

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 Sections 1, 2, and 2-12 as follows:

6 (35 ILCS 120/1) (from Ch. 120, par. 440)

7 Sec. 1. Definitions. "Sale at retail" means any transfer
8 of the ownership of or title to tangible personal property to a
9 purchaser, for the purpose of use or consumption, and not for
10 the purpose of resale in any form as tangible personal
11 property to the extent not first subjected to a use for which
12 it was purchased, for a valuable consideration: Provided that
13 the property purchased is deemed to be purchased for the
14 purpose of resale, despite first being used, to the extent to
15 which it is resold as an ingredient of an intentionally
16 produced product or byproduct of manufacturing. For this
17 purpose, slag produced as an incident to manufacturing pig
18 iron or steel and sold is considered to be an intentionally
19 produced byproduct of manufacturing. Transactions whereby the
20 possession of the property is transferred but the seller
21 retains the title as security for payment of the selling price
22 shall be deemed to be sales.

23 "Sale at retail" shall be construed to include any

1 transfer of the ownership of or title to tangible personal
2 property to a purchaser, for use or consumption by any other
3 person to whom such purchaser may transfer the tangible
4 personal property without a valuable consideration, and to
5 include any transfer, whether made for or without a valuable
6 consideration, for resale in any form as tangible personal
7 property unless made in compliance with Section 2c of this
8 Act.

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

19 "Sale at retail" shall 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 A person whose activities are organized and conducted
17 primarily as a not-for-profit service enterprise, and who
18 engages in selling tangible personal property at retail
19 (whether to the public or merely to members and their guests)
20 is engaged in the business of selling tangible personal
21 property at retail with respect to such transactions,
22 excepting only a person organized and operated exclusively for
23 charitable, religious or educational purposes either (1), to
24 the extent of sales by such person to its members, students,
25 patients or inmates of tangible personal property to be used
26 primarily for the purposes of such person, or (2), to the

1 extent of sales by such person of tangible personal property
2 which is not sold or offered for sale by persons organized for
3 profit. The selling of school books and school supplies by
4 schools at retail to students is not "primarily for the
5 purposes of" the school which does such selling. The
6 provisions of this paragraph shall not apply to nor subject to
7 taxation occasional dinners, socials or similar activities of
8 a person organized and operated exclusively for charitable,
9 religious or educational purposes, whether or not such
10 activities are open to the public.

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

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

22 "Reseller of motor fuel" means any person engaged in the
23 business of selling or delivering or transferring title of
24 motor fuel to another person other than for use or
25 consumption. No person shall act as a reseller of motor fuel
26 within this State without first being registered as a reseller

1 pursuant to Section 2c or a retailer pursuant to Section 2a.

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

1 seller's duty to collect, from the purchasers, the tax that is
2 imposed under any local use tax administered by the
3 Department. Effective December 1, 1985, "selling price" shall
4 include charges that are added to prices by sellers on account
5 of the seller's tax liability under the Cigarette Tax Act, on
6 account of the sellers' duty to collect, from the purchaser,
7 the tax imposed under the Cigarette Use Tax Act, and on account
8 of the seller's duty to collect, from the purchaser, any
9 cigarette tax imposed by a home rule unit.

10 Notwithstanding any law to the contrary, for any motor
11 vehicle, as defined in Section 1-146 of the Vehicle Code, that
12 is sold on or after January 1, 2015 for the purpose of leasing
13 the vehicle for a defined period that is longer than one year
14 and (1) is a motor vehicle of the second division that: (A) is
15 a self-contained motor vehicle designed or permanently
16 converted to provide living quarters for recreational,
17 camping, or travel use, with direct walk through access to the
18 living quarters from the driver's seat; (B) is of the van
19 configuration designed for the transportation of not less than
20 7 nor more than 16 passengers; or (C) has a gross vehicle
21 weight rating of 8,000 pounds or less or (2) is a motor vehicle
22 of the first division, "selling price" or "amount of sale"
23 means the consideration received by the lessor pursuant to the
24 lease contract, including amounts due at lease signing and all
25 monthly or other regular payments charged over the term of the
26 lease. Also included in the selling price is any amount

1 received by the lessor from the lessee for the leased vehicle
2 that is not calculated at the time the lease is executed,
3 including, but not limited to, excess mileage charges and
4 charges for excess wear and tear. For sales that occur in
5 Illinois, with respect to any amount received by the lessor
6 from the lessee for the leased vehicle that is not calculated
7 at the time the lease is executed, the lessor who purchased the
8 motor vehicle does not incur the tax imposed by the Use Tax Act
9 on those amounts, and the retailer who makes the retail sale of
10 the motor vehicle to the lessor is not required to collect the
11 tax imposed by the Use Tax Act or to pay the tax imposed by
12 this Act on those amounts. However, the lessor who purchased
13 the motor vehicle assumes the liability for reporting and
14 paying the tax on those amounts directly to the Department in
15 the same form (Illinois Retailers' Occupation Tax, and local
16 retailers' occupation taxes, if applicable) in which the
17 retailer would have reported and paid such tax if the retailer
18 had accounted for the tax to the Department. For amounts
19 received by the lessor from the lessee that are not calculated
20 at the time the lease is executed, the lessor must file the
21 return and pay the tax to the Department by the due date
22 otherwise required by this Act for returns other than
23 transaction returns. If the retailer is entitled under this
24 Act to a discount for collecting and remitting the tax imposed
25 under this Act to the Department with respect to the sale of
26 the motor vehicle to the lessor, then the right to the discount

