



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB0155

Introduced 1/14/2013, by Rep. Chad Hays

#### 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 120/1	from Ch. 120, par. 440

Amends the Use Tax Act, the Service Use Tax Act, and the Retailers' Occupation Tax Act. Provides that, with respect to sales of cellular telephones and other wireless cellular devices, the terms "selling price" and "gross receipts" do not include consideration paid by a third-party cellular service provider. Effective immediately.

LRB098 02912 HLH 32924 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. With respect to sales of cellular  
18 telephones or other wireless cellular devices, the term  
19 "selling price" does not include consideration paid by a  
20 third-party cellular service provider.

21 "Wireless cellular device" means any wireless  
22 communication device that provides for voice or data  
23 communication between 2 or more parties, including, but not  
24 limited to, a text messaging device or other device that sends  
25 or receives messages or electronic data.

26 The phrase "like kind and character" shall be liberally

1 construed (including but not limited to any form of motor  
2 vehicle for any form of motor vehicle, or any kind of farm or  
3 agricultural implement for any other kind of farm or  
4 agricultural implement), while not including a kind of item  
5 which, if sold at retail by that retailer, would be exempt from  
6 retailers' occupation tax and use tax as an isolated or  
7 occasional sale.

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

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

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

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



1           Persons who engage in the business of transferring tangible  
2 personal property upon the redemption of trading stamps are  
3 retailers hereunder when engaged in such business.

4           The isolated or occasional sale of tangible personal  
5 property at retail by a person who does not hold himself out as  
6 being engaged (or who does not habitually engage) in selling  
7 such tangible personal property at retail or a sale through a  
8 bulk vending machine does not make such person a retailer  
9 hereunder. However, any person who is engaged in a business  
10 which is not subject to the tax imposed by the "Retailers'  
11 Occupation Tax Act" because of involving the sale of or a  
12 contract to sell real estate or a construction contract to  
13 improve real estate, but who, in the course of conducting such  
14 business, transfers tangible personal property to users or  
15 consumers in the finished form in which it was purchased, and  
16 which does not become real estate, under any provision of a  
17 construction contract or real estate sale or real estate sales  
18 agreement entered into with some other person arising out of or  
19 because of such nontaxable business, is a retailer to the  
20 extent of the value of the tangible personal property so  
21 transferred. If, in such transaction, a separate charge is made  
22 for the tangible personal property so transferred, the value of  
23 such property, for the purposes of this Act, is the amount so  
24 separately charged, but not less than the cost of such property  
25 to the transferor; if no separate charge is made, the value of  
26 such property, for the purposes of this Act, is the cost to the

1 transferor of such tangible personal property.

2 "Retailer maintaining a place of business in this State",  
3 or any like term, means and includes any of the following  
4 retailers:

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

22 1.1. Beginning July 1, 2011, a retailer having a  
23 contract with a person located in this State under which  
24 the person, for a commission or other consideration based  
25 upon the sale of tangible personal property by the  
26 retailer, directly or indirectly refers potential

1 customers to the retailer by a link on the person's  
2 Internet website. The provisions of this paragraph 1.1  
3 shall apply only if the cumulative gross receipts from  
4 sales of tangible personal property by the retailer to  
5 customers who are referred to the retailer by all persons  
6 in this State under such contracts exceed \$10,000 during  
7 the preceding 4 quarterly periods ending on the last day of  
8 March, June, September, and December.

9 1.2. Beginning July 1, 2011, a retailer having a  
10 contract with a person located in this State under which:

11 A. the retailer sells the same or substantially  
12 similar line of products as the person located in this  
13 State and does so using an identical or substantially  
14 similar name, trade name, or trademark as the person  
15 located in this State; and

16 B. the retailer provides a commission or other  
17 consideration to the person located in this State based  
18 upon the sale of tangible personal property by the  
19 retailer.

