

AN ACT concerning revenue.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

ARTICLE 1. CIGARETTE MACHINE OPERATORS' OCCUPATION TAX ACT

Section 1-1. Short title. This Act may be cited as the Cigarette Machine Operators' Occupation Tax Act.

Section 1-5. Definitions. As used in this Act:

"Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling cigarettes in this State.

"Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Cigarette machine" means any machine, equipment or device used to make or fabricate cigarettes.

"Cigarette machine" shall not include a handheld manually operated device used by consumers to make roll-your-own cigarettes for personal consumption.

"Cigarette machine operator" means any person who is engaged in the business of operating a cigarette machine in

this State and is licensed by the Department as a cigarette machine operator under Section 1-15 of this Act.

"Contraband cigarettes" means:

(1) cigarettes for which any required federal taxes have not been paid;

(2) cigarettes that do not meet the requirements of this Act;

(3) cigarettes that are made or fabricated by a person holding a cigarette machine operator license under Section 1-15 of this Act and that are in the possession of manufacturers, distributors, secondary distributors, manufacturer representatives, or retailers, all as defined by the Cigarette Tax Act, for the purpose of resale;

(4) cigarettes that are in the possession of a cigarette machine operator and that are made or fabricated with cigarette tubes that do not meet the requirements of Section 1-30 of this Act;

(5) cigarettes that are in the possession of an individual and that are made or fabricated with cigarette tubes that do not meet the requirements of Section 1-30 of this Act, unless the cigarettes were made or fabricated by an individual for the individual's own use and consumption without the aid or use of a cigarette machine in the possession of a cigarette machine operator holding a license under Section 1-15 of this Act; or

(6) cigarettes that (i) are made or fabricated by a

person holding a cigarette machine operator license under Section 1-15 of this Act, (ii) are in the possession of a person, and (iii) contain tobacco of a brand family and manufacturer that are not identified on the State of Illinois Directory of Participating Manufacturers or the Illinois Directory of Compliant Non-Participating Manufacturers maintained by the Office of the Attorney General.

"Department" means the Department of Revenue.

"Operate or operating a cigarette machine" means to possess a cigarette machine for the purpose of engaging in the business of making the cigarette machine available to individuals who use the cigarette machine to make or fabricate cigarettes for their own use or consumption, and not for resale. For purposes of this Act, the cigarette machine is operated by the person possessing the cigarette machine. For purposes of this Act, cigarettes made or fabricated by the use of a cigarette machine in the possession of a cigarette machine operator holding a license under Section 1-15 of this Act are considered to be made or fabricated by the person holding the cigarette machine operator license and not the individual.

"Original package" means the individual packet, box, or other container used to contain and convey cigarettes to the consumer.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or

private corporation, however formed, limited liability company, or a receiver, executor, administrator, trustee, guardian, or other representative appointed by order of any court.

"Place of business" means any place where cigarettes are made or fabricated by a cigarette machine operator holding a license under Section 1-15 of this Act.

"Possess or possessing a cigarette machine" means to own, lease, rent or have on one's premises a cigarette machine for the purpose of engaging in the business of making the cigarette machine available to individuals who use the cigarette machine to make or fabricate cigarettes for their own use or consumption, and not for resale.

"Prior continuous compliance taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. "Prior continuous compliance taxpayer" also means any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act for a period of 5 consecutive years.

"Retailer" means any person who engages in the making of transfers of the ownership of, or title to, tobacco or cigarettes to a purchaser for use or consumption and not for

resale in any form, for a valuable consideration.

"Sale" means any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person.

Section 1-10. Tax imposed.

(a) Beginning August 1, 2012, a tax is imposed upon all persons engaged in the business of operating a cigarette machine. The tax is imposed at the rate of 99 mills per cigarette made or fabricated by a cigarette machine possessed by a cigarette machine operator.

(b) If, after July 1, 2012, the General Assembly increases the rate of tax imposed under Section 2 of the Cigarette Tax Act, then the tax imposed under subsection (a) of this Section shall be increased by the same amount beginning on the effective date of the Cigarette Tax increase, but not earlier than August 1, 2012.

(c) The tax herein imposed shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof.

(d) Persons subject to the tax imposed by this Act may reimburse themselves for their tax liability under this Act by separately stating such tax, less any credit the machine operator claims under subsection (b) of Section 1-40 of this Act on tobacco sold to and used by users of a cigarette machine

to make or fabricate cigarettes, as an additional charge to users of cigarette machines.

(e) If any cigarette machine operator collects an amount (however designated) which purports to reimburse such operator for his or her cigarette machine operators' occupation tax liability under this Act with respect to cigarettes that are not subject to cigarette machine operators' occupation tax under this Act, or if any cigarette machine operator, in collecting an amount (however designated) which purports to reimburse such operator for his or her cigarette machine operators' occupation tax liability measured by cigarettes made or fabricated by a cigarette machine that are subject to tax under this Act, collects more from the customer than the cigarette machine operators' cigarette machine operators' occupation tax liability in the transaction, the customer shall have a legal right to claim a refund of that amount from the cigarette machine operator. However, if such amount is not refunded to the customer for any reason, the cigarette machine operator is liable to pay such amount to the Department.

Section 1-15. Cigarette machine operator license. No person may engage in the business of operating a cigarette machine in this State on or after August 1, 2012 without first having obtained a license from the Department. Application for a license shall be made to the Department on a form furnished and prescribed by the Department. Each applicant for a license

under this Section shall furnish the following information to the Department on a form signed and verified by the applicant under penalty of perjury:

- (1) the name and address of the applicant;
- (2) the address of the location at which the applicant proposes to engage in the business of operating a cigarette machine in this State; and
- (3) any other additional information the Department may reasonably require.

The annual license fee payable to the Department for each cigarette machine operator license is \$250. Each applicant for a license shall pay that fee to the Department at the time of submitting an application for license to the Department.

Every applicant who is required to procure a cigarette machine operator license shall file with his or her application a joint and several bond. Such bond shall be executed to the Department of Revenue, with good and sufficient surety or sureties residing or licensed to do business within the State of Illinois, in the amount of \$2,500, conditioned upon the true and faithful compliance by the licensee with all of the provisions of this Act. Such bond, or a reissue thereof, or a substitute therefore, shall be kept in effect during the entire period covered by the license. A separate application for license shall be made, a separate annual license fee paid, and a separate bond filed, for each place of business at which a person who is required to procure a cigarette machine operator

license under this Section proposes to engage in business as a cigarette machine operator in Illinois under this Act.

The following are ineligible to receive a cigarette machine operator license under this Act:

(1) a person who is not of good character and reputation in the community in which he resides;

(2) a person who has been convicted of a felony under any federal or State law, if the Department, after investigation and a hearing, if requested by the applicant, determines that such person has not been sufficiently rehabilitated to warrant the public trust;

(3) a corporation, if any officer, manager, or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license under this Act for any reason; or

(4) a person, or any person who owns more than 15% of the ownership interests in an entity or a related party, who:

(A) owes, at the time of application, any delinquent cigarette taxes or tobacco taxes that have been determined by law to be due and unpaid, unless the license applicant has entered into an agreement approved by the Department to pay the amount due;

(B) has had a license under this Act, the Cigarette Tax Act, the Cigarette Use Tax Act, or the Tobacco



Products Tax Act of 1995 revoked within the past 2 years by the Department for misconduct relating to stolen or contraband cigarettes or has been convicted of a State or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;

(C) has been found by the Department, after notice and a hearing, to have imported or caused to be imported into the United States for sale or distribution any cigarette in violation of 19 U.S.C. 1681a;

(D) has been found by the Department, after notice and a hearing, to have imported or caused to be imported into the United States for sale or distribution, or manufactured for sale or distribution in the United States, any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331, et seq.); or

(E) has been found by the Department, after notice and a hearing, to have made a material false statement in the application or has failed to produce records required to be maintained by this Act.

The Department, upon receipt of an application, license fee, and bond in proper form from a person who is eligible to receive a cigarette machine operator license under this Act, shall issue to such applicant a license in a form as prescribed

by the Department. That license shall permit the applicant to whom it is issued to engage in business as a cigarette machine operator at the place shown in his or her application. All licenses issued by the Department under this Section shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled, or suspended as provided in this Act. No license issued under this Section is transferable or assignable. Such license shall be conspicuously displayed in the place of business conducted by the licensee in Illinois under such license. No cigarette machine operator acquires any vested interest or compensable property right in a license issued under this Act.

A cigarette machine operator shall notify the Department of any change in the information contained on the application form, including any change in ownership, and shall do so within 30 days after that change.

Every prior continuous compliance taxpayer shall be exempt from all requirements under this Section concerning the furnishing of bond as a condition precedent to his being authorized to engage in the business licensed under this Act. This exemption shall continue for each prior continuous compliance taxpayer until such time as he may be determined by the Department to be delinquent in the filing of any returns, or is determined by the Department (either through the Department's issuance of a final assessment which has become final under the Act, or by the taxpayer's filing of a return

which admits tax to be due that is not paid) to be delinquent or deficient in the paying of any tax under this Act, at which time that taxpayer shall become subject to the bond requirements of this Section and, as a condition of being allowed to continue to engage in the business licensed under this Act, shall be required to furnish bond to the Department in such form as provided in this Section. The taxpayer shall furnish such bond for a period of 2 years, after which, if the taxpayer has not been delinquent in the filing of any returns, or delinquent or deficient in the paying of any tax under this Act, the Department may reinstate that person as a prior continuance compliance taxpayer. Any taxpayer who fails to pay an admitted or established liability under this Act may also be required by the Department to post bond or other acceptable security with the Department guaranteeing the payment of that admitted or established liability.

The Department shall discharge any surety and shall release and return any bond or security deposited, assigned, pledged, or otherwise provided to it by a taxpayer under this Section within 30 days after:

(1) that taxpayer becomes a prior continuous compliance taxpayer; or

(2) that taxpayer has ceased to collect receipts on which he is required to remit tax to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge his remaining tax liability

as determined by the Department under this Act. The Department shall make a final determination of the taxpayer's outstanding tax liability as expeditiously as possible after his final tax return has been filed. If the Department cannot make the final determination within 45 days after receiving the final tax return, it shall so notify the taxpayer within that period, stating its reasons therefore.

Any person aggrieved by any decision of the Department under this Section may, within 20 days after receiving notice of the decision, protest and request a hearing. Upon receiving a written request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to that person. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

Section 1-20. Revocation, cancellation, or suspension of license. The Department may, after notice and hearing as provided for by this Act, revoke, cancel, or suspend the license of any cigarette machine operator for the violation of any provision of this Act, or for noncompliance with the provisions of this Act, or for any noncompliance with any

lawful rule or regulation promulgated by the Department under this Act, or because the licensee is determined to be ineligible for a cigarette machine operator's license for any one or more of the reasons provided for in Section 1-15 of this Act.

Any cigarette machine operator aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a written request for a hearing, the Department shall give notice in writing to the cigarette machine operator requesting the hearing that contains a statement of the charges preferred against the cigarette machine operator and that states the time and place fixed for the hearing. The Department shall hold the hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to the cigarette machine operator. In the absence of a written protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

No license so revoked shall be reissued to any cigarette machine operator for a period of 6 months after the date of the final determination of such revocation. No license shall be reissued at all so long as the person who would receive the license is ineligible to receive a cigarette machine operator's license under this Act for any one or more of the reasons provided for in Section 1-15 of this Act.

The Department, upon complaint filed in the circuit court, may, by injunction, restrain any person who fails or refuses to comply with any of the provisions of this Act from acting as a cigarette machine operator in this State.

Section 1-25. Restriction on tobacco used in cigarette machines.

(a) Only roll-your-own tobacco products of a brand family and manufacturer identified on the State of Illinois Directory of Participating Manufacturers or the Illinois Directory of Compliant Non-Participating Manufacturers maintained by the Office of the Attorney General may be sold by cigarette machine operators to customers for use in cigarette machines possessed by the cigarette machine operator.

(b) Only roll-your-own tobacco products meeting the requirements of subsection (a) and purchased at the place of business of the cigarette machine operator may be used in a cigarette machine at that location.

Section 1-30. Cigarette tubes used in cigarette machines.

(a) All cigarette tubes used in cigarette machines in the possession of cigarette machine operators licensed under Section 1-15 of this Act shall be constructed of paper of a type determined by the Attorney General, pursuant to rules promulgated by the Attorney General under the provisions of the Administrative Procedure Act, to reduce the likely ignition

propensity of cigarettes made by those tubes.

(b) A cigarette machine operator is not required to comply with subsection (a) of this Section until the Attorney General has promulgated rules implementing subsection (a) and the rules have become effective. The effective date for such rules shall be no earlier than January 1, 2014.

Section 1-35. Cigarette machine operators; sale of cigarettes.

(a) The cigarette machine operator is responsible for complying with all State and federal laws and regulations regarding packaging and labeling of original packages of cigarettes.

(b) A person possessing a cigarette machine operator license may not purchase unstamped cigarettes from an in-State or out-of-State manufacturer or distributor of cigarettes.

(c) Cigarettes made or fabricated by a cigarette machine may not be sold or distributed to, or possessed by, manufacturers, distributors, secondary distributors, manufacturer representatives, or retailers, except the cigarette machine operator.

(d) A cigarette machine possessed by a cigarette machine operator shall have a secure meter that counts the number of cigarettes made or fabricated by the cigarette machine and that cannot be accessed, altered, or reset by the machine operator, except for the sole purpose of taking meter readings.

Section 1-40. Returns.

(a) Cigarette machine operators shall file a return and remit the tax imposed by Section 1-10 by the 15th day of each month covering the preceding calendar month. Each such return shall show: the quantity of cigarettes made or fabricated during the period covered by the return; the beginning and ending meter reading for each cigarette machine for the period covered by the return; the quantity of such cigarettes sold or otherwise disposed of during the period covered by the return; the brand family and manufacturer and quantity of tobacco products used to make or fabricate cigarettes by use of a cigarette machine; the license number of each distributor from whom tobacco products are purchased; the type and quantity of cigarette tubes purchased for use in a cigarette machine; the type and quantity of cigarette tubes used in a cigarette machine; and such other information as the Department may require. Such returns shall be filed on forms prescribed and furnished by the Department. The Department may promulgate rules to require that the cigarette machine operator's return be accompanied by appropriate computer-generated magnetic media supporting schedule data in the format required by the Department, unless, as provided by rule, the Department grants an exception upon petition of a cigarette machine operator.

Cigarette machine operators shall send a copy of those returns, together with supporting schedule data, to the



Attorney General's Office by the 15th day of each month for the period covering the preceding calendar month.

(b) Cigarette machine operators may take a credit against any tax due under Section 1-10 of this Act for taxes imposed and paid under the Tobacco Products Tax Act of 1995 on tobacco products sold to a customer and used in a rolling machine located at the cigarette machine operator's place of business. To be eligible for such credit, the tobacco product must meet the requirements of subsection (a) of Section 1-25 of this Act. This subsection (b) is exempt from the provisions of Section 1-155 of this Act.

Section 1-45. Examination and correction of returns.

(a) As soon as practicable after any return is filed, the Department shall examine that return and shall correct the return according to its best judgment and information, which return so corrected by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown on the corrected return. Instead of requiring the cigarette machine operator to file an amended return, the Department may simply notify the cigarette machine operator of the correction or corrections it has made. Proof of the correction by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto in the name of the Department under the certificate of the

Director of Revenue. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown on the reproduced copy. If the Department finds that any amount of tax is due from the cigarette machine operator, the Department shall issue the cigarette machine operator a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty in an amount determined in accordance with Sections 3-3, 3-5 and 3-6 of the Uniform Penalty and Interest Act. If, in administering the provisions of this Act, comparison of a return or returns of a cigarette machine operator with the books, records, and inventories of such cigarette machine operator discloses a deficiency that cannot be allocated by the Department to a particular month or months, the Department shall issue the cigarette machine operator a notice of tax liability for the amount of tax claimed by the Department to be due for a given period, but without any obligation upon the Department to allocate that deficiency to any particular month or months, together with a penalty in an amount determined in accordance with Sections 3-3, 3-5, and 3-6 of the Uniform Penalty and Interest Act, under which circumstances the aforesaid notice of tax liability shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein; and proof of such correctness may be made in accordance with,

and the admissibility of a reproduced copy of such notice of tax liability shall be governed by, all the provisions of this Act applicable to corrected returns. If any cigarette machine operator filing any return dies or becomes a person under legal disability at any time before the Department issues its notice of tax liability, such notice shall be issued to the administrator, executor, or other legal representative of the cigarette machine operator.

(b) If, within 60 days after such notice of tax liability, the cigarette machine operator or his or her legal representative files a written protest to such notice of tax liability and requests a hearing thereon, the Department shall give notice to such cigarette machine operator or legal representative of the time and place fixed for such hearing, and shall hold a hearing in conformity with the provisions of this Act, and pursuant thereto shall issue a final assessment to such cigarette machine operator or legal representative for the amount found to be due as a result of such hearing. If a written protest to the notice of tax liability and a request for a hearing thereon is not filed within 60 days after such notice of tax liability, such notice of tax liability shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment.

(c) In case of failure to pay the tax, or any portion thereof, or any penalty provided for in this Act, when due, the Department may bring suit to recover the amount of such tax, or

portion thereof, or penalty; or, if the taxpayer dies or becomes incompetent, by filing claim therefore against his or her estate; provided that no such action with respect to any tax, or portion thereof, or penalty, shall be instituted more than 2 years after the cause of action accrues, except with the consent of the person from whom such tax or penalty is due.

After the expiration of the period within which the person assessed may file an action for judicial review under the Administrative Review Law without such an action being filed, a certified copy of the final assessment or revised final assessment of the Department may be filed with the circuit court of the county in which the taxpayer has his or her principal place of business, or of Sangamon County in those cases in which the taxpayer does not have his or her principal place of business in this State. The certified copy of the final assessment or revised final assessment shall be accompanied by a certification which recites facts that are sufficient to show that the Department complied with the jurisdictional requirements of the law in arriving at its final assessment or its revised final assessment and that the taxpayer had his or her opportunity for an administrative hearing and for judicial review, whether he or she availed himself or herself of either or both of these opportunities or not. If the court is satisfied that the Department complied with the jurisdictional requirements of the law in arriving at its final assessment or its revised final assessment and that

the taxpayer had his or her opportunity for an administrative hearing and for judicial review, whether he or she availed himself or herself of either or both of these opportunities or not, the court shall enter judgment in favor of the Department and against the taxpayer for the amount shown to be due by the final assessment or the revised final assessment, and such judgment shall be filed of record in the court. Such judgment shall bear the rate of interest set in the Uniform Penalty and Interest Act, but otherwise shall have the same effect as other judgments. The judgment may be enforced, and all laws applicable to sales for the enforcement of a judgment shall be applicable to sales made under such judgments. The Department shall file the certified copy of its assessment, as herein provided, with the circuit court within 2 years after such assessment becomes final except when the taxpayer consents in writing to an extension of such filing period.

If, when the cause of action for a proceeding in court accrues against a person, he or she is out of the State, the action may be commenced within the times herein limited, after his or her coming into or returning to the State; and if, after the cause of action accrues, he or she departs from and remains out of the State, the time of his or her absence is no part of the time limited for the commencement of the action; but the foregoing provisions concerning absence from the State shall not apply to any case in which, at the time the cause of action accrues, the party against whom the cause of action accrues is

not a resident of this State. The time within which a court action is to be commenced by the Department hereunder shall not run while the taxpayer is a debtor in any proceeding under the federal Bankruptcy Code nor thereafter until 90 days after the Department is notified by such debtor of being discharged in bankruptcy.

No claim shall be filed against the estate of any deceased person or a person under legal disability for any tax or penalty or part of either except in the manner prescribed and within the time limited by the Probate Act of 1975.

The remedies provided for herein shall not be exclusive, but all remedies available to creditors for the collection of debts shall be available for the collection of any tax or penalty due hereunder.

The collection of tax or penalty by any means provided for herein shall not be a bar to any prosecution under this Act.

The certificate of the Director of the Department to the effect that a tax or amount required to be paid by this Act has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this Act, shall be prima facie evidence thereof.

All of the provisions of Sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i and 5j of the Retailers' Occupation Tax Act, which are not inconsistent with this Act, shall apply, as far as practicable, to the subject matter of this Act to the same extent as if such provisions were included herein. References

in such incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property shall mean cigarette machine operator when used in this Act.

Section 1-50. Failure to file return or pay tax; penalty; protest.

In case any person who is required to file a return under this Act fails to file a return, or files a return and fails to remit the correct amount of tax, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein. The Department shall issue such person a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty in an amount determined in accordance with Sections 3-3, 3-5 and 3-6 of the

Uniform Penalty and Interest Act. If such person or the legal representative of such person, within 60 days after such notice, files a written protest to such notice of tax liability and requests a hearing thereon, the Department shall give notice to such person or the legal representative of such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of this Act, and pursuant thereto shall issue a final assessment to such person or to the legal representative of such person for the amount found to be due as a result of such hearing. If a written protest to the notice of tax liability and a request for a hearing thereon is not filed within 60 days after such notice of tax liability, such notice of tax liability shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment.

