

**96TH GENERAL ASSEMBLY****State of Illinois****2009 and 2010****SB3353**

Introduced 2/10/2010, by Sen. Jeffrey M. Schoenberg

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, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act. Provides that a retailer or serviceman is considered to be (i) maintaining a place of business in the State and (ii) engaged in selling personal property at retail in the State if the retailer or serviceman solicits business within the State through employees, independent contractors, agents, or other representatives. Provides that a retailer or serviceman is presumed to be soliciting business through an employee, independent contractor, agent, or other representative if the retailer or serviceman enters into an agreement with a resident of this State under which the resident, for a commission or consideration, directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the retailer or serviceman, if the cumulative gross receipts from sales by the retailer or serviceman to customers in the State who are referred to the retailer by all residents with this type of an agreement with the retailer is in excess of \$10,000 during the preceding 4 quarterly periods ending on the last day of February, May, August, and November. Provides that the presumption may be rebutted by proof that the resident with whom the retailer or serviceman has an agreement did not engage in any solicitation in the State on behalf of the retailer or serviceman that would satisfy the nexus requirement of the United States Constitution during the 4 quarterly periods in question.

LRB096 20468 HLH 36123 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 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

1 by this Act, and no credit for that tax is permitted if the
2 watercraft or aircraft is subsequently sold by the retailer.

3 "Use" does not mean the physical incorporation of tangible
4 personal property, to the extent not first subjected to a use
5 for which it was purchased, as an ingredient or constituent,
6 into other tangible personal property (a) which is sold in the
7 regular course of business or (b) which the person
8 incorporating such ingredient or constituent therein has
9 undertaken at the time of such purchase to cause to be
10 transported in interstate commerce to destinations outside the
11 State of Illinois: Provided that the property purchased is
12 deemed to be purchased for the purpose of resale, despite first
13 being used, to the extent to which it is resold as an
14 ingredient of an intentionally produced product or by-product
15 of manufacturing.

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

20 "Purchase at retail" means the acquisition of the ownership
21 of or title to tangible personal property through a sale at
22 retail.

23 "Purchaser" means anyone who, through a sale at retail,
24 acquires the ownership of tangible personal property for a
25 valuable consideration.

26 "Sale at retail" means any transfer of the ownership of or

1 title to tangible personal property to a purchaser, for the
2 purpose of use, and not for the purpose of resale in any form
3 as tangible personal property to the extent not first subjected
4 to a use for which it was purchased, for a valuable
5 consideration: Provided that the property purchased is deemed
6 to be purchased for the purpose of resale, despite first being
7 used, to the extent to which it is resold as an ingredient of
8 an intentionally produced product or by-product of
9 manufacturing. For this purpose, slag produced as an incident
10 to manufacturing pig iron or steel and sold is considered to be
11 an intentionally produced by-product of manufacturing. "Sale
12 at retail" includes any such transfer made for resale unless
13 made in compliance with Section 2c of the Retailers' Occupation
14 Tax Act, as incorporated by reference into Section 12 of this
15 Act. Transactions whereby the possession of the property is
16 transferred but the seller retains the title as security for
17 payment of the selling price are sales.

18 "Sale at retail" shall also be construed to include any
19 Illinois florist's sales transaction in which the purchase
20 order is received in Illinois by a florist and the sale is for
21 use or consumption, but the Illinois florist has a florist in
22 another state deliver the property to the purchaser or the
23 purchaser's donee in such other state.

24 Nonreusable tangible personal property that is used by
25 persons engaged in the business of operating a restaurant,
26 cafeteria, or drive-in is a sale for resale when it is

1 transferred to customers in the ordinary course of business as
2 part of the sale of food or beverages and is used to deliver,
3 package, or consume food or beverages, regardless of where
4 consumption of the food or beverages occurs. Examples of those
5 items include, but are not limited to nonreusable, paper and
6 plastic cups, plates, baskets, boxes, sleeves, buckets or other
7 containers, utensils, straws, placemats, napkins, doggie bags,
8 and wrapping or packaging materials that are transferred to
9 customers as part of the sale of food or beverages in the
10 ordinary course of business.