20 The provisions of this paragraph 1.2 shall apply only if  
21 the cumulative gross receipts from sales of tangible  
22 personal property by the retailer to customers in this  
23 State under all such contracts exceed \$10,000 during the  
24 preceding 4 quarterly periods ending on the last day of  
25 March, June, September, and December.

26 2. A retailer soliciting orders for tangible personal

1 property by means of a telecommunication or television  
2 shopping system (which utilizes toll free numbers) which is  
3 intended by the retailer to be broadcast by cable  
4 television or other means of broadcasting, to consumers  
5 located in this State.

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

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

19 5. A retailer that is owned or controlled by the same  
20 interests that own or control any retailer engaging in  
21 business in the same or similar line of business in this  
22 State.

23 6. A retailer having a franchisee or licensee operating  
24 under its trade name if the franchisee or licensee is  
25 required to collect the tax under this Section.

26 7. A retailer, pursuant to a contract with a cable

1 television operator located in this State, soliciting  
2 orders for tangible personal property by means of  
3 advertising which is transmitted or distributed over a  
4 cable television system in this State.

5 8. A retailer engaging in activities in Illinois, which  
6 activities in the state in which the retail business  
7 engaging in such activities is located would constitute  
8 maintaining a place of business in that state.

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

15 (Source: P.A. 95-723, eff. 6-23-08; 96-1544, eff. 3-10-11.)

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

18 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

19 Sec. 2. "Use" means the exercise by any person of any right  
20 or power over tangible personal property incident to the  
21 ownership of that property, but does not include the sale or  
22 use for demonstration by him of that property in any form as  
23 tangible personal property in the regular course of business.

24 "Use" does not mean the interim use of tangible personal

1 property nor the physical incorporation of tangible personal  
2 property, as an ingredient or constituent, into other tangible  
3 personal property, (a) which is sold in the regular course of  
4 business or (b) which the person incorporating such ingredient  
5 or constituent therein has undertaken at the time of such  
6 purchase to cause to be transported in interstate commerce to  
7 destinations outside the State of Illinois.

8 "Purchased from a serviceman" means the acquisition of the  
9 ownership of, or title to, tangible personal property through a  
10 sale of service.

11 "Purchaser" means any person who, through a sale of  
12 service, acquires the ownership of, or title to, any tangible  
13 personal property.

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

26 "Selling price" means the consideration for a sale valued

1 in money whether received in money or otherwise, including  
2 cash, credits and service, and shall be determined without any  
3 deduction on account of the serviceman's cost of the property  
4 sold, the cost of materials used, labor or service cost or any  
5 other expense whatsoever, but does not include interest or  
6 finance charges which appear as separate items on the bill of  
7 sale or sales contract nor charges that are added to prices by  
8 sellers on account of the seller's duty to collect, from the  
9 purchaser, the tax that is imposed by this Act. With respect to  
10 sales of cellular telephones or other wireless cellular  
11 devices, the term "selling price" does not include  
12 consideration paid by a third-party cellular service provider.

13 "Wireless cellular device" means any wireless  
14 communication device that provides for voice or data  
15 communication between 2 or more parties, including, but not  
16 limited to, a text messaging device or other device that sends  
17 or receives messages or electronic data.

18 "Department" means the Department of Revenue.

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

24 "Sale of service" means any transaction except:

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

1 Tax Act.

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

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

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



1           operated by a telecommunications provider, licensed as a  
2           common carrier by the Federal Communications Commission,  
3           which is permanently installed in or affixed to aircraft  
4           moving in interstate commerce.

5           (4a) a sale or transfer of tangible personal property  
6           as an incident to the rendering of service for owners,  
7           lessors, or shippers of tangible personal property which is  
8           utilized by interstate carriers for hire for use as rolling  
9           stock moving in interstate commerce so long as so used by  
10          interstate carriers for hire, and equipment operated by a  
11          telecommunications provider, licensed as a common carrier  
12          by the Federal Communications Commission, which is  
13          permanently installed in or affixed to aircraft moving in  
14          interstate commerce.

