



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3092

by Rep. Tom Demmer

#### 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 not-for-profit organization that (i) has received an exemption under Section 501(c)(3) of the Internal Revenue Code, (ii) has gross receipts of no more than \$10,000 per year, and (iii) is organized and operated exclusively for charitable, religious, or educational purposes is not considered a retailer or a serviceman. Effective immediately.

LRB099 08119 HLH 28268 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. Definitions.

8 "Use" means the exercise by any person of any right or  
9 power over tangible personal property incident to the ownership  
10 of that property, except that it does not include the sale of  
11 such property in any form as tangible personal property in the  
12 regular course of business to the extent that such property is  
13 not first subjected to a use for which it was purchased, and  
14 does not include the use of such property by its owner for  
15 demonstration purposes: Provided that the property purchased  
16 is deemed to be purchased for the purpose of resale, despite  
17 first being used, to the extent to which it is resold as an  
18 ingredient of an intentionally produced product or by-product  
19 of manufacturing. "Use" does not mean the demonstration use or  
20 interim use of tangible personal property by a retailer before  
21 he sells that tangible personal property. For watercraft or  
22 aircraft, if the period of demonstration use or interim use by  
23 the retailer exceeds 18 months, the retailer shall pay on the

1 retailers' original cost price the tax imposed by this Act, and  
2 no credit for that tax is permitted if the watercraft or  
3 aircraft is subsequently sold by the retailer. "Use" does not  
4 mean the physical incorporation of tangible personal property,  
5 to the extent not first subjected to a use for which it was  
6 purchased, as an ingredient or constituent, into other tangible  
7 personal property (a) which is sold in the regular course of  
8 business or (b) which the person incorporating such ingredient  
9 or constituent therein has undertaken at the time of such  
10 purchase to cause to be transported in interstate commerce to  
11 destinations outside the State of Illinois: Provided that the  
12 property purchased is deemed to be purchased for the purpose of  
13 resale, despite first being used, to the extent to which it is  
14 resold as an ingredient of an intentionally produced product or  
15 by-product 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 Notwithstanding any law to the contrary, for any motor  
19 vehicle, as defined in Section 1-146 of the Vehicle Code, that  
20 is sold on or after January 1, 2015 for the purpose of leasing  
21 the vehicle for a defined period that is longer than one year  
22 and (1) is a motor vehicle of the second division that: (A) is  
23 a self-contained motor vehicle designed or permanently  
24 converted to provide living quarters for recreational,  
25 camping, or travel use, with direct walk through access to the  
26 living quarters from the driver's seat; (B) is of the van

1 configuration designed for the transportation of not less than  
2 7 nor more than 16 passengers; or (C) has a gross vehicle  
3 weight rating of 8,000 pounds or less or (2) is a motor vehicle  
4 of the first division, "selling price" or "amount of sale"  
5 means the consideration received by the lessor pursuant to the  
6 lease contract, including amounts due at lease signing and all  
7 monthly or other regular payments charged over the term of the  
8 lease. Also included in the selling price is any amount  
9 received by the lessor from the lessee for the leased vehicle  
10 that is not calculated at the time the lease is executed,  
11 including, but not limited to, excess mileage charges and  
12 charges for excess wear and tear. For sales that occur in  
13 Illinois, with respect to any amount received by the lessor  
14 from the lessee for the leased vehicle that is not calculated  
15 at the time the lease is executed, the lessor who purchased the  
16 motor vehicle does not incur the tax imposed by the Use Tax Act  
17 on those amounts, and the retailer who makes the retail sale of  
18 the motor vehicle to the lessor is not required to collect the  
19 tax imposed by this Act or to pay the tax imposed by the  
20 Retailers' Occupation Tax Act on those amounts. However, the  
21 lessor who purchased the motor vehicle assumes the liability  
22 for reporting and paying the tax on those amounts directly to  
23 the Department in the same form (Illinois Retailers' Occupation  
24 Tax, and local retailers' occupation taxes, if applicable) in  
25 which the retailer would have reported and paid such tax if the  
26 retailer had accounted for the tax to the Department. For

