also includes machinery and equipment used in
32 the general maintenance or repair of such exempt machinery and
33 equipment or for in-house manufacture of exempt machinery and
34 equipment. For the purposes of exemption (e), each of these
35 terms shall have the following meanings: (1) "manufacturing
36 process" shall mean the production of any article of tangible

1 personal property, whether such article is a finished product
2 or an article for use in the process of manufacturing or
3 assembling a different article of tangible personal property,
4 by procedures commonly regarded as manufacturing, processing,
5 fabricating, or refining which changes some existing material
6 or materials into a material with a different form, use or
7 name. In relation to a recognized integrated business composed
8 of a series of operations which collectively constitute
9 manufacturing, or individually constitute manufacturing
10 operations, the manufacturing process shall be deemed to
11 commence with the first operation or stage of production in the
12 series, and shall not be deemed to end until the completion of
13 the final product in the last operation or stage of production
14 in the series; and further for purposes of exemption (e),
15 photoprocessing is deemed to be a manufacturing process of
16 tangible personal property for wholesale or retail sale; (2)
17 "assembling process" shall mean the production of any article
18 of tangible personal property, whether such article is a
19 finished product or an article for use in the process of
20 manufacturing or assembling a different article of tangible
21 personal property, by the combination of existing materials in
22 a manner commonly regarded as assembling which results in a
23 material of a different form, use or name; (3) "machinery"
24 shall mean major mechanical machines or major components of
25 such machines contributing to a manufacturing or assembling
26 process; and (4) "equipment" shall include any independent
27 device or tool separate from any machinery but essential to an
28 integrated manufacturing or assembly process; including
29 computers used primarily in a manufacturer's computer assisted
30 design, computer assisted manufacturing (CAD/CAM) system; or
31 any subunit or assembly comprising a component of any machinery
32 or auxiliary, adjunct or attachment parts of machinery, such as
33 tools, dies, jigs, fixtures, patterns and molds; or any parts
34 which require periodic replacement in the course of normal
35 operation; but shall not include hand tools. Equipment includes
36 chemicals or chemicals acting as catalysts but only if the

1 chemicals or chemicals acting as catalysts effect a direct and
2 immediate change upon a product being manufactured or assembled
3 for wholesale or retail sale or lease. The purchaser of such
4 machinery and equipment who has an active resale registration
5 number shall furnish such number to the seller at the time of
6 purchase. The purchaser of such machinery and equipment and
7 tools without an active resale registration number shall
8 furnish to the seller a certificate of exemption for each
9 transaction stating facts establishing the exemption for that
10 transaction, which certificate shall be available to the
11 Department for inspection or audit.

12 Except as provided in Section 2d of this Act, the rolling
13 stock exemption applies to rolling stock used by an interstate
14 carrier for hire, even just between points in Illinois, if such
15 rolling stock transports, for hire, persons whose journeys or
16 property whose shipments originate or terminate outside
17 Illinois.

18 Any informal rulings, opinions or letters issued by the
19 Department in response to an inquiry or request for any opinion
20 from any person regarding the coverage and applicability of
21 exemption (e) to specific devices shall be published,
22 maintained as a public record, and made available for public
23 inspection and copying. If the informal ruling, opinion or
24 letter contains trade secrets or other confidential
25 information, where possible the Department shall delete such
26 information prior to publication. Whenever such informal
27 rulings, opinions, or letters contain any policy of general
28 applicability, the Department shall formulate and adopt such
29 policy as a rule in accordance with the provisions of the
30 Illinois Administrative Procedure Act.

31 On and after July 1, 1987, no entity otherwise eligible
32 under exemption (c) of this Section shall make tax free
33 purchases unless it has an active exemption identification
34 number issued by the Department.

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

1 "Sale at Retail" means "sale at retail" as defined in the
2 Retailers' Occupation Tax Act.

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

6 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
7 eff. 6-20-03; revised 8-21-03.)

8 Section 20. The Retailers' Occupation Tax Act is amended by
9 changing Section 1 as follows:

10 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

27 "Sale at retail" shall be construed to include any transfer
28 of the ownership of or title to tangible personal property to a
29 purchaser, for use or consumption by any other person to whom
30 such purchaser may transfer the tangible personal property
31 without a valuable consideration, and to include any transfer,
32 whether made for or without a valuable consideration, for
33 resale in any form as tangible personal property unless made in
34 compliance with Section 2c of this Act.