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

15 "Selling price" means the consideration for a sale valued
16 in money whether received in money or otherwise, including
17 cash, credits, property other than as hereinafter provided, and
18 services, but not including the value of or credit given for
19 traded-in tangible personal property where the item that is
20 traded-in is of like kind and character as that which is being
21 sold, and shall be determined without any deduction on account
22 of the cost of the property sold, the cost of materials used,
23 labor or service cost or any other expense whatsoever, but does
24 not include interest or finance charges which appear as
25 separate items on the bill of sale or sales contract nor
26 charges that are added to prices by sellers on account of the

1 seller's tax liability under the "Retailers' Occupation Tax
2 Act", or on account of the seller's duty to collect, from the
3 purchaser, the tax that is imposed by this Act, or, except as
4 otherwise provided with respect to any cigarette tax imposed by
5 a home rule unit, on account of the seller's tax liability
6 under any local occupation tax administered by the Department,
7 or, except as otherwise provided with respect to any cigarette
8 tax imposed by a home rule unit on account of the seller's duty
9 to collect, from the purchasers, the tax that is imposed under
10 any local use tax administered by the Department. Effective
11 December 1, 1985, "selling price" shall include charges that
12 are added to prices by sellers on account of the seller's tax
13 liability under the Cigarette Tax Act, on account of the
14 seller's duty to collect, from the purchaser, the tax imposed
15 under the Cigarette Use Tax Act, and on account of the seller's
16 duty to collect, from the purchaser, any cigarette tax imposed
17 by a home rule unit.

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

26 "Department" means the Department of Revenue.

1 "Person" means any natural individual, firm, partnership,
2 association, joint stock company, joint adventure, public or
3 private corporation, limited liability company, or a receiver,
4 executor, trustee, guardian or other representative appointed
5 by order of any court.

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

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

19 A person whose activities are organized and conducted
20 primarily as a not-for-profit service enterprise, and who
21 engages in selling tangible personal property at retail
22 (whether to the public or merely to members and their guests)
23 is a retailer with respect to such transactions, excepting only
24 a person organized and operated exclusively for charitable,
25 religious or educational purposes either (1), to the extent of
26 sales by such person to its members, students, patients or

1 inmates of tangible personal property to be used primarily for
2 the purposes of such person, or (2), to the extent of sales by
3 such person of tangible personal property which is not sold or
4 offered for sale by persons organized for profit. The selling
5 of school books and school supplies by schools at retail to
6 students is not "primarily for the purposes of" the school
7 which does such selling. This paragraph does not apply to nor
8 subject to taxation occasional dinners, social or similar
9 activities of a person organized and operated exclusively for
10 charitable, religious or educational purposes, whether or not
11 such activities are open to the public.

12 A person who is the recipient of a grant or contract under
13 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
14 serves meals to participants in the federal Nutrition Program
15 for the Elderly in return for contributions established in
16 amount by the individual participant pursuant to a schedule of
17 suggested fees as provided for in the federal Act is not a
18 retailer under this Act with respect to such transactions.

19 Persons who engage in the business of transferring tangible
20 personal property upon the redemption of trading stamps are
21 retailers hereunder when engaged in such business.

22 The isolated or occasional sale of tangible personal
23 property at retail by a person who does not hold himself out as
24 being engaged (or who does not habitually engage) in selling
25 such tangible personal property at retail or a sale through a
26 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

1 under the authority of the retailer or its subsidiary,
2 irrespective of whether such place of business or agent or
3 other representative is located here permanently or
4 temporarily, or whether such retailer or subsidiary is
5 licensed to do business in this State. However, the
6 ownership of property that is located at the premises of a
7 printer with which the retailer has contracted for printing
8 and that consists of the final printed product, property
9 that becomes a part of the final printed product, or copy
10 from which the printed product is produced shall not result
11 in the retailer being deemed to have or maintain an office,
12 distribution house, sales house, warehouse, or other place
13 of business within this State.

14 2. A retailer soliciting orders for tangible personal
15 property by means of a telecommunication or television
16 shopping system (which utilizes toll free numbers) which is
17 intended by the retailer to be broadcast by cable
18 television or other means of broadcasting, to consumers
19 located in this State.

