LRB104 11576 HLH 23628 a

Rep. Dan Ugaste

Filed: 4/2/2025

AMENDMENT TO HOUSE BILL 2109

AMENDMENT NO. ______. Amend House Bill 2109 by replacing everything after the enacting clause with the following:

"Section 5. The Use Tax Act is amended by changing Sections 2 and 3 as follows:

(35 ILCS 105/2) (from Ch. 120, par. 439.2)

Sec. 2. Definitions. As used in this Act:

"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, or, on and after January 1, 2025, incident to the possession or control of, the right to possess or control, or a license to use that property through a lease, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing. "Use" does not mean the demonstration use or interim use of tangible personal property by a retailer before he sells that tangible personal property. On and after January 1, 2025, the lease of tangible personal property to a lessee by a retailer who is subject to tax on lease receipts under Public Act 103-592 ~~this amendatory Act of the 103rd General Assembly~~ does not qualify as demonstration use or interim use of that property. For watercraft or aircraft, if the period of demonstration use or interim use by the retailer exceeds 18 months, the retailer shall pay on the retailers' original cost price the tax imposed by this Act, and no credit for that tax is permitted if the watercraft or aircraft is subsequently sold by the retailer. "Use" does not mean the physical incorporation of tangible personal property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, into other tangible personal property (a) which is sold in the regular course of business or (b) which the person incorporating such ingredient or constituent therein has undertaken at the time of such purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing.

"Lease" means a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called. "Lease" does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee.

On and after January 1, 2025, the term "sale", when used in this Act, includes a lease.

Beginning on January 1, 2026, the term "lease" does not include the lease of sporting goods for a period of less than 10 days.

For the purposes of defining the term "lease", "sporting goods" means tangible personal property that is used for participation in a recreational health, fitness, or sporting activity, including, but not limited to, golf, tennis, basketball, baseball, softball, football, soccer, fishing, pickleball, ice skating, hockey, skiing, paddle boating, kayaking, canoeing, or yoga.

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

"Purchase at retail" means the acquisition of the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use, tangible personal property through a sale at retail.

"Purchaser" means anyone who, through a sale at retail, acquires the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use, tangible personal property for a valuable consideration.

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

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

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

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

"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but, prior to January 1, 2020 and beginning again on January 1, 2022, not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold; beginning January 1, 2020 and until January 1, 2022, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds $10,000. "Selling price" shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost, or any other expense whatsoever, but does not include interest or finance charges which appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by this Act, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's tax liability under any local occupation tax administered by the Department, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit on account of the seller's duty to collect, from the purchasers, the tax that is imposed under any local use tax administered by the Department. Effective December 1, 1985, "selling price" shall include charges that are added to prices by sellers on account of the seller's tax liability under the Cigarette Tax Act, on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette Use Tax Act, and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit.

The provisions of this paragraph, which provides only for an alternative meaning of "selling price" with respect to the sale of certain motor vehicles incident to the contemporaneous lease of those motor vehicles, continue in effect and are not changed by the tax on leases implemented by Public Act 103-592 ~~this amendatory Act of the 103rd General Assembly~~. Notwithstanding any law to the contrary, for any motor vehicle, as defined in Section 1-146 of the Vehicle Code, that is sold on or after January 1, 2015 for the purpose of leasing the vehicle for a defined period that is longer than one year and (1) is a motor vehicle of the second division that: (A) is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping, or travel use, with direct walk through access to the living quarters from the driver's seat; (B) is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers; or (C) has a gross vehicle weight rating of 8,000 pounds or less or (2) is a motor vehicle of the first division, "selling price" or "amount of sale" means the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease. Also included in the selling price is any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear. For sales that occur in Illinois, with respect to any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, the lessor who purchased the motor vehicle does not incur the tax imposed by the Use Tax Act on those amounts, and the retailer who makes the retail sale of the motor vehicle to the lessor is not required to collect the tax imposed by this Act or to pay the tax imposed by the Retailers' Occupation Tax Act on those amounts. However, the lessor who purchased the motor vehicle assumes the liability for reporting and paying the tax on those amounts directly to the Department in the same form (Illinois Retailers' Occupation Tax, and local retailers' occupation taxes, if applicable) in which the retailer would have reported and paid such tax if the retailer had accounted for the tax to the Department. For amounts received by the lessor from the lessee that are not calculated at the time the lease is executed, the lessor must file the return and pay the tax to the Department by the due date otherwise required by this Act for returns other than transaction returns. If the retailer is entitled under this Act to a discount for collecting and remitting the tax imposed under this Act to the Department with respect to the sale of the motor vehicle to the lessor, then the right to the discount provided in this Act shall be transferred to the lessor with respect to the tax paid by the lessor for any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed; provided that the discount is only allowed if the return is timely filed and for amounts timely paid. The "selling price" of a motor vehicle that is sold on or after January 1, 2015 for the purpose of leasing for a defined period of longer than one year shall not be reduced by the value of or credit given for traded-in tangible personal property owned by the lessor, nor shall it be reduced by the value of or credit given for traded-in tangible personal property owned by the lessee, regardless of whether the trade-in value thereof is assigned by the lessee to the lessor. In the case of a motor vehicle that is sold for the purpose of leasing for a defined period of longer than one year, the sale occurs at the time of the delivery of the vehicle, regardless of the due date of any lease payments. A lessor who incurs a Retailers' Occupation Tax liability on the sale of a motor vehicle coming off lease may not take a credit against that liability for the Use Tax the lessor paid upon the purchase of the motor vehicle (or for any tax the lessor paid with respect to any amount received by the lessor from the lessee for the leased vehicle that was not calculated at the time the lease was executed) if the selling price of the motor vehicle at the time of purchase was calculated using the definition of "selling price" as defined in this paragraph. Notwithstanding any other provision of this Act to the contrary, lessors shall file all returns and make all payments required under this paragraph to the Department by electronic means in the manner and form as required by the Department. This paragraph does not apply to leases of motor vehicles for which, at the time the lease is entered into, the term of the lease is not a defined period, including leases with a defined initial period with the option to continue the lease on a month-to-month or other basis beyond the initial defined period.