1 amounts received by the lessor from the lessee that are not  
2 calculated at the time the lease is executed, the lessor must  
3 file the return and pay the tax to the Department by the due  
4 date otherwise required by this Act for returns other than  
5 transaction returns. If the retailer is entitled under this Act  
6 to a discount for collecting and remitting the tax imposed  
7 under this Act to the Department with respect to the sale of  
8 the motor vehicle to the lessor, then the right to the discount  
9 provided in this Act shall be transferred to the lessor with  
10 respect to the tax paid by the lessor for any amount received  
11 by the lessor from the lessee for the leased vehicle that is  
12 not calculated at the time the lease is executed; provided that  
13 the discount is only allowed if the return is timely filed and  
14 for amounts timely paid. The "selling price" of a motor vehicle  
15 that is sold on or after January 1, 2015 for the purpose of  
16 leasing for a defined period of longer than one year shall not  
17 be reduced by the value of or credit given for traded-in  
18 tangible personal property owned by the lessor, nor shall it be  
19 reduced by the value of or credit given for traded-in tangible  
20 personal property owned by the lessee, regardless of whether  
21 the trade-in value thereof is assigned by the lessee to the  
22 lessor. In the case of a motor vehicle that is sold for the  
23 purpose of leasing for a defined period of longer than one  
24 year, the sale occurs at the time of the delivery of the  
25 vehicle, regardless of the due date of any lease payments. A  
26 lessor who incurs a Retailers' Occupation Tax liability on the



1 sale of a motor vehicle coming off lease may not take a credit  
2 against that liability for the Use Tax the lessor paid upon the  
3 purchase of the motor vehicle (or for any tax the lessor paid  
4 with respect to any amount received by the lessor from the  
5 lessee for the leased vehicle that was not calculated at the  
6 time the lease was executed) if the selling price of the motor  
7 vehicle at the time of purchase was calculated using the  
8 definition of "selling price" as defined in this paragraph.  
9 Notwithstanding any other provision of this Act to the  
10 contrary, lessors shall file all returns and make all payments  
11 required under this paragraph to the Department by electronic  
12 means in the manner and form as required by the Department.  
13 This paragraph does not apply to leases of motor vehicles for  
14 which, at the time the lease is entered into, the term of the  
15 lease is not a defined period, including leases with a defined  
16 initial period with the option to continue the lease on a  
17 month-to-month or other basis beyond the initial defined  
18 period.

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 "Department" means the Department of Revenue.

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

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

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

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

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

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

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

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

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

21 Notwithstanding any other provision of law, a  
22 not-for-profit organization that (i) has received an exemption  
23 under Section 501(c)(3) of the Internal Revenue Code, (ii) has  
24 gross receipts of no more than \$10,000 per year, and (iii) is  
25 organized and operated exclusively for charitable, religious,  
26 or educational purposes is not considered a retailer for the

1 purposes of this Act.

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. A retailer having a contract with a person located  
23 in this State under which the person, for a commission or  
24 other consideration based upon the sale of tangible  
25 personal property by the retailer, directly or indirectly  
26 refers potential customers to the retailer by providing to

1 the potential customers a promotional code or other  
2 mechanism that allows the retailer to track purchases  
3 referred by such persons. Examples of mechanisms that allow  
4 the retailer to track purchases referred by such persons  
5 include but are not limited to the use of a link on the  
6 person's Internet website, promotional codes distributed  
7 through the person's hand-delivered or mailed material,  
8 and promotional codes distributed by the person through  
9 radio or other broadcast media. The provisions of this  
10 paragraph 1.1 shall apply only if the cumulative gross  
11 receipts from sales of tangible personal property by the  
12 retailer to customers who are referred to the retailer by  
13 all persons in this State under such contracts exceed  
14 \$10,000 during the preceding 4 quarterly periods ending on  
15 the last day of March, June, September, and December. A  
16 retailer meeting the requirements of this paragraph 1.1  
17 shall be presumed to be maintaining a place of business in  
18 this State but may rebut this presumption by submitting  
19 proof that the referrals or other activities pursued within  
20 this State by such persons were not sufficient to meet the  
21 nexus standards of the United States Constitution during  
22 the preceding 4 quarterly periods.

