



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2577

Introduced 2/7/2018, by Sen. Cristina Castro - Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2

from Ch. 120, par. 439.2

35 ILCS 110/2

from Ch. 120, par. 439.32

Amends the Use Tax Act and the Service Use Tax Act. Provides that, if a retailer or serviceman makes a sale to purchaser in Illinois from outside of Illinois, then that retailer or serviceman is considered to be "maintaining a place of business in this State" if (1) the cumulative gross receipts from sales of service to purchasers in Illinois are \$150,000 or more; or (2) the retailer or serviceman enters into 200 or more separate transactions for sales of service to purchasers in Illinois. Provides that the amendatory Act may be referred to as the Marketplace Fairness Act. Effective immediately.

LRB100 17716 HLH 32889 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 1. This Act may be referred to as the Marketplace
5 Fairness Act.

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

8 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

9 Sec. 2. Definitions.

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

1 he sells that tangible personal property. For watercraft or
2 aircraft, if the period of demonstration use or interim use by
3 the retailer exceeds 18 months, the retailer shall pay on the
4 retailers' original cost price the tax imposed by this Act, and
5 no credit for that tax is permitted if the watercraft or
6 aircraft is subsequently sold by the retailer. "Use" does not
7 mean the physical incorporation of tangible personal property,
8 to the extent not first subjected to a use for which it was
9 purchased, as an ingredient or constituent, into other tangible
10 personal property (a) which is sold in the regular course of
11 business or (b) which the person incorporating such ingredient
12 or constituent therein has undertaken at the time of such
13 purchase to cause to be transported in interstate commerce to
14 destinations outside the State of Illinois: Provided that the
15 property purchased is deemed to be purchased for the purpose of
16 resale, despite first being used, to the extent to which it is
17 resold as an ingredient of an intentionally produced product or
18 by-product of manufacturing.

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

23 "Purchase at retail" means the acquisition of the ownership
24 of or title to tangible personal property through a sale at
25 retail.

26 "Purchaser" means anyone who, through a sale at retail,

1 acquires the ownership of tangible personal property for a
2 valuable consideration.

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

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

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

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

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

1 not include interest or finance charges which appear as
2 separate items on the bill of sale or sales contract nor
3 charges that are added to prices by sellers on account of the
4 seller's tax liability under the "Retailers' Occupation Tax
5 Act", or on account of the seller's duty to collect, from the
6 purchaser, the tax that is imposed by this Act, or, except as
7 otherwise provided with respect to any cigarette tax imposed by
8 a home rule unit, on account of the seller's tax liability
9 under any local occupation tax administered by the Department,
10 or, except as otherwise provided with respect to any cigarette
11 tax imposed by a home rule unit on account of the seller's duty
12 to collect, from the purchasers, the tax that is imposed under
13 any local use tax administered by the Department. Effective
14 December 1, 1985, "selling price" shall include charges that
15 are added to prices by sellers on account of the seller's tax
16 liability under the Cigarette Tax Act, on account of the
17 seller's duty to collect, from the purchaser, the tax imposed
18 under the Cigarette Use Tax Act, and on account of the seller's
19 duty to collect, from the purchaser, any cigarette tax imposed
20 by a home rule unit.

21 Notwithstanding any law to the contrary, for any motor
22 vehicle, as defined in Section 1-146 of the Vehicle Code, that
23 is sold on or after January 1, 2015 for the purpose of leasing
24 the vehicle for a defined period that is longer than one year
25 and (1) is a motor vehicle of the second division that: (A) is
26 a self-contained motor vehicle designed or permanently

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

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

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

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

1 which, if sold at retail by that retailer, would be exempt from
2 retailers' occupation tax and use tax as an isolated or
3 occasional sale.

4 "Department" means the Department of Revenue.