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

"Department" means the Department of Revenue.

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

"Retailer" means and includes every person engaged in the business of making sales, including, on and after January 1, 2025, leases, at retail as defined in this Section. With respect to leases, a "retailer" also means a "lessor", except as otherwise provided in this Act.

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

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

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

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

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

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

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

(1.1) A retailer having a contract with a person located in this State under which the person, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer by providing to the potential customers a promotional code or other mechanism that allows the retailer to track purchases referred by such persons. Examples of mechanisms that allow the retailer to track purchases referred by such persons include, but are not limited to, the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. The provisions of this paragraph (1.1) shall apply only if the cumulative gross receipts from sales of tangible personal property by the retailer to customers who are referred to the retailer by all persons in this State under such contracts exceed $10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December. A retailer meeting the requirements of this paragraph (1.1) shall be presumed to be maintaining a place of business in this State but may rebut this presumption by submitting proof that the referrals or other activities pursued within this State by such persons were not sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods.

(1.2) Beginning July 1, 2011, a retailer having a contract with a person located in this State under which:

(A) the retailer sells the same or substantially similar line of products as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and

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

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

(2) (Blank).

(3) (Blank).

(4) (Blank).

(5) (Blank).

(6) (Blank).

(7) (Blank).

(8) (Blank).

(9) Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois if:

(A) the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are $100,000 or more; or

(B) the retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

The retailer shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either subparagraph (A) or (B) of this paragraph (9) for the preceding 12-month period. If the retailer meets the threshold of either subparagraph (A) or (B) for a 12-month period, he or she is considered a retailer maintaining a place of business in this State and is required to collect and remit the tax imposed under this Act and file returns for one year. At the end of that one-year period, the retailer shall determine whether he or she met the threshold of either subparagraph (A) or (B) during the preceding 12-month period. If the retailer met the criteria in either subparagraph (A) or (B) for the preceding 12-month period, he or she is considered a retailer maintaining a place of business in this State and is required to collect and remit the tax imposed under this Act and file returns for the subsequent year. If at the end of a one-year period a retailer that was required to collect and remit the tax imposed under this Act determines that he or she did not meet the threshold in either subparagraph (A) or (B) during the preceding 12-month period, the retailer shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the threshold of either subparagraph (A) or (B) for the preceding 12-month period.

Beginning January 1, 2020, neither the gross receipts from nor the number of separate transactions for sales of tangible personal property to purchasers in Illinois that a retailer makes through a marketplace facilitator and for which the retailer has received a certification from the marketplace facilitator pursuant to Section 2d of this Act shall be included for purposes of determining whether he or she has met the thresholds of this paragraph (9).

(10) Beginning January 1, 2020, a marketplace facilitator that meets a threshold set forth in subsection (b) of Section 2d of this Act.

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

(Source: P.A. 102-353, eff. 1-1-22; 103-592, eff. 1-1-25; revised 11-22-24.)

(35 ILCS 105/3) (from Ch. 120, par. 439.3)

Sec. 3. Tax imposed. A tax is imposed upon the privilege of using in this State tangible personal property purchased, which, on and after January 1, 2025, includes leased, at retail from a retailer, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Purchases of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under this Act. The provisions of this amendatory Act of the 98th General Assembly are declaratory of existing law as to the meaning and scope of this Act.

The imposition of the tax under this Act on the privilege of using tangible personal property leased at retail applies to leases of tangible personal property in effect, entered into, or renewed on or after January 1, 2025. In the case of leases, except as otherwise provided in this Act, the lessor, in collecting the tax, may collect for each tax return period, only the tax applicable to that part of the selling price actually received during such tax return period.

The inclusion of leases in the tax imposed under this Act by this amendatory Act of the 103rd General Assembly does not, however, extend to motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. The taxation of these items shall continue in effect as prior to the effective date of the changes made to this Section by this amendatory Act of the 103rd General Assembly (i.e. dealers owe retailers' occupation tax, lessors owe use tax, and lessees are not subject to retailers' occupation or use tax).

On and after January 1, 2026, the inclusion of leases in the tax imposed under this Act does not extend to sporting goods that are leased for a period of less than 10 days.

(Source: P.A. 103-592, eff. 1-1-25.)

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

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

Sec. 2. Definitions. In this Act:

"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, or, on and after January 1, 2025, incident to the possession or control of, the right to possess or control, or a license to use that property through a lease, but does not include the sale or use for demonstration by him of that property in any form as tangible personal property in the regular course of business. "Use" does not mean the interim use of tangible personal property. On and after January 1, 2025, the lease of tangible personal property to a lessee by a serviceman who is subject to tax on lease receipts under this amendatory Act of the 103rd General Assembly does not qualify as demonstration use or interim use of that property. "Use" does not mean the physical incorporation of tangible personal property, as an ingredient or constituent, into other tangible personal property, (a) which is sold in the regular course of business or (b) which the person incorporating such ingredient or constituent therein has undertaken at the time of such purchase to cause to be transported in interstate commerce to destinations outside the State of Illinois.