Section 1-55. Claims; credit memorandum or refunds. If it appears, after claim is filed with the Department, that an amount of tax or penalty has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person has died or become a person under legal disability, to his or her legal representative.

If it is determined that the Department should issue a



credit or refund under this Act, the Department may first apply the amount thereof against any amount of tax or penalty due under this Act, the Cigarette Tax Act, the Cigarette Use Tax Act, or the Tobacco Products Act of 1995 from the person entitled to that credit or refund. For this purpose, if proceedings are pending to determine whether or not any tax or penalty is due under this Act or under the Cigarette Tax Act, Cigarette Use Tax Act, or the Tobacco Products Act of 1995 from the person, the Department may withhold issuance of the credit or refund pending the final disposition of such proceedings and may apply such credit or refund against any amount found to be due to the Department under this Act, the Cigarette Tax Act, the Cigarette Use Tax Act, or the Tobacco Products Act of 1995 as a result of such proceedings. The balance, if any, of the credit or refund shall be issued to the person entitled thereto.

If no tax or penalty is due and no proceeding is pending to determine whether such taxpayer is indebted to the Department for the payment of a tax or penalty, the credit memorandum or refund shall be issued to the claimant; or (in the case of a credit memorandum) the credit memorandum may be assigned and set over by the lawful holder thereof, subject to reasonable rules of the Department, to any other person who is subject to this Act, the Cigarette Tax Act, the Cigarette Use Tax Act, or the Tobacco Products Act of 1995, and the amount thereof shall be applied by the Department against any tax or penalty due or

to become due under this Act, the Cigarette Tax Act, the Cigarette Use Tax Act, or the Tobacco Products Act of 1995 from such assignee.

As to any claim filed hereunder with the Department on and after each January 1 and July 1, no amount of tax or penalty erroneously paid (either in total or partial liquidation of a tax or penalty under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded, except that, if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability under this Act, the claim may be filed at any time prior to the expiration of the period agreed upon.

Any credit or refund that is allowed under this Act shall bear interest at the rate and in the manner set forth in the Uniform Penalty and Interest Act.

In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from appropriations available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department, by rule or regulation, shall provide for the payment of refunds in hardship cases and shall define what types of cases qualify as hardship cases.

The provisions of Sections 6a, 6b, and 6c of the Retailers' Occupation Tax Act which are not inconsistent with this Act

shall apply, as far as practicable, to the subject matter of this Act to the same extent as if such provisions were included herein.

Section 1-60. Investigations and hearings. The Department, or any officer or employee designated in writing by the Director thereof, for the purpose of administering and enforcing the provisions of this Act, may hold investigations and hearings concerning any matters covered by this Act, and may examine books, papers, records, or memoranda bearing upon the sale or other disposition of cigarettes or tobacco products by a cigarette machine operator, and may issue subpoenas requiring the attendance of a cigarette machine operator, or any officer or employee of a cigarette machine operator, or any person having knowledge of the facts, and may take testimony and require proof, and may issue subpoenas duces tecum to compel the production of relevant books, papers, records, and memoranda, for the information of the Department.

In the conduct of any investigation or hearing provided for by this Act, neither the Department, nor any officer or employee thereof, shall be bound by the technical rules of evidence, and no informality in the proceedings nor in the manner of taking testimony shall invalidate any rule, order, decision, or regulation made, approved, or confirmed by the Department.

The Director of Revenue, or any duly authorized officer or

employee of the Department, shall have the power to administer oaths to such persons required by this Act to give testimony before the Department.

The books, papers, records, and memoranda of the Department, or parts thereof, may be proved in any hearing, investigation or legal proceeding by a reproduced copy thereof under the certificate of the Director of Revenue. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding.

Section 1-65. Testimony and production of documents; immunity. No person shall be excused from testifying or from producing any books, papers, records, or memoranda in any investigation or upon any hearing, when ordered to do so by the Department or any officer or employee thereof, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of the subject matter of his or her testimony or the evidence produced before the Department or an officer or employee of the Department; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Section 1-70. Confidentiality; official purposes. All information received by the Department from returns or reports filed under this Act, or from any investigation conducted under this Act, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a Class A misdemeanor.

Nothing in this Act prevents the Director of Revenue from publishing or making available to the public the names and addresses of persons filing returns or reports under this Act, or reasonable statistics concerning the operation of the tax by grouping the contents of returns or reports so that the information in any individual return or report is not disclosed.

Nothing in this Act prevents the Director of Revenue from divulging to the United States government or the government of any other state, or any officer or agency thereof, for exclusively official purposes, information received by the Department in administering this Act, provided that such other governmental agency agrees to divulge requested tax information to the Department.

The furnishing upon request of the Auditor General, or his authorized agents, for official use, of returns or reports filed and information related thereto under this Act is deemed

to be an official purpose within the meaning of this Section.

The furnishing of financial information to a home rule unit with a population in excess of 2,000,000 that has imposed a tax similar to that imposed by this Act under its home rule powers, upon request of the Chief Executive of the home rule unit, is an official purpose within the meaning of this Section, provided the home rule unit agrees in writing to the requirements of this Section. Information so provided is subject to all confidentiality provisions of this Section. The written agreement shall provide for reciprocity, limitations on access, disclosure, and procedures for requesting information.

The Director may make available to any State agency, including the Illinois Supreme Court, that licenses persons to engage in any occupation, information that a person licensed by such agency has failed to file returns under this Act or pay the tax, penalty, and interest shown therein, or has failed to pay any final assessment of tax, penalty, or interest due under this Act or has failed to file reports under this Act. An assessment is final when all proceedings in court for review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

The Director shall make available for public inspection in the Department's principal office and for publication, at cost, administrative decisions issued on or after January 1, 2013. These decisions are to be made available in a manner so that

the following taxpayer or licensee information is not disclosed:

(1) The names, addresses, and identification numbers of the taxpayer or licensee, related entities, and employees.

(2) At the sole discretion of the Director, trade secrets or other confidential information identified as such by the taxpayer or licensee no later than 30 days after receipt of an administrative decision, by such means as the Department shall provide by rule.

The Director shall determine the appropriate extent of the deletions allowed in paragraph (2). In the event the taxpayer or licensee does not submit deletions, the Director shall make only the deletions specified in paragraph (1).

The Director shall make available for public inspection and publication each administrative decision within 180 days after the issuance of the administrative decision. The term "administrative decision" has the same meaning as defined in Section 3-101 of the Code of Civil Procedure. Costs collected under this Section shall be paid into the Tax Compliance and Administration Fund.

Nothing contained in this Act shall prevent the Director from divulging information to any person pursuant to a request or authorization made by the taxpayer or licensee or by an authorized representative of the taxpayer or licensee.

Section 1-75. Records. Every cigarette machine operator who is required to procure a license under this Act shall keep within Illinois, at his licensed address: complete and accurate records of the quantity of such cigarettes made or fabricated; meter readings for each cigarette machine; the quantity of such cigarettes sold or otherwise disposed of; the brand family and manufacturer and quantity of tobacco products purchased and the brand family and manufacturer and quantity of tobacco products used to make or fabricate cigarettes by use of a cigarette machine; the name, address, and license number of each distributor from whom the cigarette machine operator purchases tobacco products; the type and quantity of cigarette tubes purchased for use in a cigarette machine; the type and quantity of cigarette tubes used in a cigarette machine; and such other information as the Department may require, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a return is required of all cigarettes, tobacco products and cigarette tubes on hand, and other pertinent papers and documents relating to the manufacture, purchase, sale, or disposition of cigarettes and tobacco products. All books and records and other papers and documents that are required by this Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and



employees. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. For purposes of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation. Those books, records, papers and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the cigarette machine operator, without a search warrant, and inspect the premises and the stock or packages of cigarettes, tobacco products, cigarette tubes, and the cigarette machines therein contained, to determine whether any of the provisions of this Act are being violated. If such agent or employee is denied free access or is hindered or interfered with in making such examination as herein provided, the license of the cigarette machine operator at such premises shall be subject to revocation by the Department.

Section 1-80. Subpoenas and witnesses; depositions. The Department, or any officer or employee of the Department designated in writing by the Director, shall, at its, his, or

her own instance, or on the written request of any cigarette machine operator or other interested party to the proceeding, issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit court of this State; such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Department or any officer or employee thereof, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding, the cost of service of the subpoena or subpoena duces tecum and the fee of the witness shall be borne by the party at whose instance the witness is summoned. In such case, the Department, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum so issued shall be served in the same manner as a subpoena or subpoena duces tecum issued out of a court.

Any circuit court of this State, upon the application of the Department or any officer or employee thereof, or upon the application of any other party to the proceeding, may, in its discretion, compel the attendance of witnesses, the production

of books, papers, records or memoranda and the giving of testimony before the Department or any officer or employee thereof conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

The Department or any officer or employee thereof, or any other party in an investigation or hearing before the Department, may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions, or depositions for discovery in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda, in the same manner provided herein.

Section 1-85. Regulations and rules; notice; hearings. The Department may adopt and enforce such reasonable rules and regulations relating to the administration and enforcement of this Act as may be deemed expedient.

Whenever notice is required by this Act, such notice may be given by United States certified or registered mail, addressed to the person concerned at his last known address, and proof of such mailing shall be sufficient for the purposes of this Act. Notice of any hearing provided for by this Act shall be so given not less than 7 days prior to the day fixed for the hearing.

Hearings provided for in this Act shall be held:

(1) in Cook County, if the taxpayer's or licensee's principal place of business is in that county;

(2) at the Department's office nearest the taxpayer's or licensee's principal place of business, if the taxpayer's or licensee's principal place of business is in Illinois but outside Cook County; or

(3) in Sangamon County, if the taxpayer's or licensee's principal place of business is outside Illinois.

The circuit court of the county wherein the hearing is held has power to review all final administrative decisions of the Department in administering this Act. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department under this Act. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Service upon the Director of Revenue or Assistant Director of Revenue of summons issued in any action to review a final administrative decision shall be service upon the Department. The Department shall certify the record of its proceedings if the cigarette machine operator pays to it the sum of 75¢ per page of testimony taken before the Department and 25¢ per page of all other matters contained in such record, except that these charges may be waived where the Department is satisfied

that the aggrieved party is an indigent person who cannot afford to pay such charges. Before the delivery of such record to the person applying for it, payment of these charges must be made, and if the record is not paid for within 30 days after notice that such record is available, the complaint may be dismissed by the court upon motion of the Department.

No stay order shall be entered by the circuit court unless the cigarette machine operator files with the court a bond, in an amount fixed and approved by the court, to indemnify the State against all loss and injury which may be sustained by it on account of the review proceedings and to secure all costs which may be occasioned by such proceedings.

Whenever any proceeding provided by this Act is begun before the Department, either by the Department or by a person subject to this Act, and such person thereafter dies or becomes a person under legal disability before such proceeding is concluded, the legal representative of the deceased person or of the person under legal disability shall notify the Department of such death or legal disability. Such legal representative, as such, shall then be substituted by the Department for such person. If the legal representative fails to notify the Department of his or her appointment as such legal representative, the Department may, upon its own motion, substitute such legal representative in the proceeding pending before the Department for the person who died or became a person under legal disability.

Section 1-90. The Illinois Administrative Procedure Act. The Illinois Administrative Procedure Act is hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Revenue under this Act, except that: (1) paragraph (b) of Section 5-10 of the Illinois Administrative Procedure Act does not apply to final orders, decisions and opinions of the Department; (2) subparagraph (a)(ii) of Section 5-10 of the Illinois Administrative Procedure Act does not apply to forms established by the Department for use under this Act; and (3) the provisions of Section 10-45 of the Illinois Administrative Procedure Act regarding proposals for decision are excluded and not applicable to the Department under this Act.

Section 1-95. Legal proceedings. All legal proceedings under this Act, whether civil or criminal, shall be instituted and prosecuted by the Attorney General or by the State's Attorney for the county in which an offense under this Act is committed, and all civil actions may be brought in the name of the Department of Revenue.

Section 1-100. Arrest and seizure. Any duly authorized employee of the Department may: arrest without warrant any person committing in his presence a violation of any of the provisions of this Act; may without a search warrant inspect

all cigarettes and cigarette machines located in any place of business; and may seize any contraband cigarettes and any cigarette machines in which such contraband cigarettes may be found or may be made, and such packages or cigarette machines so seized shall be subject to confiscation and forfeiture as provided in Section 1-105 of this Act.

Section 1-105. Hearings regarding seized cigarettes and cigarette machines. After seizing any cigarettes or cigarette machines, as provided in Section 1-100 of this Act, the Department shall hold a hearing and shall determine whether such cigarettes, at the time of their seizure by the Department, were contraband cigarettes, or whether such cigarette machines, at the time of their seizure by the Department, contained or made contraband cigarettes. The Department shall give not less than 7 days' notice of the time and place of such hearing to the owner of such property, if he is known, and also to the person in whose possession the property so taken was found, if such person is known and if such person in possession is not the owner of said property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of the time and place of such hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing is to be held.

If, as the result of such hearing, the Department

determines that the cigarettes seized were, at the time of seizure, contraband cigarettes, or that any cigarette machine at the time of its seizure contained or made contraband cigarettes, the Department shall enter an order declaring such cigarettes or such cigarette machine confiscated and forfeited to the State, and to be held by the Department for disposal as provided in this Section. The Department shall give notice of such order to the owner of such property if he is known, and also to the person in whose possession the property so taken was found, if such person is known, and if such person in possession is not the owner of the property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of such order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing was held.

When any cigarettes or any cigarette machine shall have been declared forfeited to the State by the Department, as provided hereunder, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy or maintain and use such property in an undercover capacity.

Section 1-110. Filing of a complaint.

Whenever any peace officer of the State or any duly



authorized officer or employee of the Department shall have reason to believe that any violation of this Act has occurred and that the person so violating the Act has in that person's possession contraband cigarettes, or any cigarette machine containing or making contraband cigarettes, he or she may file or cause to be filed his complaint in writing, verified by affidavit, with any court within whose jurisdiction the premises to be searched are situated, stating the facts upon which such belief is founded, the premises to be searched, and the property to be seized, and procure a search warrant and execute the same. Upon the execution of such search warrant, the peace officer, or officer or employee of the Department, executing such search warrant shall make due return thereof to the court issuing the same, together with an inventory of the property taken thereunder. The court shall thereupon issue process against the owner of such property if he is known; otherwise, such process shall be issued against the person in whose possession the property so taken is found, if such person is known. In case of inability to serve such process upon the owner or the person in possession of the property at the time of its seizure, notice of the proceedings before the court shall be given as required by the statutes of the State governing cases of attachment. Upon the return of the process duly served or upon the posting or publishing of notice made, as herein provided, the court or jury, if a jury shall be demanded, shall proceed to determine whether or not such

property so seized was held or possessed in violation of this Act, or whether, if a cigarette machine has been so seized, it contained or was making at the time of its seizure contraband cigarettes. In case of a finding that any cigarette machine so seized contained or was making at the time of its seizure contraband cigarettes, judgment shall be entered confiscating and forfeiting the property to the State and ordering its delivery to the Department, and, in addition thereto, the court shall have power to tax and assess the costs of the proceedings.

When any cigarettes or any cigarette machine is declared forfeited to the State by any court, and when such confiscated and forfeited property is delivered to the Department as provided in this Act, the Department shall destroy or maintain and use such property in an undercover capacity.

Section 1-115. False or fraudulent reports. Any person required by this Act to make, file, render, sign, or verify any report or return, or any officer, agent, or employee of that person, who makes any false or fraudulent report or return or files any false or fraudulent report or return, or who fails to make such report or return or file such report or return when due, is guilty of a Class 4 felony.

Section 1-120. Possession of more than 200 contraband cigarettes; penalty. Any person possessing more than 200

contraband cigarettes is liable to pay, to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1 for each such cigarette in excess of 200, unless reasonable cause can be established by the person upon whom the penalty is imposed. This penalty is in addition to the taxes imposed by this Act. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

Section 1-125. Possession of not less than 20 and not more than 200 contraband cigarettes; penalty. Any person possessing not less than 20 and not more than 200 contraband cigarettes is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$0.50 for each such cigarette, unless reasonable cause can be established by the person upon whom the penalty is imposed. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

Section 1-130. Punishment for sale or possession of contraband cigarettes.

(a) Possession or sale of 200 or less contraband cigarettes. Any person who has in his or her possession or sells 200 or less contraband cigarettes is guilty of a Class A

misdemeanor.

(b) Possession or sale of more than 200 and not more 1000 contraband cigarettes. Any person who has in his or her possession or sells more than 200 and not more than 1000 contraband cigarettes is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.

(c) Possession or sale of more than 1000 contraband cigarettes. Any person who has in his or her possession or sells more than 1000 contraband cigarettes is guilty of a Class 4 felony.

Section 1-135. Unlawful operation of cigarette machines. Whoever operates a cigarette machine without a license is guilty of a Class 4 felony. Notwithstanding this Section, and any other provisions of this Act, an individual may own a cigarette machine for that individual's own use, and not for the purpose of resale of cigarettes.

Section 1-140. Failure to keep records; penalty. Any person required by this Act to keep records of any kind, who fails to keep the required records or falsifies those records, is guilty of a Class 4 felony.

Section 1-145. Failure to preserve records; penalty. Any person who fails to safely preserve the records required by Section 1-75 of this Act for the period of 3 years, as required

by that Section, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to \$5,000.

Section 1-150. Forfeit of bond. If a cigarette machine operator is convicted of the violation of any of the provisions of this Act, or if his or her license is revoked and no review is had of the order or revocation, or if on review thereof the decision is adverse to the cigarette machine operator, or if a cigarette machine operator fails to pay an assessment as to which no judicial review is sought and which has become final, or pursuant to which, upon review thereof, the circuit court has entered a judgment that is in favor of the Department and that has become final, the bond filed pursuant to this Act shall thereupon be forfeited, and the Department may institute a suit upon such bond in its own name for the entire amount of such bond and costs. Such suit upon the bond shall be in addition to any other remedy provided for herein.

Section 1-155. Sunset of exemptions, credits, and deductions. The application of every exemption, credit, and deduction against tax imposed by this Act that becomes law after the effective date of this Act shall be limited by a reasonable and appropriate sunset date. A taxpayer is not entitled to take the exemption, credit, or deduction beginning on the sunset date and thereafter. If a reasonable and

appropriate sunset date is not specified in the Public Act that creates the exemption, credit, or deduction, a taxpayer shall not be entitled to take the exemption, credit, or deduction beginning 5 years after the effective date of the Public Act creating the exemption, credit, or deduction and thereafter.

Section 1-160. Distribution of receipts by the Department. All moneys received by the Department under this Act shall be deposited into the Healthcare Provider Relief Fund.

Section 1-165. Exemption. Persons who are not operating cigarette machines as defined in this Act and are engaged in the business of renting, leasing or selling cigarette machines to persons are exempt from the provisions of this Act.

Section 1-170. Notice. Any person who distributes or offers for sale or rent a cigarette machine in this State shall provide notice to any potential purchaser, lessee, or lessor of that cigarette machine or any retail space containing a cigarette machine. The notice shall contain information about this Act, including: (i) licensure requirements for cigarette machine operators; (ii) tax collection and remittance duties of cigarette machine operators; (iii) any product limitations imposed on cigarette machines by this Act; and (iv) packaging and labeling requirements.

ARTICLE 5. AMENDATORY PROVISIONS

Section 5-5. The Illinois Income Tax Act is amended by adding Section 223 as follows:

(35 ILCS 5/223 new)

Sec. 223. Hospital credit.

(a) For tax years ending on or after December 31, 2012, a taxpayer that is the owner of a hospital licensed under the Hospital Licensing Act, but not including an organization that is exempt from federal income taxes under the Internal Revenue Code, is entitled to a credit against the taxes imposed under subsections (a) and (b) of Section 201 of this Act in an amount equal to the lesser of the amount of real property taxes paid during the tax year on real property used for hospital purposes during the prior tax year or the cost of free or discounted services provided during the tax year pursuant to the hospital's charitable financial assistance policy, measured at cost.

(b) If the taxpayer is a partnership or Subchapter S corporation, the credit is allowed to the partners or shareholders in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code. A transfer of this credit may be made by the taxpayer earning the credit within one year after the credit is earned in accordance with rules

adopted by the Department. The Department shall prescribe rules to enforce and administer provisions of this Section. If the amount of the credit exceeds the tax liability for the year, then the excess credit may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first. In no event shall a credit under this Section reduce the taxpayer's liability to less than zero.

Section 5-10. The Use Tax Act is amended by adding Section 3-8 as follows:

(35 ILCS 105/3-8 new)

Sec. 3-8. Hospital exemption.