23 1.2. Beginning July 1, 2011, a retailer having a  
24 contract with a person located in this State under which:

25 A. the retailer sells the same or substantially  
26 similar line of products as the person located in this

1 State and does so using an identical or substantially  
2 similar name, trade name, or trademark as the person  
3 located in this State; and

4 B. the retailer provides a commission or other  
5 consideration to the person located in this State based  
6 upon the sale of tangible personal property by the  
7 retailer.

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

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 "Bulk vending machine" means a vending machine, containing  
24 unsorted confections, nuts, toys, or other items designed  
25 primarily to be used or played with by children which, when a  
26 coin or coins of a denomination not larger than \$0.50 are



1 inserted, are dispensed in equal portions, at random and  
2 without selection by the customer.

3 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14;  
4 98-1089, eff. 1-1-15; revised 10-1-14.)

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

7 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

8 Sec. 2. Definitions.

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

22 "Purchased from a serviceman" means the acquisition of the  
23 ownership of, or title to, tangible personal property through a  
24 sale of service.

1           "Purchaser" means any person who, through a sale of  
2 service, acquires the ownership of, or title to, any tangible  
3 personal property.

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 or her by his or her subcontractor  
13 is equal to 50% of the subcontractor's charges to the  
14 serviceman in the absence of proof of the consideration paid by  
15 the subcontractor for the purchase of such property.

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

26           "Department" means the Department of Revenue.

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

6 "Sale of service" means any transaction except:

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

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

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

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

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

23          (4a-5) on and after July 1, 2003 and through June 30,  
24          2004, a sale or transfer of a motor vehicle of the second  
25          division with a gross vehicle weight in excess of 8,000  
26          pounds as an incident to the rendering of service if that

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

18 (5) a sale or transfer of machinery and equipment used  
19 primarily in the process of the manufacturing or  
20 assembling, either in an existing, an expanded or a new  
21 manufacturing facility, of tangible personal property for  
22 wholesale or retail sale or lease, whether such sale or  
23 lease is made directly by the manufacturer or by some other  
24 person, whether the materials used in the process are owned  
25 by the manufacturer or some other person, or whether such  
26 sale or lease is made apart from or as an incident to the

1 seller's engaging in a service occupation and the  
2 applicable tax is a Service Use Tax or Service Occupation  
3 Tax, rather than Use Tax or Retailers' Occupation Tax. The  
4 exemption provided by this paragraph (5) does not include  
5 machinery and equipment used in (i) the generation of  
6 electricity for wholesale or retail sale; (ii) the  
7 generation or treatment of natural or artificial gas for  
8 wholesale or retail sale that is delivered to customers  
9 through pipes, pipelines, or mains; or (iii) the treatment  
10 of water for wholesale or retail sale that is delivered to  
11 customers through pipes, pipelines, or mains. The  
12 provisions of this amendatory Act of the 98th General  
13 Assembly are declaratory of existing law as to the meaning  
14 and scope of this exemption.

15 (5a) the repairing, reconditioning or remodeling, for  
16 a common carrier by rail, of tangible personal property  
17 which belongs to such carrier for hire, and as to which  
18 such carrier receives the physical possession of the  
19 repaired, reconditioned or remodeled item of tangible  
20 personal property in Illinois, and which such carrier  
21 transports, or shares with another common carrier in the  
22 transportation of such property, out of Illinois on a  
23 standard uniform bill of lading showing the person who  
24 repaired, reconditioned or remodeled the property to a  
25 destination outside Illinois, for use outside Illinois.

26 (5b) a sale or transfer of tangible personal property

1           which is produced by the seller thereof on special order in  
2           such a way as to have made the applicable tax the Service  
3           Occupation Tax or the Service Use Tax, rather than the  
4           Retailers' Occupation Tax or the Use Tax, for an interstate  
5           carrier by rail which receives the physical possession of  
6           such property in Illinois, and which transports such  
7           property, or shares with another common carrier in the  
8           transportation of such property, out of Illinois on a  
9           standard uniform bill of lading showing the seller of the  
10          property as the shipper or consignor of such property to a  
11          destination outside Illinois, for use outside Illinois.

