

SB2214



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2214

Introduced 1/11/2006, by Sen. M. Maggie Crotty

SYNOPSIS AS INTRODUCED:

35 ILCS 115/2

from Ch. 120, par. 439.102

Amends the Service Occupation Tax Act. Provides that a serviceman is not required to register as a retailer under the Retailers' Occupation Tax Act if: (i) all of his or her sales activities constitute accommodation retail sales made to service customers; and (ii) these accommodation retail sales do not exceed 3% of the serviceman's annual revenues from sales of service. Effective immediately.

LRB094 17763 BDD 53062 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 Service Occupation Tax Act is amended by
5 changing Section 2 as follows:

6 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

7 Sec. 2. "Transfer" means any transfer of the title to
8 property or of the ownership of property whether or not the
9 transferor retains title as security for the payment of amounts
10 due him from the transferee.

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

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

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

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

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

27 (d-1) A sale or transfer of tangible personal property as
28 an incident to the rendering of service for owners, lessors or
29 shippers of tangible personal property which is utilized by
30 interstate carriers for hire for use as rolling stock moving in
31 interstate commerce, and equipment operated by a
32 telecommunications provider, licensed as a common carrier by
33 the Federal Communications Commission, which is permanently
34 installed in or affixed to aircraft moving in interstate
35 commerce.

36 (d-1.1) On and after July 1, 2003 and through June 30,

1 2004, a sale or transfer of a motor vehicle of the second
2 division with a gross vehicle weight in excess of 8,000 pounds
3 as an incident to the rendering of service if that motor
4 vehicle is subject to the commercial distribution fee imposed
5 under Section 3-815.1 of the Illinois Vehicle Code. Beginning
6 on July 1, 2004 and through June 30, 2005, the use in this
7 State of motor vehicles of the second division: (i) with a
8 gross vehicle weight rating in excess of 8,000 pounds; (ii)
9 that are subject to the commercial distribution fee imposed
10 under Section 3-815.1 of the Illinois Vehicle Code; and (iii)
11 that are primarily used for commercial purposes. Through June
12 30, 2005, this exemption applies to repair and replacement
13 parts added after the initial purchase of such a motor vehicle
14 if that motor vehicle is used in a manner that would qualify
15 for the rolling stock exemption otherwise provided for in this
16 Act. For purposes of this paragraph, "used for commercial
17 purposes" means the transportation of persons or property in
18 furtherance of any commercial or industrial enterprise whether
19 for-hire or not.

20 (d-2) The repairing, reconditioning or remodeling, for a
21 common carrier by rail, of tangible personal property which
22 belongs to such carrier for hire, and as to which such carrier
23 receives the physical possession of the repaired,
24 reconditioned or remodeled item of tangible personal property
25 in Illinois, and which such carrier transports, or shares with
26 another common carrier in the transportation of such property,
27 out of Illinois on a standard uniform bill of lading showing
28 the person who repaired, reconditioned or remodeled the
29 property as the shipper or consignor of such property to a
30 destination outside Illinois, for use outside Illinois.

31 (d-3) A sale or transfer of tangible personal property
32 which is produced by the seller thereof on special order in
33 such a way as to have made the applicable tax the Service
34 Occupation Tax or the Service Use Tax, rather than the
35 Retailers' Occupation Tax or the Use Tax, for an interstate
36 carrier by rail which receives the physical possession of such

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

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

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

25 (f) Until July 1, 2003, the sale or transfer of
26 distillation machinery and equipment, sold as a unit or kit and
27 assembled or installed by the retailer, which machinery and
28 equipment is certified by the user to be used only for the
29 production of ethyl alcohol that will be used for consumption
30 as motor fuel or as a component of motor fuel for the personal
31 use of such user and not subject to sale or resale.