15          (4a-5) on and after July 1, 2003 and through June 30,  
16          2004, a sale or transfer of a motor vehicle of the second  
17          division with a gross vehicle weight in excess of 8,000  
18          pounds as an incident to the rendering of service if that  
19          motor vehicle is subject to the commercial distribution fee  
20          imposed under Section 3-815.1 of the Illinois Vehicle Code.  
21          Beginning on July 1, 2004 and through June 30, 2005, the  
22          use in this State of motor vehicles of the second division:  
23          (i) with a gross vehicle weight rating in excess of 8,000  
24          pounds; (ii) that are subject to the commercial  
25          distribution fee imposed under Section 3-815.1 of the  
26          Illinois Vehicle Code; and (iii) that are primarily used

1 for commercial purposes. Through June 30, 2005, this  
2 exemption applies to repair and replacement parts added  
3 after the initial purchase of such a motor vehicle if that  
4 motor vehicle is used in a manner that would qualify for  
5 the rolling stock exemption otherwise provided for in this  
6 Act. For purposes of this paragraph, "used for commercial  
7 purposes" means the transportation of persons or property  
8 in furtherance of any commercial or industrial enterprise  
9 whether for-hire or not.

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

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

7 (5b) a sale or transfer of tangible personal property  
8 which is produced by the seller thereof on special order in  
9 such a way as to have made the applicable tax the Service  
10 Occupation Tax or the Service Use Tax, rather than the  
11 Retailers' Occupation Tax or the Use Tax, for an interstate  
12 carrier by rail which receives the physical possession of  
13 such property in Illinois, and which transports such  
14 property, or shares with another common carrier in the  
15 transportation of such property, out of Illinois on a  
16 standard uniform bill of lading showing the seller of the  
17 property as the shipper or consignor of such property to a  
18 destination outside Illinois, for use outside Illinois.

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

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

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

25          Exemption (5) also includes machinery and equipment used in  
26          the general maintenance or repair of such exempt machinery and

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

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

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

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

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

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

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

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

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

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

15 1.1. beginning July 1, 2011, having a contract with a  
16 person located in this State under which the person, for a  
17 commission or other consideration based on the sale of  
18 service by the serviceman, directly or indirectly refers  
19 potential customers to the serviceman by a link on the  
20 person's Internet website. The provisions of this  
21 paragraph 1.1 shall apply only if the cumulative gross  
22 receipts from sales of service by the serviceman to  
23 customers who are referred to the serviceman by all persons  
24 in this State under such contracts exceed \$10,000 during  
25 the preceding 4 quarterly periods ending on the last day of  
26 March, June, September, and December;



1           1.2. beginning July 1, 2011, having a contract with a  
2 person located in this State under which:

3           A. the serviceman sells the same or substantially  
4 similar line of services as the person located in this  
5 State and does so using an identical or substantially  
6 similar name, trade name, or trademark as the person  
7 located in this State; and

8           B. the serviceman provides a commission or other  
9 consideration to the person located in this State based  
10 upon the sale of services by the serviceman.

11 The provisions of this paragraph 1.2 shall apply only if  
12 the cumulative gross receipts from sales of service by the  
13 serviceman to customers in this State under all such  
14 contracts exceed \$10,000 during the preceding 4 quarterly  
15 periods ending on the last day of March, June, September,  
16 and December;

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          (Source: P.A. 96-1544, eff. 3-10-11.)

24          Section 15. The Retailers' Occupation Tax Act is amended by  
25          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.

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

1 customers as part of the sale of food or beverages in the  
2 ordinary course of business.

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

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

1 open to the public.