(a) Tangible personal property sold to or used by a hospital owner that owns one or more hospitals licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act, or a hospital affiliate that is not already exempt under another provision of this Act and meets the criteria for an exemption under this Section, is exempt from taxation under this Act.

(b) A hospital owner or hospital affiliate satisfies the conditions for an exemption under this Section if the value of



qualified services or activities listed in subsection (c) of this Section for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, without regard to any property tax exemption granted under Section 15-86 of the Property Tax Code, for the calendar year in which exemption or renewal of exemption is sought. For purposes of making the calculations required by this subsection (b), if the relevant hospital entity is a hospital owner that owns more than one hospital, the value of the services or activities listed in subsection (c) shall be calculated on the basis of only those services and activities relating to the hospital that includes the subject property, and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to the properties comprising that hospital. In the case of a multi-state hospital system or hospital affiliate, the value of the services or activities listed in subsection (c) shall be calculated on the basis of only those services and activities that occur in Illinois and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to its property located in Illinois.

(c) The following services and activities shall be considered for purposes of making the calculations required by subsection (b):

(1) Charity care. Free or discounted services provided pursuant to the relevant hospital entity's financial

assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act.

(2) Health services to low-income and underserved individuals. Other unreimbursed costs of the relevant hospital entity for providing without charge, paying for, or subsidizing goods, activities, or services for the purpose of addressing the health of low-income or underserved individuals. Those activities or services may include, but are not limited to: financial or in-kind support to affiliated or unaffiliated hospitals, hospital affiliates, community clinics, or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals who care for low-income or underserved individuals; providing or subsidizing outreach or educational services to low-income or underserved individuals for disease management and prevention; free or subsidized goods, supplies, or services needed by low-income or underserved individuals because of their medical condition; and prenatal or childbirth outreach to low-income or underserved persons.

(3) Subsidy of State or local governments. Direct or indirect financial or in-kind subsidies of State or local governments by the relevant hospital entity that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.

(4) Support for State health care programs for low-income individuals. At the election of the hospital applicant for each applicable year, either (A) 10% of payments to the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) under Medicaid or other means-tested programs, including, but not limited to, General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program or (B) the amount of subsidy provided by the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) to State or local government in treating Medicaid recipients and recipients of means-tested programs, including but not limited to General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program. The amount of subsidy for purpose of this item (4) is calculated in the same manner as unreimbursed costs are calculated for Medicaid and other means-tested government programs in the Schedule H of IRS Form 990 in effect on the effective date of this

amendatory Act of the 97th General Assembly.

(5) Dual-eligible subsidy. The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients. The amount of subsidy for purposes of this item (5) is calculated by multiplying the relevant hospital entity's unreimbursed costs for Medicare, calculated in the same manner as determined in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly, by the relevant hospital entity's ratio of dual-eligible patients to total Medicare patients.

(6) Relief of the burden of government related to health care. Except to the extent otherwise taken into account in this subsection, the portion of unreimbursed costs of the relevant hospital entity attributable to providing, paying for, or subsidizing goods, activities, or services that relieve the burden of government related to health care for low-income individuals. Such activities or services shall include, but are not limited to, providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services; providing medical education; and conducting medical research or training of health care professionals. The portion of those unreimbursed costs attributable to benefiting low-income individuals shall be determined using the ratio calculated by adding the relevant hospital entity's costs

attributable to charity care, Medicaid, other means-tested government programs, disabled Medicare patients under age 65, and dual-eligible Medicare/Medicaid patients and dividing that total by the relevant hospital entity's total costs. Such costs for the numerator and denominator shall be determined by multiplying gross charges by the cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I). In the case of emergency services, the ratio shall be calculated using costs (gross charges multiplied by the cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I)) of patients treated in the relevant hospital entity's emergency department.

(7) Any other activity by the relevant hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

(d) The hospital applicant shall include information in its exemption application establishing that it satisfies the requirements of subsection (b). For purposes of making the calculations required by subsection (b), the hospital applicant may for each year elect to use either (1) the value of the services or activities listed in subsection (e) for the hospital year or (2) the average value of those services or activities for the 3 fiscal years ending with the hospital

year. If the relevant hospital entity has been in operation for less than 3 completed fiscal years, then the latter calculation, if elected, shall be performed on a pro rata basis.

(e) For purposes of making the calculations required by this Section:

(1) particular services or activities eligible for consideration under any of the paragraphs (1) through (7) of subsection (c) may not be counted under more than one of those paragraphs; and

(2) the amount of unreimbursed costs and the amount of subsidy shall not be reduced by restricted or unrestricted payments received by the relevant hospital entity as contributions deductible under Section 170(a) of the Internal Revenue Code.

(g) Estimation of Exempt Property Tax Liability. The estimated property tax liability used for the determination in subsection (b) shall be calculated as follows:

(1) "Estimated property tax liability" means the estimated dollar amount of property tax that would be owed, with respect to the exempt portion of each of the relevant hospital entity's properties that are already fully or partially exempt, or for which an exemption in whole or in part is currently being sought, and then aggregated as applicable, as if the exempt portion of those properties were subject to tax, calculated with respect to each such

property by multiplying:

(A) the lesser of (i) the actual assessed value, if any, of the portion of the property for which an exemption is sought or (ii) an estimated assessed value of the exempt portion of such property as determined in item (2) of this subsection (g), by

(B) the applicable State equalization rate (yielding the equalized assessed value), by

(C) the applicable tax rate.

(2) The estimated assessed value of the exempt portion of the property equals the sum of (i) the estimated fair market value of buildings on the property, as determined in accordance with subparagraphs (A) and (B) of this item (2), multiplied by the applicable assessment factor, and (ii) the estimated assessed value of the land portion of the property, as determined in accordance with subparagraph (C).

(A) The "estimated fair market value of buildings on the property" means the replacement value of any exempt portion of buildings on the property, minus depreciation, determined utilizing the cost replacement method whereby the exempt square footage of all such buildings is multiplied by the replacement cost per square foot for Class A Average building found in the most recent edition of the Marshall & Swift Valuation Services Manual, adjusted by any appropriate

current cost and local multipliers.

(B) Depreciation, for purposes of calculating the estimated fair market value of buildings on the property, is applied by utilizing a weighted mean life for the buildings based on original construction and assuming a 40-year life for hospital buildings and the applicable life for other types of buildings as specified in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets". In the case of hospital buildings, the remaining life is divided by 40 and this ratio is multiplied by the replacement cost of the buildings to obtain an estimated fair market value of buildings. If a hospital building is older than 35 years, a remaining life of 5 years for residual value is assumed; and if a building is less than 8 years old, a remaining life of 32 years is assumed.

(C) The estimated assessed value of the land portion of the property shall be determined by multiplying (i) the per square foot average of the assessed values of three parcels of land (not including farm land, and excluding the assessed value of the improvements thereon) reasonably comparable to the property, by (ii) the number of square feet comprising the exempt portion of the property's land square footage.



(3) The assessment factor, State equalization rate, and tax rate (including any special factors such as Enterprise Zones) used in calculating the estimated property tax liability shall be for the most recent year that is publicly available from the applicable chief county assessment officer or officers at least 90 days before the end of the hospital year.

(4) The method utilized to calculate estimated property tax liability for purposes of this Section 15-86 shall not be utilized for the actual valuation, assessment, or taxation of property pursuant to the Property Tax Code.

(h) For the purpose of this Section, the following terms shall have the meanings set forth below:

(1) "Hospital" means any institution, place, building, buildings on a campus, or other health care facility located in Illinois that is licensed under the Hospital Licensing Act and has a hospital owner.

(2) "Hospital owner" means a not-for-profit corporation that is the titleholder of a hospital, or the owner of the beneficial interest in an Illinois land trust that is the titleholder of a hospital.

(3) "Hospital affiliate" means any corporation, partnership, limited partnership, joint venture, limited liability company, association or other organization, other than a hospital owner, that directly or indirectly controls, is controlled by, or is under common control with

one or more hospital owners and that supports, is supported by, or acts in furtherance of the exempt health care purposes of at least one of those hospital owners' hospitals.

(4) "Hospital system" means a hospital and one or more other hospitals or hospital affiliates related by common control or ownership.

(5) "Control" relating to hospital owners, hospital affiliates, or hospital systems means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through ownership of assets, membership interest, other voting or governance rights, by contract or otherwise.

(6) "Hospital applicant" means a hospital owner or hospital affiliate that files an application for an exemption or renewal of exemption under this Section.

(7) "Relevant hospital entity" means (A) the hospital owner, in the case of a hospital applicant that is a hospital owner, and (B) at the election of a hospital applicant that is a hospital affiliate, either (i) the hospital affiliate or (ii) the hospital system to which the hospital applicant belongs, including any hospitals or hospital affiliates that are related by common control or ownership.

(8) "Subject property" means property used for the calculation under subsection (b) of this Section.

(9) "Hospital year" means the fiscal year of the relevant hospital entity, or the fiscal year of one of the hospital owners in the hospital system if the relevant hospital entity is a hospital system with members with different fiscal years, that ends in the year for which the exemption is sought.

Section 5-15. The Service Use Tax Act is amended by adding Section 3-8 as follows:

(35 ILCS 110/3-8 new)

Sec. 3-8. Hospital exemption.

(a) Tangible personal property sold to or used by a hospital owner that owns one or more hospitals licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act, or a hospital affiliate that is not already exempt under another provision of this Act and meets the criteria for an exemption under this Section, is exempt from taxation under this Act.

(b) A hospital owner or hospital affiliate satisfies the conditions for an exemption under this Section if the value of qualified services or activities listed in subsection (c) of this Section for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, without regard to any property tax exemption granted under Section 15-86 of the Property Tax Code, for the calendar year

in which exemption or renewal of exemption is sought. For purposes of making the calculations required by this subsection (b), if the relevant hospital entity is a hospital owner that owns more than one hospital, the value of the services or activities listed in subsection (c) shall be calculated on the basis of only those services and activities relating to the hospital that includes the subject property, and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to the properties comprising that hospital. In the case of a multi-state hospital system or hospital affiliate, the value of the services or activities listed in subsection (c) shall be calculated on the basis of only those services and activities that occur in Illinois and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to its property located in Illinois.

(c) The following services and activities shall be considered for purposes of making the calculations required by subsection (b):

(1) Charity care. Free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act.

(2) Health services to low-income and underserved individuals. Other unreimbursed costs of the relevant

hospital entity for providing without charge, paying for, or subsidizing goods, activities, or services for the purpose of addressing the health of low-income or underserved individuals. Those activities or services may include, but are not limited to: financial or in-kind support to affiliated or unaffiliated hospitals, hospital affiliates, community clinics, or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals who care for low-income or underserved individuals; providing or subsidizing outreach or educational services to low-income or underserved individuals for disease management and prevention; free or subsidized goods, supplies, or services needed by low-income or underserved individuals because of their medical condition; and prenatal or childbirth outreach to low-income or underserved persons.

(3) Subsidy of State or local governments. Direct or indirect financial or in-kind subsidies of State or local governments by the relevant hospital entity that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.

(4) Support for State health care programs for low-income individuals. At the election of the hospital applicant for each applicable year, either (A) 10% of payments to the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity

(provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) under Medicaid or other means-tested programs, including, but not limited to, General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program or (B) the amount of subsidy provided by the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) to State or local government in treating Medicaid recipients and recipients of means-tested programs, including but not limited to General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program. The amount of subsidy for purposes of this item (4) is calculated in the same manner as unreimbursed costs are calculated for Medicaid and other means-tested government programs in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly.

(5) Dual-eligible subsidy. The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients. The amount of subsidy for purposes of this item (5) is calculated by multiplying the

relevant hospital entity's unreimbursed costs for Medicare, calculated in the same manner as determined in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly, by the relevant hospital entity's ratio of dual-eligible patients to total Medicare patients.

(6) Relief of the burden of government related to health care. Except to the extent otherwise taken into account in this subsection, the portion of unreimbursed costs of the relevant hospital entity attributable to providing, paying for, or subsidizing goods, activities, or services that relieve the burden of government related to health care for low-income individuals. Such activities or services shall include, but are not limited to, providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services; providing medical education; and conducting medical research or training of health care professionals. The portion of those unreimbursed costs attributable to benefiting low-income individuals shall be determined using the ratio calculated by adding the relevant hospital entity's costs attributable to charity care, Medicaid, other means-tested government programs, disabled Medicare patients under age 65, and dual-eligible Medicare/Medicaid patients and dividing that total by the relevant hospital entity's total costs. Such costs for the numerator and denominator shall

be determined by multiplying gross charges by the cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I). In the case of emergency services, the ratio shall be calculated using costs (gross charges multiplied by the cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I)) of patients treated in the relevant hospital entity's emergency department.

(7) Any other activity by the relevant hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

(d) The hospital applicant shall include information in its exemption application establishing that it satisfies the requirements of subsection (b). For purposes of making the calculations required by subsection (b), the hospital applicant may for each year elect to use either (1) the value of the services or activities listed in subsection (e) for the hospital year or (2) the average value of those services or activities for the 3 fiscal years ending with the hospital year. If the relevant hospital entity has been in operation for less than 3 completed fiscal years, then the latter calculation, if elected, shall be performed on a pro rata basis.

(e) For purposes of making the calculations required by



this Section:

(1) particular services or activities eligible for consideration under any of the paragraphs (1) through (7) of subsection (c) may not be counted under more than one of those paragraphs; and

(2) the amount of unreimbursed costs and the amount of subsidy shall not be reduced by restricted or unrestricted payments received by the relevant hospital entity as contributions deductible under Section 170(a) of the Internal Revenue Code.

(g) Estimation of Exempt Property Tax Liability. The estimated property tax liability used for the determination in subsection (b) shall be calculated as follows:

(1) "Estimated property tax liability" means the estimated dollar amount of property tax that would be owed, with respect to the exempt portion of each of the relevant hospital entity's properties that are already fully or partially exempt, or for which an exemption in whole or in part is currently being sought, and then aggregated as applicable, as if the exempt portion of those properties were subject to tax, calculated with respect to each such property by multiplying:

(A) the lesser of (i) the actual assessed value, if any, of the portion of the property for which an exemption is sought or (ii) an estimated assessed value of the exempt portion of such property as determined in

item (2) of this subsection (g), by

(B) the applicable State equalization rate  
(yielding the equalized assessed value), by

(C) the applicable tax rate.

(2) The estimated assessed value of the exempt portion  
of the property equals the sum of (i) the estimated fair  
market value of buildings on the property, as determined in  
accordance with subparagraphs (A) and (B) of this item (2),  
multiplied by the applicable assessment factor, and (ii)  
the estimated assessed value of the land portion of the  
property, as determined in accordance with subparagraph  
(C).

(A) The "estimated fair market value of buildings  
on the property" means the replacement value of any  
exempt portion of buildings on the property, minus  
depreciation, determined utilizing the cost  
replacement method whereby the exempt square footage  
of all such buildings is multiplied by the replacement  
cost per square foot for Class A Average building found  
in the most recent edition of the Marshall & Swift  
Valuation Services Manual, adjusted by any appropriate  
current cost and local multipliers.

(B) Depreciation, for purposes of calculating the  
estimated fair market value of buildings on the  
property, is applied by utilizing a weighted mean life  
for the buildings based on original construction and

assuming a 40-year life for hospital buildings and the applicable life for other types of buildings as specified in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets". In the case of hospital buildings, the remaining life is divided by 40 and this ratio is multiplied by the replacement cost of the buildings to obtain an estimated fair market value of buildings. If a hospital building is older than 35 years, a remaining life of 5 years for residual value is assumed; and if a building is less than 8 years old, a remaining life of 32 years is assumed.

(C) The estimated assessed value of the land portion of the property shall be determined by multiplying (i) the per square foot average of the assessed values of three parcels of land (not including farm land, and excluding the assessed value of the improvements thereon) reasonably comparable to the property, by (ii) the number of square feet comprising the exempt portion of the property's land square footage.

(3) The assessment factor, State equalization rate, and tax rate (including any special factors such as Enterprise Zones) used in calculating the estimated property tax liability shall be for the most recent year that is publicly available from the applicable chief county

assessment officer or officers at least 90 days before the end of the hospital year.

(4) The method utilized to calculate estimated property tax liability for purposes of this Section 15-86 shall not be utilized for the actual valuation, assessment, or taxation of property pursuant to the Property Tax Code.

(h) For the purpose of this Section, the following terms shall have the meanings set forth below:

(1) "Hospital" means any institution, place, building, buildings on a campus, or other health care facility located in Illinois that is licensed under the Hospital Licensing Act and has a hospital owner.

(2) "Hospital owner" means a not-for-profit corporation that is the titleholder of a hospital, or the owner of the beneficial interest in an Illinois land trust that is the titleholder of a hospital.

(3) "Hospital affiliate" means any corporation, partnership, limited partnership, joint venture, limited liability company, association or other organization, other than a hospital owner, that directly or indirectly controls, is controlled by, or is under common control with one or more hospital owners and that supports, is supported by, or acts in furtherance of the exempt health care purposes of at least one of those hospital owners' hospitals.

(4) "Hospital system" means a hospital and one or more

other hospitals or hospital affiliates related by common control or ownership.

(5) "Control" relating to hospital owners, hospital affiliates, or hospital systems means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through ownership of assets, membership interest, other voting or governance rights, by contract or otherwise.

(6) "Hospital applicant" means a hospital owner or hospital affiliate that files an application for an exemption or renewal of exemption under this Section.

(7) "Relevant hospital entity" means (A) the hospital owner, in the case of a hospital applicant that is a hospital owner, and (B) at the election of a hospital applicant that is a hospital affiliate, either (i) the hospital affiliate or (ii) the hospital system to which the hospital applicant belongs, including any hospitals or hospital affiliates that are related by common control or ownership.

(8) "Subject property" means property used for the calculation under subsection (b) of this Section.

(9) "Hospital year" means the fiscal year of the relevant hospital entity, or the fiscal year of one of the hospital owners in the hospital system if the relevant hospital entity is a hospital system with members with different fiscal years, that ends in the year for which the

exemption is sought.

Section 5-20. The Service Occupation Tax Act is amended by adding Section 3-8 as follows:

(35 ILCS 115/3-8 new)

Sec. 3-8. Hospital exemption.

(a) Tangible personal property sold to or used by a hospital owner that owns one or more hospitals licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act, or a hospital affiliate that is not already exempt under another provision of this Act and meets the criteria for an exemption under this Section, is exempt from taxation under this Act.

(b) A hospital owner or hospital affiliate satisfies the conditions for an exemption under this Section if the value of qualified services or activities listed in subsection (c) of this Section for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, without regard to any property tax exemption granted under Section 15-86 of the Property Tax Code, for the calendar year in which exemption or renewal of exemption is sought. For purposes of making the calculations required by this subsection (b), if the relevant hospital entity is a hospital owner that owns more than one hospital, the value of the services or activities listed in subsection (c) shall be calculated on the

basis of only those services and activities relating to the hospital that includes the subject property, and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to the properties comprising that hospital. In the case of a multi-state hospital system or hospital affiliate, the value of the services or activities listed in subsection (c) shall be calculated on the basis of only those services and activities that occur in Illinois and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to its property located in Illinois.

(c) The following services and activities shall be considered for purposes of making the calculations required by subsection (b):

(1) Charity care. Free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act.

(2) Health services to low-income and underserved individuals. Other unreimbursed costs of the relevant hospital entity for providing without charge, paying for, or subsidizing goods, activities, or services for the purpose of addressing the health of low-income or underserved individuals. Those activities or services may include, but are not limited to: financial or in-kind

support to affiliated or unaffiliated hospitals, hospital affiliates, community clinics, or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals who care for low-income or underserved individuals; providing or subsidizing outreach or educational services to low-income or underserved individuals for disease management and prevention; free or subsidized goods, supplies, or services needed by low-income or underserved individuals because of their medical condition; and prenatal or childbirth outreach to low-income or underserved persons.

(3) Subsidy of State or local governments. Direct or indirect financial or in-kind subsidies of State or local governments by the relevant hospital entity that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.

(4) Support for State health care programs for low-income individuals. At the election of the hospital applicant for each applicable year, either (A) 10% of payments to the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) under Medicaid or other means-tested programs, including, but not limited to, General



Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program or (B) the amount of subsidy provided by the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) to State or local government in treating Medicaid recipients and recipients of means-tested programs, including but not limited to General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program. The amount of subsidy for purposes of this item (4) is calculated in the same manner as unreimbursed costs are calculated for Medicaid and other means-tested government programs in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly.

(5) Dual-eligible subsidy. The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients. The amount of subsidy for purposes of this item (5) is calculated by multiplying the relevant hospital entity's unreimbursed costs for Medicare, calculated in the same manner as determined in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly, by the relevant hospital entity's ratio of dual-eligible

patients to total Medicare patients.