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

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

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

23 A person whose activities are organized and conducted
24 primarily as a not-for-profit service enterprise, and who
25 engages in selling tangible personal property at retail
26 (whether to the public or merely to members and their guests)

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

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

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

26 The isolated or occasional sale of tangible personal

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

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

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

19 (1.1) ~~1.1.~~ A retailer having a contract with a person
20 located in this State under which the person, for a
21 commission or other consideration based upon the sale of
22 tangible personal property by the retailer, directly or
23 indirectly refers potential customers to the retailer by
24 providing to the potential customers a promotional code or
25 other mechanism that allows the retailer to track purchases
26 referred by such persons. Examples of mechanisms that allow

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

20 (1.2) ~~1.2.~~ Beginning July 1, 2011, a retailer having a
21 contract with a person located in this State under which:

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

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

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

11 (2) ~~2.~~ A retailer soliciting orders for tangible
12 personal property by means of a telecommunication or
13 television shopping system (which utilizes toll free
14 numbers) which is intended by the retailer to be broadcast
15 by cable television or other means of broadcasting, to
16 consumers located in this State.

17 (3) ~~3.~~ A retailer, pursuant to a contract with a
18 broadcaster or publisher located in this State, soliciting
19 orders for tangible personal property by means of
20 advertising which is disseminated primarily to consumers
21 located in this State and only secondarily to bordering
22 jurisdictions.

23 (4) ~~4.~~ A retailer soliciting orders for tangible
24 personal property by mail if the solicitations are
25 substantial and recurring and if the retailer benefits from
26 any banking, financing, debt collection,

1 telecommunication, or marketing activities occurring in
2 this State or benefits from the location in this State of
3 authorized installation, servicing, or repair facilities.

4 (5) ~~5.~~ A retailer that is owned or controlled by the
5 same interests that own or control any retailer engaging in
6 business in the same or similar line of business in this
7 State.

8 (6) ~~6.~~ A retailer having a franchisee or licensee
9 operating under its trade name if the franchisee or
10 licensee is required to collect the tax under this Section.

11 (7) ~~7.~~ A retailer, pursuant to a contract with a cable
12 television operator located in this State, soliciting
13 orders for tangible personal property by means of
14 advertising which is transmitted or distributed over a
15 cable television system in this State.

16 (8) ~~8.~~ A retailer engaging in activities in Illinois,
17 which activities in the state in which the retail business
18 engaging in such activities is located would constitute
19 maintaining a place of business in that state.

20 (9) Beginning January 1, 2019, a retailer making sales
21 of tangible personal property to purchasers in Illinois
22 from outside of Illinois if:

23 (A) the cumulative gross receipts from sales of
24 tangible personal property to purchasers in Illinois
25 are \$150,000 or more; or

26 (B) the retailer enters into 200 or more separate

1 transactions for the sale of tangible personal
2 property to purchasers in Illinois.

3 The retailer shall determine on a quarterly basis,
4 ending on the last day of March, June, September, and
5 December, whether he or she meets the criteria of either
6 (A) or (B) of this paragraph (9) for the preceding 12-month
7 period. If the retailer meets the criteria of either (A) or
8 (B) for a 12-month period, he or she is considered a
9 retailer maintaining a place of business in this State and
10 is required to collect and remit the tax imposed under this
11 Act and file returns for one year. At the end of that
12 one-year period, the retailer shall determine whether the
13 retailer met the criteria of either (A) or (B) during the
14 preceding 12-month period. If the retailer met the criteria
15 in either (A) or (B) for the preceding 12-month period, he
16 or she is considered a retailer maintaining a place of
17 business in this State and is required to collect and remit
18 the tax imposed under this Act and file returns for the
19 subsequent year. If at the end of a one-year period a
20 retailer that was required to collect and remit the tax
21 imposed under this Act determines that he or she did not
22 meet the criteria in either (A) or (B) during the preceding
23 12-month period, the retailer shall subsequently determine
24 on a quarterly basis, ending on the last day of March,
25 June, September, and December, whether he or she meets the
26 criteria of either (A) or (B) for the preceding 12-month

1 period.

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

8 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14;
9 98-1089, eff. 1-1-15; 99-78, eff. 7-20-15.)

