



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3111

Introduced 2/17/2023, by Rep. Norine K. Hammond

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2	from Ch. 120, par. 439.2
35 ILCS 110/2	from Ch. 120, par. 439.32
35 ILCS 115/2	from Ch. 120, par. 439.102
35 ILCS 120/1	from Ch. 120, par. 440
35 ILCS 120/2-55	from Ch. 120, par. 441-55

Amends the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act. Provides that motor carriers that sell items of tangible personal property to purchasers for use or consumption in addition to rendering service as a motor carrier are engaged in a profession or service occupation as a motor carrier and are not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of this Act. Effective immediately.

LRB103 29603 HLH 55998 b

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

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

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

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

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

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

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

25 Nonreusable tangible personal property that is used by
26 persons engaged in the business of operating a restaurant,

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

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

16 "Selling price" means the consideration for a sale valued
17 in money whether received in money or otherwise, including
18 cash, credits, property other than as hereinafter provided,
19 and services, but, prior to January 1, 2020 and beginning
20 again on January 1, 2022, not including the value of or credit
21 given for traded-in tangible personal property where the item
22 that is traded-in is of like kind and character as that which
23 is being sold; beginning January 1, 2020 and until January 1,
24 2022, "selling price" includes the portion of the value of or
25 credit given for traded-in motor vehicles of the First
26 Division as defined in Section 1-146 of the Illinois Vehicle

1 Code of like kind and character as that which is being sold
2 that exceeds \$10,000. "Selling price" shall be determined
3 without any deduction on account of the cost of the property
4 sold, the cost of materials used, labor or service cost or any
5 other expense whatsoever, but does not include interest or
6 finance charges which appear as separate items on the bill of
7 sale or sales contract nor charges that are added to prices by
8 sellers on account of the seller's tax liability under the
9 Retailers' Occupation Tax Act, or on account of the seller's
10 duty to collect, from the purchaser, the tax that is imposed by
11 this Act, or, except as otherwise provided with respect to any
12 cigarette tax imposed by a home rule unit, on account of the
13 seller's tax liability under any local occupation tax
14 administered by the Department, or, except as otherwise
15 provided with respect to any cigarette tax imposed by a home
16 rule unit on account of the seller's duty to collect, from the
17 purchasers, the tax that is imposed under any local use tax
18 administered by the Department. Effective December 1, 1985,
19 "selling price" shall include charges that are added to prices
20 by sellers on account of the seller's tax liability under the
21 Cigarette Tax Act, on account of the seller's duty to collect,
22 from the purchaser, the tax imposed under the Cigarette Use
23 Tax Act, and on account of the seller's duty to collect, from
24 the purchaser, any cigarette tax imposed by a home rule unit.

25 Notwithstanding any law to the contrary, for any motor
26 vehicle, as defined in Section 1-146 of the Vehicle Code, that

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

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

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

26 The phrase "like kind and character" shall be liberally

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

8 "Department" means the Department of Revenue.

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

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

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

1 A person whose activities are organized and conducted
2 primarily as a not-for-profit service enterprise, and who
3 engages in selling tangible personal property at retail
4 (whether to the public or merely to members and their guests)
5 is a retailer with respect to such transactions, excepting
6 only a person organized and operated exclusively for
7 charitable, religious or educational purposes either (1), to
8 the extent of sales by such person to its members, students,
9 patients or inmates of tangible personal property to be used
10 primarily for the purposes of such person, or (2), to the
11 extent of sales by such person of tangible personal property
12 which is not sold or offered for sale by persons organized for
13 profit. The selling of school books and school supplies by
14 schools at retail to students is not "primarily for the
15 purposes of" the school which does such selling. This
16 paragraph does not apply to nor subject to taxation occasional
17 dinners, social or similar activities of a person organized
18 and operated exclusively for charitable, religious or
19 educational purposes, whether or not such activities are open
20 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
3 tangible personal property upon the redemption of trading
4 stamps are 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
20 or 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
23 made for the tangible personal property so transferred, the
24 value of such property, for the purposes of this Act, is the
25 amount so separately charged, but not less than the cost of
26 such property to the transferor; if no separate charge is

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

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

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

25 (1.1) A retailer having a contract with a person
26 located in this State under which the person, for a

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

26 (1.2) Beginning July 1, 2011, a retailer having a

1 contract with a person located in this State under which:

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

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

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

17 (2) (Blank).