20 3. A retailer, pursuant to a contract with a
21 broadcaster or publisher located in this State, soliciting
22 orders for tangible personal property by means of
23 advertising which is disseminated primarily to consumers
24 located in this State and only secondarily to bordering
25 jurisdictions.

26 4. A retailer soliciting orders for tangible personal

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

7 5. A retailer that is owned or controlled by the same
8 interests that own or control any retailer engaging in
9 business in the same or similar line of business in this
10 State.

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

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

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

23 9. A retailer that solicits business within the State
24 through employees, independent contractors, agents, or
25 other representatives. A retailer making sales of tangible
26 personal property that are taxable under this Act shall be

1 presumed to be soliciting business through an employee,
2 independent contractor, agent, or other representative if
3 the retailer enters into an agreement with a resident of
4 this State under which the resident, for a commission or
5 consideration, directly or indirectly refers potential
6 customers, whether by a link on an Internet website or
7 otherwise, to the retailer, if the cumulative gross
8 receipts from sales by the retailer to customers in the
9 State who are referred to the retailer by all residents
10 with this type of an agreement with the retailer is in
11 excess of \$10,000 during the preceding 4 quarterly periods
12 ending on the last day of February, May, August, and
13 November. This presumption may be rebutted by proof that
14 the resident with whom the retailer has an agreement did
15 not engage in any solicitation in the State on behalf of
16 the retailer that would satisfy the nexus requirement of
17 the United States Constitution during the 4 quarterly
18 periods in question.

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

25 (Source: P.A. 94-1074, eff. 12-26-06; 95-723, eff. 6-23-08.)

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

3 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

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

17 "Purchased from a serviceman" means the acquisition of the
18 ownership of, or title to, tangible personal property through a
19 sale of service.

20 "Purchaser" means any person who, through a sale of
21 service, acquires the ownership of, or title to, any tangible
22 personal property.

23 "Cost price" means the consideration paid by the serviceman
24 for a purchase valued in money, whether paid in money or
25 otherwise, including cash, credits and services, and shall be

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

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

20 "Department" means the Department of Revenue.

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

26 "Sale of service" means any transaction except:

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

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

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

21 (4) a sale or transfer of tangible personal property as
22 an incident to the rendering of service for interstate
23 carriers for hire for use as rolling stock moving in
24 interstate commerce or by lessors under a lease of one year
25 or longer, executed or in effect at the time of purchase of
26 personal property, to interstate carriers for hire for use

1 as rolling stock moving in interstate commerce so long as
2 so used by such interstate carriers for hire, and equipment
3 operated by a telecommunications provider, licensed as a
4 common carrier by the Federal Communications Commission,
5 which is permanently installed in or affixed to aircraft
6 moving in interstate commerce.

7 (4a) a sale or transfer of tangible personal property
8 as an incident to the rendering of service for owners,
9 lessors, or shippers of tangible personal property which is
10 utilized by interstate carriers for hire for use as rolling
11 stock moving in interstate commerce so long as so used by
12 interstate carriers for hire, and equipment operated by a
13 telecommunications provider, licensed as a common carrier
14 by the Federal Communications Commission, which is
15 permanently installed in or affixed to aircraft moving in
16 interstate commerce.

17 (4a-5) on and after July 1, 2003 and through June 30,
18 2004, a sale or transfer of a motor vehicle of the second
19 division with a gross vehicle weight in excess of 8,000
20 pounds as an incident to the rendering of service if that
21 motor vehicle is subject to the commercial distribution fee
22 imposed under Section 3-815.1 of the Illinois Vehicle Code.
23 Beginning on July 1, 2004 and through June 30, 2005, the
24 use in this State of motor vehicles of the second division:
25 (i) with a gross vehicle weight rating in excess of 8,000
26 pounds; (ii) that are subject to the commercial

1 distribution fee imposed under Section 3-815.1 of the
2 Illinois Vehicle Code; and (iii) that are primarily used
3 for commercial purposes. Through June 30, 2005, this
4 exemption applies to repair and replacement parts added
5 after the initial purchase of such a motor vehicle if that
6 motor vehicle is used in a manner that would qualify for
7 the rolling stock exemption otherwise provided for in this
8 Act. For purposes of this paragraph, "used for commercial
9 purposes" means the transportation of persons or property
10 in furtherance of any commercial or industrial enterprise
11 whether for-hire or not.