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

12 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

13 Sec. 2. Definitions. In this Act:

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

1 to cause to be transported in interstate commerce to
2 destinations outside the State of Illinois.

3 "Purchased from a serviceman" means the acquisition of the
4 ownership of, or title to, tangible personal property through a
5 sale of service.

6 "Purchaser" means any person who, through a sale of
7 service, acquires the ownership of, or title to, any tangible
8 personal property.

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

21 "Selling price" means the consideration for a sale valued
22 in money whether received in money or otherwise, including
23 cash, credits and service, and shall be determined without any
24 deduction on account of the serviceman's cost of the property
25 sold, the cost of materials used, labor or service cost or any
26 other expense whatsoever, but does not include interest or

1 finance charges which appear as separate items on the bill of
2 sale or sales contract nor charges that are added to prices by
3 sellers on account of the seller's duty to collect, from the
4 purchaser, the tax that is imposed by this Act.

5 "Department" means the Department of Revenue.

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

11 "Sale of service" means any transaction except:

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

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

18 (3) except as hereinafter provided, a sale or transfer
19 of tangible personal property as an incident to the
20 rendering of service for or by any governmental body, or
21 for or by any corporation, society, association,
22 foundation or institution organized and operated
23 exclusively for charitable, religious or educational
24 purposes or any not-for-profit corporation, society,
25 association, foundation, institution or organization which
26 has no compensated officers or employees and which is

1 organized and operated primarily for the recreation of
2 persons 55 years of age or older. A limited liability
3 company may qualify for the exemption under this paragraph
4 only if the limited liability company is organized and
5 operated exclusively for educational purposes.

6 (4) (blank).

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

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

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

12 (5) a sale or transfer of machinery and equipment used
13 primarily in the process of the manufacturing or
14 assembling, either in an existing, an expanded or a new
15 manufacturing facility, of tangible personal property for
16 wholesale or retail sale or lease, whether such sale or
17 lease is made directly by the manufacturer or by some other
18 person, whether the materials used in the process are owned
19 by the manufacturer or some other person, or whether such
20 sale or lease is made apart from or as an incident to the
21 seller's engaging in a service occupation and the
22 applicable tax is a Service Use Tax or Service Occupation
23 Tax, rather than Use Tax or Retailers' Occupation Tax. The
24 exemption provided by this paragraph (5) does not include
25 machinery and equipment used in (i) the generation of
26 electricity for wholesale or retail sale; (ii) the

1 generation or treatment of natural or artificial gas for
2 wholesale or retail sale that is delivered to customers
3 through pipes, pipelines, or mains; or (iii) the treatment
4 of water for wholesale or retail sale that is delivered to
5 customers through pipes, pipelines, or mains. The
6 provisions of Public Act 98-583 ~~this amendatory Act of the~~
7 ~~98th General Assembly~~ are declaratory of existing law as to
8 the meaning and scope of this exemption. The exemption
9 under this paragraph (5) is exempt from the provisions of
10 Section 3-75.

11 (5a) the repairing, reconditioning or remodeling, for
12 a common carrier by rail, of tangible personal property
13 which belongs to such carrier for hire, and as to which
14 such carrier receives the physical possession of the
15 repaired, reconditioned or remodeled item of tangible
16 personal property in Illinois, and which such carrier
17 transports, or shares with another common carrier in the
18 transportation of such property, out of Illinois on a
19 standard uniform bill of lading showing the person who
20 repaired, reconditioned or remodeled the property to a
21 destination outside Illinois, for use outside Illinois.

22 (5b) a sale or transfer of tangible personal property
23 which is produced by the seller thereof on special order in
24 such a way as to have made the applicable tax the Service
25 Occupation Tax or the Service Use Tax, rather than the
26 Retailers' Occupation Tax or the Use Tax, for an interstate

1 carrier by rail which receives the physical possession of
2 such property in Illinois, and which transports such
3 property, or shares with another common carrier in the
4 transportation of such property, out of Illinois on a
5 standard uniform bill of lading showing the seller of the
6 property as the shipper or consignor of such property to a
7 destination outside Illinois, for use outside Illinois.