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

20           (7) at the election of any serviceman not required to  
21          be otherwise registered as a retailer under Section 2a of  
22          the Retailers' Occupation Tax Act, made for each fiscal  
23          year sales of service in which the aggregate annual cost  
24          price of tangible personal property transferred as an  
25          incident to the sales of service is less than 35%, or 75%  
26          in the case of servicemen transferring prescription drugs

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

15 Tangible personal property transferred incident to the  
16 completion of a maintenance agreement is exempt from the tax  
17 imposed pursuant to this Act.

18 Exemption (5) also includes machinery and equipment used in  
19 the general maintenance or repair of such exempt machinery and  
20 equipment or for in-house manufacture of exempt machinery and  
21 equipment. The machinery and equipment exemption does not  
22 include machinery and equipment used in (i) the generation of  
23 electricity for wholesale or retail sale; (ii) the generation  
24 or treatment of natural or artificial gas for wholesale or  
25 retail sale that is delivered to customers through pipes,  
26 pipelines, or mains; or (iii) the treatment of water for



1 wholesale or retail sale that is delivered to customers through  
2 pipes, pipelines, or mains. The provisions of this amendatory  
3 Act of the 98th General Assembly are declaratory of existing  
4 law as to the meaning and scope of this exemption. For the  
5 purposes of exemption (5), each of these terms shall have the  
6 following meanings: (1) "manufacturing process" shall mean the  
7 production of any article of tangible personal property,  
8 whether such article is a finished product or an article for  
9 use in the process of manufacturing or assembling a different  
10 article of tangible personal property, by procedures commonly  
11 regarded as manufacturing, processing, fabricating, or  
12 refining which changes some existing material or materials into  
13 a material with a different form, use or name. In relation to a  
14 recognized integrated business composed of a series of  
15 operations which collectively constitute manufacturing, or  
16 individually constitute manufacturing operations, the  
17 manufacturing process shall be deemed to commence with the  
18 first operation or stage of production in the series, and shall  
19 not be deemed to end until the completion of the final product  
20 in the last operation or stage of production in the series; and  
21 further, for purposes of exemption (5), photoprocessing is  
22 deemed to be a manufacturing process of tangible personal  
23 property for wholesale or retail sale; (2) "assembling process"  
24 shall mean the production of any article of tangible personal  
25 property, whether such article is a finished product or an  
26 article for use in the process of manufacturing or assembling a

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

1 certificate shall be available to the Department for inspection  
2 or audit. The Department shall prescribe the form of the  
3 certificate.

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

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

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

26 "Serviceman" means any person who is engaged in the

1 occupation of making sales of service.

2 Notwithstanding any other provision of law, a  
3 not-for-profit organization that (i) has received an exemption  
4 under Section 501(c)(3) of the Internal Revenue Code, (ii) has  
5 gross receipts of no more than \$10,000 per year, and (iii) is  
6 organized and operated exclusively for charitable, religious,  
7 or educational purposes is not considered a serviceman for the  
8 purposes of this Act.

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

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

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

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

25 1.1. having a contract with a person located in this  
26 State under which the person, for a commission or other

1 consideration based on the sale of service by the  
2 serviceman, directly or indirectly refers potential  
3 customers to the serviceman by providing to the potential  
4 customers a promotional code or other mechanism that allows  
5 the serviceman to track purchases referred by such persons.  
6 Examples of mechanisms that allow the serviceman to track  
7 purchases referred by such persons include but are not  
8 limited to the use of a link on the person's Internet  
9 website, promotional codes distributed through the  
10 person's hand-delivered or mailed material, and  
11 promotional codes distributed by the person through radio  
12 or other broadcast media. The provisions of this paragraph  
13 1.1 shall apply only if the cumulative gross receipts from  
14 sales of service by the serviceman to customers who are  
15 referred to the serviceman by all persons in this State  
16 under such contracts exceed \$10,000 during the preceding 4  
17 quarterly periods ending on the last day of March, June,  
18 September, and December; a serviceman meeting the  
19 requirements of this paragraph 1.1 shall be presumed to be  
20 maintaining a place of business in this State but may rebut  
21 this presumption by submitting proof that the referrals or  
22 other activities pursued within this State by such persons  
23 were not sufficient to meet the nexus standards of the  
24 United States Constitution during the preceding 4  
25 quarterly periods;