"Lease" means a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called. "Lease" does not include a lease entered into merely as a security agreement that does not involve a transfer of possession from the lessor to the lessee.

On and after January 1, 2025, the term "sale", when used in this Act with respect to tangible personal property, includes a lease.

Beginning on January 1, 2026, the term "lease" does not include the lease of sporting goods for a period of less than

10 days.

For the purposes of defining the term "lease", "sporting goods" means tangible personal property that is used for participation in a recreational health, fitness, or sporting activity, including, but not limited to, golf, tennis, basketball, baseball, softball, football, soccer, fishing, pickleball, ice skating, hockey, skiing, paddle boating, kayaking, canoeing, or yoga.

"Purchased from a serviceman" means the acquisition of the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use, tangible personal property through a sale of service.

"Purchaser" means any person who, through a sale of service, acquires the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use, any tangible personal property.

"Cost price" means the consideration paid by the serviceman for a purchase, including, on and after January 1, 2025, a lease, valued in money, whether paid in money or otherwise, including cash, credits and services, and shall be determined without any deduction on account of the supplier's cost of the property sold or on account of any other expense incurred by the supplier. When a serviceman contracts out part or all of the services required in his sale of service, it shall be presumed that the cost price to the serviceman of the property transferred to him or her by his or her subcontractor is equal to 50% of the subcontractor's charges to the serviceman in the absence of proof of the consideration paid by the subcontractor for the purchase of such property.

"Selling price" means the consideration for a sale, including, on and after January 1, 2025, a lease, valued in money whether received in money or otherwise, including cash, credits and service, and shall be determined without any deduction on account of the serviceman's cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges which appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's duty to collect, from the purchaser, the tax that is imposed by this Act.

"Department" means the Department of Revenue.

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

"Sale of service" means any transaction except:

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

(2) a sale of tangible personal property for the purpose of resale made in compliance with Section 2c of

the Retailers' Occupation Tax Act.

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

(4) (blank).

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

(4a-5) on and after July 1, 2003 and through June 30, 2004, a sale or transfer of a motor vehicle of the second division with a gross vehicle weight in excess of 8,000 pounds as an incident to the rendering of service if that motor vehicle is subject to the commercial distribution fee imposed under Section 3-815.1 of the Illinois Vehicle Code. Beginning on July 1, 2004 and through June 30, 2005, the use in this State of motor vehicles of the second division: (i) with a gross vehicle weight rating in excess of 8,000 pounds; (ii) that are subject to the commercial distribution fee imposed under Section 3-815.1 of the Illinois Vehicle Code; and (iii) that are primarily used for commercial purposes. Through June 30, 2005, this exemption applies to repair and replacement parts added after the initial purchase of such a motor vehicle if that motor vehicle is used in a manner that would qualify for the rolling stock exemption otherwise provided for in this Act. For purposes of this paragraph, "used for commercial purposes" means the transportation of persons or property in furtherance of any commercial or industrial enterprise whether for-hire or not.

(5) a sale or transfer of machinery and equipment used primarily in the process of the manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease, whether such sale or

lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether such sale or lease is made apart from or as an incident to the seller's engaging in a service occupation and the applicable tax is a Service Use Tax or Service Occupation Tax, rather than Use Tax or Retailers' Occupation Tax. The exemption provided by this paragraph (5) includes production related tangible personal property, as defined in Section 3-50 of the Use Tax Act, purchased on or after July 1, 2019. The exemption provided by this paragraph (5) does not include machinery and equipment used in (i) the generation of electricity for wholesale or retail sale; (ii) the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or (iii) the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. The provisions of Public Act 98-583 are declaratory of existing law as to the meaning and scope of this exemption. The exemption under this paragraph (5) is exempt from the provisions of Section 3-75.

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

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

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

used for consumption as motor fuel or as a component of motor fuel for the personal use of such user and not subject to sale or resale.

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

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

Exemption (5) also includes machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. On and after July 1, 2017, exemption (5) also includes graphic arts machinery and equipment, as defined in paragraph (5) of Section 3-5. The machinery and equipment exemption does not include machinery and equipment used in (i) the generation of electricity for wholesale or retail sale; (ii) the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or (iii) the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. The provisions of Public Act 98-583 are declaratory of existing law as to the meaning and scope of this exemption. For the purposes of exemption (5), each of these terms shall have the following meanings: (1) "manufacturing process" shall mean the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. In relation to a recognized integrated business composed of a series of operations which collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process shall be deemed to commence with the first operation or stage of production in the series, and shall not be deemed to end until the completion of the final product in the last operation or stage of production in the series; and further, for purposes of exemption (5), photoprocessing is deemed to be a manufacturing process of tangible personal property for wholesale or retail sale; (2) "assembling process" shall mean the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling which results in a material of a different form, use or name; (3) "machinery" shall mean major mechanical machines or major components of such machines contributing to a manufacturing or assembling process; and (4) "equipment" shall include any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembly process; including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; or any subunit or assembly comprising a component of any machinery or auxiliary, adjunct or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns and molds; or any parts which require periodic replacement in the course of normal operation; but shall not include hand tools. Equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease. The purchaser of such machinery and equipment who has an active resale registration number shall furnish such number to the seller at the time of purchase. The purchaser of such machinery and equipment and tools without an active resale registration number shall prepare a certificate of exemption stating facts establishing the exemption, which certificate shall be available to the Department for inspection or audit. The Department shall prescribe the form of the certificate.