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

24 (5a) the repairing, reconditioning or remodeling, for
25 a common carrier by rail, of tangible personal property
26 which belongs to such carrier for hire, and as to which

1 such carrier receives the physical possession of the
2 repaired, reconditioned or remodeled item of tangible
3 personal property in Illinois, and which such carrier
4 transports, 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 person who
7 repaired, reconditioned or remodeled the property to a
8 destination outside Illinois, for use outside Illinois.

9 (5b) a sale or transfer of tangible personal property
10 which is produced by the seller thereof on special order in
11 such a way as to have made the applicable tax the Service
12 Occupation Tax or the Service Use Tax, rather than the
13 Retailers' Occupation Tax or the Use Tax, for an interstate
14 carrier by rail which receives the physical possession of
15 such property in Illinois, and which transports such
16 property, or shares with another common carrier in the
17 transportation of such property, out of Illinois on a
18 standard uniform bill of lading showing the seller of the
19 property as the shipper or consignor of such property to a
20 destination outside Illinois, for use outside Illinois.

21 (6) until July 1, 2003, a sale or transfer of
22 distillation machinery and equipment, sold as a unit or kit
23 and assembled or installed by the retailer, which machinery
24 and equipment is certified by the user to be used only for
25 the production of ethyl alcohol that will be used for
26 consumption as motor fuel or as a component of motor fuel

1 for the personal use of such user and not subject to sale
2 or resale.

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

24 Tangible personal property transferred incident to the
25 completion of a maintenance agreement is exempt from the tax
26 imposed pursuant to this Act.

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

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

1 or audit. The Department shall prescribe the form of the
2 certificate.

3 Any informal rulings, opinions or letters issued by the
4 Department in response to an inquiry or request for any opinion
5 from any person regarding the coverage and applicability of
6 exemption (5) to specific devices shall be published,
7 maintained as a public record, and made available for public
8 inspection and copying. If the informal ruling, opinion or
9 letter contains trade secrets or other confidential
10 information, where possible the Department shall delete such
11 information prior to publication. Whenever such informal
12 rulings, opinions, or letters contain any policy of general
13 applicability, the Department shall formulate and adopt such
14 policy as a rule in accordance with the provisions of the
15 Illinois Administrative Procedure Act.

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

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

25 "Serviceman" means any person who is engaged in the
26 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 "Serviceman maintaining a place of business in this State",
7 or any like term, means and includes any serviceman:

8 1. having or maintaining within this State, directly or
9 by a subsidiary, an office, distribution house, sales
10 house, warehouse or other place of business, or any agent
11 or other representative operating within this State under
12 the authority of the serviceman or its subsidiary,
13 irrespective of whether such place of business or agent or
14 other representative is located here permanently or
15 temporarily, or whether such serviceman or subsidiary is
16 licensed to do business in this State;

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

22 3. pursuant to a contract with a broadcaster or
23 publisher located in this State, soliciting orders for
24 tangible personal property by means of advertising which is
25 disseminated primarily to consumers located in this State
26 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.

23 "Serviceman maintaining a place of business in this State"
24 also includes a serviceman that solicits business within the
25 State through employees, independent contractors, agents, or
26 other representatives. A serviceman making sales of tangible

1 personal property that are taxable under this Act shall be
2 presumed to be soliciting business through an employee,
3 independent contractor, agent, or other representative if the
4 serviceman enters into an agreement with a resident of this
5 State under which the resident, for a commission or
6 consideration, directly or indirectly refers potential
7 customers, whether by a link on an Internet website or
8 otherwise, to the serviceman, if the cumulative gross receipts
9 from sales by the serviceman to customers in the State who are
10 referred to the serviceman by all residents with this type of
11 an agreement with the serviceman is in excess of \$10,000 during
12 the preceding 4 quarterly periods ending on the last day of
13 February, May, August, and November. This presumption may be
14 rebutted by proof that the resident with whom the serviceman
15 has an agreement did not engage in any solicitation in the
16 State on behalf of the serviceman that would satisfy the nexus
17 requirement of the United States Constitution during the 4
18 quarterly periods in question.

