



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2492

Introduced 1/22/2020, by Sen. Paul Schimpf

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2	from Ch. 120, par. 439.2
35 ILCS 110/2	from Ch. 120, par. 439.32
35 ILCS 120/1	from Ch. 120, par. 440

Amends the Use Tax Act, the Service Use Tax Act, and the Retailers' Occupation Tax Act. Provides that, beginning on July 1, 2020, with respect to motor fuel, the term "selling price" does not include any tax or fee imposed by the federal government, the State, or any unit of local government. Effective immediately.

LRB101 14733 HLH 63682 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

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

6 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

7 Sec. 2. Definitions.

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

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

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

20 "Purchase at retail" means the acquisition of the ownership
21 of or title to tangible personal property through a sale at
22 retail.

23 "Purchaser" means anyone who, through a sale at retail,
24 acquires the ownership of tangible personal property for a
25 valuable consideration.

26 "Sale at retail" means any transfer of the ownership of or

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

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

24 Nonreusable tangible personal property that is used by
25 persons engaged in the business of operating a restaurant,
26 cafeteria, or drive-in is a sale for resale when it is

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

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

15 "Selling price" means the consideration for a sale valued
16 in money whether received in money or otherwise, including
17 cash, credits, property other than as hereinafter provided, and
18 services, but, prior to January 1, 2020, not including the
19 value of or credit given for traded-in tangible personal
20 property where the item that is traded-in is of like kind and
21 character as that which is being sold; beginning January 1,
22 2020, "selling price" includes the portion of the value of or
23 credit given for traded-in motor vehicles of the First Division
24 as defined in Section 1-146 of the Illinois Vehicle Code of
25 like kind and character as that which is being sold that
26 exceeds \$10,000. "Selling price" shall be determined without

1 any deduction on account of the cost of the property sold, the
2 cost of materials used, labor or service cost or any other
3 expense whatsoever, but does not include interest or finance
4 charges which appear as separate items on the bill of sale or
5 sales contract nor charges that are added to prices by sellers
6 on account of the seller's tax liability under the "Retailers'
7 Occupation Tax Act", or on account of the seller's duty to
8 collect, from the purchaser, the tax that is imposed by this
9 Act, or, except as otherwise provided with respect to any
10 cigarette tax imposed by a home rule unit, on account of the
11 seller's tax liability under any local occupation tax
12 administered by the Department, or, except as otherwise
13 provided with respect to any cigarette tax imposed by a home
14 rule unit on account of the seller's duty to collect, from the
15 purchasers, the tax that is imposed under any local use tax
16 administered by the Department. Effective December 1, 1985,
17 "selling price" shall include charges that are added to prices
18 by sellers on account of the seller's tax liability under the
19 Cigarette Tax Act, on account of the seller's duty to collect,
20 from the purchaser, the tax imposed under the Cigarette Use Tax
21 Act, and on account of the seller's duty to collect, from the
22 purchaser, any cigarette tax imposed by a home rule unit.
23 Beginning July 1, 2020, with respect to motor fuel, "selling
24 price" does not include any tax or fee imposed by the federal
25 government, the State, or any unit of local government.

26 Notwithstanding any law to the contrary, for any motor

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

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

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

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

9 "Department" means the Department of Revenue.

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

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

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

1 property that are sold at retail.

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

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

1 retailer under this Act with respect to such transactions.

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

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

1 such property, for the purposes of this Act, is the cost to the
2 transferor of such tangible personal property.

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

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

23 (1.1) (Blank).

24 (1.2) (Blank).

25 (2) (Blank).

26 (3) (Blank).

1 (4) (Blank).

2 (5) (Blank).

3 (6) (Blank).

4 (7) (Blank).

5 (8) (Blank).