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

16 (7) at the election of any serviceman not required to
17 be otherwise registered as a retailer under Section 2a of
18 the Retailers' Occupation Tax Act, made for each fiscal
19 year sales of service in which the aggregate annual cost
20 price of tangible personal property transferred as an
21 incident to the sales of service is less than 35%, or 75%
22 in the case of servicemen transferring prescription drugs
23 or servicemen engaged in graphic arts production, of the
24 aggregate annual total gross receipts from all sales of
25 service. The purchase of such tangible personal property by
26 the serviceman shall be subject to tax under the Retailers'

1 Occupation Tax Act and the Use Tax Act. However, if a
2 primary serviceman who has made the election described in
3 this paragraph subcontracts service work to a secondary
4 serviceman who has also made the election described in this
5 paragraph, the primary serviceman does not incur a Use Tax
6 liability if the secondary serviceman (i) has paid or will
7 pay Use Tax on his or her cost price of any tangible
8 personal property transferred to the primary serviceman
9 and (ii) certifies that fact in writing to the primary
10 serviceman.

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

14 Exemption (5) also includes machinery and equipment used in
15 the general maintenance or repair of such exempt machinery and
16 equipment or for in-house manufacture of exempt machinery and
17 equipment. On and after July 1, 2017, exemption (5) also
18 includes graphic arts machinery and equipment, as defined in
19 paragraph (5) of Section 3-5. The machinery and equipment
20 exemption does not include machinery and equipment used in (i)
21 the generation of electricity for wholesale or retail sale;
22 (ii) the generation or treatment of natural or artificial gas
23 for wholesale or retail sale that is delivered to customers
24 through pipes, pipelines, or mains; or (iii) the treatment of
25 water for wholesale or retail sale that is delivered to
26 customers through pipes, pipelines, or mains. The provisions of

1 Public Act 98-583 ~~this amendatory Act of the 98th General~~
2 ~~Assembly~~ are declaratory of existing law as to the meaning and
3 scope of this exemption. For the purposes of exemption (5),
4 each of these terms shall have the following meanings: (1)
5 "manufacturing process" shall mean the production of any
6 article of tangible personal property, whether such article is
7 a finished product or an article for use in the process of
8 manufacturing or assembling a different article of tangible
9 personal property, by procedures commonly regarded as
10 manufacturing, processing, fabricating, or refining which
11 changes some existing material or materials into a material
12 with a different form, use or name. In relation to a recognized
13 integrated business composed of a series of operations which
14 collectively constitute manufacturing, or individually
15 constitute manufacturing operations, the manufacturing process
16 shall be deemed to commence with the first operation or stage
17 of production in the series, and shall not be deemed to end
18 until the completion of the final product in the last operation
19 or stage of production in the series; and further, for purposes
20 of exemption (5), photoprocessing is deemed to be a
21 manufacturing process of tangible personal property for
22 wholesale or retail sale; (2) "assembling process" shall mean
23 the production of any article of tangible personal property,
24 whether such article is a finished product or an article for
25 use in the process of manufacturing or assembling a different
26 article of tangible personal property, by the combination of

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

1 prescribe the form of the certificate.

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

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

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

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

26 "Sale at retail" means "sale at retail" as defined in the

1 Retailers' Occupation Tax Act.

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

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

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

16 (1.1) ~~1.1.~~ having a contract with a person located in
17 this State under which the person, for a commission or
18 other consideration based on the sale of service by the
19 serviceman, directly or indirectly refers potential
20 customers to the serviceman by providing to the potential
21 customers a promotional code or other mechanism that allows
22 the serviceman to track purchases referred by such persons.
23 Examples of mechanisms that allow the serviceman to track
24 purchases referred by such persons include but are not
25 limited to the use of a link on the person's Internet
26 website, promotional codes distributed through the