18 (3) (Blank).

19 (4) (Blank).

20 (5) (Blank).

21 (6) (Blank).

22 (7) (Blank).

23 (8) (Blank).

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

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

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

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

1 determines that he or she did not meet the threshold in
2 either subparagraph (A) or (B) during the preceding
3 12-month period, the retailer shall subsequently determine
4 on a quarterly basis, ending on the last day of March,
5 June, September, and December, whether he or she meets the
6 threshold of either subparagraph (A) or (B) for the
7 preceding 12-month period.

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

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

19 Motor carriers, as defined in Section 18c-1104 of the
20 Vehicle Code, that sell items of tangible personal property to
21 purchasers for use or consumption in addition to rendering
22 service as a motor carrier are engaged in a profession or
23 service occupation as a motor carrier and are not engaged in
24 the business of selling tangible personal property to
25 purchasers for use or consumption within the meaning of this
26 Act. Those motor carriers are not required to remit retailers'

1 occupation taxes measured by their receipts from engaging in
2 such profession or service occupation, including receipts from
3 both services and tangible personal property.

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

10 (Source: P.A. 101-9, eff. 6-5-19; 101-31, eff. 1-1-20;
11 101-604, eff. 1-1-20; 102-353, eff. 1-1-22.)

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

14 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

15 Sec. 2. Definitions. In this Act:

16 "Use" means the exercise by any person of any right or
17 power over tangible personal property incident to the
18 ownership of that property, but does not include the sale or
19 use for demonstration by him of that property in any form as
20 tangible personal property in the regular course of business.

21 "Use" does not mean the interim use of tangible personal
22 property nor the physical incorporation of tangible personal
23 property, as an ingredient or constituent, into other tangible
24 personal property, (a) which is sold in the regular course of

1 business or (b) which the person incorporating such ingredient
2 or constituent therein has undertaken at the time of such
3 purchase to cause to be transported in interstate commerce to
4 destinations outside the State of Illinois.

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

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

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

24 "Selling price" means the consideration for a sale valued
25 in money whether received in money or otherwise, including
26 cash, credits and service, and shall be determined without any

1 deduction on account of the serviceman's cost of the property
2 sold, the cost of materials used, labor or service cost or any
3 other expense whatsoever, but does not include interest or
4 finance charges which appear as separate items on the bill of
5 sale or sales contract nor charges that are added to prices by
6 sellers on account of the seller's duty to collect, from the
7 purchaser, the tax that is imposed by this Act.

8 "Department" means the Department of Revenue.

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

14 "Sale of service" means any transaction except:

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

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

21 (3) except as hereinafter provided, a sale or transfer
22 of tangible personal property as an incident to the
23 rendering of service for or by any governmental body, or
24 for or by any corporation, society, association,
25 foundation or institution organized and operated
26 exclusively for charitable, religious or educational

1 purposes or any not-for-profit corporation, society,
2 association, foundation, institution or organization which
3 has no compensated officers or employees and which is
4 organized and operated primarily for the recreation of
5 persons 55 years of age or older. A limited liability
6 company may qualify for the exemption under this paragraph
7 only if the limited liability company is organized and
8 operated exclusively for educational purposes.

9 (4) (blank).

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

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

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

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

1 Occupation Tax. The exemption provided by this paragraph
2 (5) includes production related tangible personal
3 property, as defined in Section 3-50 of the Use Tax Act,
4 purchased on or after July 1, 2019. The exemption provided
5 by this paragraph (5) does not include machinery and
6 equipment used in (i) the generation of electricity for
7 wholesale or retail sale; (ii) the generation or treatment
8 of natural or artificial gas for wholesale or retail sale
9 that is delivered to customers through pipes, pipelines,
10 or mains; or (iii) the treatment of water for wholesale or
11 retail sale that is delivered to customers through pipes,
12 pipelines, or mains. The provisions of Public Act 98-583
13 are declaratory of existing law as to the meaning and
14 scope of this exemption. The exemption under this
15 paragraph (5) is exempt from the provisions of Section
16 3-75.