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

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

23 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

24 Sec. 2. "Transfer" means any transfer of the title to

1 property or of the ownership of property whether or not the
2 transferor retains title as security for the payment of amounts
3 due him from the transferee.

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

16 "Department" means the Department of Revenue.

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

22 "Sale of Service" means any transaction except:

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

26 (b) A sale of tangible personal property for the purpose of

1 resale made in compliance with Section 2c of the Retailers'
2 Occupation Tax Act.

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

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

26 (d-1) A sale or transfer of tangible personal property as

1 an incident to the rendering of service for owners, lessors or
2 shippers of tangible personal property which is utilized by
3 interstate carriers for hire for use as rolling stock moving in
4 interstate commerce, and equipment operated by a
5 telecommunications provider, licensed as a common carrier by
6 the Federal Communications Commission, which is permanently
7 installed in or affixed to aircraft moving in interstate
8 commerce.

9 (d-1.1) On and after July 1, 2003 and through June 30,
10 2004, a sale or transfer of a motor vehicle of the second
11 division with a gross vehicle weight in excess of 8,000 pounds
12 as an incident to the rendering of service if that motor
13 vehicle is subject to the commercial distribution fee imposed
14 under Section 3-815.1 of the Illinois Vehicle Code. Beginning
15 on July 1, 2004 and through June 30, 2005, the use in this
16 State of motor vehicles of the second division: (i) with a
17 gross vehicle weight rating in excess of 8,000 pounds; (ii)
18 that are subject to the commercial distribution fee imposed
19 under Section 3-815.1 of the Illinois Vehicle Code; and (iii)
20 that are primarily used for commercial purposes. Through June
21 30, 2005, this exemption applies to repair and replacement
22 parts added after the initial purchase of such a motor vehicle
23 if that motor vehicle is used in a manner that would qualify
24 for the rolling stock exemption otherwise provided for in this
25 Act. For purposes of this paragraph, "used for commercial
26 purposes" means the transportation of persons or property in

1 furtherance of any commercial or industrial enterprise whether
2 for-hire or not.

3 (d-2) The repairing, reconditioning or remodeling, for a
4 common carrier by rail, of tangible personal property which
5 belongs to such carrier for hire, and as to which such carrier
6 receives the physical possession of the repaired,
7 reconditioned or remodeled item of tangible personal property
8 in Illinois, and which such carrier transports, or shares with
9 another common carrier in the transportation of such property,
10 out of Illinois on a standard uniform bill of lading showing
11 the person who repaired, reconditioned or remodeled the
12 property as the shipper or consignor of such property to a
13 destination outside Illinois, for use outside Illinois.

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

26 (d-4) Until January 1, 1997, a sale, by a registered

1 serviceman paying tax under this Act to the Department, of
2 special order printed materials delivered outside Illinois and
3 which are not returned to this State, if delivery is made by
4 the seller or agent of the seller, including an agent who
5 causes the product to be delivered outside Illinois by a common
6 carrier or the U.S. postal service.

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

18 (f) Until July 1, 2003, the sale or transfer of
19 distillation machinery and equipment, sold as a unit or kit and
20 assembled or installed by the retailer, which machinery and
21 equipment is certified by the user to be used only for the
22 production of ethyl alcohol that will be used for consumption
23 as motor fuel or as a component of motor fuel for the personal
24 use of such user and not subject to sale or resale.

25 (g) At the election of any serviceman not required to be
26 otherwise registered as a retailer under Section 2a of the

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

18 Tangible personal property transferred incident to the
19 completion of a maintenance agreement is exempt from the tax
20 imposed pursuant to this Act.

21 Exemption (e) also includes machinery and equipment used in
22 the general maintenance or repair of such exempt machinery and
23 equipment or for in-house manufacture of exempt machinery and
24 equipment. For the purposes of exemption (e), each of these
25 terms shall have the following meanings: (1) "manufacturing
26 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

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 purchaser of such machinery and equipment and
17 tools without an active resale registration number shall
18 furnish to the seller a certificate of exemption for each
19 transaction stating facts establishing the exemption for that
20 transaction, which certificate shall be available to the
21 Department for inspection or audit.