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

Illinois Administrative Procedure Act.

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

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

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

"Sale at retail" means "sale at retail" as defined in the Retailers' Occupation Tax Act, which, on and after January 1, 2025, is defined to include leases.

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

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

(1) 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 or other representative operating within this State under the authority of the serviceman or its subsidiary, irrespective of whether such place of business or agent or

other representative is located here permanently or temporarily, or whether such serviceman or subsidiary is licensed to do business in this State;

(1.1) having a contract with a person located in this State under which the person, for a commission or other consideration based on the sale of service by the serviceman, directly or indirectly refers potential customers to the serviceman by providing to the potential customers a promotional code or other mechanism that allows the serviceman to track purchases referred by such persons. Examples of mechanisms that allow the serviceman to track purchases referred by such persons include but are not limited to the use of a link on the person's Internet website, promotional codes distributed through the person's hand-delivered or mailed material, and promotional codes distributed by the person through radio or other broadcast media. The provisions of this paragraph (1.1) shall apply only if the cumulative gross receipts from sales of service by the serviceman to customers who are referred to the serviceman by all persons in this State under such contracts exceed $10,000 during the preceding 4 quarterly periods ending on the last day of March, June, September, and December; a serviceman meeting the requirements of this paragraph (1.1) shall be presumed to be maintaining a place of business in this State but may rebut this presumption by submitting proof that the referrals or other activities pursued within this State by such persons were not sufficient to meet the nexus standards of the United States Constitution during the preceding 4 quarterly periods;

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

(A) the serviceman sells the same or substantially similar line of services as the person located in this State and does so using an identical or substantially similar name, trade name, or trademark as the person located in this State; and

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

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

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

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

(4) soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this State or benefits from the location in this State of authorized installation, servicing, or repair facilities;

(5) being owned or controlled by the same interests which own or control any retailer engaging in business in the same or similar line of business in this State;

(6) having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this Section;

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

(8) engaging in activities in Illinois, which activities in the state in which the supply business engaging in such activities is located would constitute

maintaining a place of business in that state; or

(9) beginning October 1, 2018, making sales of service to purchasers in Illinois from outside of Illinois if:

(A) the cumulative gross receipts from sales of service to purchasers in Illinois are $100,000 or more; or

(B) the serviceman enters into 200 or more separate transactions for sales of service to purchasers in Illinois.

The serviceman shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either subparagraph (A) or (B) of this paragraph (9) for the preceding 12-month period. If the serviceman meets the criteria of either subparagraph (A) or (B) for a 12-month period, he or she is considered a serviceman maintaining a place of business in this State and is required to collect and remit the tax imposed under this Act and file returns for one year. At the end of that one-year period, the serviceman shall determine whether the serviceman met the criteria of either subparagraph (A) or (B) during the preceding 12-month period. If the serviceman met the criteria in either subparagraph (A) or (B) for the preceding 12-month period, he or she is considered a serviceman maintaining a place of business in this State and is required to collect and remit the tax imposed under this Act and file returns for the subsequent year. If at the end of a one-year period a serviceman that was required to collect and remit the tax imposed under this Act determines that he or she did not meet the criteria in either subparagraph (A) or (B) during the preceding 12-month period, the serviceman subsequently shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either subparagraph (A) or (B) for the preceding 12-month period.

Beginning January 1, 2020, neither the gross receipts from nor the number of separate transactions for sales of service to purchasers in Illinois that a serviceman makes through a marketplace facilitator and for which the serviceman has received a certification from the marketplace facilitator pursuant to Section 2d of this Act shall be included for purposes of determining whether he or she has met the thresholds of this paragraph (9).

(10) Beginning January 1, 2020, a marketplace facilitator, as defined in Section 2d of this Act.

(Source: P.A. 103-592, eff. 1-1-25.)

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

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

Sec. 2. In this Act:

"Transfer" means any transfer of the title to property or of the ownership of property whether or not the transferor retains title as security for the payment of amounts due him from the transferee. On and after January 1, 2025, "transfer" also means any transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property.

"Lease" means a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called. "Lease" does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee.

On and after January 1, 2025, the term "sale", when used in this Act with respect to tangible personal property, includes a lease.

Beginning on January 1, 2026, the term "lease" does not include the lease of sporting goods for a period of less than 10 days.

For the purposes of defining the term "lease", "sporting goods" means tangible personal property that is used for participation in a recreational health, fitness, or sporting activity, including, but not limited to, golf, tennis, basketball, baseball, softball, football, soccer, fishing, pickleball, ice skating, hockey, skiing, paddle boating, kayaking, canoeing, or yoga.

"Cost Price" means the consideration paid by the serviceman for a purchase, including, on and after January 1, 2025, a lease, valued in money, whether paid in money or otherwise, including cash, credits and services, and shall be determined without any deduction on account of the supplier's cost of the property sold or on account of any other expense incurred by the supplier. When a serviceman contracts out part or all of the services required in his sale of service, it shall be presumed that the cost price to the serviceman of the property transferred to him by his or her subcontractor is equal to 50% of the subcontractor's charges to the serviceman in the absence of proof of the consideration paid by the subcontractor for the purchase of such property.

"Department" means the Department of Revenue.