6 (9) Beginning October 1, 2018 through June 30, 2020, a
7 retailer making sales of tangible personal property to
8 purchasers in Illinois from outside of Illinois if:

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

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

15 The retailer shall determine on a quarterly basis,
16 ending on the last day of March, June, September, and
17 December, whether he or she meets the criteria of either
18 subparagraph (A) or (B) of this paragraph (9) for the
19 preceding 12-month period. If the retailer meets the
20 criteria of either subparagraph (A) or (B) for a 12-month
21 period, he or she is considered a retailer maintaining a
22 place of business in this State and is required to collect
23 and remit the tax imposed under this Act and file returns
24 for one year. At the end of that one-year period, the
25 retailer shall determine whether the retailer met the
26 criteria of either subparagraph (A) or (B) during the

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

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

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

26 "Bulk vending machine" means a vending machine, containing

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

6 (Source: P.A. 100-587, eff. 6-4-18; 101-9, eff. 6-5-19; 101-31,
7 eff. 1-1-20; revised 7-11-19.)

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

10 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

11 Sec. 2. Definitions. In this Act:

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

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

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

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

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

1 sellers on account of the seller's duty to collect, from the
2 purchaser, the tax that is imposed by this Act. Beginning July
3 1, 2020, with respect to motor fuel, "selling price" does not
4 include any tax or fee imposed by the federal government, the
5 State, or any unit of local government.

6 "Department" means the Department of Revenue.

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

12 "Sale of service" means any transaction except:

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

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

19 (3) except as hereinafter provided, a sale or transfer
20 of tangible personal property as an incident to the
21 rendering of service for or by any governmental body, or
22 for or by any corporation, society, association,
23 foundation or institution organized and operated
24 exclusively for charitable, religious or educational
25 purposes or any not-for-profit corporation, society,
26 association, foundation, institution or organization which

1 has no compensated officers or employees and which is
2 organized and operated primarily for the recreation of
3 persons 55 years of age or older. A limited liability
4 company may qualify for the exemption under this paragraph
5 only if the limited liability company is organized and
6 operated exclusively for educational purposes.

7 (4) (blank).

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

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

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

13 (5) a sale or transfer of machinery and equipment used
14 primarily in the process of the manufacturing or
15 assembling, either in an existing, an expanded or a new
16 manufacturing facility, of tangible personal property for
17 wholesale or retail sale or lease, whether such sale or
18 lease is made directly by the manufacturer or by some other
19 person, whether the materials used in the process are owned
20 by the manufacturer or some other person, or whether such
21 sale or lease is made apart from or as an incident to the
22 seller's engaging in a service occupation and the
23 applicable tax is a Service Use Tax or Service Occupation
24 Tax, rather than Use Tax or Retailers' Occupation Tax. The
25 exemption provided by this paragraph (5) includes
26 production related tangible personal property, as defined

1 in Section 3-50 of the Use Tax Act, purchased on or after
2 July 1, 2019. The exemption provided by this paragraph (5)
3 does not include machinery and equipment used in (i) the
4 generation of electricity for wholesale or retail sale;
5 (ii) the generation or treatment of natural or artificial
6 gas for wholesale or retail sale that is delivered to
7 customers through pipes, pipelines, or mains; or (iii) the
8 treatment of water for wholesale or retail sale that is
9 delivered to customers through pipes, pipelines, or mains.
10 The provisions of Public Act 98-583 are declaratory of
11 existing law as to the meaning and scope of this exemption.
12 The exemption under this paragraph (5) is exempt from the
13 provisions of Section 3-75.

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

25 (5b) a sale or transfer of tangible personal property
26 which is produced by the seller thereof on special order in

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

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

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

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

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

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

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

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

1 establishing the exemption for that transaction, which
2 certificate shall be available to the Department for inspection
3 or audit. The Department shall prescribe the form of the
4 certificate.

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

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

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

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

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

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

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

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

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

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

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

22 (A) the serviceman sells the same or substantially
23 similar line of services 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) the serviceman provides a commission or other
2 consideration to the person located in this State based
3 upon the sale of services by the serviceman.

