

HB4533



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4533

Introduced 1/31/2024, by Rep. Anthony DeLuca

SYNOPSIS AS INTRODUCED:

35 ILCS 120/2-12

Amends the Retailers' Occupation Tax Act. Provides that a remote retailer making retail sales of tangible personal property and using distribution houses or other facilities that receive and route tangible personal property to a final destination is engaged in the business of selling at the final Illinois location to which the tangible personal property is shipped or delivered.

LRB103 05288 SPS 50306 b

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 Retailers' Occupation Tax Act is amended by
5 changing Section 2-12 as follows:

6 (35 ILCS 120/2-12)

7 Sec. 2-12. Location where retailer is deemed to be engaged
8 in the business of selling. The purpose of this Section is to
9 specify where a retailer is deemed to be engaged in the
10 business of selling tangible personal property for the
11 purposes of this Act, the Use Tax Act, the Service Use Tax Act,
12 and the Service Occupation Tax Act, and for the purpose of
13 collecting any other local retailers' occupation tax
14 administered by the Department. This Section applies only with
15 respect to the particular selling activities described in the
16 following paragraphs. The provisions of this Section are not
17 intended to, and shall not be interpreted to, affect where a
18 retailer is deemed to be engaged in the business of selling
19 with respect to any activity that is not specifically
20 described in the following paragraphs.

21 (1) If a purchaser who is present at the retailer's
22 place of business, having no prior commitment to the
23 retailer, agrees to purchase and makes payment for

1 tangible personal property at the retailer's place of
2 business, then the transaction shall be deemed an
3 over-the-counter sale occurring at the retailer's same
4 place of business where the purchaser was present and made
5 payment for that tangible personal property if the
6 retailer regularly stocks the purchased tangible personal
7 property or similar tangible personal property in the
8 quantity, or similar quantity, for sale at the retailer's
9 same place of business and then either (i) the purchaser
10 takes possession of the tangible personal property at the
11 same place of business or (ii) the retailer delivers or
12 arranges for the tangible personal property to be
13 delivered to the purchaser.

14 (2) If a purchaser, having no prior commitment to the
15 retailer, agrees to purchase tangible personal property
16 and makes payment over the phone, in writing, or via the
17 Internet and takes possession of the tangible personal
18 property at the retailer's place of business, then the
19 sale shall be deemed to have occurred at the retailer's
20 place of business where the purchaser takes possession of
21 the property if the retailer regularly stocks the item or
22 similar items in the quantity, or similar quantities,
23 purchased by the purchaser.

24 (3) A retailer is deemed to be engaged in the business
25 of selling food, beverages, or other tangible personal
26 property through a vending machine at the location where

1 the vending machine is located at the time the sale is made
2 if (i) the vending machine is a device operated by coin,
3 currency, credit card, token, coupon or similar device;
4 (2) the food, beverage or other tangible personal property
5 is contained within the vending machine and dispensed from
6 the vending machine; and (3) the purchaser takes
7 possession of the purchased food, beverage or other
8 tangible personal property immediately.

9 (4) Minerals. A producer of coal or other mineral
10 mined in Illinois is deemed to be engaged in the business
11 of selling at the place where the coal or other mineral
12 mined in Illinois is extracted from the earth. With
13 respect to minerals (i) the term "extracted from the
14 earth" means the location at which the coal or other
15 mineral is extracted from the mouth of the mine, and (ii) a
16 "mineral" includes not only coal, but also oil, sand,
17 stone taken from a quarry, gravel and any other thing
18 commonly regarded as a mineral and extracted from the
19 earth. This paragraph does not apply to coal or another
20 mineral when it is delivered or shipped by the seller to
21 the purchaser at a point outside Illinois so that the sale
22 is exempt under the United States Constitution as a sale
23 in interstate or foreign commerce.

24 (5) A retailer selling tangible personal property to a
25 nominal lessee or bailee pursuant to a lease with a dollar
26 or other nominal option to purchase is engaged in the

1 business of selling at the location where the property is
2 first delivered to the lessee or bailee for its intended
3 use.

4 (6) ~~A Beginning on January 1, 2021,~~ a remote retailer
5 making retail sales of tangible personal property that
6 meet or exceed the thresholds established in paragraph (1)
7 or (2) of subsection (b) of Section 2 of this Act and using
8 distribution houses or other facilities that receive and
9 route tangible personal property to a final destination is
10 engaged in the business of selling at the final Illinois
11 location to which the tangible personal property is
12 shipped or delivered or at which possession is taken by
13 the purchaser.

14 (7) Beginning January 1, 2021, a marketplace
15 facilitator facilitating sales of tangible personal
16 property that meet or exceed one of the thresholds
17 established in paragraph (1) or (2) of subsection (c) of
18 Section 2 of this Act is deemed to be engaged in the
19 business of selling at the Illinois location to which the
20 tangible personal property is shipped or delivered or at
21 which possession is taken by the purchaser when the sale
22 is made by a marketplace seller on the marketplace
23 facilitator's marketplace.

24 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 1-1-20.)