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

"Sale of Service" means any transaction except:

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

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

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

(d) (Blank).

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

(d-1.1) On and after July 1, 2003 and through June 30, 2004, a sale or transfer of a motor vehicle of the second division with a gross vehicle weight in excess of 8,000 pounds as an incident to the rendering of service if that motor vehicle is subject to the commercial distribution fee imposed under Section 3-815.1 of the Illinois Vehicle Code. Beginning on July 1, 2004 and through June 30, 2005, the use in this State of motor vehicles of the second division: (i) with a gross vehicle weight rating in excess of 8,000 pounds; (ii) that are subject to the commercial distribution fee imposed under Section 3-815.1 of the Illinois Vehicle Code; and (iii) that are primarily used for commercial purposes. Through June 30, 2005, this exemption applies to repair and replacement parts added after the initial purchase of such a motor vehicle if that motor vehicle is used in a manner that would qualify for the rolling stock exemption otherwise provided for in this Act. For purposes of this paragraph, "used for commercial purposes" means the transportation of persons or property in furtherance of any commercial or industrial enterprise whether for-hire or not.

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

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

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

(e) A sale or transfer of machinery and equipment used primarily in the process of the manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease, whether such sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether such sale or lease is made apart from or as an incident to the seller's engaging in a service occupation and the applicable tax is a Service Occupation Tax or Service Use Tax, rather than Retailers' Occupation Tax or Use Tax. The exemption provided by this paragraph (e) includes production related tangible personal property, as defined in Section 3-50 of the Use Tax Act, purchased on or after July 1, 2019. The exemption provided by this paragraph (e) does not include machinery and equipment used in (i) the generation of electricity for wholesale or retail sale; (ii) the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or (iii) the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. The provisions of Public Act 98-583 are declaratory of existing law as to the meaning and scope of this exemption. The exemption under this subsection (e) is exempt from the provisions of Section 3-75.

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

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

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

Exemption (e) also includes machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. On and after July 1, 2017, exemption (e) also includes graphic arts machinery and equipment, as defined in paragraph (5) of Section 3-5. The machinery and equipment exemption does not include machinery and equipment used in (i) the generation of electricity for wholesale or retail sale; (ii) the generation or treatment of natural or artificial gas for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains; or (iii) the treatment of water for wholesale or retail sale that is delivered to customers through pipes, pipelines, or mains. The provisions of Public Act 98-583 are declaratory of existing law as to the meaning and scope of this exemption. For the purposes of exemption (e), each of these terms shall have the following meanings: (1) "manufacturing process" shall mean the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. In relation to a recognized integrated business composed of a series of operations which collectively constitute manufacturing, or individually constitute manufacturing operations, the manufacturing process shall be deemed to commence with the first operation or stage of production in the series, and shall not be deemed to end until the completion of the final product in the last operation or stage of production in the series; and further for purposes of exemption (e), photoprocessing is deemed to be a manufacturing process of tangible personal property for wholesale or retail sale; (2) "assembling process" shall mean the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by the combination of existing materials in a manner commonly regarded as assembling which results in a material of a different form, use or name; (3) "machinery" shall mean major mechanical machines or major components of such machines contributing to a manufacturing or assembling process; and (4) "equipment" shall include any independent device or tool separate from any machinery but essential to an integrated manufacturing or assembly process; including computers used primarily in a manufacturer's computer assisted design, computer assisted manufacturing (CAD/CAM) system; or any subunit or assembly comprising a component of any machinery or auxiliary, adjunct or attachment parts of machinery, such as tools, dies, jigs, fixtures, patterns and molds; or any parts which require periodic replacement in the course of normal operation; but shall not include hand tools. Equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for wholesale or retail sale or lease. The purchaser of such machinery and equipment who has an active resale registration number shall furnish such number to the seller at the time of purchase. The purchaser of such machinery and equipment and tools without an active resale registration number shall furnish to the seller a certificate of exemption stating facts establishing the exemption, which certificate shall be available to the Department for inspection or audit.

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

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

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

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

"Sale at Retail" means "sale at retail" as defined in the Retailers' Occupation Tax Act, which, on and after January 1, 2025, is defined to include leases.

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

(Source: P.A. 103-592, eff. 1-1-25.)

Section 20. The Retailers' Occupation Tax Act is amended by changing Sections 1 and 2 as follows:

(35 ILCS 120/1)

Sec. 1. Definitions. As used in this Act:

"Sale at retail" means any transfer of the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced byproduct of manufacturing. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales.

"Sale at retail" shall be construed to include any transfer of the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use tangible personal property to a purchaser, for use or consumption by any other person to whom such purchaser may transfer the tangible personal property without a valuable consideration, and to include any transfer, whether made for or without a valuable consideration, for resale in any form as tangible personal property unless made in compliance with Section 2c of this Act.

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

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

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

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

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

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

"Lease" means a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called. "Lease" does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee.

On and after January 1, 2025, the term "sale", when used in this Act, includes a lease.

<u>Beginning on January 1, 2026, the term "lease" does not include the lease of sporting goods for a period of less than 10 days.</u>

<u>For the purposes of defining the term "lease", "sporting</u>

goods" means tangible personal property that is used for participation in a recreational health, fitness, or sporting activity, including, but not limited to, golf, tennis, basketball, baseball, softball, football, soccer, fishing, pickleball, ice skating, hockey, skiing, paddle boating, kayaking, canoeing, or yoga.