22 Except as provided in Section 2d of this Act, the rolling
23 stock exemption applies to rolling stock used by an interstate
24 carrier for hire, even just between points in Illinois, if such
25 rolling stock transports, for hire, persons whose journeys or
26 property whose shipments originate or terminate outside

1 Illinois.

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

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

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

21 "Serviceman" also includes a serviceman that solicits
22 business within the State through employees, independent
23 contractors, agents, or other representatives. A serviceman
24 making sales of tangible personal property that are taxable
25 under this Act shall be presumed to be soliciting business
26 through an employee, independent contractor, agent, or other

1 representative if the serviceman enters into an agreement with
2 a resident of this State under which the resident, for a
3 commission or consideration, directly or indirectly refers
4 potential customers, whether by a link on an Internet website
5 or otherwise, to the serviceman, if the cumulative gross
6 receipts from sales by the serviceman to customers in the State
7 who are referred to the serviceman by all residents with this
8 type of an agreement with the serviceman is in excess of
9 \$10,000 during the preceding 4 quarterly periods ending on the
10 last day of February, May, August, and November. This
11 presumption may be rebutted by proof that the resident with
12 whom the serviceman has an agreement did not engage in any
13 solicitation in the State on behalf of the serviceman that
14 would satisfy the nexus requirement of the United States
15 Constitution during the 4 quarterly periods in question.

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

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

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

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

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

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

18 "Sale at retail" shall be construed to include any transfer
19 of the ownership of or title to tangible personal property to a
20 purchaser, for use or consumption by any other person to whom
21 such purchaser may transfer the tangible personal property
22 without a valuable consideration, and to include any transfer,
23 whether made for or without a valuable consideration, for
24 resale in any form as tangible personal property unless made in
25 compliance with Section 2c of this Act.

26 Sales of tangible personal property, which property, to the

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

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

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

1 ordinary course of business.

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

6 A person whose activities are organized and conducted
7 primarily as a not-for-profit service enterprise, and who
8 engages in selling tangible personal property at retail
9 (whether to the public or merely to members and their guests)
10 is engaged in the business of selling tangible personal
11 property at retail with respect to such transactions, excepting
12 only a person organized and operated exclusively for
13 charitable, religious or educational purposes either (1), to
14 the extent of sales by such person to its members, students,
15 patients or inmates of tangible personal property to be used
16 primarily for the purposes of such person, or (2), to the
17 extent of sales by such person of tangible personal property
18 which is not sold or offered for sale by persons organized for
19 profit. The selling of school books and school supplies by
20 schools at retail to students is not "primarily for the
21 purposes of" the school which does such selling. The provisions
22 of this paragraph shall not apply to nor subject to taxation
23 occasional dinners, socials or similar activities of a person
24 organized and operated exclusively for charitable, religious
25 or educational purposes, whether or not such activities are
26 open to the public.

1 A person who is the recipient of a grant or contract under
2 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
3 serves meals to participants in the federal Nutrition Program
4 for the Elderly in return for contributions established in
5 amount by the individual participant pursuant to a schedule of
6 suggested fees as provided for in the federal Act is not
7 engaged in the business of selling tangible personal property
8 at retail with respect to such transactions.

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

12 "Reseller of motor fuel" means any person engaged in the
13 business of selling or delivering or transferring title of
14 motor fuel to another person other than for use or consumption.
15 No person shall act as a reseller of motor fuel within this
16 State without first being registered as a reseller pursuant to
17 Section 2c or a retailer pursuant to Section 2a.

18 "Selling price" or the "amount of sale" means the
19 consideration for a sale valued in money whether received in
20 money or otherwise, including cash, credits, property, other
21 than as hereinafter provided, and services, but not including
22 the value of or credit given for traded-in tangible personal
23 property where the item that is traded-in is of like kind and
24 character as that which is being sold, and shall be determined
25 without any deduction on account of the cost of the property
26 sold, the cost of materials used, labor or service cost or any

1 other expense whatsoever, but does not include charges that are
2 added to prices by sellers on account of the seller's tax
3 liability under this Act, or on account of the seller's duty to
4 collect, from the purchaser, the tax that is imposed by the Use
5 Tax Act, or, except as otherwise provided with respect to any
6 cigarette tax imposed by a home rule unit, on account of the
7 seller's tax liability under any local occupation tax
8 administered by the Department, or, except as otherwise
9 provided with respect to any cigarette tax imposed by a home
10 rule unit on account of the seller's duty to collect, from the
11 purchasers, the tax that is imposed under any local use tax
12 administered by the Department. Effective December 1, 1985,
13 "selling price" shall include charges that are added to prices
14 by sellers on account of the seller's tax liability under the
15 Cigarette Tax Act, on account of the sellers' duty to collect,
16 from the purchaser, the tax imposed under the Cigarette Use Tax
17 Act, and on account of the seller's duty to collect, from the
18 purchaser, any cigarette tax imposed by a home rule unit.