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

1 destination outside Illinois, for use outside Illinois.

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

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

23 (7) at the election of any serviceman not required to
24 be otherwise registered as a retailer under Section 2a of
25 the Retailers' Occupation Tax Act, made for each fiscal
26 year sales of service in which the aggregate annual cost

1 price of tangible personal property transferred as an
2 incident to the sales of service is less than 35%, or 75%
3 in the case of servicemen transferring prescription drugs
4 or servicemen engaged in graphic arts production, of the
5 aggregate annual total gross receipts from all sales of
6 service. The purchase of such tangible personal property
7 by the serviceman shall be subject to tax under the
8 Retailers' Occupation Tax Act and the Use Tax Act.
9 However, if a primary serviceman who has made the election
10 described in this paragraph subcontracts service work to a
11 secondary serviceman who has also made the election
12 described in this paragraph, the primary serviceman does
13 not incur a Use Tax liability if the secondary serviceman
14 (i) has paid or will pay Use Tax on his or her cost price
15 of any tangible personal property transferred to the
16 primary serviceman and (ii) certifies that fact in writing
17 to the primary serviceman.

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

21 Exemption (5) also includes machinery and equipment used
22 in the general maintenance or repair of such exempt machinery
23 and equipment or for in-house manufacture of exempt machinery
24 and equipment. On and after July 1, 2017, exemption (5) also
25 includes graphic arts machinery and equipment, as defined in
26 paragraph (5) of Section 3-5. The machinery and equipment

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

1 photoprocessing is deemed to be a manufacturing process of
2 tangible personal property for wholesale or retail sale; (2)
3 "assembling process" shall mean the production of any article
4 of tangible personal property, whether such article is a
5 finished product or an article for use in the process of
6 manufacturing or assembling a different article of tangible
7 personal property, by the combination of existing materials in
8 a manner commonly regarded as assembling which results in a
9 material of a different form, use or name; (3) "machinery"
10 shall mean major mechanical machines or major components of
11 such machines contributing to a manufacturing or assembling
12 process; and (4) "equipment" shall include any independent
13 device or tool separate from any machinery but essential to an
14 integrated manufacturing or assembly process; including
15 computers used primarily in a manufacturer's computer assisted
16 design, computer assisted manufacturing (CAD/CAM) system; or
17 any subunit or assembly comprising a component of any
18 machinery or auxiliary, adjunct or attachment parts of
19 machinery, such as tools, dies, jigs, fixtures, patterns and
20 molds; or any parts which require periodic replacement in the
21 course of normal operation; but shall not include hand tools.
22 Equipment includes chemicals or chemicals acting as catalysts
23 but only if the chemicals or chemicals acting as catalysts
24 effect a direct and immediate change upon a product being
25 manufactured or assembled for wholesale or retail sale or
26 lease. The purchaser of such machinery and equipment who has

1 an active resale registration number shall furnish such number
2 to the seller at the time of purchase. The purchaser of such
3 machinery and equipment and tools without an active resale
4 registration number shall prepare a certificate of exemption
5 stating facts establishing the exemption, which certificate
6 shall be available to the Department for inspection or audit.
7 The Department shall prescribe the form of the certificate.

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

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

25 The purchase, employment and transfer of such tangible
26 personal property as newsprint and ink for the primary purpose

1 of conveying news (with or without other information) is not a
2 purchase, use or sale of service or of tangible personal
3 property within the meaning of this Act.

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

6 Motor carriers, as defined in Section 18c-1104 of the
7 Vehicle Code, that sell items of tangible personal property to
8 purchasers for use or consumption in addition to rendering
9 service as a motor carrier are engaged in a profession or
10 service occupation as a motor carrier and are not engaged in
11 the business of selling tangible personal property to
12 purchasers for use or consumption within the meaning of this
13 Act. Those motor carriers are not required to remit retailers'
14 occupation taxes measured by their receipts from engaging in
15 such profession or service occupation, including receipts from
16 both services and tangible personal property.