"Purchaser" means anyone who, through a sale at retail, acquires the ownership of, the title to, the possession or control of, the right to possess or control, or a license to use tangible personal property for a valuable consideration.

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

"Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but, prior to January 1, 2020 and beginning again on January 1, 2022, not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold; beginning January 1, 2020 and until January 1, 2022, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds $10,000. "Selling price" shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include charges that are added to prices by sellers on account of the seller's tax liability under this Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's tax liability under any local occupation tax administered by the Department, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit on account of the seller's duty to collect, from the purchasers, the tax that is imposed under any local use tax administered by the Department. Effective December 1, 1985, "selling price" shall include charges that are added to prices by sellers on account of the seller's tax liability under the Cigarette Tax Act, on account of the sellers' duty to collect, from the purchaser, the tax imposed under the Cigarette Use Tax Act, and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit.

The provisions of this paragraph, which provides only for an alternative meaning of "selling price" with respect to the sale of certain motor vehicles incident to the contemporaneous lease of those motor vehicles, continue in effect and are not changed by the tax on leases implemented by Public Act 103-592 ~~this amendatory Act of the 103rd General Assembly~~. Notwithstanding any law to the contrary, for any motor vehicle, as defined in Section 1-146 of the Illinois Vehicle Code, that is sold on or after January 1, 2015 for the purpose of leasing the vehicle for a defined period that is longer than one year and (1) is a motor vehicle of the second division that: (A) is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping, or travel use, with direct walk through access to the living quarters from the driver's seat; (B) is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers; or (C) has a gross vehicle weight rating of 8,000 pounds or less or (2) is a motor vehicle of the first division, "selling price" or "amount of sale" means the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease. Also included in the selling price is any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear. For sales that occur in Illinois, with respect to any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, the lessor who purchased the motor vehicle does not incur the tax imposed by the Use Tax Act on those amounts, and the retailer who makes the retail sale of the motor vehicle to the lessor is not required to collect the tax imposed by the Use Tax Act or to pay the tax imposed by this Act on those amounts. However, the lessor who purchased the motor vehicle assumes the liability for reporting and paying the tax on those amounts directly to the Department in the same form (Illinois Retailers' Occupation Tax, and local retailers' occupation taxes, if applicable) in which the retailer would have reported and paid such tax if the retailer had accounted for the tax to the Department. For amounts received by the lessor from the lessee that are not calculated at the time the lease is executed, the lessor must file the return and pay the tax to the Department by the due date otherwise required by this Act for returns other than transaction returns. If the retailer is entitled under this Act to a discount for collecting and remitting the tax imposed under this Act to the Department with respect to the sale of the motor vehicle to the lessor, then the right to the discount provided in this Act shall be transferred to the lessor with respect to the tax paid by the lessor for any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed; provided that the discount is only allowed if the return is timely filed and for amounts timely paid. The "selling price" of a motor vehicle that is sold on or after January 1, 2015 for the purpose of leasing for a defined period of longer than one year shall not be reduced by the value of or credit given for traded-in tangible personal property owned by the lessor, nor shall it be reduced by the value of or credit given for traded-in tangible personal property owned by the lessee, regardless of whether the trade-in value thereof is assigned by the lessee to the lessor. In the case of a motor vehicle that is sold for the purpose of leasing for a defined period of longer than one year, the sale occurs at the time of the delivery of the vehicle, regardless of the due date of any lease payments. A lessor who incurs a Retailers' Occupation Tax liability on the sale of a motor vehicle coming off lease may not take a credit against that liability for the Use Tax the lessor paid upon the purchase of the motor vehicle (or for any tax the lessor paid with respect to any amount received by the lessor from the lessee for the leased vehicle that was not calculated at the time the lease was executed) if the selling price of the motor vehicle at the time of purchase was calculated using the definition of "selling price" as defined in this paragraph. Notwithstanding any other provision of this Act to the contrary, lessors shall file all returns and make all payments required under this paragraph to the Department by electronic means in the manner and form as required by the Department. This paragraph does not apply to leases of motor vehicles for which, at the time the lease is entered into, the term of the lease is not a defined period, including leases with a defined initial period with the option to continue the lease on a month-to-month or other basis beyond the initial defined period.

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

"Gross receipts" from the sales of tangible personal property at retail means the total selling price or the amount of such sales, as hereinbefore defined. In the case of charge and time sales, the amount thereof shall be included only as and when payments are received by the seller. In the case of leases, except as otherwise provided in this Act, the amount thereof shall be included only as and when gross receipts are received by the lessor. Receipts or other consideration derived by a seller from the sale, transfer or assignment of accounts receivable to a wholly owned subsidiary will not be deemed payments prior to the time the purchaser makes payment on such accounts.

"Department" means the Department of Revenue.

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

The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail, or a sale through a bulk vending machine, does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this Act; provided that any person who is engaged in a business which is not subject to the tax imposed by this Act because of involving the sale of or a contract to sell real estate or a construction contract to improve real estate or a construction contract to engineer, install, and maintain an integrated system of products, but who, in the course of conducting such business, transfers tangible personal property to users or consumers in the finished form in which it was purchased, and which does not become real estate or was not engineered and installed, under any provision of a construction contract or real estate sale or real estate sales agreement entered into with some other person arising out of or because of such nontaxable business, is engaged in the business of selling tangible personal property at retail to the extent of the value of the tangible personal property so transferred. If, in such a transaction, a separate charge is made for the tangible personal property so transferred, the value of such property, for the purpose of this Act, shall be the amount so separately charged, but not less than the cost of such property to the transferor; if no separate charge is made, the value of such property, for the purposes of this Act, is the cost to the transferor of such tangible personal property. Construction contracts for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price.