(6) Relief of the burden of government related to health care. Except to the extent otherwise taken into account in this subsection, the portion of unreimbursed costs of the relevant hospital entity attributable to providing, paying for, or subsidizing goods, activities, or services that relieve the burden of government related to health care for low-income individuals. Such activities or services shall include, but are not limited to, providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services; providing medical education; and conducting medical research or training of health care professionals. The portion of those unreimbursed costs attributable to benefiting low-income individuals shall be determined using the ratio calculated by adding the relevant hospital entity's costs attributable to charity care, Medicaid, other means-tested government programs, disabled Medicare patients under age 65, and dual-eligible Medicare/Medicaid patients and dividing that total by the relevant hospital entity's total costs. Such costs for the numerator and denominator shall be determined by multiplying gross charges by the cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I). In the case of emergency services, the ratio shall be calculated using costs (gross charges multiplied by the

cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I)) of patients treated in the relevant hospital entity's emergency department.

(7) Any other activity by the relevant hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

(d) The hospital applicant shall include information in its exemption application establishing that it satisfies the requirements of subsection (b). For purposes of making the calculations required by subsection (b), the hospital applicant may for each year elect to use either (1) the value of the services or activities listed in subsection (e) for the hospital year or (2) the average value of those services or activities for the 3 fiscal years ending with the hospital year. If the relevant hospital entity has been in operation for less than 3 completed fiscal years, then the latter calculation, if elected, shall be performed on a pro rata basis.

(e) For purposes of making the calculations required by this Section:

(1) particular services or activities eligible for consideration under any of the paragraphs (1) through (7) of subsection (c) may not be counted under more than one of those paragraphs; and

(2) the amount of unreimbursed costs and the amount of subsidy shall not be reduced by restricted or unrestricted payments received by the relevant hospital entity as contributions deductible under Section 170(a) of the Internal Revenue Code.

(g) Estimation of Exempt Property Tax Liability. The estimated property tax liability used for the determination in subsection (b) shall be calculated as follows:

(1) "Estimated property tax liability" means the estimated dollar amount of property tax that would be owed, with respect to the exempt portion of each of the relevant hospital entity's properties that are already fully or partially exempt, or for which an exemption in whole or in part is currently being sought, and then aggregated as applicable, as if the exempt portion of those properties were subject to tax, calculated with respect to each such property by multiplying:

(A) the lesser of (i) the actual assessed value, if any, of the portion of the property for which an exemption is sought or (ii) an estimated assessed value of the exempt portion of such property as determined in item (2) of this subsection (g), by

(B) the applicable State equalization rate (yielding the equalized assessed value), by

(C) the applicable tax rate.

(2) The estimated assessed value of the exempt portion

of the property equals the sum of (i) the estimated fair market value of buildings on the property, as determined in accordance with subparagraphs (A) and (B) of this item (2), multiplied by the applicable assessment factor, and (ii) the estimated assessed value of the land portion of the property, as determined in accordance with subparagraph (C).

(A) The "estimated fair market value of buildings on the property" means the replacement value of any exempt portion of buildings on the property, minus depreciation, determined utilizing the cost replacement method whereby the exempt square footage of all such buildings is multiplied by the replacement cost per square foot for Class A Average building found in the most recent edition of the Marshall & Swift Valuation Services Manual, adjusted by any appropriate current cost and local multipliers.

(B) Depreciation, for purposes of calculating the estimated fair market value of buildings on the property, is applied by utilizing a weighted mean life for the buildings based on original construction and assuming a 40-year life for hospital buildings and the applicable life for other types of buildings as specified in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets". In the case of hospital buildings,

the remaining life is divided by 40 and this ratio is multiplied by the replacement cost of the buildings to obtain an estimated fair market value of buildings. If a hospital building is older than 35 years, a remaining life of 5 years for residual value is assumed; and if a building is less than 8 years old, a remaining life of 32 years is assumed.

(C) The estimated assessed value of the land portion of the property shall be determined by multiplying (i) the per square foot average of the assessed values of three parcels of land (not including farm land, and excluding the assessed value of the improvements thereon) reasonably comparable to the property, by (ii) the number of square feet comprising the exempt portion of the property's land square footage.

(3) The assessment factor, State equalization rate, and tax rate (including any special factors such as Enterprise Zones) used in calculating the estimated property tax liability shall be for the most recent year that is publicly available from the applicable chief county assessment officer or officers at least 90 days before the end of the hospital year.

(4) The method utilized to calculate estimated property tax liability for purposes of this Section 15-86 shall not be utilized for the actual valuation, assessment,

or taxation of property pursuant to the Property Tax Code.

(h) For the purpose of this Section, the following terms shall have the meanings set forth below:

(1) "Hospital" means any institution, place, building, buildings on a campus, or other health care facility located in Illinois that is licensed under the Hospital Licensing Act and has a hospital owner.

(2) "Hospital owner" means a not-for-profit corporation that is the titleholder of a hospital, or the owner of the beneficial interest in an Illinois land trust that is the titleholder of a hospital.

(3) "Hospital affiliate" means any corporation, partnership, limited partnership, joint venture, limited liability company, association or other organization, other than a hospital owner, that directly or indirectly controls, is controlled by, or is under common control with one or more hospital owners and that supports, is supported by, or acts in furtherance of the exempt health care purposes of at least one of those hospital owners' hospitals.

(4) "Hospital system" means a hospital and one or more other hospitals or hospital affiliates related by common control or ownership.

(5) "Control" relating to hospital owners, hospital affiliates, or hospital systems means possession, direct or indirect, of the power to direct or cause the direction

of the management and policies of the entity, whether through ownership of assets, membership interest, other voting or governance rights, by contract or otherwise.

(6) "Hospital applicant" means a hospital owner or hospital affiliate that files an application for an exemption or renewal of exemption under this Section.

(7) "Relevant hospital entity" means (A) the hospital owner, in the case of a hospital applicant that is a hospital owner, and (B) at the election of a hospital applicant that is a hospital affiliate, either (i) the hospital affiliate or (ii) the hospital system to which the hospital applicant belongs, including any hospitals or hospital affiliates that are related by common control or ownership.

(8) "Subject property" means property used for the calculation under subsection (b) of this Section.

(9) "Hospital year" means the fiscal year of the relevant hospital entity, or the fiscal year of one of the hospital owners in the hospital system if the relevant hospital entity is a hospital system with members with different fiscal years, that ends in the year for which the exemption is sought.

Section 5-25. The Retailers' Occupation Tax Act is amended by adding Section 2-9 as follows:



(35 ILCS 120/2-9 new)

Sec. 2-9. Hospital exemption.

(a) Tangible personal property sold to or used by a hospital owner that owns one or more hospitals licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act, or a hospital affiliate that is not already exempt under another provision of this Act and meets the criteria for an exemption under this Section, is exempt from taxation under this Act.

(b) A hospital owner or hospital affiliate satisfies the conditions for an exemption under this Section if the value of qualified services or activities listed in subsection (c) of this Section for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, without regard to any property tax exemption granted under Section 15-86 of the Property Tax Code, for the calendar year in which exemption or renewal of exemption is sought. For purposes of making the calculations required by this subsection (b), if the relevant hospital entity is a hospital owner that owns more than one hospital, the value of the services or activities listed in subsection (c) shall be calculated on the basis of only those services and activities relating to the hospital that includes the subject property, and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to the properties comprising that hospital. In the case of a multi-state hospital system or

hospital affiliate, the value of the services or activities listed in subsection (c) shall be calculated on the basis of only those services and activities that occur in Illinois and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to its property located in Illinois.

(c) The following services and activities shall be considered for purposes of making the calculations required by subsection (b):

(1) Charity care. Free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act.

(2) Health services to low-income and underserved individuals. Other unreimbursed costs of the relevant hospital entity for providing without charge, paying for, or subsidizing goods, activities, or services for the purpose of addressing the health of low-income or underserved individuals. Those activities or services may include, but are not limited to: financial or in-kind support to affiliated or unaffiliated hospitals, hospital affiliates, community clinics, or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals who care for low-income or underserved individuals; providing or

subsidizing outreach or educational services to low-income or underserved individuals for disease management and prevention; free or subsidized goods, supplies, or services needed by low-income or underserved individuals because of their medical condition; and prenatal or childbirth outreach to low-income or underserved persons.

(3) Subsidy of State or local governments. Direct or indirect financial or in-kind subsidies of State or local governments by the relevant hospital entity that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.

(4) Support for State health care programs for low-income individuals. At the election of the hospital applicant for each applicable year, either (A) 10% of payments to the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) under Medicaid or other means-tested programs, including, but not limited to, General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program or (B) the amount of subsidy provided by the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's

operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) to State or local government in treating Medicaid recipients and recipients of means-tested programs, including but not limited to General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program. The amount of subsidy for purposes of this item (4) is calculated in the same manner as unreimbursed costs are calculated for Medicaid and other means-tested government programs in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly.

(5) Dual-eligible subsidy. The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients. The amount of subsidy for purposes of this item (5) is calculated by multiplying the relevant hospital entity's unreimbursed costs for Medicare, calculated in the same manner as determined in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly, by the relevant hospital entity's ratio of dual-eligible patients to total Medicare patients.

(6) Relief of the burden of government related to health care. Except to the extent otherwise taken into account in this subsection, the portion of unreimbursed costs of the relevant hospital entity attributable to

providing, paying for, or subsidizing goods, activities, or services that relieve the burden of government related to health care for low-income individuals. Such activities or services shall include, but are not limited to, providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services; providing medical education; and conducting medical research or training of health care professionals. The portion of those unreimbursed costs attributable to benefiting low-income individuals shall be determined using the ratio calculated by adding the relevant hospital entity's costs attributable to charity care, Medicaid, other means-tested government programs, disabled Medicare patients under age 65, and dual-eligible Medicare/Medicaid patients and dividing that total by the relevant hospital entity's total costs. Such costs for the numerator and denominator shall be determined by multiplying gross charges by the cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I). In the case of emergency services, the ratio shall be calculated using costs (gross charges multiplied by the cost to charge ratio taken from the hospital's most recently filed Medicare cost report (CMS 2252-10 Worksheet, Part I)) of patients treated in the relevant hospital entity's emergency department.

(7) Any other activity by the relevant hospital entity

that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

(d) The hospital applicant shall include information in its exemption application establishing that it satisfies the requirements of subsection (b). For purposes of making the calculations required by subsection (b), the hospital applicant may for each year elect to use either (1) the value of the services or activities listed in subsection (e) for the hospital year or (2) the average value of those services or activities for the 3 fiscal years ending with the hospital year. If the relevant hospital entity has been in operation for less than 3 completed fiscal years, then the latter calculation, if elected, shall be performed on a pro rata basis.

(e) For purposes of making the calculations required by this Section:

(1) particular services or activities eligible for consideration under any of the paragraphs (1) through (7) of subsection (c) may not be counted under more than one of those paragraphs; and

(2) the amount of unreimbursed costs and the amount of subsidy shall not be reduced by restricted or unrestricted payments received by the relevant hospital entity as contributions deductible under Section 170(a) of the Internal Revenue Code.

(g) Estimation of Exempt Property Tax Liability. The estimated property tax liability used for the determination in subsection (b) shall be calculated as follows:

(1) "Estimated property tax liability" means the estimated dollar amount of property tax that would be owed, with respect to the exempt portion of each of the relevant hospital entity's properties that are already fully or partially exempt, or for which an exemption in whole or in part is currently being sought, and then aggregated as applicable, as if the exempt portion of those properties were subject to tax, calculated with respect to each such property by multiplying:

(A) the lesser of (i) the actual assessed value, if any, of the portion of the property for which an exemption is sought or (ii) an estimated assessed value of the exempt portion of such property as determined in item (2) of this subsection (g), by

(B) the applicable State equalization rate (yielding the equalized assessed value), by

(C) the applicable tax rate.

(2) The estimated assessed value of the exempt portion of the property equals the sum of (i) the estimated fair market value of buildings on the property, as determined in accordance with subparagraphs (A) and (B) of this item (2), multiplied by the applicable assessment factor, and (ii) the estimated assessed value of the land portion of the

property, as determined in accordance with subparagraph (C).

(A) The "estimated fair market value of buildings on the property" means the replacement value of any exempt portion of buildings on the property, minus depreciation, determined utilizing the cost replacement method whereby the exempt square footage of all such buildings is multiplied by the replacement cost per square foot for Class A Average building found in the most recent edition of the Marshall & Swift Valuation Services Manual, adjusted by any appropriate current cost and local multipliers.

(B) Depreciation, for purposes of calculating the estimated fair market value of buildings on the property, is applied by utilizing a weighted mean life for the buildings based on original construction and assuming a 40-year life for hospital buildings and the applicable life for other types of buildings as specified in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets". In the case of hospital buildings, the remaining life is divided by 40 and this ratio is multiplied by the replacement cost of the buildings to obtain an estimated fair market value of buildings. If a hospital building is older than 35 years, a remaining life of 5 years for residual value is assumed; and if a



building is less than 8 years old, a remaining life of 32 years is assumed.

(C) The estimated assessed value of the land portion of the property shall be determined by multiplying (i) the per square foot average of the assessed values of three parcels of land (not including farm land, and excluding the assessed value of the improvements thereon) reasonably comparable to the property, by (ii) the number of square feet comprising the exempt portion of the property's land square footage.

(3) The assessment factor, State equalization rate, and tax rate (including any special factors such as Enterprise Zones) used in calculating the estimated property tax liability shall be for the most recent year that is publicly available from the applicable chief county assessment officer or officers at least 90 days before the end of the hospital year.

(4) The method utilized to calculate estimated property tax liability for purposes of this Section 15-86 shall not be utilized for the actual valuation, assessment, or taxation of property pursuant to the Property Tax Code.

(h) For the purpose of this Section, the following terms shall have the meanings set forth below:

(1) "Hospital" means any institution, place, building, buildings on a campus, or other health care facility

located in Illinois that is licensed under the Hospital Licensing Act and has a hospital owner.

(2) "Hospital owner" means a not-for-profit corporation that is the titleholder of a hospital, or the owner of the beneficial interest in an Illinois land trust that is the titleholder of a hospital.

(3) "Hospital affiliate" means any corporation, partnership, limited partnership, joint venture, limited liability company, association or other organization, other than a hospital owner, that directly or indirectly controls, is controlled by, or is under common control with one or more hospital owners and that supports, is supported by, or acts in furtherance of the exempt health care purposes of at least one of those hospital owners' hospitals.

(4) "Hospital system" means a hospital and one or more other hospitals or hospital affiliates related by common control or ownership.

(5) "Control" relating to hospital owners, hospital affiliates, or hospital systems means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through ownership of assets, membership interest, other voting or governance rights, by contract or otherwise.

(6) "Hospital applicant" means a hospital owner or hospital affiliate that files an application for an

exemption or renewal of exemption under this Section.

(7) "Relevant hospital entity" means (A) the hospital owner, in the case of a hospital applicant that is a hospital owner, and (B) at the election of a hospital applicant that is a hospital affiliate, either (i) the hospital affiliate or (ii) the hospital system to which the hospital applicant belongs, including any hospitals or hospital affiliates that are related by common control or ownership.

(8) "Subject property" means property used for the calculation under subsection (b) of this Section.

(9) "Hospital year" means the fiscal year of the relevant hospital entity, or the fiscal year of one of the hospital owners in the hospital system if the relevant hospital entity is a hospital system with members with different fiscal years, that ends in the year for which the exemption is sought.

Section 5-30. The Cigarette Tax Act is amended by changing Sections 1 and 2 as follows:

(35 ILCS 130/1) (from Ch. 120, par. 453.1)

Sec. 1. For the purposes of this Act:

"Brand Style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette or

packaging.

Until July 1, 2012, "cigarette" ~~"Cigarette"~~, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Cigarette", beginning on and after July 1, 2012, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, and the wrapper or cover of which is made of paper.

"Cigarette", beginning on and after July 1, 2012, also shall mean: Any roll for smoking made wholly or in part of tobacco labeled as anything other than a cigarette or not bearing a label, if it meets two or more of the following criteria:

(a) the product is sold in packs similar to cigarettes;

(b) the product is available for sale in cartons of ten packs;

(c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;

(d) the product is of a length and diameter similar to commercially manufactured cigarettes;

(e) the product has a cellulose acetate or other

integrated filter;

(f) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or

(g) other evidence that the product fits within the definition of cigarette.

"Contraband cigarettes" means:

(a) cigarettes that do not bear a required tax stamp under this Act;

(b) cigarettes for which any required federal taxes have not been paid;

(c) cigarettes that bear a counterfeit tax stamp;

(d) cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person other than (i) the owner of the trademark rights in the cigarette brand or (ii) a person that is directly or indirectly authorized by such owner;

(e) cigarettes imported into the United States, or otherwise distributed, in violation of the federal Imported Cigarette Compliance Act of 2000 (Title IV of Public Law 106-476);

(f) cigarettes that have false manufacturing labels;

(g) cigarettes identified in Section 3-10(a)(1) of this Act; ~~or~~

(h) cigarettes that are improperly tax stamped, including cigarettes that bear a tax stamp of another state or taxing jurisdiction; or ~~or~~

(i) cigarettes made or fabricated by a person holding a cigarette machine operator license under Section 1-20 of the Cigarette Machine Operators' Occupation Tax Act in the possession of manufacturers, distributors, secondary distributors, manufacturer representatives or other retailers for the purpose of resale, regardless of whether the tax has been paid on such cigarettes.

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

"Prior Continuous Compliance Taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. Also, any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act for a period of 5 consecutive years shall be considered to be a "Prior continuous compliance taxpayer". In calculating the consecutive period of time described herein for qualification as a "prior continuous compliance taxpayer", a consecutive period of time of qualifying compliance immediately prior to

the effective date of this amendatory Act of 1987 shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of 1987.

"Department" means the Department of Revenue.

"Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person.

"Original Package" means the individual packet, box or other container whatsoever used to contain and to convey cigarettes to the consumer.

"Distributor" means any and each of the following:

(1) Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes, for sale or other disposition in the course of such business.

(2) Any person who makes, manufactures or fabricates cigarettes in this State for sale in this State, except a person who makes, manufactures or fabricates cigarettes as a part of a correctional industries program for sale to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility.

(3) Any person who makes, manufactures or fabricates cigarettes outside this State, which cigarettes are placed in original packages contained in sealed transparent wrappers, for delivery or shipment into this State, and who elects to qualify and is accepted by the Department as a distributor under Section 4b of this Act.

"Place of business" shall mean and include any place where cigarettes are sold or where cigarettes are manufactured, stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

"Manufacturer representative" means a director, officer, or employee of a manufacturer who has obtained authority from the Department under Section 4f to maintain representatives in Illinois that provide or sell original packages of cigarettes made, manufactured, or fabricated by the manufacturer to retailers in compliance with Section 4f of this Act to promote cigarettes made, manufactured, or fabricated by the manufacturer.

"Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling cigarettes in this State.

"Retailer" means any person who engages in the making of transfers of the ownership of, or title to, cigarettes to a purchaser for use or consumption and not for resale in any form, for a valuable consideration. "Retailer" does not include



a person:

(1) who transfers to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility ownership of cigarettes made, manufactured, or fabricated as part of a correctional industries program; or

(2) who transfers cigarettes to a not-for-profit research institution that conducts tests concerning the health effects of tobacco products and who does not offer the cigarettes for resale.

"Retailer" shall be construed to include any person who engages in the making of transfers of the ownership of, or title to, cigarettes to a purchaser, for use or consumption by any other person to whom such purchaser may transfer the cigarettes without a valuable consideration, except a person who transfers to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility ownership of cigarettes made, manufactured or fabricated as part of a correctional industries program.

"Secondary distributor" means any person engaged in the business of selling cigarettes who purchases stamped original packages of cigarettes from a licensed distributor under this Act or the Cigarette Use Tax Act, sells 75% or more of those cigarettes to retailers for resale, and maintains an established business where a substantial stock of cigarettes is available to retailers for resale.

"Stamp" or "stamps" mean the indicia required to be affixed on a pack of cigarettes that evidence payment of the tax on cigarettes under Section 2 of this Act.

"Related party" means any person that is associated with any other person because he or she:

- (a) is an officer or director of a business; or
- (b) is legally recognized as a partner in business.

(Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

(35 ILCS 130/2) (from Ch. 120, par. 453.2)

Sec. 2. Tax imposed; rate; collection, payment, and distribution; discount.