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

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

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

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

33 A person whose activities are organized and conducted
34 primarily as a not-for-profit service enterprise, and who
35 engages in selling tangible personal property at retail
36 (whether to the public or merely to members and their guests)

1 is engaged in the business of selling tangible personal
2 property at retail with respect to such transactions, excepting
3 only a person organized and operated exclusively for
4 charitable, religious or educational purposes either (1), to
5 the extent of sales by such person to its members, students,
6 patients or inmates of tangible personal property to be used
7 primarily for the purposes of such person, or (2), to the
8 extent of sales by such person of tangible personal property
9 which is not sold or offered for sale by persons organized for
10 profit. The selling of school books and school supplies by
11 schools at retail to students is not "primarily for the
12 purposes of" the school which does such selling. The provisions
13 of this paragraph shall not apply to nor subject to taxation
14 occasional dinners, socials or similar activities of a person
15 organized and operated exclusively for charitable, religious
16 or educational purposes, whether or not such activities are
17 open to the public.

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

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

29 "Reseller of motor fuel" means any person engaged in the
30 business of selling or delivering or transferring title of
31 motor fuel to another person other than for use or consumption.
32 No person shall act as a reseller of motor fuel within this
33 State without first being registered as a reseller pursuant to
34 Section 2c or a retailer pursuant to Section 2a.

35 "Selling price" or the "amount of sale" means the
36 consideration for a sale valued in money whether received in

1 money or otherwise, including cash, credits, property, other
2 than as hereinafter provided, and services, but not including
3 the value of or credit given for traded-in tangible personal
4 property where the item that is traded-in is of like kind and
5 character as that which is being sold, and shall be determined
6 without any deduction on account of the cost of the property
7 sold, the cost of materials used, labor or service cost or any
8 other expense whatsoever, but does not include charges that are
9 added to prices by sellers on account of the seller's tax
10 liability under this Act, or on account of the seller's duty to
11 collect, from the purchaser, the tax that is imposed by the Use
12 Tax Act, or on account of the seller's tax liability under
13 Section 8-11-1 of the Illinois Municipal Code, as heretofore
14 and hereafter amended, or on account of the seller's tax
15 liability under the County Retailers' Occupation Tax Act, or on
16 account of the seller's tax liability under the Home Rule
17 Municipal Soft Drink Retailers' Occupation Tax, or on account
18 of the seller's tax liability under any tax imposed under the
19 "Regional Transportation Authority Act", approved December 12,
20 1973. Effective December 1, 1985, "selling price" shall include
21 charges that are added to prices by sellers on account of the
22 seller's tax liability under the Cigarette Tax Act, on account
23 of the sellers' duty to collect, from the purchaser, the tax
24 imposed under the Cigarette Use Tax Act, and on account of the
25 seller's duty to collect, from the purchaser, any cigarette tax
26 imposed by a home rule unit.

27 The phrase "like kind and character" shall be liberally
28 construed (including but not limited to any form of motor
29 vehicle for any form of motor vehicle, or any kind of farm or
30 agricultural implement for any other kind of farm or
31 agricultural implement), while not including a kind of item
32 which, if sold at retail by that retailer, would be exempt from
33 retailers' occupation tax and use tax as an isolated or
34 occasional sale.

35 "Gross receipts" from the sales of tangible personal
36 property at retail means the total selling price or the amount

1 of such sales, as hereinbefore defined. In the case of charge
2 and time sales, the amount thereof shall be included only as
3 and when payments are received by the seller. Receipts or other
4 consideration derived by a seller from the sale, transfer or
5 assignment of accounts receivable to a wholly owned subsidiary
6 will not be deemed payments prior to the time the purchaser
7 makes payment on such accounts.

8 "Department" means the Department of Revenue.

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

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

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

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

24 Persons who engage in the business of transferring tangible
25 personal property upon the redemption of trading stamps are
26 engaged in the business of selling such property at retail and
27 shall be liable for and shall pay the tax imposed by this Act
28 on the basis of the retail value of the property transferred
29 upon redemption of such stamps.

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

36 (Source: P.A. 92-213, eff. 1-1-02.)