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

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

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

24 (1) having or maintaining within this State, directly
25 or by a subsidiary, an office, distribution house, sales
26 house, warehouse or other place of business, or any agent

1 or other representative operating within this State under
2 the authority of the serviceman or its subsidiary,
3 irrespective of whether such place of business or agent or
4 other representative is located here permanently or
5 temporarily, or whether such serviceman or subsidiary is
6 licensed to do business in this State;

7 (1.1) having a contract with a person located in this
8 State under which the person, for a commission or other
9 consideration based on the sale of service by the
10 serviceman, directly or indirectly refers potential
11 customers to the serviceman by providing to the potential
12 customers a promotional code or other mechanism that
13 allows the serviceman to track purchases referred by such
14 persons. Examples of mechanisms that allow the serviceman
15 to track purchases referred by such persons include but
16 are not limited to the use of a link on the person's
17 Internet website, promotional codes distributed through
18 the person's hand-delivered or mailed material, and
19 promotional codes distributed by the person through radio
20 or other broadcast media. The provisions of this paragraph
21 (1.1) shall apply only if the cumulative gross receipts
22 from sales of service by the serviceman to customers who
23 are referred to the serviceman by all persons in this
24 State under such contracts exceed \$10,000 during the
25 preceding 4 quarterly periods ending on the last day of
26 March, June, September, and December; a serviceman meeting

1 the requirements of this paragraph (1.1) shall be presumed
2 to be maintaining a place of business in this State but may
3 rebut this presumption by submitting proof that the
4 referrals or other activities pursued within this State by
5 such persons were not sufficient to meet the nexus
6 standards of the United States Constitution during the
7 preceding 4 quarterly periods;

8 (1.2) beginning July 1, 2011, having a contract with a
9 person located in this State under which:

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

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

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

24 (2) soliciting orders for tangible personal property
25 by means of a telecommunication or television shopping
26 system (which utilizes toll free numbers) which is

1 intended by the retailer to be broadcast by cable
2 television or other means of broadcasting, to consumers
3 located in this State;

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

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

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

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

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

1 (8) engaging in activities in Illinois, which
2 activities in the state in which the supply business
3 engaging in such activities is located would constitute
4 maintaining a place of business in that state; or

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

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

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

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

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

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

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

24 (Source: P.A. 100-22, eff. 7-6-17; 100-321, eff. 8-24-17;
25 100-587, eff. 6-4-18; 100-863, eff. 8-14-18; 101-9, Article
26 10, Section 10-15, eff. 6-5-19; 101-9, Article 25, Section

1 25-10, eff. 6-5-19; 101-604, eff. 12-13-19.)

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

4 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

5 Sec. 2. In this Act:

6 "Transfer" means any transfer of the title to property or
7 of the ownership of property whether or not the transferor
8 retains title as security for the payment of amounts due him
9 from the transferee.

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

22 "Department" means the Department of Revenue.

23 "Person" means any natural individual, firm, partnership,
24 association, joint stock company, joint venture, public or

1 private corporation, limited liability company, and any
2 receiver, executor, trustee, guardian or other representative
3 appointed by order of any court.

4 "Sale of Service" means any transaction except:

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

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

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

24 (d) (Blank).

25 (d-1) A sale or transfer of tangible personal property as
26 an incident to the rendering of service for owners, lessors or

1 shippers of tangible personal property which is utilized by
2 interstate carriers for hire for use as rolling stock moving
3 in interstate commerce, and equipment operated by a
4 telecommunications provider, licensed as a common carrier by
5 the Federal Communications Commission, which is permanently
6 installed in or affixed to aircraft moving in interstate
7 commerce.