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

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

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

21 (4) soliciting orders for tangible personal property
22 by mail if the solicitations are substantial and recurring
23 and if the retailer benefits from any banking, financing,
24 debt collection, telecommunication, or marketing
25 activities occurring in this State or benefits from the
26 location in this State of authorized installation,

1 servicing, or repair facilities;

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

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

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

13 (8) engaging in activities in Illinois, which
14 activities in the state in which the supply business
15 engaging in such activities is located would constitute
16 maintaining a place of business in that state; or

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

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

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

25 The serviceman shall determine on a quarterly basis,
26 ending on the last day of March, June, September, and

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

26 Beginning January 1, 2020, neither the gross receipts

1 from nor the number of separate transactions for sales of
2 service to purchasers in Illinois that a serviceman makes
3 through a marketplace facilitator and for which the
4 serviceman has received a certification from the
5 marketplace facilitator pursuant to Section 2d of this Act
6 shall be included for purposes of determining whether he or
7 she has met the thresholds of this paragraph (9).

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

10 (Source: P.A. 100-22, eff. 7-6-17; 100-321, eff. 8-24-17;
11 100-587, eff. 6-4-18; 100-863, eff. 8-14-18; 101-9, Article 10,
12 Section 10-15, eff. 6-5-19; 101-9, Article 25, Section 25-10,
13 eff. 6-5-19; revised 7-10-19.)

14 Section 15. The Retailers' Occupation Tax Act is amended by
15 changing Section 1 as follows:

16 (35 ILCS 120/1) (from Ch. 120, par. 440)

17 Sec. 1. Definitions. "Sale at retail" means any transfer of
18 the ownership of or title to tangible personal property to a
19 purchaser, for the purpose of use or consumption, and not for
20 the purpose of resale in any form as tangible personal property
21 to the extent not first subjected to a use for which it was
22 purchased, for a valuable consideration: Provided that the
23 property purchased is deemed to be purchased for the purpose of
24 resale, despite first being used, to the extent to which it is

1 resold as an ingredient of an intentionally produced product or
2 byproduct of manufacturing. For this purpose, slag produced as
3 an incident to manufacturing pig iron or steel and sold is
4 considered to be an intentionally produced byproduct of
5 manufacturing. Transactions whereby the possession of the
6 property is transferred but the seller retains the title as
7 security for payment of the selling price shall be deemed to be
8 sales.

9 "Sale at retail" shall be construed to include any transfer
10 of the ownership of or title to tangible personal property to a
11 purchaser, for use or consumption by any other person to whom
12 such purchaser may transfer the tangible personal property
13 without a valuable consideration, and to include any transfer,
14 whether made for or without a valuable consideration, for
15 resale in any form as tangible personal property unless made in
16 compliance with Section 2c of this Act.

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

26 "Sale at retail" shall be construed to include any Illinois

1 florist's sales transaction in which the purchase order is
2 received in Illinois by a florist and the sale is for use or
3 consumption, but the Illinois florist has a florist in another
4 state deliver the property to the purchaser or the purchaser's
5 donee in such other state.

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

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 tangible personal property.

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

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

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

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

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

9 "Selling price" or the "amount of sale" means the
10 consideration for a sale valued in money whether received in
11 money or otherwise, including cash, credits, property, other
12 than as hereinafter provided, and services, but, prior to
13 January 1, 2020, not including the value of or credit given for
14 traded-in tangible personal property where the item that is
15 traded-in is of like kind and character as that which is being
16 sold; beginning January 1, 2020, "selling price" includes the
17 portion of the value of or credit given for traded-in motor
18 vehicles of the First Division as defined in Section 1-146 of
19 the Illinois Vehicle Code of like kind and character as that
20 which is being sold that exceeds \$10,000. "Selling price" shall
21 be determined without any deduction on account of the cost of
22 the property sold, the cost of materials used, labor or service
23 cost or any other expense whatsoever, but does not include
24 charges that are added to prices by sellers on account of the
25 seller's tax liability under this Act, or on account of the
26 seller's duty to collect, from the purchaser, the tax that is