(a) A tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at the rate of 5 1/2 mills per cigarette sold, or otherwise disposed of in the course of such business in this State. In addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at a rate of 1/2 mill per cigarette sold or otherwise disposed of in the course of such business in this State on and after January 1, 1947, and shall be paid into the Metropolitan Fair and Exposition Authority Reconstruction Fund or as otherwise provided in Section 29. On and after December 1, 1985, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes

in this State at a rate of 4 mills per cigarette sold or otherwise disposed of in the course of such business in this State. Of the additional tax imposed by this amendatory Act of 1985, \$9,000,000 of the moneys received by the Department of Revenue pursuant to this Act shall be paid each month into the Common School Fund. On and after the effective date of this amendatory Act of 1989, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 5 mills per cigarette sold or otherwise disposed of in the course of such business in this State. On and after the effective date of this amendatory Act of 1993, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business in this State. On and after December 15, 1997, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business of this State. All of the moneys received by the Department of Revenue pursuant to this Act and the Cigarette Use Tax Act from the additional taxes imposed by this amendatory Act of 1997, shall be paid each month into the Common School Fund. On and after July 1, 2002, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of

cigarettes at the rate of 20.0 mills per cigarette sold or otherwise disposed of in the course of such business in this State. Beginning on June 24, 2012, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 50 mills per cigarette sold or otherwise disposed of in the course of such business in this State. All moneys received by the Department of Revenue under this Act and the Cigarette Use Tax Act from the additional taxes imposed by this amendatory Act of the 97th General Assembly shall be paid each month into the Healthcare Provider Relief Fund. The payment of such taxes shall be evidenced by a stamp affixed to each original package of cigarettes, or an authorized substitute for such stamp imprinted on each original package of such cigarettes underneath the sealed transparent outside wrapper of such original package, as hereinafter provided. However, such taxes are not imposed upon any activity in such business in interstate commerce or otherwise, which activity may not under the Constitution and statutes of the United States be made the subject of taxation by this State.

Beginning on the effective date of this amendatory Act of the 92nd General Assembly and through June 30, 2006, all of the moneys received by the Department of Revenue pursuant to this Act and the Cigarette Use Tax Act, other than the moneys that are dedicated to the Common School Fund, shall be distributed each month as follows: first, there shall be paid into the

General Revenue Fund an amount which, when added to the amount paid into the Common School Fund for that month, equals \$33,300,000, except that in the month of August of 2004, this amount shall equal \$83,300,000; then, from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund; then, beginning on April 1, 2003, from the moneys remaining, \$5,000,000 per month shall be paid into the School Infrastructure Fund; then, if any amounts required to be paid into the School Infrastructure Fund in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund; then the moneys remaining, if any, shall be paid into the Long-Term Care Provider Fund. To the extent that more than \$25,000,000 has been paid into the General Revenue Fund and Common School Fund per month for the period of July 1, 1993 through the effective date of this amendatory Act of 1994 from combined receipts of the Cigarette Tax Act and the Cigarette Use Tax Act, notwithstanding the distribution provided in this Section, the Department of Revenue is hereby directed to adjust the distribution provided in this Section to increase the next monthly payments to the Long Term Care Provider Fund by the amount paid to the General Revenue Fund and Common School Fund in excess of \$25,000,000 per month and to decrease the next monthly payments to the General Revenue Fund and Common School Fund by that same excess amount.

Beginning on July 1, 2006, all of the moneys received by the Department of Revenue pursuant to this Act and the Cigarette Use Tax Act, other than the moneys that are dedicated to the Common School Fund and, beginning on the effective date of this amendatory Act of the 97th General Assembly, other than the moneys from the additional taxes imposed by this amendatory Act of the 97th General Assembly that must be paid each month into the Healthcare Provider Relief Fund, shall be distributed each month as follows: first, there shall be paid into the General Revenue Fund an amount that, when added to the amount paid into the Common School Fund for that month, equals \$29,200,000; then, from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund; then from the moneys remaining, \$5,000,000 per month shall be paid into the School Infrastructure Fund; then, if any amounts required to be paid into the School Infrastructure Fund in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund; then the moneys remaining, if any, shall be paid into the Long-Term Care Provider Fund.

When any tax imposed herein terminates or has terminated, distributors who have bought stamps while such tax was in effect and who therefore paid such tax, but who can show, to the Department's satisfaction, that they sold the cigarettes to which they affixed such stamps after such tax had terminated

and did not recover the tax or its equivalent from purchasers, shall be allowed by the Department to take credit for such absorbed tax against subsequent tax stamp purchases from the Department by such distributor.

The impact of the tax levied by this Act is imposed upon the retailer and shall be prepaid or pre-collected by the distributor for the purpose of convenience and facility only, and the amount of the tax shall be added to the price of the cigarettes sold by such distributor. Collection of the tax shall be evidenced by a stamp or stamps affixed to each original package of cigarettes, as hereinafter provided.

Each distributor shall collect the tax from the retailer at or before the time of the sale, shall affix the stamps as hereinafter required, and shall remit the tax collected from retailers to the Department, as hereinafter provided. Any distributor who fails to properly collect and pay the tax imposed by this Act shall be liable for the tax. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on the effective date of this amendatory Act of 1989 shall not be required to pay the additional tax imposed by this amendatory Act of 1989 on such stamped cigarettes. Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale at 12:01 a.m. on the effective date of this amendatory Act of 1993, is required to pay the additional tax imposed by this amendatory Act of 1993 on such stamped cigarettes. This

payment, less the discount provided in subsection (b), shall be due when the distributor first makes a purchase of cigarette tax stamps after the effective date of this amendatory Act of 1993, or on the first due date of a return under this Act after the effective date of this amendatory Act of 1993, whichever occurs first. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on December 15, 1997 shall not be required to pay the additional tax imposed by this amendatory Act of 1997 on such stamped cigarettes.

Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale on July 1, 2002 shall not be required to pay the additional tax imposed by this amendatory Act of the 92nd General Assembly on those stamped cigarettes.

Any retailer having cigarettes in his or her possession on June 24, 2012 to which tax stamps have been affixed is not required to pay the additional tax that begins on June 24, 2012 imposed by this amendatory Act of the 97th General Assembly on those stamped cigarettes. Any distributor having cigarettes in his or her possession on June 24, 2012 to which tax stamps have been affixed, and any distributor having stamps in his or her possession on June 24, 2012 that have not been affixed to packages of cigarettes before June 24, 2012, is required to pay the additional tax that begins on June 24, 2012 imposed by this amendatory Act of the 97th General Assembly to the extent the calendar year 2012 average monthly volume of cigarette stamps



in the distributor's possession exceeds the average monthly volume of cigarette stamps purchased by the distributor in calendar year 2011. This payment, less the discount provided in subsection (b), is due when the distributor first makes a purchase of cigarette stamps on or after June 24, 2012 or on the first due date of a return under this Act occurring on or after June 24, 2012, whichever occurs first. Those distributors may elect to pay the additional tax on packages of cigarettes to which stamps have been affixed and on any stamps in the distributor's possession that have not been affixed to packages of cigarettes over a period not to exceed 12 months from the due date of the additional tax by notifying the Department in writing. The first payment for distributors making such election is due when the distributor first makes a purchase of cigarette tax stamps on or after June 24, 2012 or on the first due date of a return under this Act occurring on or after June 24, 2012, whichever occurs first. Distributors making such an election are not entitled to take the discount provided in subsection (b) on such payments.

Distributors making sales of cigarettes to secondary distributors shall add the amount of the tax to the price of the cigarettes sold by the distributors. Secondary distributors making sales of cigarettes to retailers shall include the amount of the tax in the price of the cigarettes sold to retailers. The amount of tax shall not be less than the amount of taxes imposed by the State and all local

jurisdictions. The amount of local taxes shall be calculated based on the location of the retailer's place of business shown on the retailer's certificate of registration or sub-registration issued to the retailer pursuant to Section 2a of the Retailers' Occupation Tax Act. The original packages of cigarettes sold to the retailer shall bear all the required stamps, or other indicia, for the taxes included in the price of cigarettes.

The amount of the Cigarette Tax imposed by this Act shall be separately stated, apart from the price of the goods, by distributors, manufacturer representatives, secondary distributors, and retailers, in all bills and sales invoices.

(b) The distributor shall be required to collect the taxes provided under paragraph (a) hereof, and, to cover the costs of such collection, shall be allowed a discount during any year commencing July 1st and ending the following June 30th in accordance with the schedule set out hereinbelow, which discount shall be allowed at the time of purchase of the stamps when purchase is required by this Act, or at the time when the tax is remitted to the Department without the purchase of stamps from the Department when that method of paying the tax is required or authorized by this Act. Prior to December 1, 1985, a discount equal to  $1\frac{2}{3}\%$  of the amount of the tax up to and including the first \$700,000 paid hereunder by such distributor to the Department during any such year;  $1\frac{1}{3}\%$  of the next \$700,000 of tax or any part thereof, paid hereunder by

such distributor to the Department during any such year; 1% of the next \$700,000 of tax, or any part thereof, paid hereunder by such distributor to the Department during any such year, and 2/3 of 1% of the amount of any additional tax paid hereunder by such distributor to the Department during any such year shall apply. On and after December 1, 1985, a discount equal to 1.75% of the amount of the tax payable under this Act up to and including the first \$3,000,000 paid hereunder by such distributor to the Department during any such year and 1.5% of the amount of any additional tax paid hereunder by such distributor to the Department during any such year shall apply.

Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.

(c) The taxes herein imposed are in addition to all other occupation or privilege taxes imposed by the State of Illinois, or by any political subdivision thereof, or by any municipal corporation.

(Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

Section 5-45. The Cigarette Use Tax Act is amended by changing Sections 1 and 2 as follows:

(35 ILCS 135/1) (from Ch. 120, par. 453.31)

Sec. 1. For the purpose of this Act, unless otherwise

required by the context:

"Use" means the exercise by any person of any right or power over cigarettes incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes and shall include the keeping or retention of cigarettes for use, except that "use" does not include the use of cigarettes by a not-for-profit research institution conducting tests concerning the health effects of tobacco products, provided the cigarettes are not offered for resale.

"Brand Style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette or packaging.

Until July 1, 2012, "cigarette" ~~"Cigarette"~~ means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Cigarette", beginning on and after July 1, 2012, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper.

"Cigarette", beginning on and after July 1, 2012, also

shall mean: Any roll for smoking made wholly or in part of tobacco labeled as anything other than a cigarette or not bearing a label, if it meets two or more of the following criteria:

(a) the product is sold in packs similar to cigarettes;

(b) the product is available for sale in cartons of ten packs;

(c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;

(d) the product is of a length and diameter similar to commercially manufactured cigarettes;

(e) the product has a cellulose acetate or other integrated filter;

(f) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or

(g) other evidence that the product fits within the definition of cigarette.

"Contraband cigarettes" means:

(a) cigarettes that do not bear a required tax stamp under this Act;

(b) cigarettes for which any required federal taxes have not been paid;

(c) cigarettes that bear a counterfeit tax stamp;

(d) cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person

other than (i) the owner of the trademark rights in the cigarette brand or (ii) a person that is directly or indirectly authorized by such owner;

(e) cigarettes imported into the United States, or otherwise distributed, in violation of the federal Imported Cigarette Compliance Act of 2000 (Title IV of Public Law 106-476);

(f) cigarettes that have false manufacturing labels;

(g) cigarettes identified in Section 3-10(a)(1) of this Act; ~~or~~

(h) cigarettes that are improperly tax stamped, including cigarettes that bear a tax stamp of another state or taxing jurisdiction; or ~~or~~

(i) cigarettes made or fabricated by a person holding a cigarette machine operator license under Section 1-20 of the Cigarette Machine Operators' Occupation Tax Act in the possession of manufacturers, distributors, secondary distributors, manufacturer representatives or other retailers for the purpose of resale, regardless of whether the tax has been paid on such cigarettes.

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

"Department" means the Department of Revenue.

"Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person.

"Original Package" means the individual packet, box or other container whatsoever used to contain and to convey cigarettes to the consumer.

"Distributor" means any and each of the following:

a. Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes, for sale in the course of such business.

b. Any person who makes, manufactures or fabricates cigarettes in this State for sale, except a person who makes, manufactures or fabricates cigarettes for sale to residents incarcerated in penal institutions or resident patients or a State-operated mental health facility.

c. Any person who makes, manufactures or fabricates cigarettes outside this State, which cigarettes are placed in original packages contained in sealed transparent wrappers, for delivery or shipment into this State, and who elects to qualify and is accepted by the Department as a

distributor under Section 7 of this Act.

"Distributor" does not include any person who transfers cigarettes to a not-for-profit research institution that conducts tests concerning the health effects of tobacco products and who does not offer the cigarettes for resale.

"Distributor maintaining a place of business in this State", or any like term, means any distributor having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this State under the authority of the distributor or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such distributor or subsidiary is licensed to transact business within this State.

"Business" means any trade, occupation, activity or enterprise engaged in or conducted in this State for the purpose of selling cigarettes.

"Prior Continuous Compliance Taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. Also, any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act of a



period of 5 consecutive years shall be considered to be a "prior continuous compliance taxpayer". In calculating the consecutive period of time described herein for qualification as a "prior continuous compliance taxpayer", a consecutive period of time of qualifying compliance immediately prior to the effective date of this amendatory Act of 1987 shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of 1987.

"Secondary distributor" means any person engaged in the business of selling cigarettes who purchases stamped original packages of cigarettes from a licensed distributor under this Act or the Cigarette Tax Act, sells 75% or more of those cigarettes to retailers for resale, and maintains an established business where a substantial stock of cigarettes is available to retailers for resale.

"Secondary distributor maintaining a place of business in this State", or any like term, means any secondary distributor having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this State under the authority of the secondary distributor or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such secondary distributor or subsidiary is licensed to transact business within this State.

"Stamp" or "stamps" mean the indicia required to be affixed

on a pack of cigarettes that evidence payment of the tax on cigarettes under Section 2 of this Act.

"Related party" means any person that is associated with any other person because he or she:

(a) is an officer or director of a business; or

(b) is legally recognized as a partner in business.

(Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

(35 ILCS 135/2) (from Ch. 120, par. 453.32)

Sec. 2. A tax is imposed upon the privilege of using cigarettes in this State, at the rate of 6 mills per cigarette so used. On and after December 1, 1985, in addition to any other tax imposed by this Act, a tax is imposed upon the privilege of using cigarettes in this State at a rate of 4 mills per cigarette so used. On and after the effective date of this amendatory Act of 1989, in addition to any other tax imposed by this Act, a tax is imposed upon the privilege of using cigarettes in this State at the rate of 5 mills per cigarette so used. On and after the effective date of this amendatory Act of 1993, in addition to any other tax imposed by this Act, a tax is imposed upon the privilege of using cigarettes in this State at a rate of 7 mills per cigarette so used. On and after December 15, 1997, in addition to any other tax imposed by this Act, a tax is imposed upon the privilege of using cigarettes in this State at a rate of 7 mills per

cigarette so used. On and after July 1, 2002, in addition to any other tax imposed by this Act, a tax is imposed upon the privilege of using cigarettes in this State at a rate of 20.0 mills per cigarette so used. Beginning on June 24, 2012, in addition to any other tax imposed by this Act, a tax is imposed upon the privilege of using cigarettes in this State at a rate of 50 mills per cigarette so used. The taxes herein imposed shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any political subdivision thereof or by any municipal corporation.

When any tax imposed herein terminates or has terminated, distributors who have bought stamps while such tax was in effect and who therefore paid such tax, but who can show, to the Department's satisfaction, that they sold the cigarettes to which they affixed such stamps after such tax had terminated and did not recover the tax or its equivalent from purchasers, shall be allowed by the Department to take credit for such absorbed tax against subsequent tax stamp purchases from the Department by such distributors.

When the word "tax" is used in this Act, it shall include any tax or tax rate imposed by this Act and shall mean the singular of "tax" or the plural "taxes" as the context may require.

Any distributor having cigarettes to which stamps have been affixed in his possession for sale on the effective date of this amendatory Act of 1989 shall not be required to pay the

additional tax imposed by this amendatory Act of 1989 on such stamped cigarettes. Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale at 12:01 a.m. on the effective date of this amendatory Act of 1993, is required to pay the additional tax imposed by this amendatory Act of 1993 on such stamped cigarettes. This payment shall be due when the distributor first makes a purchase of cigarette tax stamps after the effective date of this amendatory Act of 1993, or on the first due date of a return under this Act after the effective date of this amendatory Act of 1993, whichever occurs first. Once a distributor tenders payment of the additional tax to the Department, the distributor may purchase stamps from the Department. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on December 15, 1997 shall not be required to pay the additional tax imposed by this amendatory Act of 1997 on such stamped cigarettes.

Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale on July 1, 2002 shall not be required to pay the additional tax imposed by this amendatory Act of the 92nd General Assembly on those stamped cigarettes.

Any retailer having cigarettes in his or her possession on June 24, 2012 to which tax stamps have been affixed is not required to pay the additional tax that begins on June 24, 2012 imposed by this amendatory Act of the 97th General Assembly on

those stamped cigarettes. Any distributor having cigarettes in his or her possession on June 24, 2012 to which tax stamps have been affixed, and any distributor having stamps in his or her possession on June 24, 2012 that have not been affixed to packages of cigarettes before June 24, 2012, is required to pay the additional tax that begins on June 24, 2012 imposed by this amendatory Act of the 97th General Assembly to the extent the calendar year 2012 average monthly volume of cigarette stamps in the distributor's possession exceeds the average monthly volume of cigarette stamps purchased by the distributor in calendar year 2011. This payment, less the discount provided in Section 3, is due when the distributor first makes a purchase of cigarette stamps on or after June 24, 2012 or on the first due date of a return under this Act occurring on or after June 24, 2012, whichever occurs first. Those distributors may elect to pay the additional tax on packages of cigarettes to which stamps have been affixed and on any stamps in the distributor's possession that have not been affixed to packages of cigarettes over a period not to exceed 12 months from the due date of the additional tax by notifying the Department in writing. The first payment for distributors making such election is due when the distributor first makes a purchase of cigarette tax stamps on or after June 24, 2012 or on the first due date of a return under this Act occurring on or after June 24, 2012, whichever occurs first. Distributors making such an election are not entitled to take the discount provided in Section 3 on such

payments.

(Source: P.A. 92-536, eff. 6-6-02.)

Section 5-50. The Tobacco Products Tax Act of 1995 is amended by changing Sections 10-5, 10-10, and 10-30 as follows:

(35 ILCS 143/10-5)

Sec. 10-5. Definitions. For purposes of this Act:

"Business" means any trade, occupation, activity, or enterprise engaged in, at any location whatsoever, for the purpose of selling tobacco products.

"Cigarette" has the meaning ascribed to the term in Section 1 of the Cigarette Tax Act.

"Correctional Industries program" means a program run by a State penal institution in which residents of the penal institution produce tobacco products for sale to persons incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Department" means the Illinois Department of Revenue.

"Distributor" means any of the following:

(1) Any manufacturer or wholesaler in this State engaged in the business of selling tobacco products who sells, exchanges, or distributes tobacco products to retailers or consumers in this State.

(2) Any manufacturer or wholesaler engaged in the business of selling tobacco products from without this

State who sells, exchanges, distributes, ships, or transports tobacco products to retailers or consumers located in this State, so long as that manufacturer or wholesaler has or maintains within this State, directly or by subsidiary, an office, sales house, or other place of business, or any agent or other representative operating within this State under the authority of the person or subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily.

(3) Any retailer who receives tobacco products on which the tax has not been or will not be paid by another distributor.

"Distributor" does not include any person, wherever resident or located, who makes, manufactures, or fabricates tobacco products as part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Manufacturer" means any person, wherever resident or located, who manufactures and sells tobacco products, except a person who makes, manufactures, or fabricates tobacco products as a part of a Correctional Industries program for sale to persons incarcerated in penal institutions or resident patients of a State operated mental health facility.

Beginning on January 1, 2013, "moist snuff" means any finely cut, ground, or powdered tobacco that is not intended to

be smoked, but shall not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint venture, limited liability company, or public or private corporation, however formed, or a receiver, executor, administrator, trustee, conservator, or other representative appointed by order of any court.

"Place of business" means and includes any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

"Retailer" means any person in this State engaged in the business of selling tobacco products to consumers in this State, regardless of quantity or number of sales.

"Sale" means any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration and includes all sales made by persons.

"Tobacco products" means any cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff (including moist snuff) or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and other kinds and forms of tobacco,



prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette distributors and manufacturers defined in the Cigarette Tax Act and persons who make, manufacture, or fabricate cigarettes as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Wholesale price" means the established list price for which a manufacturer sells tobacco products to a distributor, before the allowance of any discount, trade allowance, rebate, or other reduction. In the absence of such an established list price, the manufacturer's invoice price at which the manufacturer sells the tobacco product to unaffiliated distributors, before any discounts, trade allowances, rebates, or other reductions, shall be presumed to be the wholesale price.

"Wholesaler" means any person, wherever resident or located, engaged in the business of selling tobacco products to others for the purpose of resale.

(Source: P.A. 92-231, eff. 8-2-01.)