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

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

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

"Remote retailer" means a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily or whether such retailer or subsidiary is licensed to do business in this State.

"Retailer maintaining a place of business in this State" has the meaning given to that term in Section 2 of the Use Tax Act.

"Marketplace" means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items.

"Marketplace facilitator" means a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a retail sale by an unrelated third-party ~~third party~~ marketplace seller by:

(1) listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under this Act; and

(2) either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in paragraph (2) of this definition of "marketplace facilitator".

"Marketplace facilitator" does not include any person licensed under the Auction License Act. This exemption does not apply to any person who is an Internet auction listing service, as defined by the Auction License Act.

"Marketplace seller" means a person who ~~that~~ makes sales

through a marketplace operated by an unrelated third-party ~~third party~~ marketplace facilitator.
(Source: P.A. 102-353, eff. 1-1-22; 102-634, eff. 8-27-21; 102-813, eff. 5-13-22; 103-592, eff. 1-1-25; 103-983, eff. 1-1-25; revised 11-26-24.)

(35 ILCS 120/2)

Sec. 2. Tax imposed.

(a) A tax is imposed upon persons engaged in the business of selling at retail, which, on and after January 1, 2025, includes leasing, tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed.

The imposition of the tax under this Act on persons engaged in the business of leasing tangible personal property applies to leases in effect, entered into, or renewed on or after January 1, 2025. In the case of leases, except as otherwise provided in this Act, the lessor must remit, for each tax return period, only the tax applicable to that part of the selling price actually received during such tax return period.

The inclusion of leases in the tax imposed under this Act by Public Act 103-592 ~~this amendatory Act of the 103rd General Assembly~~ does not, however, extend to motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. The taxation of these items shall continue in effect as prior to the effective date of the changes made to this Section by Public Act 103-592 ~~this amendatory Act of the 103rd General Assembly~~ (i.e., dealers owe retailers' occupation tax, lessors owe use tax, and lessees are not subject to retailers' occupation or use tax).

Sales of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under this Act. The provisions of Public Act 98-583 ~~this amendatory Act of the 98th General Assembly~~ are declaratory of existing law as to the meaning and scope of this Act.

On and after January 1, 2026, the inclusion of leases in the tax imposed under this Act does not extend to sporting goods that are leased for a period of less than 10 days.

(b) Beginning on January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for purposes of this Act, if:

(1) the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are $100,000 or more; or

(2) the retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

Remote retailers that meet or exceed the threshold in either paragraph (1) or (2) above shall be liable for all applicable State retailers' and locally imposed retailers' occupation taxes administered by the Department on all retail sales to Illinois purchasers.

The remote retailer shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either paragraph (1) or (2) of this subsection for the preceding 12-month period. If the retailer meets the criteria of either paragraph (1) or (2) for a 12-month period, he or she is considered a retailer maintaining a place of business in this State and is required to collect and remit the tax imposed under this Act and all retailers' occupation tax imposed by local taxing jurisdictions in Illinois, provided such local taxes are administered by the Department, and to file all applicable returns for one year. At the end of that one-year period, the retailer shall determine whether the retailer met the criteria of either paragraph (1) or (2) for the preceding

12-month period. If the retailer met the criteria in either paragraph (1) or (2) for the preceding 12-month period, he or she is considered a retailer maintaining a place of business in this State and is required to collect and remit all applicable State and local retailers' occupation taxes and file returns for the subsequent year. If, at the end of a one-year period, a retailer that was required to collect and remit the tax imposed under this Act determines that he or she did not meet the criteria in either paragraph (1) or (2) during the preceding 12-month period, then the retailer shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either paragraph (1) or (2) for the preceding 12-month period.

(b-2) Beginning on January 1, 2025, a retailer maintaining a place of business in this State that makes retail sales of tangible personal property to Illinois customers from a location or locations outside of Illinois is engaged in the occupation of selling at retail in Illinois for the purposes of this Act. Those retailers are liable for all applicable State and locally imposed retailers' occupation taxes administered by the Department on retail sales made by those retailers to Illinois customers from locations outside of Illinois.

(b-5) For the purposes of this Section, neither the gross receipts from nor the number of separate transactions for sales of tangible personal property to purchasers in Illinois that a remote retailer makes through a marketplace facilitator shall be included for the purposes of determining whether he or she has met the thresholds of subsection (b) of this Section so long as the remote retailer has received certification from the marketplace facilitator that the marketplace facilitator is legally responsible for payment of tax on such sales.

(b-10) A remote retailer that is required to collect taxes imposed under the Use Tax Act on retail sales made to Illinois purchasers or a retailer maintaining a place of business in this State that is required to collect taxes imposed under the Use Tax Act on retail sales made to Illinois purchasers shall be liable to the Department for such taxes, except when the remote retailer or retailer maintaining a place of business in this State is relieved of the duty to remit such taxes by virtue of having paid to the Department taxes imposed by this Act in accordance with this Section upon his or her gross receipts from such sales.