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

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

10 "Department" means the Department of Revenue.

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

16 The isolated or occasional sale of tangible personal
17 property at retail by a person who does not hold himself out as
18 being engaged (or who does not habitually engage) in selling
19 such tangible personal property at retail, or a sale through a
20 bulk vending machine, does not constitute engaging in a
21 business of selling such tangible personal property at retail
22 within the meaning of this Act; provided that any person who is
23 engaged in a business which is not subject to the tax imposed
24 by this Act because of involving the sale of or a contract to
25 sell real estate or a construction contract to improve real
26 estate or a construction contract to engineer, install, and

1 maintain an integrated system of products, but who, in the
2 course of conducting such business, transfers tangible
3 personal property to users or consumers in the finished form in
4 which it was purchased, and which does not become real estate
5 or was not engineered and installed, under any provision of a
6 construction contract or real estate sale or real estate sales
7 agreement entered into with some other person arising out of or
8 because of such nontaxable business, is engaged in the business
9 of selling tangible personal property at retail to the extent
10 of the value of the tangible personal property so transferred.
11 If, in such a transaction, a separate charge is made for the
12 tangible personal property so transferred, the value of such
13 property, for the purpose of this Act, shall be the amount so
14 separately charged, but not less than the cost of such property
15 to the transferor; if no separate charge is made, the value of
16 such property, for the purposes of this Act, is the cost to the
17 transferor of such tangible personal property. Construction
18 contracts for the improvement of real estate consisting of
19 engineering, installation, and maintenance of voice, data,
20 video, security, and all telecommunication systems do not
21 constitute engaging in a business of selling tangible personal
22 property at retail within the meaning of this Act if they are
23 sold at one specified contract price.

24 A person who holds himself or herself out as being engaged
25 (or who habitually engages) in selling tangible personal
26 property at retail is a person engaged in the business of

1 selling tangible personal property at retail hereunder with
2 respect to such sales (and not primarily in a service
3 occupation) notwithstanding the fact that such person designs
4 and produces such tangible personal property on special order
5 for the purchaser and in such a way as to render the property
6 of value only to such purchaser, if such tangible personal
7 property so produced on special order serves substantially the
8 same function as stock or standard items of tangible personal
9 property that are sold at retail.

10 Persons who engage in the business of transferring tangible
11 personal property upon the redemption of trading stamps are
12 engaged in the business of selling such property at retail and
13 shall be liable for and shall pay the tax imposed by this Act
14 on the basis of the retail value of the property transferred
15 upon redemption of such stamps.

16 A retailer that solicits business within the State through
17 employees, independent contractors, agents, or other
18 representatives is considered to be selling tangible personal
19 property at retail. A retailer making sales of tangible
20 personal property that are taxable under this Act shall be
21 presumed to be soliciting business through an employee,
22 independent contractor, agent, or other representative if the
23 retailer enters into an agreement with a resident of this State
24 under which the resident, for a commission or consideration,
25 directly or indirectly refers potential customers, whether by a
26 link on an Internet website or otherwise, to the retailer, if

1 the cumulative gross receipts from sales by the retailer to
2 customers in the State who are referred to the retailer by all
3 residents with this type of an agreement with the retailer is
4 in excess of \$10,000 during the preceding 4 quarterly periods
5 ending on the last day of February, May, August, and November.
6 This presumption may be rebutted by proof that the resident
7 with whom the retailer has an agreement did not engage in any
8 solicitation in the State on behalf of the retailer that would
9 satisfy the nexus requirement of the United States Constitution
10 during the 4 quarterly periods in question.

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

17 (Source: P.A. 95-723, eff. 6-23-08.)