1 person's hand-delivered or mailed material, and
2 promotional codes distributed by the person through radio
3 or other broadcast media. The provisions of this paragraph
4 (1.1) ~~1.1~~ shall apply only if the cumulative gross receipts
5 from sales of service by the serviceman to customers who
6 are referred to the serviceman by all persons in this State
7 under such contracts exceed \$10,000 during the preceding 4
8 quarterly periods ending on the last day of March, June,
9 September, and December; a serviceman meeting the
10 requirements of this paragraph (1.1) ~~1.1~~ shall be presumed
11 to be maintaining a place of business in this State but may
12 rebut this presumption by submitting proof that the
13 referrals or other activities pursued within this State by
14 such persons were not sufficient to meet the nexus
15 standards of the United States Constitution during the
16 preceding 4 quarterly periods;

17 (1.2) ~~1.2~~ beginning July 1, 2011, having a contract
18 with a person located in this State under which:

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

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

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

7 (2) ~~2.~~ soliciting orders for tangible personal
8 property by means of a telecommunication or television
9 shopping system (which utilizes toll free numbers) which is
10 intended by the retailer to be broadcast by cable
11 television or other means of broadcasting, to consumers
12 located in this State;

13 (3) ~~3.~~ pursuant to a contract with a broadcaster or
14 publisher located in this State, soliciting orders for
15 tangible personal property by means of advertising which is
16 disseminated primarily to consumers located in this State
17 and only secondarily to bordering jurisdictions;

18 (4) ~~4.~~ soliciting orders for tangible personal
19 property by mail if the solicitations are substantial and
20 recurring and if the retailer benefits from any banking,
21 financing, debt collection, telecommunication, or
22 marketing activities occurring in this State or benefits
23 from the location in this State of authorized installation,
24 servicing, or repair facilities;

25 (5) ~~5.~~ being owned or controlled by the same interests
26 which own or control any retailer engaging in business in

1 the same or similar line of business in this State;

2 (6) ~~6.~~ having a franchisee or licensee operating under
3 its trade name if the franchisee or licensee is required to
4 collect the tax under this Section;

5 (7) ~~7.~~ pursuant to a contract with a cable television
6 operator located in this State, soliciting orders for
7 tangible personal property by means of advertising which is
8 transmitted or distributed over a cable television system
9 in this State; ~~or~~

10 (8) ~~8.~~ engaging in activities in Illinois, which
11 activities in the state in which the supply business
12 engaging in such activities is located would constitute
13 maintaining a place of business in that state; or ~~-~~

14 (9) beginning January 1, 2019, making sales of service
15 to purchasers in Illinois from outside of Illinois if:

16 (A) the cumulative gross receipts from sales of
17 service to purchasers in Illinois are \$150,000 or more;

18 or

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

22 The serviceman shall determine on a quarterly basis,
23 ending on the last day of March, June, September, and
24 December, whether he or she meets the criteria of either
25 (A) or (B) of this paragraph (9) for the preceding 12-month
26 period. If the serviceman meets the criteria of either (A)

1 or (B) for a 12-month period, he or she is considered a
2 serviceman maintaining a place of business in this State
3 and is required to collect and remit the tax imposed under
4 this Act and file returns for one year. At the end of that
5 one-year period, the serviceman shall determine whether
6 the serviceman met the criteria of either (A) or (B) during
7 the preceding 12-month period. If the serviceman met the
8 criteria in either (A) or (B) for the preceding 12-month
9 period, he or she is considered a serviceman maintaining a
10 place of business in this State and is required to collect
11 and remit the tax imposed under this Act and file returns
12 for the subsequent year. If at the end of a one-year period
13 a serviceman that was required to collect and remit the tax
14 imposed under this Act determines that he or she did not
15 meet the criteria in either (A) or (B) during the preceding
16 12-month period, the serviceman subsequently shall
17 determine on a quarterly basis, ending on the last day of
18 March, June, September, and December, whether he or she
19 meets the criteria of either (A) or (B) for the preceding
20 12-month period.

21 (Source: P.A. 100-22, eff. 7-6-17; 100-321, eff. 8-24-17;
22 revised 9-27-17.)

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