(35 ILCS 143/10-10)

Sec. 10-10. Tax imposed. On the first day of the third month after the month in which this Act becomes law, a tax is

imposed on any person engaged in business as a distributor of tobacco products, as defined in Section 10-5, at the rate of (i) 18% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State prior to July 1, 2012 and (ii) 36% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State beginning on July 1, 2012; except that, beginning on January 1, 2013, the tax on moist snuff shall be imposed at a rate of \$0.30 per ounce, and a proportionate tax at the like rate on all fractional parts of an ounce, sold or otherwise disposed of to retailers or consumers located in this State. The tax is in addition to all other occupation or privilege taxes imposed by the State of Illinois, by any political subdivision thereof, or by any municipal corporation. However, the tax is not imposed upon any activity in that business in interstate commerce or otherwise, to the extent to which that activity may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State. The tax is also not imposed on sales made to the United States or any entity thereof.

Beginning on January 1, 2013, the tax rate imposed per ounce of moist snuff may not exceed 15% of the tax imposed upon a package of 20 cigarettes pursuant to the Cigarette Tax Act.

All moneys received by the Department under this Act from sales occurring prior to July 1, 2012 shall be paid into the Long-Term Care Provider Fund of the State Treasury. Of the

moneys received by the Department from sales occurring on or after July 1, 2012, 50% shall be paid into the Long-Term Care Provider Fund and 50% shall be paid into the Healthcare Provider Relief Fund.

(Source: P.A. 92-231, eff. 8-2-01.)

(35 ILCS 143/10-30)

Sec. 10-30. Returns. Every distributor shall, on or before the 15th day of each month, file a return with the Department covering the preceding calendar month. The return shall disclose the wholesale price for all tobacco products and the quantity of moist snuff sold or otherwise disposed of and other information that the Department may reasonably require. The return shall be filed upon a form prescribed and furnished by the Department.

At the time when any return of any distributor is due to be filed with the Department, the distributor shall also remit to the Department the tax liability that the distributor has incurred for transactions occurring in the preceding calendar month.

(Source: P.A. 89-21, eff. 6-6-95.)

Section 5-55. The Property Tax Code is amended by changing Section 15-10 and by adding Section 15-86 as follows:

(35 ILCS 200/15-10)

Sec. 15-10. Exempt property; procedures for certification.

(a) All property granted an exemption by the Department pursuant to the requirements of Section 15-5 and described in the Sections following Section 15-30 and preceding Section 16-5, to the extent therein limited, is exempt from taxation. In order to maintain that exempt status, the titleholder or the owner of the beneficial interest of any property that is exempt must file with the chief county assessment officer, on or before January 31 of each year (May 31 in the case of property exempted by Section 15-170), an affidavit stating whether there has been any change in the ownership or use of the property, ~~or~~ the status of the owner-resident, the satisfaction by a relevant hospital entity of the condition for an exemption under Section 15-86, or that a disabled veteran who qualifies under Section 15-165 owned and used the property as of January 1 of that year. The nature of any change shall be stated in the affidavit. Failure to file an affidavit shall, in the discretion of the assessment officer, constitute cause to terminate the exemption of that property, notwithstanding any other provision of this Code. Owners of 5 or more such exempt parcels within a county may file a single annual affidavit in lieu of an affidavit for each parcel. The assessment officer, upon request, shall furnish an affidavit form to the owners, in which the owner may state whether there has been any change in the ownership or use of the property or status of the owner or resident as of January 1 of that year. The owner of 5 or more

exempt parcels shall list all the properties giving the same information for each parcel as required of owners who file individual affidavits.

(b) However, titleholders or owners of the beneficial interest in any property exempted under any of the following provisions are not required to submit an annual filing under this Section:

(1) Section 15-45 (burial grounds) in counties of less than 3,000,000 inhabitants and owned by a not-for-profit organization.

(2) Section 15-40.

(3) Section 15-50 (United States property).

(c) If there is a change in use or ownership, however, notice must be filed pursuant to Section 15-20.

(d) An application for homestead exemptions shall be filed as provided in Section 15-170 (senior citizens homestead exemption), Section 15-172 (senior citizens assessment freeze homestead exemption), and Sections 15-175 (general homestead exemption), 15-176 (general alternative homestead exemption), and 15-177 (long-time occupant homestead exemption), respectively.

(e) For purposes of determining satisfaction of the condition for an exemption under Section 15-86:

(1) The "year for which exemption is sought" is the year prior to the year in which the affidavit is due.

(2) The "hospital year" is the fiscal year of the

relevant hospital entity, or the fiscal year of one of the hospitals in the hospital system if the relevant hospital entity is a hospital system with members with different fiscal years, that ends in the year prior to the year in which the affidavit is due. However, if that fiscal year ends 3 months or less before the date on which the affidavit is due, the relevant hospital entity shall file an interim affidavit based on the currently available information, and shall file a supplemental affidavit within 90 days of date on which the application was due, if the information in the relevant hospital entity's audited financial statements changes the interim affidavit's statement concerning the entity's compliance with the calculation required by Section 15-86.

(3) The affidavit shall be accompanied by an exhibit prepared by the relevant hospital entity showing (A) the value of the relevant hospital entity's services and activities, if any, under items (1) through (7) of subsection (e) of Section 15-86, stated separately for each item, and (B) the value relating to the relevant hospital entity's estimated property tax liability under paragraphs (A), (B), and (C) of item (1) of subsection (g) of Section 15-86; under paragraphs (A), (B), and (C) of item (2) of subsection (g) of Section 15-86; and under item (3) of subsection (g) of Section 15-86.

(Source: P.A. 95-644, eff. 10-12-07.)

(35 ILCS 200/15-86 new)

Sec. 15-86. Exemptions related to access to hospital and health care services by low-income and underserved individuals.

(a) The General Assembly finds:

(1) Despite the Supreme Court's decision in *Provena Covenant Medical Center v. Dept. of Revenue*, 236 Ill.2d 368, there is considerable uncertainty surrounding the test for charitable property tax exemption, especially regarding the application of a quantitative or monetary threshold. In *Provena*, the Department stated that the primary basis for its decision was the hospital's inadequate amount of charitable activity, but the Department has not articulated what constitutes an adequate amount of charitable activity. After *Provena*, the Department denied property tax exemption applications of 3 more hospitals, and, on the effective date of this amendatory Act of the 97th General Assembly, at least 20 other hospitals are awaiting rulings on applications for property tax exemption.

(2) In *Provena*, two Illinois Supreme Court justices opined that "setting a monetary or quantum standard is a complex decision which should be left to our legislature, should it so choose". The Appellate Court in *Provena* stated: "The language we use in the State of Illinois to

determine whether real property is used for a charitable purpose has its genesis in our 1870 Constitution. It is obvious that such language may be difficult to apply to the modern face of our nation's health care delivery systems". The court noted the many significant changes in the health care system since that time, but concluded that taking these changes into account is a matter of public policy, and "it is the legislature's job, not ours, to make public policy".

(3) It is essential to ensure that tax exemption law relating to hospitals accounts for the complexities of the modern health care delivery system. Health care is moving beyond the walls of the hospital. In addition to treating individual patients, hospitals are assuming responsibility for improving the health status of communities and populations. Low-income and underserved communities benefit disproportionately by these activities.

(4) The Supreme Court has explained that: "the fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens". Hospitals relieve the burden of government in many ways, but most significantly through their participation in and substantial financial subsidization of the Illinois



Medicaid program, which could not operate without the participation and partnership of Illinois hospitals.

(5) Working with the Illinois hospital community and other interested parties, the General Assembly has developed a comprehensive combination of related legislation that addresses hospital property tax exemption, significantly increases access to free health care for indigent persons, and strengthens the Medical Assistance program. It is the intent of the General Assembly to establish a new category of ownership for charitable property tax exemption to be applied to not-for-profit hospitals and hospital affiliates in lieu of the existing ownership category of "institutions of public charity". It is also the intent of the General Assembly to establish quantifiable standards for the issuance of charitable exemptions for such property. It is not the intent of the General Assembly to declare any property exempt ipso facto, but rather to establish criteria to be applied to the facts on a case-by-case basis.

(b) For the purpose of this Section and Section 15-10, the following terms shall have the meanings set forth below:

(1) "Hospital" means any institution, place, building, buildings on a campus, or other health care facility located in Illinois that is licensed under the Hospital Licensing Act and has a hospital owner.

(2) "Hospital owner" means a not-for-profit corporation that is the titleholder of a hospital, or the owner of the beneficial interest in an Illinois land trust that is the titleholder of a hospital.

(3) "Hospital affiliate" means any corporation, partnership, limited partnership, joint venture, limited liability company, association or other organization, other than a hospital owner, that directly or indirectly controls, is controlled by, or is under common control with one or more hospital owners and that supports, is supported by, or acts in furtherance of the exempt health care purposes of at least one of those hospital owners' hospitals.

(4) "Hospital system" means a hospital and one or more other hospitals or hospital affiliates related by common control or ownership.

(5) "Control" relating to hospital owners, hospital affiliates, or hospital systems means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through ownership of assets, membership interest, other voting or governance rights, by contract or otherwise.

(6) "Hospital applicant" means a hospital owner or hospital affiliate that files an application for a property tax exemption pursuant to Section 15-5 and this Section.

(7) "Relevant hospital entity" means (A) the hospital

owner, in the case of a hospital applicant that is a hospital owner, and (B) at the election of a hospital applicant that is a hospital affiliate, either (i) the hospital affiliate or (ii) the hospital system to which the hospital applicant belongs, including any hospitals or hospital affiliates that are related by common control or ownership.

(8) "Subject property" means property for which a hospital applicant files an application for an exemption pursuant to Section 15-5 and this Section.

(9) "Hospital year" means the fiscal year of the relevant hospital entity, or the fiscal year of one of the hospital owners in the hospital system if the relevant hospital entity is a hospital system with members with different fiscal years, that ends in the year for which the exemption is sought.

(c) A hospital applicant satisfies the conditions for an exemption under this Section with respect to the subject property, and shall be issued a charitable exemption for that property, if the value of services or activities listed in subsection (e) for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, as determined under subsection (g), for the year for which exemption is sought. For purposes of making the calculations required by this subsection (c), if the relevant hospital entity is a hospital owner that owns more than one hospital,

the value of the services or activities listed in subsection (e) shall be calculated on the basis of only those services and activities relating to the hospital that includes the subject property, and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to the properties comprising that hospital. In the case of a multi-state hospital system or hospital affiliate, the value of the services or activities listed in subsection (e) shall be calculated on the basis of only those services and activities that occur in Illinois and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to its property located in Illinois.

Notwithstanding any other provisions of this Act, any parcel or portion thereof, that is owned by a for-profit entity whether part of the hospital system or not, or that is leased, licensed or operated by a for-profit entity regardless of whether healthcare services are provided on that parcel shall not qualify for exemption. If a parcel has both exempt and non-exempt uses, an exemption may be granted for the qualifying portion of that parcel. In the case of parking lots and common areas serving both exempt and non-exempt uses those parcels or portions thereof may qualify for an exemption in proportion to the amount of qualifying use.

(d) The hospital applicant shall include information in its exemption application establishing that it satisfies the requirements of subsection (c). For purposes of making the

calculations required by subsection (c), the hospital applicant may for each year elect to use either (1) the value of the services or activities listed in subsection (e) for the hospital year or (2) the average value of those services or activities for the 3 fiscal years ending with the hospital year. If the relevant hospital entity has been in operation for less than 3 completed fiscal years, then the latter calculation, if elected, shall be performed on a pro rata basis.

(e) Services that address the health care needs of low-income or underserved individuals or relieve the burden of government with regard to health care services. The following services and activities shall be considered for purposes of making the calculations required by subsection (c):

(1) Charity care. Free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act.

(2) Health services to low-income and underserved individuals. Other unreimbursed costs of the relevant hospital entity for providing without charge, paying for, or subsidizing goods, activities, or services for the purpose of addressing the health of low-income or underserved individuals. Those activities or services may include, but are not limited to: financial or in-kind

support to affiliated or unaffiliated hospitals, hospital affiliates, community clinics, or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals who care for low-income or underserved individuals; providing or subsidizing outreach or educational services to low-income or underserved individuals for disease management and prevention; free or subsidized goods, supplies, or services needed by low-income or underserved individuals because of their medical condition; and prenatal or childbirth outreach to low-income or underserved persons.

(3) Subsidy of State or local governments. Direct or indirect financial or in-kind subsidies of State or local governments by the relevant hospital entity that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.

(4) Support for State health care programs for low-income individuals. At the election of the hospital applicant for each applicable year, either (A) 10% of payments to the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) under Medicaid or other means-tested programs, including, but not limited to, General

Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program or (B) the amount of subsidy provided by the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) to State or local government in treating Medicaid recipients and recipients of means-tested programs, including but not limited to General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program. The amount of subsidy for purposes of this item (4) is calculated in the same manner as unreimbursed costs are calculated for Medicaid and other means-tested government programs in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly; provided, however, that in any event unreimbursed costs shall be net of fee-for-services payments, payments pursuant to an assessment, quarterly payments, and all other payments included on the schedule H of the IRS form 990.

(5) Dual-eligible subsidy. The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients. The amount of subsidy for purposes of this item (5) is calculated by multiplying the relevant hospital entity's unreimbursed costs for

Medicare, calculated in the same manner as determined in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly, by the relevant hospital entity's ratio of dual-eligible patients to total Medicare patients.

(6) Relief of the burden of government related to health care of low-income individuals. Except to the extent otherwise taken into account in this subsection, the portion of unreimbursed costs of the relevant hospital entity attributable to providing, paying for, or subsidizing goods, activities, or services that relieve the burden of government related to health care for low-income individuals. Such activities or services shall include, but are not limited to, providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services; providing medical education; and conducting medical research or training of health care professionals. The portion of those unreimbursed costs attributable to benefiting low-income individuals shall be determined using the ratio calculated by adding the relevant hospital entity's costs attributable to charity care, Medicaid, other means-tested government programs, disabled Medicare patients under age 65, and dual-eligible Medicare/Medicaid patients and dividing that total by the relevant hospital entity's total costs. Such costs for the numerator and denominator shall be determined by



multiplying gross charges by the cost to charge ratio taken from the hospitals' most recently filed Medicare cost report (CMS 2252-10 Worksheet C, Part I). In the case of emergency services, the ratio shall be calculated using costs (gross charges multiplied by the cost to charge ratio taken from the hospitals' most recently filed Medicare cost report (CMS 2252-10 Worksheet C, Part I)) of patients treated in the relevant hospital entity's emergency department.

(7) Any other activity by the relevant hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

(f) For purposes of making the calculations required by subsections (c) and (e):

(1) particular services or activities eligible for consideration under any of the paragraphs (1) through (7) of subsection (e) may not be counted under more than one of those paragraphs; and

(2) the amount of unreimbursed costs and the amount of subsidy shall not be reduced by restricted or unrestricted payments received by the relevant hospital entity as contributions deductible under Section 170(a) of the Internal Revenue Code.

(g) Estimation of Exempt Property Tax Liability. The estimated property tax liability used for the determination in

subsection (c) shall be calculated as follows:

(1) "Estimated property tax liability" means the estimated dollar amount of property tax that would be owed, with respect to the exempt portion of each of the relevant hospital entity's properties that are already fully or partially exempt, or for which an exemption in whole or in part is currently being sought, and then aggregated as applicable, as if the exempt portion of those properties were subject to tax, calculated with respect to each such property by multiplying:

(A) the lesser of (i) the actual assessed value, if any, of the portion of the property for which an exemption is sought or (ii) an estimated assessed value of the exempt portion of such property as determined in item (2) of this subsection (c), by:

(B) the applicable State equalization rate (yielding the equalized assessed value), by

(C) the applicable tax rate.

(2) The estimated assessed value of the exempt portion of the property equals the sum of (i) the estimated fair market value of buildings on the property, as determined in accordance with subparagraphs (A) and (B) of this item (2), multiplied by the applicable assessment factor, and (ii) the estimated assessed value of the land portion of the property, as determined in accordance with subparagraph (C).

(A) The "estimated fair market value of buildings on the property" means the replacement value of any exempt portion of buildings on the property, minus depreciation, determined utilizing the cost replacement method whereby the exempt square footage of all such buildings is multiplied by the replacement cost per square foot for Class A Average building found in the most recent edition of the Marshall & Swift Valuation Services Manual, adjusted by any appropriate current cost and local multipliers.

(B) Depreciation, for purposes of calculating the estimated fair market value of buildings on the property, is applied by utilizing a weighted mean life for the buildings based on original construction and assuming a 40-year life for hospital buildings and the applicable life for other types of buildings as specified in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets". In the case of hospital buildings, the remaining life is divided by 40 and this ratio is multiplied by the replacement cost of the buildings to obtain an estimated fair market value of buildings. If a hospital building is older than 35 years, a remaining life of 5 years for residual value is assumed; and if a building is less than 8 years old, a remaining life of 32 years is assumed.

(C) The estimated assessed value of the land portion of the property shall be determined by multiplying (i) the per square foot average of the assessed values of three parcels of land (not including farm land, and excluding the assessed value of the improvements thereon) reasonably comparable to the property, by (ii) the number of square feet comprising the exempt portion of the property's land square footage.

(3) The assessment factor, State equalization rate, and tax rate (including any special factors such as Enterprise Zones) used in calculating the estimated property tax liability shall be for the most recent year that is publicly available from the applicable chief county assessment officer or officers at least 90 days before the end of the hospital year.

(4) The method utilized to calculate estimated property tax liability for purposes of this Section 15-86 shall not be utilized for the actual valuation, assessment, or taxation of property pursuant to the Property Tax Code.

(h) Application. Each hospital applicant applying for a property tax exemption pursuant to Section 15-5 and this Section shall use an application form provided by the Department. The application form shall specify the records required in support of the application and those records shall be submitted to the Department with the application form. Each

application or affidavit shall contain a verification by the Chief Executive Officer of the hospital applicant under oath or affirmation stating that each statement in the application or affidavit and each document submitted with the application or affidavit are true and correct. The records submitted with the application pursuant to this Section shall include an exhibit prepared by the relevant hospital entity showing (A) the value of the relevant hospital entity's services and activities, if any, under paragraphs (1) through (7) of subsection (e) of this Section stated separately for each paragraph, and (B) the value relating to the relevant hospital entity's estimated property tax liability under subsections (g) (1) (A), (B), and (C), subsections (g) (2) (A), (B), and (C), and subsection (g) (3) of this Section stated separately for each item. Such exhibit will be made available to the public by the chief county assessment officer. Nothing in this Section shall be construed as limiting the Attorney General's authority under the Illinois False Claims Act.

(i) Nothing in this Section shall be construed to limit the ability of otherwise eligible hospitals, hospital owners, hospital affiliates, or hospital systems to obtain or maintain property tax exemptions pursuant to a provision of the Property Tax Code other than this Section.

Section 5-60. The Illinois Public Aid Code is amended by changing Sections 5A-1, 5A-2, 5A-4, 5A-5, 5A-8, 5A-10, 5A-13,

and 5A-14 and by adding Sections 5A-12.4 and 5A-15 as follows:

(305 ILCS 5/5A-1) (from Ch. 23, par. 5A-1)

Sec. 5A-1. Definitions. As used in this Article, unless the context requires otherwise:

~~"Adjusted gross hospital revenue" shall be determined separately for inpatient and outpatient services for each hospital conducted, operated or maintained by a hospital provider, and means the hospital provider's total gross revenues less: (i) gross revenue attributable to non hospital based services including home dialysis services, durable medical equipment, ambulance services, outpatient clinics and any other non-hospital based services as determined by the Illinois Department by rule; and (ii) gross revenues attributable to the routine services provided to persons receiving skilled or intermediate long term care services within the meaning of Title XVIII or XIX of the Social Security Act; and (iii) Medicare gross revenue (excluding the Medicare gross revenue attributable to clauses (i) and (ii) of this paragraph and the Medicare gross revenue attributable to the routine services provided to patients in a psychiatric hospital, a rehabilitation hospital, a distinct part psychiatric unit, a distinct part rehabilitation unit, or swing beds). Adjusted gross hospital revenue shall be determined using the most recent data available from each hospital's 2003 Medicare cost report as contained in the Healthcare Cost Report~~

~~Information System file, for the quarter ending on December 31, 2004, without regard to any subsequent adjustments or changes to such data. If a hospital's 2003 Medicare cost report is not contained in the Healthcare Cost Report Information System, the hospital provider shall furnish such cost report or the data necessary to determine its adjusted gross hospital revenue as required by rule by the Illinois Department.~~

"Fund" means the Hospital Provider Fund.

"Hospital" means an institution, place, building, or agency located in this State that is subject to licensure by the Illinois Department of Public Health under the Hospital Licensing Act, whether public or private and whether organized for profit or not-for-profit.

"Hospital provider" means a person licensed by the Department of Public Health to conduct, operate, or maintain a hospital, regardless of whether the person is a Medicaid provider. For purposes of this paragraph, "person" means any political subdivision of the State, municipal corporation, individual, firm, partnership, corporation, company, limited liability company, association, joint stock association, or trust, or a receiver, executor, trustee, guardian, or other representative appointed by order of any court.