26 1.2. beginning July 1, 2011, having a contract with a

1 person located in this State under which:

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

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

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

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

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

26 4. soliciting orders for tangible personal property by

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

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

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

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

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

22 (Source: P.A. 98-583, eff. 1-1-14; 98-1089, eff. 1-1-15.)

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

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

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

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

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



1 Act.

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

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

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

1 in interstate commerce.

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

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

1 Act. For purposes of this paragraph, "used for commercial  
2 purposes" means the transportation of persons or property in  
3 furtherance of any commercial or industrial enterprise whether  
4 for-hire or not.

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

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

1 for use outside Illinois.

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

9 (e) A sale or transfer of machinery and equipment used  
10 primarily in the process of the manufacturing or assembling,  
11 either in an existing, an expanded or a new manufacturing  
12 facility, of tangible personal property for wholesale or retail  
13 sale or lease, whether such sale or lease is made directly by  
14 the manufacturer or by some other person, whether the materials  
15 used in the process are owned by the manufacturer or some other  
16 person, or whether such sale or lease is made apart from or as  
17 an incident to the seller's engaging in a service occupation  
18 and the applicable tax is a Service Occupation Tax or Service  
19 Use Tax, rather than Retailers' Occupation Tax or Use Tax. The  
20 exemption provided by this paragraph (e) does not include  
21 machinery and equipment used in (i) the generation of  
22 electricity for wholesale or retail sale; (ii) the generation  
23 or treatment of natural or artificial gas for wholesale or  
24 retail sale that is delivered to customers through pipes,  
25 pipelines, or mains; or (iii) the treatment of water for  
26 wholesale or retail sale that is delivered to customers through

1 pipes, pipelines, or mains. The provisions of this amendatory  
2 Act of the 98th General Assembly are declaratory of existing  
3 law as to the meaning and scope of this exemption.

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

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

1 pay Use Tax on his or her cost price of any tangible personal  
2 property transferred to the primary serviceman and (ii)  
3 certifies that fact in writing to the primary serviceman.

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

7 Exemption (e) also includes machinery and equipment used in  
8 the general maintenance or repair of such exempt machinery and  
9 equipment or for in-house manufacture of exempt machinery and  
10 equipment. The machinery and equipment exemption does not  
11 include machinery and equipment used in (i) the generation of  
12 electricity for wholesale or retail sale; (ii) the generation  
13 or treatment of natural or artificial gas for wholesale or  
14 retail sale that is delivered to customers through pipes,  
15 pipelines, or mains; or (iii) the treatment of water for  
16 wholesale or retail sale that is delivered to customers through  
17 pipes, pipelines, or mains. The provisions of this amendatory  
18 Act of the 98th General Assembly are declaratory of existing  
19 law as to the meaning and scope of this exemption. For the  
20 purposes of exemption (e), each of these terms shall have the  
21 following meanings: (1) "manufacturing process" shall mean the  
22 production of any article of tangible personal property,  
23 whether such article is a finished product or an article for  
24 use in the process of manufacturing or assembling a different  
25 article of tangible personal property, by procedures commonly  
26 regarded as manufacturing, processing, fabricating, or