8 (d-1.1) On and after July 1, 2003 and through June 30,
9 2004, a sale or transfer of a motor vehicle of the second
10 division with a gross vehicle weight in excess of 8,000 pounds
11 as an incident to the rendering of service if that motor
12 vehicle is subject to the commercial distribution fee imposed
13 under Section 3-815.1 of the Illinois Vehicle Code. Beginning
14 on July 1, 2004 and through June 30, 2005, the use in this
15 State of motor vehicles of the second division: (i) with a
16 gross vehicle weight rating in excess of 8,000 pounds; (ii)
17 that are subject to the commercial distribution fee imposed
18 under Section 3-815.1 of the Illinois Vehicle Code; and (iii)
19 that are primarily used for commercial purposes. Through June
20 30, 2005, this exemption applies to repair and replacement
21 parts added after the initial purchase of such a motor vehicle
22 if that motor vehicle is used in a manner that would qualify
23 for the rolling stock exemption otherwise provided for in this
24 Act. For purposes of this paragraph, "used for commercial
25 purposes" means the transportation of persons or property in
26 furtherance of any commercial or industrial enterprise whether

1 for-hire or not.

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

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

25 (d-4) Until January 1, 1997, a sale, by a registered
26 serviceman paying tax under this Act to the Department, of

1 special order printed materials delivered outside Illinois and
2 which are not returned to this State, if delivery is made by
3 the seller or agent of the seller, including an agent who
4 causes the product to be delivered outside Illinois by a
5 common carrier or the U.S. postal service.

6 (e) A sale or transfer of machinery and equipment used
7 primarily in the process of the manufacturing or assembling,
8 either in an existing, an expanded or a new manufacturing
9 facility, of tangible personal property for wholesale or
10 retail sale or lease, whether such sale or lease is made
11 directly by the manufacturer or by some other person, whether
12 the materials used in the process are owned by the
13 manufacturer or some other person, or whether such sale or
14 lease is made apart from or as an incident to the seller's
15 engaging in a service occupation and the applicable tax is a
16 Service Occupation Tax or Service Use Tax, rather than
17 Retailers' Occupation Tax or Use Tax. The exemption provided
18 by this paragraph (e) includes production related tangible
19 personal property, as defined in Section 3-50 of the Use Tax
20 Act, purchased on or after July 1, 2019. The exemption
21 provided by this paragraph (e) does not include machinery and
22 equipment used in (i) the generation of electricity for
23 wholesale or retail sale; (ii) the generation or treatment of
24 natural or artificial gas for wholesale or retail sale that is
25 delivered to customers through pipes, pipelines, or mains; or
26 (iii) the treatment of water for wholesale or retail sale that

1 is delivered to customers through pipes, pipelines, or mains.
2 The provisions of Public Act 98-583 are declaratory of
3 existing law as to the meaning and scope of this exemption. The
4 exemption under this subsection (e) is exempt from the
5 provisions of Section 3-75.

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

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

1 described in this paragraph, the primary serviceman does not
2 incur a Use Tax liability if the secondary serviceman (i) has
3 paid or will pay Use Tax on his or her cost price of any
4 tangible personal property transferred to the primary
5 serviceman and (ii) certifies that fact in writing to the
6 primary serviceman.

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

10 Exemption (e) also includes machinery and equipment used
11 in the general maintenance or repair of such exempt machinery
12 and equipment or for in-house manufacture of exempt machinery
13 and equipment. On and after July 1, 2017, exemption (e) also
14 includes graphic arts machinery and equipment, as defined in
15 paragraph (5) of Section 3-5. The machinery and equipment
16 exemption does not include machinery and equipment used in (i)
17 the generation of electricity for wholesale or retail sale;
18 (ii) the generation or treatment of natural or artificial gas
19 for wholesale or retail sale that is delivered to customers
20 through pipes, pipelines, or mains; or (iii) the treatment of
21 water for wholesale or retail sale that is delivered to
22 customers through pipes, pipelines, or mains. The provisions
23 of Public Act 98-583 are declaratory of existing law as to the
24 meaning and scope of this exemption. For the purposes of
25 exemption (e), each of these terms shall have the following
26 meanings: (1) "manufacturing process" shall mean the

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

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

23 Except as provided in Section 2d of this Act, the rolling
24 stock exemption applies to rolling stock used by an interstate
25 carrier for hire, even just between points in Illinois, if
26 such rolling stock transports, for hire, persons whose

1 journeys or property whose shipments originate or terminate
2 outside Illinois.