"Medicare bed days" means, for each hospital, the sum of the number of days that each bed was occupied by a patient who was covered by Title XVIII of the Social Security Act, excluding days attributable to the routine services provided to

persons receiving skilled or intermediate long term care services. Medicare bed days shall be computed separately for each hospital operated or maintained by a hospital provider.

"Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds, excluding days attributable to the routine services provided to persons receiving skilled or intermediate long term care services. Occupied bed days shall be computed separately for each hospital operated or maintained by a hospital provider.

"Outpatient gross revenue" means, for each hospital, its total gross charges attributed to outpatient services as reported on the Medicare cost report at Worksheet C, Part I, Column 7, line 101, less the sum of lines 45, 60, 63, 64, 65, 66, 67, and 68 (and any subsets of those lines).

~~"Proration factor" means a fraction, the numerator of which is 53 and the denominator of which is 365.~~

(Source: P.A. 94-242, eff. 7-18-05; 95-859, eff. 8-19-08.)

(305 ILCS 5/5A-2) (from Ch. 23, par. 5A-2)

(Section scheduled to be repealed on July 1, 2014)

Sec. 5A-2. Assessment.

~~(a) Subject to Sections 5A-3 and 5A-10, an annual assessment on inpatient services is imposed on each hospital provider in an amount equal to the hospital's occupied bed days multiplied by \$84.19 multiplied by the proration factor for State fiscal year 2004 and the hospital's occupied bed days~~



~~multiplied by \$84.19 for State fiscal year 2005.~~

~~For State fiscal years 2004 and 2005, the Department of Healthcare and Family Services shall use the number of occupied bed days as reported by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health to calculate the hospital's annual assessment. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals or if there are data errors in the reported sum of a hospital's occupied bed days as determined by the Department of Healthcare and Family Services (formerly Department of Public Aid), then the Department of Healthcare and Family Services may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department of Healthcare and Family Services or its duly authorized agents and employees.~~

~~Subject to Sections 5A 3 and 5A 10, for the privilege of engaging in the occupation of hospital provider, beginning August 1, 2005, an annual assessment is imposed on each hospital provider for State fiscal years 2006, 2007, and 2008, in an amount equal to 2.5835% of the hospital provider's adjusted gross hospital revenue for inpatient services and 2.5835% of the hospital provider's adjusted gross hospital revenue for outpatient services. If the hospital provider's adjusted gross hospital revenue is not available, then the~~

~~Illinois Department may obtain the hospital provider's adjusted gross hospital revenue from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Illinois Department or its duly authorized agents and employees.~~

Subject to Sections 5A-3 and 5A-10, for State fiscal years 2009 through 2014, and from July 1, 2014 through December 31, 2014, an annual assessment on inpatient services is imposed on each hospital provider in an amount equal to \$218.38 multiplied by the difference of the hospital's occupied bed days less the hospital's Medicare bed days.

For State fiscal years 2009 through 2014, and after a hospital's occupied bed days and Medicare bed days shall be determined using the most recent data available from each hospital's 2005 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on December 31, 2006, without regard to any subsequent adjustments or changes to such data. If a hospital's 2005 Medicare cost report is not contained in the Healthcare Cost Report Information System, then the Illinois Department may obtain the hospital provider's occupied bed days and Medicare bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Illinois Department or its duly authorized agents and

employees.

(b) (Blank).

(b-5) Subject to Sections 5A-3 and 5A-10, for State fiscal years 2013 through 2014, and July 1, 2014 through December 31, 2014, an annual assessment on outpatient services is imposed on each hospital provider in an amount equal to .008766 multiplied by the hospital's outpatient gross revenue.

For State fiscal years 2013 through 2014, and July 1, 2014 through December 31, 2014, a hospital's outpatient gross revenue shall be determined using the most recent data available from each hospital's 2009 Medicare cost report as contained in the Healthcare Cost Report Information System file, for the quarter ending on June 30, 2011, without regard to any subsequent adjustments or changes to such data. If a hospital's 2009 Medicare cost report is not contained in the Healthcare Cost Report Information System, then the Department may obtain the hospital provider's outpatient gross revenue from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

(c) (Blank).

(d) Notwithstanding any of the other provisions of this Section, the Department is authorized, ~~during this 94th General Assembly,~~ to adopt rules to reduce the rate of any annual assessment imposed under this Section, as authorized by Section

5-46.2 of the Illinois Administrative Procedure Act.

(e) Notwithstanding any other provision of this Section, any plan providing for an assessment on a hospital provider as a permissible tax under Title XIX of the federal Social Security Act and Medicaid-eligible payments to hospital providers from the revenues derived from that assessment shall be reviewed by the Illinois Department of Healthcare and Family Services, as the Single State Medicaid Agency required by federal law, to determine whether those assessments and hospital provider payments meet federal Medicaid standards. If the Department determines that the elements of the plan may meet federal Medicaid standards and a related State Medicaid Plan Amendment is prepared in a manner and form suitable for submission, that State Plan Amendment shall be submitted in a timely manner for review by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services and subject to approval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services. No such plan shall become effective without approval by the Illinois General Assembly by the enactment into law of related legislation. Notwithstanding any other provision of this Section, the Department is authorized to adopt rules to reduce the rate of any annual assessment imposed under this Section. Any such rules may be adopted by the Department under Section 5-50 of the Illinois Administrative Procedure Act.

(Source: P.A. 95-859, eff. 8-19-08; 96-1530, eff. 2-16-11.)

(305 ILCS 5/5A-4) (from Ch. 23, par. 5A-4)

Sec. 5A-4. Payment of assessment; penalty.

(a) ~~The annual assessment imposed by Section 5A-2 for State fiscal year 2004 shall be due and payable on June 18 of the year. The assessment imposed by Section 5A-2 for State fiscal year 2005 shall be due and payable in quarterly installments, each equalling one fourth of the assessment for the year, on July 19, October 19, January 18, and April 19 of the year. The assessment imposed by Section 5A-2 for State fiscal years 2006 through 2008 shall be due and payable in quarterly installments, each equaling one fourth of the assessment for the year, on the fourteenth State business day of September, December, March, and May. Except as provided in subsection (a-5) of this Section, the assessment imposed by Section 5A-2 for State fiscal year 2009 and each subsequent State fiscal year shall be due and payable in monthly installments, each equaling one-twelfth of the assessment for the year, on the fourteenth State business day of each month. No installment payment of an assessment imposed by Section 5A-2 shall be due and payable, however, until after the Comptroller has issued the payments required under this Article: (i) ~~the Department notifies the hospital provider, in writing, that the payment methodologies to hospitals required under Section 5A-12, Section 5A 12.1, or Section 5A 12.2, whichever is applicable~~~~

~~for that fiscal year, have been approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services and the waiver under 42 CFR 433.68 for the assessment imposed by Section 5A-2, if necessary, has been granted by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services; and (ii) the Comptroller has issued the payments required under Section 5A-12, Section 5A-12.1, or Section 5A-12.2, whichever is applicable for that fiscal year. Upon notification to the Department of approval of the payment methodologies required under Section 5A-12, Section 5A-12.1, or Section 5A-12.2, whichever is applicable for that fiscal year, and the waiver granted under 42 CFR 433.68, all installments otherwise due under Section 5A-2 prior to the date of notification shall be due and payable to the Department upon written direction from the Department and issuance by the Comptroller of the payments required under Section 5A-12.1 or Section 5A-12.2, whichever is applicable for that fiscal year.~~

Except as provided in subsection (a-5) of this Section, the assessment imposed by subsection (b-5) of Section 5A-2 for State fiscal year 2013 and each subsequent State fiscal year shall be due and payable in monthly installments, each equaling one-twelfth of the assessment for the year, on the 14th State business day of each month. No installment payment of an assessment imposed by subsection (b-5) of Section 5A-2 shall be due and payable, however, until after: (i) the Department

notifies the hospital provider, in writing, that the payment methodologies to hospitals required under Section 5A-12.4, have been approved by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, and the waiver under 42 CFR 433.68 for the assessment imposed by subsection (b-5) of Section 5A-2, if necessary, has been granted by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services; and (ii) the Comptroller has issued the payments required under Section 5A-12.4. Upon notification to the Department of approval of the payment methodologies required under Section 5A-12.4 and the waiver granted under 42 CFR 433.68, if necessary, all installments otherwise due under subsection (b-5) of Section 5A-2 prior to the date of notification shall be due and payable to the Department upon written direction from the Department and issuance by the Comptroller of the payments required under Section 5A-12.4.

(a-5) The Illinois Department may, ~~for the purpose of maximizing federal revenue,~~ accelerate the schedule upon which assessment installments are due and payable by hospitals with a payment ratio greater than or equal to one. Such acceleration of due dates for payment of the assessment may be made only in conjunction with a corresponding acceleration in access payments identified in Section 5A-12.2 or Section 5A-12.4 to the same hospitals. For the purposes of this subsection (a-5), a hospital's payment ratio is defined as the quotient obtained

by dividing the total payments for the State fiscal year, as authorized under Section 5A-12.2 or Section 5A-12.4, by the total assessment for the State fiscal year imposed under Section 5A-2 or subsection (b-5) of Section 5A-2.

(b) The Illinois Department is authorized to establish delayed payment schedules for hospital providers that are unable to make installment payments when due under this Section due to financial difficulties, as determined by the Illinois Department.

(c) If a hospital provider fails to pay the full amount of an installment when due (including any extensions granted under subsection (b)), there shall, unless waived by the Illinois Department for reasonable cause, be added to the assessment imposed by Section 5A-2 a penalty assessment equal to the lesser of (i) 5% of the amount of the installment not paid on or before the due date plus 5% of the portion thereof remaining unpaid on the last day of each 30-day period thereafter or (ii) 100% of the installment amount not paid on or before the due date. For purposes of this subsection, payments will be credited first to unpaid installment amounts (rather than to penalty or interest), beginning with the most delinquent installments.

(d) Any assessment amount that is due and payable to the Illinois Department more frequently than once per calendar quarter shall be remitted to the Illinois Department by the hospital provider by means of electronic funds transfer. The



Illinois Department may provide for remittance by other means if (i) the amount due is less than \$10,000 or (ii) electronic funds transfer is unavailable for this purpose.

(Source: P.A. 95-331, eff. 8-21-07; 95-859, eff. 8-19-08; 96-821, eff. 11-20-09.)

(305 ILCS 5/5A-5) (from Ch. 23, par. 5A-5)

Sec. 5A-5. Notice; penalty; maintenance of records.

(a) The Illinois Department ~~of Healthcare and Family Services~~ shall send a notice of assessment to every hospital provider subject to assessment under this Article. The notice of assessment shall notify the hospital of its assessment and shall be sent after receipt by the Department of notification from the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services that the payment methodologies required under this Article ~~Section 5A 12, Section 5A 12.1, or Section 5A 12.2, whichever is applicable for that fiscal year,~~ and, if necessary, the waiver granted under 42 CFR 433.68 have been approved. The notice shall be on a form prepared by the Illinois Department and shall state the following:

(1) The name of the hospital provider.

(2) The address of the hospital provider's principal place of business from which the provider engages in the occupation of hospital provider in this State, and the name and address of each hospital operated, conducted, or

maintained by the provider in this State.

(3) The occupied bed days, occupied bed days less Medicare days, ~~or~~ adjusted gross hospital revenue, or outpatient gross revenue of the hospital provider (whichever is applicable), the amount of assessment imposed under Section 5A-2 for the State fiscal year for which the notice is sent, and the amount of each installment to be paid during the State fiscal year.

(4) (Blank).

(5) Other reasonable information as determined by the Illinois Department.

(b) If a hospital provider conducts, operates, or maintains more than one hospital licensed by the Illinois Department of Public Health, the provider shall pay the assessment for each hospital separately.

(c) Notwithstanding any other provision in this Article, in the case of a person who ceases to conduct, operate, or maintain a hospital in respect of which the person is subject to assessment under this Article as a hospital provider, the assessment for the State fiscal year in which the cessation occurs shall be adjusted by multiplying the assessment computed under Section 5A-2 by a fraction, the numerator of which is the number of days in the year during which the provider conducts, operates, or maintains the hospital and the denominator of which is 365. Immediately upon ceasing to conduct, operate, or maintain a hospital, the person shall pay the assessment for

the year as so adjusted (to the extent not previously paid).

(d) Notwithstanding any other provision in this Article, a provider who commences conducting, operating, or maintaining a hospital, upon notice by the Illinois Department, shall pay the assessment computed under Section 5A-2 and subsection (e) in installments on the due dates stated in the notice and on the regular installment due dates for the State fiscal year occurring after the due dates of the initial notice.

~~(e) Notwithstanding any other provision in this Article, for State fiscal years 2004 and 2005, in the case of a hospital provider that did not conduct, operate, or maintain a hospital throughout calendar year 2001, the assessment for that State fiscal year shall be computed on the basis of hypothetical occupied bed days for the full calendar year as determined by the Illinois Department. Notwithstanding any other provision in this Article, for State fiscal years 2006 through 2008, in the case of a hospital provider that did not conduct, operate, or maintain a hospital in 2003, the assessment for that State fiscal year shall be computed on the basis of hypothetical adjusted gross hospital revenue for the hospital's first full fiscal year as determined by the Illinois Department (which may be based on annualization of the provider's actual revenues for a portion of the year, or revenues of a comparable hospital for the year, including revenues realized by a prior provider of the same hospital during the year). Notwithstanding any other provision in this Article, for State fiscal years 2009 through~~

2014, in the case of a hospital provider that did not conduct, operate, or maintain a hospital in 2005, the assessment for that State fiscal year shall be computed on the basis of hypothetical occupied bed days for the full calendar year as determined by the Illinois Department. Notwithstanding any other provision in this Article, for State fiscal years 2013 through 2014, and for July 1, 2014 through December 31, 2014, in the case of a hospital provider that did not conduct, operate, or maintain a hospital in 2009, the assessment under subsection (b-5) of Section 5A-2 for that State fiscal year shall be computed on the basis of hypothetical gross outpatient revenue for the full calendar year as determined by the Illinois Department.

(f) Every hospital provider subject to assessment under this Article shall keep sufficient records to permit the determination of adjusted gross hospital revenue for the hospital's fiscal year. All such records shall be kept in the English language and shall, at all times during regular business hours of the day, be subject to inspection by the Illinois Department or its duly authorized agents and employees.

(g) The Illinois Department may, by rule, provide a hospital provider a reasonable opportunity to request a clarification or correction of any clerical or computational errors contained in the calculation of its assessment, but such corrections shall not extend to updating the cost report

information used to calculate the assessment.

(h) (Blank).

(Source: P.A. 95-331, eff. 8-21-07; 95-859, eff. 8-19-08; 96-1530, eff. 2-16-11.)

(305 ILCS 5/5A-8) (from Ch. 23, par. 5A-8)

Sec. 5A-8. Hospital Provider Fund.

(a) There is created in the State Treasury the Hospital Provider Fund. Interest earned by the Fund shall be credited to the Fund. The Fund shall not be used to replace any moneys appropriated to the Medicaid program by the General Assembly.

(b) The Fund is created for the purpose of receiving moneys in accordance with Section 5A-6 and disbursing moneys only for the following purposes, notwithstanding any other provision of law:

(1) For making payments to hospitals as required under ~~Articles V, V A, VI, and XIV~~ of this Code, under the Children's Health Insurance Program Act, under the Covering ALL KIDS Health Insurance Act, and under the Long Term Acute Care Hospital Quality Improvement Transfer Program ~~Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act~~.

(2) For the reimbursement of moneys collected by the Illinois Department from hospitals or hospital providers through error or mistake in performing the activities authorized under ~~this Article and Article V~~ of this Code.

(3) For payment of administrative expenses incurred by the Illinois Department or its agent in performing the activities authorized by this Code, under the Children's Health Insurance Program Act, under the Covering ALL KIDS Health Insurance Act, and under the Long Term Acute Care Hospital Quality Improvement Transfer Program Act. ~~Article.~~

(4) For payments of any amounts which are reimbursable to the federal government for payments from this Fund which are required to be paid by State warrant.

(5) For making transfers, as those transfers are authorized in the proceedings authorizing debt under the Short Term Borrowing Act, but transfers made under this paragraph (5) shall not exceed the principal amount of debt issued in anticipation of the receipt by the State of moneys to be deposited into the Fund.

(6) For making transfers to any other fund in the State treasury, but transfers made under this paragraph (6) shall not exceed the amount transferred previously from that other fund into the Hospital Provider Fund.

(6.5) For making transfers to the Healthcare Provider Relief Fund, except that transfers made under this paragraph (6.5) shall not exceed \$60,000,000 in the aggregate.

(7) For making transfers not exceeding the following amounts, in State fiscal years 2013 and 2014, to the

following designated funds:

Health and Human Services Medicaid Trust

<u>Fund</u> .....	<u>\$20,000,000</u>
<u>Long-Term Care Provider Fund</u> .....	<u>\$30,000,000</u>
<u>General Revenue Fund</u> .....	<u>\$80,000,000.</u>

Transfers under this paragraph shall be made within 7 days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4.

(7.1) For making transfers not exceeding the following amounts, in State fiscal year 2015, to the following designated funds:

Health and Human Services Medicaid Trust

<u>Fund</u> .....	<u>\$10,000,000</u>
<u>Long-Term Care Provider Fund</u> .....	<u>\$15,000,000</u>
<u>General Revenue Fund</u> .....	<u>\$40,000,000.</u>

Transfers under this paragraph shall be made within 7 days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4. ~~For State fiscal years 2004 and 2005 for making transfers to the Health and Human Services Medicaid Trust Fund, including 20% of the moneys received from hospital providers under Section 5A-4 and transferred into the Hospital Provider Fund under Section 5A-6. For State fiscal year 2006 for making transfers to the Health and Human Services Medicaid Trust Fund of up to \$130,000,000 per year~~

~~of the moneys received from hospital providers under Section 5A-4 and transferred into the Hospital Provider Fund under Section 5A-6. Transfers under this paragraph shall be made within 7 days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4.~~

~~(7.5) (Blank). For State fiscal year 2007 for making transfers of the moneys received from hospital providers under Section 5A-4 and transferred into the Hospital Provider Fund under Section 5A-6 to the designated funds not exceeding the following amounts in that State fiscal year:~~

~~Health and Human Services~~

<del>Medicaid Trust Fund .....</del>	<del>-\$20,000,000</del>
<del>Long-Term Care Provider Fund .....</del>	<del>-\$30,000,000</del>
<del>General Revenue Fund .....</del>	<del>-\$80,000,000.</del>

~~Transfers under this paragraph shall be made within 7 days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4.~~

~~(7.8) (Blank). For State fiscal year 2008, for making transfers of the moneys received from hospital providers under Section 5A-4 and transferred into the Hospital Provider Fund under Section 5A-6 to the designated funds not exceeding the following amounts in that State fiscal year:~~



~~Health and Human Services~~

<del>Medicaid Trust Fund .....</del>	<del>\$40,000,000</del>
<del>Long Term Care Provider Fund .....</del>	<del>\$60,000,000</del>
<del>General Revenue Fund .....</del>	<del>\$160,000,000.</del>

~~Transfers under this paragraph shall be made within 7 days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4.~~

~~(7.9) (Blank). For State fiscal years 2009 through 2014, for making transfers of the moneys received from hospital providers under Section 5A-4 and transferred into the Hospital Provider Fund under Section 5A-6 to the designated funds not exceeding the following amounts in that State fiscal year:~~

~~Health and Human Services~~

<del>Medicaid Trust Fund .....</del>	<del>\$20,000,000</del>
<del>Long Term Care Provider Fund .....</del>	<del>\$30,000,000</del>
<del>General Revenue Fund .....</del>	<del>\$80,000,000.</del>

~~Except as provided under this paragraph, transfers under this paragraph shall be made within 7 business days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4. For State fiscal year 2009, transfers to the General Revenue Fund under this paragraph shall be made on or before June 30, 2009, as sufficient funds become available in the Hospital Provider Fund to both make the transfers~~

~~and continue hospital payments.~~

(7.10) For State fiscal years 2013 and 2014, for making transfers of the moneys resulting from the assessment under subsection (b-5) of Section 5A-2 and received from hospital providers under Section 5A-4 and transferred into the Hospital Provider Fund under Section 5A-6 to the designated funds not exceeding the following amounts in that State fiscal year:

Health Care Provider Relief Fund . . . . \$50,000,000

Transfers under this paragraph shall be made within 7 days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4.

(7.11) For State fiscal year 2015, for making transfers of the moneys resulting from the assessment under subsection (b-5) of Section 5A-2 and received from hospital providers under Section 5A-4 and transferred into the Hospital Provider Fund under Section 5A-6 to the designated funds not exceeding the following amounts in that State fiscal year:

Health Care Provider Relief Fund . . . . \$25,000,000

Transfers under this paragraph shall be made within 7 days after the payments have been received pursuant to the schedule of payments provided in subsection (a) of Section 5A-4.