1 refining which changes some existing material or materials into  
2 a material with a different form, use or name. In relation to a  
3 recognized integrated business composed of a series of  
4 operations which collectively constitute manufacturing, or  
5 individually constitute manufacturing operations, the  
6 manufacturing process shall be deemed to commence with the  
7 first operation or stage of production in the series, and shall  
8 not be deemed to end until the completion of the final product  
9 in the last operation or stage of production in the series; and  
10 further for purposes of exemption (e), photoprocessing is  
11 deemed to be a manufacturing process of tangible personal  
12 property for wholesale or retail sale; (2) "assembling process"  
13 shall mean the production of any article of tangible personal  
14 property, whether such article is a finished product or an  
15 article for use in the process of manufacturing or assembling a  
16 different article of tangible personal property, by the  
17 combination of existing materials in a manner commonly regarded  
18 as assembling which results in a material of a different form,  
19 use or name; (3) "machinery" shall mean major mechanical  
20 machines or major components of such machines contributing to a  
21 manufacturing or assembling process; and (4) "equipment" shall  
22 include any independent device or tool separate from any  
23 machinery but essential to an integrated manufacturing or  
24 assembly process; including computers used primarily in a  
25 manufacturer's computer assisted design, computer assisted  
26 manufacturing (CAD/CAM) system; or any subunit or assembly

1 comprising a component of any machinery or auxiliary, adjunct  
2 or attachment parts of machinery, such as tools, dies, jigs,  
3 fixtures, patterns and molds; or any parts which require  
4 periodic replacement in the course of normal operation; but  
5 shall not include hand tools. Equipment includes chemicals or  
6 chemicals acting as catalysts but only if the chemicals or  
7 chemicals acting as catalysts effect a direct and immediate  
8 change upon a product being manufactured or assembled for  
9 wholesale or retail sale or lease. The purchaser of such  
10 machinery and equipment who has an active resale registration  
11 number shall furnish such number to the seller at the time of  
12 purchase. The purchaser of such machinery and equipment and  
13 tools without an active resale registration number shall  
14 furnish to the seller a certificate of exemption for each  
15 transaction stating facts establishing the exemption for that  
16 transaction, which certificate shall be available to the  
17 Department for inspection or audit.

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

24       Any informal rulings, opinions or letters issued by the  
25 Department in response to an inquiry or request for any opinion  
26 from any person regarding the coverage and applicability of



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

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

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

17 Notwithstanding any other provision of law, a  
18 not-for-profit organization that (i) has received an exemption  
19 under Section 501(c)(3) of the Internal Revenue Code, (ii) has  
20 gross receipts of no more than \$10,000 per year, and (iii) is  
21 organized and operated exclusively for charitable, religious,  
22 or educational purposes is not considered a serviceman for the  
23 purposes of this Act.

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

26 "Supplier" means any person who makes sales of tangible

1 personal property to servicemen for the purpose of resale as an  
2 incident to a sale of service.

3 (Source: P.A. 98-583, eff. 1-1-14.)

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

6 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

23 "Sale at retail" shall be construed to include any transfer  
24 of the ownership of or title to tangible personal property to a

1 purchaser, for use or consumption by any other person to whom  
2 such purchaser may transfer the tangible personal property  
3 without a valuable consideration, and to include any transfer,  
4 whether made for or without a valuable consideration, for  
5 resale in any form as tangible personal property unless made in  
6 compliance with Section 2c of this Act.

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

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

22 Nonreusable tangible personal property that is used by  
23 persons engaged in the business of operating a restaurant,  
24 cafeteria, or drive-in is a sale for resale when it is  
25 transferred to customers in the ordinary course of business as  
26 part of the sale of food or beverages and is used to deliver,

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

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

13 A person whose activities are organized and conducted  
14 primarily as a not-for-profit service enterprise, and who  
15 engages in selling tangible personal property at retail  
16 (whether to the public or merely to members and their guests)  
17 is engaged in the business of selling tangible personal  
18 property at retail with respect to such transactions, excepting  
19 only a person organized and operated exclusively for  
20 charitable, religious or educational purposes either (1), to  
21 the extent of sales by such person to its members, students,  
22 patients or inmates of tangible personal property to be used  
23 primarily for the purposes of such person, or (2), to the  
24 extent of sales by such person of tangible personal property  
25 which is not sold or offered for sale by persons organized for  
26 profit. The selling of school books and school supplies by

1 schools at retail to students is not "primarily for the  
2 purposes of" the school which does such selling. The provisions  
3 of this paragraph shall not apply to nor subject to taxation  
4 occasional dinners, socials or similar activities of a person  
5 organized and operated exclusively for charitable, religious  
6 or educational purposes, whether or not such activities are  
7 open to the public.