32 (g) At the election of any serviceman not required to be
33 otherwise registered as a retailer under Section 2a of the
34 Retailers' Occupation Tax Act, made for each fiscal year sales
35 of service in which the aggregate annual cost price of tangible
36 personal property transferred as an incident to the sales of

1 service is less than 35% (75% in the case of servicemen
2 transferring prescription drugs or servicemen engaged in
3 graphic arts production) of the aggregate annual total gross
4 receipts from all sales of service. For purposes of this
5 Section, a serviceman is not required to register as a retailer
6 under Section 2a of the Retailers' Occupation Tax Act if: (i)
7 all of his or her sales activities constitute accommodation
8 retail sales made to service customers; and (ii) these
9 accommodation retail sales do not exceed 3% of the serviceman's
10 annual revenues from sales of service. The purchase of such
11 tangible personal property by the serviceman shall be subject
12 to tax under the Retailers' Occupation Tax Act and the Use Tax
13 Act. However, if a primary serviceman who has made the election
14 described in this paragraph subcontracts service work to a
15 secondary serviceman who has also made the election described
16 in this paragraph, the primary serviceman does not incur a Use
17 Tax liability if the secondary serviceman (i) has paid or will
18 pay Use Tax on his or her cost price of any tangible personal
19 property transferred to the primary serviceman and (ii)
20 certifies that fact in writing to the primary serviceman.

21 Tangible personal property transferred incident to the
22 completion of a maintenance agreement is exempt from the tax
23 imposed pursuant to this Act.

24 Exemption (e) also includes machinery and equipment used in
25 the general maintenance or repair of such exempt machinery and
26 equipment or for in-house manufacture of exempt machinery and
27 equipment. For the purposes of exemption (e), each of these
28 terms shall have the following meanings: (1) "manufacturing
29 process" shall mean the production of any article of tangible
30 personal property, whether such article is a finished product
31 or an article for use in the process of manufacturing or
32 assembling a different article of tangible personal property,
33 by procedures commonly regarded as manufacturing, processing,
34 fabricating, or refining which changes some existing material
35 or materials into a material with a different form, use or
36 name. In relation to a recognized integrated business composed

1 of a series of operations which collectively constitute
2 manufacturing, or individually constitute manufacturing
3 operations, the manufacturing process shall be deemed to
4 commence with the first operation or stage of production in the
5 series, and shall not be deemed to end until the completion of
6 the final product in the last operation or stage of production
7 in the series; and further for purposes of exemption (e),
8 photoprocessing is deemed to be a manufacturing process of
9 tangible personal property for wholesale or retail sale; (2)
10 "assembling process" shall mean the production of any article
11 of tangible personal property, whether such article is a
12 finished product or an article for use in the process of
13 manufacturing or assembling a different article of tangible
14 personal property, by the combination of existing materials in
15 a manner commonly regarded as assembling which results in a
16 material of a different form, use or name; (3) "machinery"
17 shall mean major mechanical machines or major components of
18 such machines contributing to a manufacturing or assembling
19 process; and (4) "equipment" shall include any independent
20 device or tool separate from any machinery but essential to an
21 integrated manufacturing or assembly process; including
22 computers used primarily in a manufacturer's computer assisted
23 design, computer assisted manufacturing (CAD/CAM) system; or
24 any subunit or assembly comprising a component of any machinery
25 or auxiliary, adjunct or attachment parts of machinery, such as
26 tools, dies, jigs, fixtures, patterns and molds; or any parts
27 which require periodic replacement in the course of normal
28 operation; but shall not include hand tools. Equipment includes
29 chemicals or chemicals acting as catalysts but only if the
30 chemicals or chemicals acting as catalysts effect a direct and
31 immediate change upon a product being manufactured or assembled
32 for wholesale or retail sale or lease. The purchaser of such
33 machinery and equipment who has an active resale registration
34 number shall furnish such number to the seller at the time of
35 purchase. The purchaser of such machinery and equipment and
36 tools without an active resale registration number shall

1 furnish to the seller a certificate of exemption for each
2 transaction stating facts establishing the exemption for that
3 transaction, which certificate shall be available to the
4 Department for inspection or audit.

5 Except as provided in Section 2d of this Act, the rolling
6 stock exemption applies to rolling stock used by an interstate
7 carrier for hire, even just between points in Illinois, if such
8 rolling stock transports, for hire, persons whose journeys or
9 property whose shipments originate or terminate outside
10 Illinois.

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

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

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

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

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

35 (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,
36 eff. 6-20-03; 93-1033, eff. 9-3-04.)

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