(c) Marketplace facilitators engaged in the business of selling at retail tangible personal property in Illinois. Beginning January 1, 2021, a marketplace facilitator is engaged in the occupation of selling at retail tangible personal property in Illinois for purposes of this Act if, during the previous 12-month period:

(1) the cumulative gross receipts from sales of tangible personal property on its own behalf or on behalf

of marketplace sellers to purchasers in Illinois equals $100,000 or more; or

(2) the marketplace facilitator enters into 200 or more separate transactions on its own behalf or on behalf of marketplace sellers for the sale of tangible personal property to purchasers in Illinois, regardless of whether the marketplace facilitator or marketplace sellers for whom such sales are facilitated are registered as retailers in this State.

A marketplace facilitator who meets either paragraph (1) or (2) of this subsection is required to remit the applicable State retailers' occupation taxes under this Act and local retailers' occupation taxes administered by the Department on all taxable sales of tangible personal property made by the marketplace facilitator or facilitated for marketplace sellers to customers in this State. A marketplace facilitator selling or facilitating the sale of tangible personal property to customers in this State is subject to all applicable procedures and requirements of this Act.

The marketplace facilitator shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either paragraph (1) or (2) of this subsection for the preceding 12-month period. If the marketplace facilitator meets the criteria of either paragraph (1) or (2) for a 12-month period, he or she is considered a retailer maintaining a place of business in this State and is required to remit the tax imposed under this Act and all retailers' occupation tax imposed by local taxing jurisdictions in Illinois, provided such local taxes are administered by the Department, and to file all applicable returns for one year. At the end of that one-year period, the marketplace facilitator shall determine whether it met the criteria of either paragraph (1) or (2) for the preceding 12-month period. If the marketplace facilitator met the criteria in either paragraph (1) or (2) for the preceding 12-month period, it is considered a retailer maintaining a place of business in this State and is required to collect and remit all applicable State and local retailers' occupation taxes and file returns for the subsequent year. If at the end of a one-year period a marketplace facilitator that was required to collect and remit the tax imposed under this Act determines that he or she did not meet the criteria in either paragraph (1) or (2) during the preceding 12-month period, the marketplace facilitator shall subsequently determine on a quarterly basis, ending on the last day of March, June, September, and December, whether he or she meets the criteria of either paragraph (1) or (2) for the preceding 12-month period.

A marketplace facilitator shall be entitled to any credits, deductions, or adjustments to the sales price otherwise provided to the marketplace seller, in addition to any such adjustments provided directly to the marketplace facilitator. This Section pertains to, but is not limited to, adjustments such as discounts, coupons, and rebates. In addition, a marketplace facilitator shall be entitled to the retailers' discount provided in Section 3 of the Retailers' Occupation Tax Act on all marketplace sales, and the marketplace seller shall not include sales made through a marketplace facilitator when computing any retailers' discount on remaining sales. Marketplace facilitators shall report and remit the applicable State and local retailers' occupation taxes on sales facilitated for marketplace sellers separately from any sales or use tax collected on taxable retail sales made directly by the marketplace facilitator or its affiliates.

The marketplace facilitator is liable for the remittance of all applicable State retailers' occupation taxes under this Act and local retailers' occupation taxes administered by the Department on sales through the marketplace and is subject to audit on all such sales. The Department shall not audit marketplace sellers for their marketplace sales where a marketplace facilitator remitted the applicable State and local retailers' occupation taxes unless the marketplace facilitator seeks relief as a result of incorrect information provided to the marketplace facilitator by a marketplace seller as set forth in this Section. The marketplace facilitator shall not be held liable for tax on any sales made by a marketplace seller that take place outside of the marketplace and which are not a part of any agreement between a marketplace facilitator and a marketplace seller. In addition, marketplace facilitators shall not be held liable to State and local governments of Illinois for having charged and remitted an incorrect amount of State and local retailers' occupation tax if, at the time of the sale, the tax is computed based on erroneous data provided by the State in database files on tax rates, boundaries, or taxing jurisdictions or incorrect information provided to the marketplace facilitator by the marketplace seller.

(d) A marketplace facilitator shall:

(1) certify to each marketplace seller that the marketplace facilitator assumes the rights and duties of a retailer under this Act with respect to sales made by the marketplace seller through the marketplace; and

(2) remit taxes imposed by this Act as required by this Act for sales made through the marketplace.

(e) A marketplace seller shall retain books and records for all sales made through a marketplace in accordance with the requirements of this Act.

(f) A marketplace facilitator is subject to audit on all marketplace sales for which it is considered to be the retailer, but shall not be liable for tax or subject to audit on sales made by marketplace sellers outside of the marketplace.

(g) A marketplace facilitator required to collect taxes imposed under the Use Tax Act on marketplace sales made to Illinois purchasers shall be liable to the Department for such taxes, except when the marketplace facilitator is relieved of the duty to remit such taxes by virtue of having paid to the Department taxes imposed by this Act in accordance with this Section upon his or her gross receipts from such sales.

(h) Nothing in this Section shall allow the Department to collect retailers' occupation taxes from both the marketplace facilitator and marketplace seller on the same transaction.

(i) If, for any reason, the Department is prohibited from enforcing the marketplace facilitator's duty under this Act to remit taxes pursuant to this Section, the duty to remit such taxes remains with the marketplace seller.

(j) Nothing in this Section affects the obligation of any consumer to remit use tax for any taxable transaction for which a certified service provider acting on behalf of a remote retailer or a marketplace facilitator does not collect and remit the appropriate tax.

(k) Nothing in this Section shall allow the Department to collect the retailers' occupation tax from both the marketplace facilitator and the marketplace seller.

(Source: P.A. 103-592, eff. 1-1-25; 103-983, eff. 1-1-25; revised 11-26-24.)

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