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

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

19 "Reseller of motor fuel" means any person engaged in the  
20 business of selling or delivering or transferring title of  
21 motor fuel to another person other than for use or consumption.  
22 No person shall act as a reseller of motor fuel within this  
23 State without first being registered as a reseller pursuant to  
24 Section 2c or a retailer pursuant to Section 2a.

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

1 money or otherwise, including cash, credits, property, other  
2 than as hereinafter provided, and services, but not including  
3 the value of or credit given for traded-in tangible personal  
4 property where the item that is traded-in is of like kind and  
5 character as that which is being sold, and shall be determined  
6 without any deduction on account of the cost of the property  
7 sold, the cost of materials used, labor or service cost or any  
8 other expense whatsoever, but does not include charges that are  
9 added to prices by sellers on account of the seller's tax  
10 liability under this Act, or on account of the seller's duty to  
11 collect, from the purchaser, the tax that is imposed by the Use  
12 Tax Act, or, except as otherwise provided with respect to any  
13 cigarette tax imposed by a home rule unit, on account of the  
14 seller's tax liability under any local occupation tax  
15 administered by the Department, or, except as otherwise  
16 provided with respect to any cigarette tax imposed by a home  
17 rule unit on account of the seller's duty to collect, from the  
18 purchasers, the tax that is imposed under any local use tax  
19 administered by the Department. Effective December 1, 1985,  
20 "selling price" shall include charges that are added to prices  
21 by sellers on account of the seller's tax liability under the  
22 Cigarette Tax Act, on account of the sellers' duty to collect,  
23 from the purchaser, the tax imposed under the Cigarette Use Tax  
24 Act, and on account of the seller's duty to collect, from the  
25 purchaser, any cigarette tax imposed by a home rule unit.

26 Notwithstanding any law to the contrary, for any motor

1 vehicle, as defined in Section 1-146 of the Vehicle Code, that  
2 is sold on or after January 1, 2015 for the purpose of leasing  
3 the vehicle for a defined period that is longer than one year  
4 and (1) is a motor vehicle of the second division that: (A) is  
5 a self-contained motor vehicle designed or permanently  
6 converted to provide living quarters for recreational,  
7 camping, or travel use, with direct walk through access to the  
8 living quarters from the driver's seat; (B) is of the van  
9 configuration designed for the transportation of not less than  
10 7 nor more than 16 passengers; or (C) has a gross vehicle  
11 weight rating of 8,000 pounds or less or (2) is a motor vehicle  
12 of the first division, "selling price" or "amount of sale"  
13 means the consideration received by the lessor pursuant to the  
14 lease contract, including amounts due at lease signing and all  
15 monthly or other regular payments charged over the term of the  
16 lease. Also included in the selling price is any amount  
17 received by the lessor from the lessee for the leased vehicle  
18 that is not calculated at the time the lease is executed,  
19 including, but not limited to, excess mileage charges and  
20 charges for excess wear and tear. For sales that occur in  
21 Illinois, with respect to any amount received by the lessor  
22 from the lessee for the leased vehicle that is not calculated  
23 at the time the lease is executed, the lessor who purchased the  
24 motor vehicle does not incur the tax imposed by the Use Tax Act  
25 on those amounts, and the retailer who makes the retail sale of  
26 the motor vehicle to the lessor is not required to collect the