1 imposed by the Use Tax Act, or, except as otherwise provided
2 with respect to any cigarette tax imposed by a home rule unit,
3 on account of the seller's tax liability under any local
4 occupation tax administered by the Department, or, except as
5 otherwise provided with respect to any cigarette tax imposed by
6 a home rule unit on account of the seller's duty to collect,
7 from the purchasers, the tax that is imposed under any local
8 use tax administered by the Department. Effective December 1,
9 1985, "selling price" shall include charges that are added to
10 prices by sellers on account of the seller's tax liability
11 under the Cigarette Tax Act, on account of the sellers' duty to
12 collect, from the purchaser, the tax imposed under the
13 Cigarette Use Tax Act, and on account of the seller's duty to
14 collect, from the purchaser, any cigarette tax imposed by a
15 home rule unit. Beginning July 1, 2020, with respect to motor
16 fuel, "selling price" does not include any tax or fee imposed
17 by the federal government, the State, or any unit of local
18 government.

19 Notwithstanding any law to the contrary, for any motor
20 vehicle, as defined in Section 1-146 of the Vehicle Code, that
21 is sold on or after January 1, 2015 for the purpose of leasing
22 the vehicle for a defined period that is longer than one year
23 and (1) is a motor vehicle of the second division that: (A) is
24 a self-contained motor vehicle designed or permanently
25 converted to provide living quarters for recreational,
26 camping, or travel use, with direct walk through access to the

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

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

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

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

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

10 "Department" means the Department of Revenue.

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

16 The isolated or occasional sale of tangible personal
17 property at retail by a person who does not hold himself out as
18 being engaged (or who does not habitually engage) in selling
19 such tangible personal property at retail, or a sale through a
20 bulk vending machine, does not constitute engaging in a
21 business of selling such tangible personal property at retail
22 within the meaning of this Act; provided that any person who is
23 engaged in a business which is not subject to the tax imposed
24 by this Act because of involving the sale of or a contract to
25 sell real estate or a construction contract to improve real
26 estate or a construction contract to engineer, install, and

1 maintain an integrated system of products, but who, in the
2 course of conducting such business, transfers tangible
3 personal property to users or consumers in the finished form in
4 which it was purchased, and which does not become real estate
5 or was not engineered and installed, under any provision of a
6 construction contract or real estate sale or real estate sales
7 agreement entered into with some other person arising out of or
8 because of such nontaxable business, is engaged in the business
9 of selling tangible personal property at retail to the extent
10 of the value of the tangible personal property so transferred.
11 If, in such a transaction, a separate charge is made for the
12 tangible personal property so transferred, the value of such
13 property, for the purpose of this Act, shall be the amount so
14 separately charged, but not less than the cost of such property
15 to the transferor; if no separate charge is made, the value of
16 such property, for the purposes of this Act, is the cost to the
17 transferor of such tangible personal property. Construction
18 contracts for the improvement of real estate consisting of
19 engineering, installation, and maintenance of voice, data,
20 video, security, and all telecommunication systems do not
21 constitute engaging in a business of selling tangible personal
22 property at retail within the meaning of this Act if they are
23 sold at one specified contract price.

24 A person who holds himself or herself out as being engaged
25 (or who habitually engages) in selling tangible personal
26 property at retail is a person engaged in the business of

1 selling tangible personal property at retail hereunder with
2 respect to such sales (and not primarily in a service
3 occupation) notwithstanding the fact that such person designs
4 and produces such tangible personal property on special order
5 for the purchaser and in such a way as to render the property
6 of value only to such purchaser, if such tangible personal
7 property so produced on special order serves substantially the
8 same function as stock or standard items of tangible personal
9 property that are sold at retail.

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

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

22 "Remote retailer" means a retailer located outside of this
23 State that does not maintain within this State, directly or by
24 a subsidiary, an office, distribution house, sales house,
25 warehouse or other place of business, or any agent or other
26 representative operating within this State under the authority

1 of the retailer or its subsidiary, irrespective of whether such
2 place of business or agent is located here permanently or
3 temporarily or whether such retailer or subsidiary is licensed
4 to do business in this State.

5 (Source: P.A. 101-31, eff. 6-28-19.)

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