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

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

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

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

1 sold, the cost of materials used, labor or service cost or any  
2 other expense whatsoever, but does not include charges that are  
3 added to prices by sellers on account of the seller's tax  
4 liability under this Act, or on account of the seller's duty to  
5 collect, from the purchaser, the tax that is imposed by the Use  
6 Tax Act, or, except as otherwise provided with respect to any  
7 cigarette tax imposed by a home rule unit, on account of the  
8 seller's tax liability under any local occupation tax  
9 administered by the Department, or, except as otherwise  
10 provided with respect to any cigarette tax imposed by a home  
11 rule unit on account of the seller's duty to collect, from the  
12 purchasers, the tax that is imposed under any local use tax  
13 administered by the Department. Effective December 1, 1985,  
14 "selling price" shall include charges that are added to prices  
15 by sellers on account of the seller's tax liability under the  
16 Cigarette Tax Act, on account of the sellers' duty to collect,  
17 from the purchaser, the tax imposed under the Cigarette Use Tax  
18 Act, and on account of the seller's duty to collect, from the  
19 purchaser, any cigarette tax imposed by a home rule unit. With  
20 respect to sales of cellular telephones or other wireless  
21 cellular devices, the term "selling price" does not include  
22 consideration paid by a third-party cellular service provider.

23 The phrase "like kind and character" shall be liberally  
24 construed (including but not limited to any form of motor  
25 vehicle for any form of motor vehicle, or any kind of farm or  
26 agricultural implement for any other kind of farm or

1 agricultural implement), while not including a kind of item  
2 which, if sold at retail by that retailer, would be exempt from  
3 retailers' occupation tax and use tax as an isolated or  
4 occasional sale.

5 "Gross receipts" from the sales of tangible personal  
6 property at retail means the total selling price or the amount  
7 of such sales, as hereinbefore defined. In the case of charge  
8 and time sales, the amount thereof shall be included only as  
9 and when payments are received by the seller. Receipts or other  
10 consideration derived by a seller from the sale, transfer or  
11 assignment of accounts receivable to a wholly owned subsidiary  
12 will not be deemed payments prior to the time the purchaser  
13 makes payment on such accounts. With respect to sales of  
14 cellular telephones or other wireless cellular devices, the  
15 term "gross receipts" does not include consideration paid by a  
16 third-party cellular service provider.

17 "Wireless cellular device" means any wireless  
18 communication device that provides for voice or data  
19 communication between 2 or more parties, including, but not  
20 limited to, a text messaging device or other device that sends  
21 or receives messages or electronic data.

22 "Department" means the Department of Revenue.

23 "Person" means any natural individual, firm, partnership,  
24 association, joint stock company, joint adventure, public or  
25 private corporation, limited liability company, or a receiver,  
26 executor, trustee, guardian or other representative appointed



1 by order of any court.

2 The isolated or occasional sale of tangible personal  
3 property at retail by a person who does not hold himself out as  
4 being engaged (or who does not habitually engage) in selling  
5 such tangible personal property at retail, or a sale through a  
6 bulk vending machine, does not constitute engaging in a  
7 business of selling such tangible personal property at retail  
8 within the meaning of this Act; provided that any person who is  
9 engaged in a business which is not subject to the tax imposed  
10 by this Act because of involving the sale of or a contract to  
11 sell real estate or a construction contract to improve real  
12 estate or a construction contract to engineer, install, and  
13 maintain an integrated system of products, but who, in the  
14 course of conducting such business, transfers tangible  
15 personal property to users or consumers in the finished form in  
16 which it was purchased, and which does not become real estate  
17 or was not engineered and installed, under any provision of a  
18 construction contract or real estate sale or real estate sales  
19 agreement entered into with some other person arising out of or  
20 because of such nontaxable business, is engaged in the business  
21 of selling tangible personal property at retail to the extent  
22 of the value of the tangible personal property so transferred.  
23 If, in such a transaction, a separate charge is made for the  
24 tangible personal property so transferred, the value of such  
25 property, for the purpose of this Act, shall be the amount so  
26 separately charged, but not less than the cost of such property

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

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

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

1 upon redemption of such stamps.

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

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

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