(8) For making refunds to hospital providers pursuant

to Section 5A-10.

Disbursements from the Fund, other than transfers authorized under paragraphs (5) and (6) of this subsection, shall be by warrants drawn by the State Comptroller upon receipt of vouchers duly executed and certified by the Illinois Department.

(c) The Fund shall consist of the following:

(1) All moneys collected or received by the Illinois Department from the hospital provider assessment imposed by this Article.

(2) All federal matching funds received by the Illinois Department as a result of expenditures made by the Illinois Department that are attributable to moneys deposited in the Fund.

(3) Any interest or penalty levied in conjunction with the administration of this Article.

(4) Moneys transferred from another fund in the State treasury.

(5) All other moneys received for the Fund from any other source, including interest earned thereon.

(d) (Blank).

(Source: P.A. 95-707, eff. 1-11-08; 95-859, eff. 8-19-08; 96-3, eff. 2-27-09; 96-45, eff. 7-15-09; 96-821, eff. 11-20-09; 96-1530, eff. 2-16-11.)

(305 ILCS 5/5A-10) (from Ch. 23, par. 5A-10)

Sec. 5A-10. Applicability.

(a) The assessment imposed by subsection (a) of Section 5A-2 shall not take effect or shall cease to be imposed, and any moneys remaining in the Fund shall be refunded to hospital providers in proportion to the amounts paid by them, if:

(1) The payments to hospitals required under this Article are not eligible for federal matching funds under Title XIX or XXI of the Social Security Act; The sum of the appropriations for State fiscal years 2004 and 2005 from the General Revenue Fund for hospital payments under the medical assistance program is less than \$4,500,000,000 or the appropriation for each of State fiscal years 2006, 2007 and 2008 from the General Revenue Fund for hospital payments under the medical assistance program is less than \$2,500,000,000 increased annually to reflect any increase in the number of recipients, or the annual appropriation for State fiscal years 2009, 2010, 2011, 2013, and 2014, from the General Revenue Fund combined with the Hospital Provider Fund as authorized in Section 5A-8 for hospital payments under the medical assistance program, is less than the amount appropriated for State fiscal year 2009, adjusted annually to reflect any change in the number of recipients, excluding State fiscal year 2009 supplemental appropriations made necessary by the enactment of the American Recovery and Reinvestment Act of 2009; or

~~(2) For State fiscal years prior to State fiscal year~~

~~2009, the Department of Healthcare and Family Services (formerly Department of Public Aid) makes changes in its rules that reduce the hospital inpatient or outpatient payment rates, including adjustment payment rates, in effect on October 1, 2004, except for hospitals described in subsection (b) of Section 5A-3 and except for changes in the methodology for calculating outlier payments to hospitals for exceptionally costly stays, so long as those changes do not reduce aggregate expenditures below the amount expended in State fiscal year 2005 for such services; or~~

(2) ~~(2.1)~~ For State fiscal years 2009 through 2014, and July 1, 2014 through December 31, 2014, the Department of Healthcare and Family Services adopts any administrative rule change to reduce payment rates or alters any payment methodology that reduces any payment rates made to operating hospitals under the approved Title XIX or Title XXI State plan in effect January 1, 2008 except for:

(A) any changes for hospitals described in subsection (b) of Section 5A-3; ~~or~~

(B) any rates for payments made under this Article V-A; ~~or~~

(C) any changes proposed in State plan amendment transmittal numbers 08-01, 08-02, 08-04, 08-06, and 08-07; or

(D) in relation to any admissions on or after

January 1, 2011, a modification in the methodology for calculating outlier payments to hospitals for exceptionally costly stays, for hospitals reimbursed under the diagnosis-related grouping methodology in effect on July 1, 2011; provided that the Department shall be limited to one such modification during the 36-month period after the effective date of this amendatory Act of the 96th General Assembly; or

(3) The payments to hospitals required under Section 5A-12 or Section 5A-12.2 are changed or are not eligible for federal matching funds under Title XIX or XXI of the Social Security Act.

(b) The assessment imposed by Section 5A-2 shall not take effect or shall cease to be imposed, and the Department's obligation to make payments shall immediately cease, if the assessment is determined to be an impermissible tax under Title XIX of the Social Security Act. Moneys in the Hospital Provider Fund derived from assessments imposed prior thereto shall be disbursed in accordance with Section 5A-8 to the extent federal financial participation is not reduced due to the impermissibility of the assessments, and any remaining moneys shall be refunded to hospital providers in proportion to the amounts paid by them.

(c) The assessments imposed by subsection (b-5) of Section 5A-2 shall not take effect or shall cease to be imposed, the Department's obligation to make payments shall immediately

cease, and any moneys remaining in the Fund shall be refunded to hospital providers in proportion to the amounts paid by them, if the payments to hospitals required under Section 5A-12.4 are not eligible for federal matching funds under Title XIX of the Social Security Act.

(d) The assessments imposed by Section 5A-2 shall not take effect or shall cease to be imposed, the Department's obligation to make payments shall immediately cease, and any moneys remaining in the Fund shall be refunded to hospital providers in proportion to the amounts paid by them, if:

(1) for State fiscal years 2013 through 2014, and July 1, 2014 through December 31, 2014, the Department reduces any payment rates to hospitals as in effect on May 1, 2012, or alters any payment methodology as in effect on May 1, 2012, that has the effect of reducing payment rates to hospitals, except for any changes affecting hospitals authorized in Senate Bill 2840 of the 97th General Assembly in the form in which it becomes law, and except for any changes authorized under Section 5A-15; or

(2) for State fiscal years 2013 through 2014, and July 1, 2014 through December 31, 2014, the Department reduces any supplemental payments made to hospitals below the amounts paid for services provided in State fiscal year 2011 as implemented by administrative rules adopted and in effect on or prior to June 30, 2011, except for any changes affecting hospitals authorized in Senate Bill 2840 of the

97th General Assembly in the form in which it becomes law, and except for any changes authorized under Section 5A-15.

(Source: P.A. 96-8, eff. 4-28-09; 96-1530, eff. 2-16-11; 97-72, eff. 7-1-11; 97-74, eff. 6-30-11.)

(305 ILCS 5/5A-12.4 new)

Sec. 5A-12.4. Hospital access improvement payments on or after July 1, 2012.

(a) Hospital access improvement payments. To preserve and improve access to hospital services, for hospital and physician services rendered on or after July 1, 2012, the Illinois Department shall, except for hospitals described in subsection (b) of Section 5A-3, make payments to hospitals as set forth in this Section. These payments shall be paid in 12 equal installments on or before the 7th State business day of each month, except that no payment shall be due within 100 days after the later of the date of notification of federal approval of the payment methodologies required under this Section or any waiver required under 42 CFR 433.68, at which time the sum of amounts required under this Section prior to the date of notification is due and payable. Payments under this Section are not due and payable, however, until (i) the methodologies described in this Section are approved by the federal government in an appropriate State Plan amendment and (ii) the assessment imposed under subsection (b-5) of Section 5A-2 of this Article is determined to be a permissible tax under Title



XIX of the Social Security Act. The Illinois Department shall take all actions necessary to implement the payments under this Section effective July 1, 2012, including but not limited to providing public notice pursuant to federal requirements, the filing of a State Plan amendment, and the adoption of administrative rules.

(a-5) Accelerated schedule. The Illinois Department may, when practicable, accelerate the schedule upon which payments authorized under this Section are made.

(b) Magnet and perinatal hospital adjustment. In addition to rates paid for inpatient hospital services, the Department shall pay to each Illinois general acute care hospital that, as of August 25, 2011, was recognized as a Magnet hospital by the American Nurses Credentialing Center and that, as of September 14, 2011, was designated as a level III perinatal center amounts as follows:

(1) For hospitals with a case mix index equal to or greater than the 80th percentile of case mix indices for all Illinois hospitals, \$470 for each Medicaid general acute care inpatient day of care provided by the hospital during State fiscal year 2009.

(2) For all other hospitals, \$170 for each Medicaid general acute care inpatient day of care provided by the hospital during State fiscal year 2009.

(c) Trauma level II adjustment. In addition to rates paid for inpatient hospital services, the Department shall pay to

each Illinois general acute care hospital that, as of July 1, 2011, was designated as a level II trauma center amounts as follows:

(1) For hospitals with a case mix index equal to or greater than the 50th percentile of case mix indices for all Illinois hospitals, \$470 for each Medicaid general acute care inpatient day of care provided by the hospital during State fiscal year 2009.

(2) For all other hospitals, \$170 for each Medicaid general acute care inpatient day of care provided by the hospital during State fiscal year 2009.

(3) For the purposes of this adjustment, hospitals located in the same city that alternate their trauma center designation as defined in 89 Ill. Adm. Code 148.295(a)(2) shall have the adjustment provided under this Section divided between the 2 hospitals.

(d) Dual-eligible adjustment. In addition to rates paid for inpatient services, the Department shall pay each Illinois general acute care hospital that had a ratio of crossover days to total inpatient days for programs under Title XIX of the Social Security Act administered by the Department (utilizing information from 2009 paid claims) greater than 50%, and a case mix index equal to or greater than the 75th percentile of case mix indices for all Illinois hospitals, a rate of \$400 for each Medicaid inpatient day during State fiscal year 2009 including crossover days.

(e) Medicaid volume adjustment. In addition to rates paid for inpatient hospital services, the Department shall pay to each Illinois general acute care hospital that provided more than 10,000 Medicaid inpatient days of care in State fiscal year 2009, has a Medicaid inpatient utilization rate of at least 29.05% as calculated by the Department for the Rate Year 2011 Disproportionate Share determination, and is not eligible for Medicaid Percentage Adjustment payments in rate year 2011 an amount equal to \$135 for each Medicaid inpatient day of care provided during State fiscal year 2009.

(f) Outpatient service adjustment. In addition to the rates paid for outpatient hospital services, the Department shall pay each Illinois hospital an amount at least equal to \$100 multiplied by the hospital's outpatient ambulatory procedure listing services (excluding categories 3B and 3C) and by the hospital's end stage renal disease treatment services provided for State fiscal year 2009.

(g) Ambulatory service adjustment.

(1) In addition to the rates paid for outpatient hospital services provided in the emergency department, the Department shall pay each Illinois hospital an amount equal to \$105 multiplied by the hospital's outpatient ambulatory procedure listing services for categories 3A, 3B, and 3C for State fiscal year 2009.

(2) In addition to the rates paid for outpatient hospital services, the Department shall pay each Illinois

freestanding psychiatric hospital an amount equal to \$200 multiplied by the hospital's ambulatory procedure listing services for category 5A for State fiscal year 2009.

(h) Specialty hospital adjustment. In addition to the rates paid for outpatient hospital services, the Department shall pay each Illinois long term acute care hospital and each Illinois hospital devoted exclusively to the treatment of cancer, an amount equal to \$700 multiplied by the hospital's outpatient ambulatory procedure listing services and by the hospital's end stage renal disease treatment services (including services provided to individuals eligible for both Medicaid and Medicare) provided for State fiscal year 2009.

(h-1) ER Safety Net Payments. In addition to rates paid for outpatient services, the Department shall pay to each Illinois general acute care hospital with an emergency room ratio equal to or greater than 55%, that is not eligible for Medicaid percentage adjustments payments in rate year 2011, with a case mix index equal to or greater than the 20th percentile, and that is not designated as a trauma center by the Illinois Department of Public Health on July 1, 2011, as follows:

(1) Each hospital with an emergency room ratio equal to or greater than 74% shall receive a rate of \$225 for each outpatient ambulatory procedure listing and end-stage renal disease treatment service provided for State fiscal year 2009.

(2) For all other hospitals, \$65 shall be paid for each

outpatient ambulatory procedure listing and end-stage renal disease treatment service provided for State fiscal year 2009.

(i) Physician supplemental adjustment. In addition to the rates paid for physician services, the Department shall make an adjustment payment for services provided by physicians as follows:

(1) Physician services eligible for the adjustment payment are those provided by physicians employed by or who have a contract to provide services to patients of the following hospitals: (i) Illinois general acute care hospitals that provided at least 17,000 Medicaid inpatient days of care in State fiscal year 2009 and are eligible for Medicaid Percentage Adjustment Payments in rate year 2011; and (ii) Illinois freestanding children's hospitals, as defined in 89 Ill. Adm. Code 149.50(c)(3)(A).

(2) The amount of the adjustment for each eligible hospital under this subsection (i) shall be determined by rule by the Department to spend a total pool of at least \$6,960,000 annually. This pool shall be allocated among the eligible hospitals based on the difference between the upper payment limit for what could have been paid under Medicaid for physician services provided during State fiscal year 2009 by physicians employed by or who had a contract with the hospital and the amount that was paid under Medicaid for such services, provided however, that in

no event shall physicians at any individual hospital collectively receive an annual, aggregate adjustment in excess of \$435,000, except that any amount that is not distributed to a hospital because of the upper payment limit shall be reallocated among the remaining eligible hospitals that are below the upper payment limitation, on a proportionate basis.

(i-5) For any children's hospital which did not charge for its services during the base period, the Department shall use data supplied by the hospital to determine payments using similar methodologies for freestanding children's hospitals under this Section or Section 12.2.

(j) For purposes of this Section, a hospital that is enrolled to provide Medicaid services during State fiscal year 2009 shall have its utilization and associated reimbursements annualized prior to the payment calculations being performed under this Section.

(k) For purposes of this Section, the terms "Medicaid days", "ambulatory procedure listing services", and "ambulatory procedure listing payments" do not include any days, charges, or services for which Medicare or a managed care organization reimbursed on a capitated basis was liable for payment, except where explicitly stated otherwise in this Section.

(l) Definitions. Unless the context requires otherwise or unless provided otherwise in this Section, the terms used in

this Section for qualifying criteria and payment calculations shall have the same meanings as those terms have been given in the Illinois Department's administrative rules as in effect on October 1, 2011. Other terms shall be defined by the Illinois Department by rule.

As used in this Section, unless the context requires otherwise:

"Case mix index" means, for a given hospital, the sum of the per admission (DRG) relative weighting factors in effect on January 1, 2005, for all general acute care admissions for State fiscal year 2009, excluding Medicare crossover admissions and transplant admissions reimbursed under 89 Ill. Adm. Code 148.82, divided by the total number of general acute care admissions for State fiscal year 2009, excluding Medicare crossover admissions and transplant admissions reimbursed under 89 Ill. Adm. Code 148.82.

"Emergency room ratio" means, for a given hospital, a fraction, the denominator of which is the number of the hospital's outpatient ambulatory procedure listing and end-stage renal disease treatment services provided for State fiscal year 2009 and the numerator of which is the hospital's outpatient ambulatory procedure listing services for categories 3A, 3B, and 3C for State fiscal year 2009.

"Medicaid inpatient day" means, for a given hospital, the sum of days of inpatient hospital days provided to recipients of medical assistance under Title XIX of the federal Social

Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring during State fiscal year 2009 that was adjudicated by the Department through June 30, 2010.

"Outpatient ambulatory procedure listing services" means, for a given hospital, ambulatory procedure listing services, as described in 89 Ill. Adm. Code 148.140(b), provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding services for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for services occurring in State fiscal year 2009 that were adjudicated by the Department through September 2, 2010.

"Outpatient end-stage renal disease treatment services" means, for a given hospital, the services, as described in 89 Ill. Adm. Code 148.140(c), provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding payments for individuals eligible for Medicare under Title XVIII of the Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for services occurring in State fiscal year 2009 that were adjudicated by the Department through September 2, 2010.

(m) The Department may adjust payments made under this Section 5A-12.4 to comply with federal law or regulations



regarding hospital-specific payment limitations on government-owned or government-operated hospitals.

(n) Notwithstanding any of the other provisions of this Section, the Department is authorized to adopt rules that change the hospital access improvement payments specified in this Section, but only to the extent necessary to conform to any federally approved amendment to the Title XIX State plan. Any such rules shall be adopted by the Department as authorized by Section 5-50 of the Illinois Administrative Procedure Act. Notwithstanding any other provision of law, any changes implemented as a result of this subsection (n) shall be given retroactive effect so that they shall be deemed to have taken effect as of the effective date of this Section.

(o) The Department of Healthcare and Family Services must submit a State Medicaid Plan Amendment to the Centers of Medicare and Medicaid Services to implement the payments under this Section within 30 days of the effective date of this Act.

(305 ILCS 5/5A-13)

Sec. 5A-13. Emergency rulemaking.

(a) The Department of Healthcare and Family Services (formerly Department of Public Aid) may adopt rules necessary to implement this amendatory Act of the 94th General Assembly through the use of emergency rulemaking in accordance with Section 5-45 of the Illinois Administrative Procedure Act. For purposes of that Act, the General Assembly finds that the

adoption of rules to implement this amendatory Act of the 94th General Assembly is deemed an emergency and necessary for the public interest, safety, and welfare.

(b) The Department of Healthcare and Family Services may adopt rules necessary to implement this amendatory Act of the 97th General Assembly through the use of emergency rulemaking in accordance with Section 5-45 of the Illinois Administrative Procedure Act. For purposes of that Act, the General Assembly finds that the adoption of rules to implement this amendatory Act of the 97th General Assembly is deemed an emergency and necessary for the public interest, safety, and welfare.

(Source: P.A. 94-242, eff. 7-18-05; 95-331, eff. 8-21-07.)

(305 ILCS 5/5A-14)

Sec. 5A-14. Repeal of assessments and disbursements.

(a) Section 5A-2 is repealed on January 1, 2015 ~~July 1, 2014~~.

(b) Section 5A-12 is repealed on July 1, 2005.

(c) Section 5A-12.1 is repealed on July 1, 2008.

(d) Section 5A-12.2 and Section 5A-12.4 are ~~is~~ repealed on January 1, 2015 ~~July 1, 2014~~.

(e) Section 5A-12.3 is repealed on July 1, 2011.

(Source: P.A. 95-859, eff. 8-19-08; 96-821, eff. 11-20-09; 96-1530, eff. 2-16-11.)

(305 ILCS 5/5A-15 new)

Sec. 5A-15. Protection of federal revenue.

(a) If the federal Centers for Medicare and Medicaid Services finds that any federal upper payment limit applicable to the payments under this Article is exceeded then:

(1) the payments under this Article that exceed the applicable federal upper payment limit shall be reduced uniformly to the extent necessary to comply with the applicable federal upper payment limit; and

(2) any assessment rate imposed under this Article shall be reduced such that the aggregate assessment is reduced by the same percentage reduction applied in paragraph (1); and

(3) any transfers from the Hospital Provider Fund under Section 5A-8 shall be reduced by the same percentage reduction applied in paragraph (1).

(b) Any payment reductions made under the authority granted in this Section are exempt from the requirements and actions under Section 5A-10.

Section 5-65. The Cigarette Fire Safety Standard Act is amended by adding Section 65 as follows:

(425 ILCS 8/65 new)

Sec. 65. Cigarette Machine Operators. Cigarettes made or fabricated by cigarette machine operators possessing valid licenses under Section 20 of the Cigarette Machine Operators'

Occupation Tax Act are exempt from the provisions of this Act.

ARTICLE 99. APPLICABILITY, SEVERABILITY, AND EFFECTIVE DATE

Section 90. Applicability. The changes made by this amendatory Act of the 97th General Assembly to the Property Tax Code, the Illinois Income Tax Act, the Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act shall apply to: (1) all decisions by the Department on or after the effective date of this amendatory Act of the 97th General Assembly regarding entitlement or continued entitlement by hospitals, hospital owners, hospital affiliates, or hospital systems to charitable property tax exemptions; (2) all applications for property tax exemption filed by hospitals, hospital owners, hospital affiliates, or hospital systems on or after the effective date of this amendatory Act of the 97th General Assembly; (3) all applications for property tax exemption filed by hospitals, hospital owners, hospital affiliates, or hospital systems that have either not been decided by the Department before the effective date of this amendatory Act of the 97th General Assembly, or for which any such Department decisions are not final and non-appealable as of that date; (4) all decisions by the Department, on or after the effective date of this amendatory Act of the 97th General Assembly, regarding entitlement by hospitals, hospital owners or hospital affiliates to an exemption or renewal of exemption

from the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act; (5) all applications for exemption or renewal of exemption from the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act filed by hospitals, hospital owners or hospital affiliates on or after the effective date of this amendatory Act of the 97th General Assembly; and (6) all applications for exemption or renewal of exemption from the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act filed by hospitals, hospital owners, or hospital affiliates that have either not been decided by the Department before the effective date of this amendatory Act of the 97th General Assembly or for which any such Department decisions are not final and non-appealable as of that date.

Section 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Public Act 097-0688

SB2194 Enrolled

LRB097 10235 HLH 50431 b

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