1 tax imposed by the Use Tax Act or to pay the tax imposed by this  
2 Act on those amounts. However, the lessor who purchased the  
3 motor vehicle assumes the liability for reporting and paying  
4 the tax on those amounts directly to the Department in the same  
5 form (Illinois Retailers' Occupation Tax, and local retailers'  
6 occupation taxes, if applicable) in which the retailer would  
7 have reported and paid such tax if the retailer had accounted  
8 for the tax to the Department. For amounts received by the  
9 lessor from the lessee that are not calculated at the time the  
10 lease is executed, the lessor must file the return and pay the  
11 tax to the Department by the due date otherwise required by  
12 this Act for returns other than transaction returns. If the  
13 retailer is entitled under this Act to a discount for  
14 collecting and remitting the tax imposed under this Act to the  
15 Department with respect to the sale of the motor vehicle to the  
16 lessor, then the right to the discount provided in this Act  
17 shall be transferred to the lessor with respect to the tax paid  
18 by the lessor for any amount received by the lessor from the  
19 lessee for the leased vehicle that is not calculated at the  
20 time the lease is executed; provided that the discount is only  
21 allowed if the return is timely filed and for amounts timely  
22 paid. The "selling price" of a motor vehicle that is sold on or  
23 after January 1, 2015 for the purpose of leasing for a defined  
24 period of longer than one year shall not be reduced by the  
25 value of or credit given for traded-in tangible personal  
26 property owned by the lessor, nor shall it be reduced by the



1 value of or credit given for traded-in tangible personal  
2 property owned by the lessee, regardless of whether the  
3 trade-in value thereof is assigned by the lessee to the lessor.  
4 In the case of a motor vehicle that is sold for the purpose of  
5 leasing for a defined period of longer than one year, the sale  
6 occurs at the time of the delivery of the vehicle, regardless  
7 of the due date of any lease payments. A lessor who incurs a  
8 Retailers' Occupation Tax liability on the sale of a motor  
9 vehicle coming off lease may not take a credit against that  
10 liability for the Use Tax the lessor paid upon the purchase of  
11 the motor vehicle (or for any tax the lessor paid with respect  
12 to any amount received by the lessor from the lessee for the  
13 leased vehicle that was not calculated at the time the lease  
14 was executed) if the selling price of the motor vehicle at the  
15 time of purchase was calculated using the definition of  
16 "selling price" as defined in this paragraph. Notwithstanding  
17 any other provision of this Act to the contrary, lessors shall  
18 file all returns and make all payments required under this  
19 paragraph to the Department by electronic means in the manner  
20 and form as required by the Department. This paragraph does not  
21 apply to leases of motor vehicles for which, at the time the  
22 lease is entered into, the term of the lease is not a defined  
23 period, including leases with a defined initial period with the  
24 option to continue the lease on a month-to-month or other basis  
25 beyond the initial defined period.

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

17 "Department" means the Department of Revenue.

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

23 Notwithstanding any other provision of law, a  
24 not-for-profit organization that (i) has received an exemption  
25 under Section 501(c)(3) of the Internal Revenue Code, (ii) has  
26 gross receipts of no more than \$10,000 per year, and (iii) is

1 organized and operated exclusively for charitable, religious,  
2 or educational purposes is not considered a retailer for the  
3 purposes of this Act.

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 constitute engaging in a  
9 business of selling such tangible personal property at retail  
10 within the meaning of this Act; provided that any person who is  
11 engaged in a business which is not subject to the tax imposed  
12 by this Act because of involving the sale of or a contract to  
13 sell real estate or a construction contract to improve real  
14 estate or a construction contract to engineer, install, and  
15 maintain an integrated system of products, but who, in the  
16 course of conducting such business, transfers tangible  
17 personal property to users or consumers in the finished form in  
18 which it was purchased, and which does not become real estate  
19 or was not engineered and installed, under any provision of a  
20 construction contract or real estate sale or real estate sales  
21 agreement entered into with some other person arising out of or  
22 because of such nontaxable business, is engaged in the business  
23 of selling tangible personal property at retail to the extent  
24 of the value of the tangible personal property so transferred.  
25 If, in such a transaction, a separate charge is made for the  
26 tangible personal property so transferred, the value of such

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

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

24 Persons who engage in the business of transferring tangible  
25 personal property upon the redemption of trading stamps are  
26 engaged in the business of selling such property at retail and

1 shall be liable for and shall pay the tax imposed by this Act  
2 on the basis of the retail value of the property transferred  
3 upon redemption of such stamps.

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

10 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14.)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.