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

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

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

22 Motor carriers, as defined in Section 18c-1104 of the
23 Vehicle Code, that sell items of tangible personal property to
24 purchasers for use or consumption in addition to rendering
25 service as a motor carrier are engaged in a profession or
26 service occupation as a motor carrier and are not engaged in

1 the business of selling tangible personal property to
2 purchasers for use or consumption within the meaning of this
3 Act. Those motor carriers are not required to remit retailers'
4 occupation taxes measured by their receipts from engaging in
5 such profession or service occupation, including receipts from
6 both services and tangible personal property.

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

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

12 (Source: P.A. 100-22, eff. 7-6-17; 100-321, eff. 8-24-17;
13 100-863, eff. 8-14-18; 101-9, eff. 6-5-19; 101-604, eff.
14 12-13-19.)

15 Section 20. The Retailers' Occupation Tax Act is amended
16 by changing Sections 1 and 2-55 as follows:

17 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

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

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

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

1 ingredient of an intentionally produced product or byproduct
2 of manufacturing.

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

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

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 tangible personal property.

26 A person whose activities are organized and conducted

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

1 engaged in the business of selling tangible personal property
2 at retail with respect to such transactions.

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

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

12 "Selling price" or the "amount of sale" means the
13 consideration for a sale valued in money whether received in
14 money or otherwise, including cash, credits, property, other
15 than as hereinafter provided, and services, but, prior to
16 January 1, 2020 and beginning again on January 1, 2022, not
17 including the value of or credit given for traded-in tangible
18 personal property where the item that is traded-in is of like
19 kind and character as that which is being sold; beginning
20 January 1, 2020 and until January 1, 2022, "selling price"
21 includes the portion of the value of or credit given for
22 traded-in motor vehicles of the First Division as defined in
23 Section 1-146 of the Illinois Vehicle Code of like kind and
24 character as that which is being sold that exceeds \$10,000.
25 "Selling price" shall be determined without any deduction on
26 account of the cost of the property sold, the cost of materials

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

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

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

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

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

21 The phrase "like kind and character" shall be liberally
22 construed (including but not limited to any form of motor
23 vehicle for any form of motor vehicle, or any kind of farm or
24 agricultural implement for any other kind of farm or
25 agricultural implement), while not including a kind of item
26 which, if sold at retail by that retailer, would be exempt from

1 retailers' occupation tax and use tax as an isolated or
2 occasional sale.

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

12 "Department" means the Department of Revenue.

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

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

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

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

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

19 Motor carriers, as defined in Section 18c-1104 of the
20 Vehicle Code, that sell items of tangible personal property to
21 purchasers for use or consumption in addition to rendering
22 service as a motor carrier are engaged in a profession or
23 service occupation as a motor carrier and are not engaged in
24 the business of selling tangible personal property to
25 purchasers for use or consumption within the meaning of this
26 Act. Those motor carriers are not required to remit retailers'

1 occupation taxes measured by their receipts from engaging in
2 such profession or service occupation, including receipts from
3 both services and tangible personal property.

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

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

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

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

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

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

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

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

20 "Marketplace seller" means a person that makes sales
21 through a marketplace operated by an unrelated third party
22 marketplace facilitator.

23 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 1-1-20;
24 102-353, eff. 1-1-22; 102-634, eff. 8-27-21; 102-813, eff.
25 5-13-22.)

1 (35 ILCS 120/2-55) (from Ch. 120, par. 441-55)

2 Sec. 2-55. Serviceman transfer. Tangible personal property
3 purchased by a serviceman, as defined in Section 2 of the
4 Service Occupation Tax Act, is subject to the tax imposed by
5 this Act when purchased for transfer by the serviceman
6 incidental to completion of a maintenance agreement.

7 Motor carriers, as defined in Section 18c-1104 of the
8 Vehicle Code, that sell items of tangible personal property to
9 purchasers for use or consumption in addition to rendering
10 service as a motor carrier are engaged in a profession or
11 service occupation as a motor carrier and are not engaged in
12 the business of selling tangible personal property to
13 purchasers for use or consumption within the meaning of this
14 Act. Those motor carriers are not required to remit retailers'
15 occupation taxes measured by their receipts from engaging in
16 such profession or service occupation, including receipts from
17 both services and tangible personal property.

18 (Source: P.A. 91-51, eff. 6-30-99.)

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