1 provided in this Act shall be transferred to the lessor with
2 respect to the tax paid by the lessor for any amount received
3 by the lessor from the lessee for the leased vehicle that is
4 not calculated at the time the lease is executed; provided
5 that the discount is only allowed if the return is timely filed
6 and for amounts timely paid. The "selling price" of a motor
7 vehicle that is sold on or after January 1, 2015 for the
8 purpose of leasing for a defined period of longer than one year
9 shall not be reduced by the value of or credit given for
10 traded-in tangible personal property owned by the lessor, nor
11 shall it be reduced by the value of or credit given for
12 traded-in tangible personal property owned by the lessee,
13 regardless of whether the trade-in value thereof is assigned
14 by the lessee to the lessor. In the case of a motor vehicle
15 that is sold for the purpose of leasing for a defined period of
16 longer than one year, the sale occurs at the time of the
17 delivery of the vehicle, regardless of the due date of any
18 lease payments. A lessor who incurs a Retailers' Occupation
19 Tax liability on the sale of a motor vehicle coming off lease
20 may not take a credit against that liability for the Use Tax
21 the lessor paid upon the purchase of the motor vehicle (or for
22 any tax the lessor paid with respect to any amount received by
23 the lessor from the lessee for the leased vehicle that was not
24 calculated at the time the lease was executed) if the selling
25 price of the motor vehicle at the time of purchase was
26 calculated using the definition of "selling price" as defined

1 in this paragraph. Notwithstanding any other provision of this
2 Act to the contrary, lessors shall file all returns and make
3 all payments required under this paragraph to the Department
4 by electronic means in the manner and form as required by the
5 Department. This paragraph does not apply to leases of motor
6 vehicles for which, at the time the lease is entered into, the
7 term of the lease is not a defined period, including leases
8 with a defined initial period with the option to continue the
9 lease on a month-to-month or other basis beyond the initial
10 defined period.

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

19 "Gross receipts" from the sales of tangible personal
20 property at retail means the total selling price or the amount
21 of such sales, as hereinbefore defined. In the case of charge
22 and time sales, the amount thereof shall be included only as
23 and when payments are received by the seller. Receipts or
24 other consideration derived by a seller from the sale,
25 transfer or assignment of accounts receivable to a wholly
26 owned subsidiary will not be deemed payments prior to the time

1 the purchaser makes payment on such accounts.

2 "Department" means the Department of Revenue.

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

8 The isolated or occasional sale of tangible personal
9 property at retail by a person who does not hold himself out as
10 being engaged (or who does not habitually engage) in selling
11 such tangible personal property at retail, or a sale through a
12 bulk vending machine, does not constitute engaging in a
13 business of selling such tangible personal property at retail
14 within the meaning of this Act; provided that any person who is
15 engaged in a business which is not subject to the tax imposed
16 by this Act because of involving the sale of or a contract to
17 sell real estate or a construction contract to improve real
18 estate or a construction contract to engineer, install, and
19 maintain an integrated system of products, but who, in the
20 course of conducting such business, transfers tangible
21 personal property to users or consumers in the finished form
22 in which it was purchased, and which does not become real
23 estate or was not engineered and installed, under any
24 provision of a construction contract or real estate sale or
25 real estate sales agreement entered into with some other
26 person arising out of or because of such nontaxable business,

1 is engaged in the business of selling tangible personal
2 property at retail to the extent of the value of the tangible
3 personal property so transferred. If, in such a transaction, a
4 separate charge is made for the tangible personal property so
5 transferred, the value of such property, for the purpose of
6 this Act, shall be the amount so separately charged, but not
7 less than the cost of such property to the transferor; if no
8 separate charge is made, the value of such property, for the
9 purposes of this Act, is the cost to the transferor of such
10 tangible personal property. Construction contracts for the
11 improvement of real estate consisting of engineering,
12 installation, and maintenance of voice, data, video, security,
13 and all telecommunication systems do not constitute engaging
14 in a business of selling tangible personal property at retail
15 within the meaning of this Act if they are sold at one
16 specified contract price.

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

1 same function as stock or standard items of tangible personal
2 property that are sold at retail.

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

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

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

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

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

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

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

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

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

24 "Marketplace facilitator" does not include any person
25 licensed under the Auction License Act. This exemption does
26 not apply to any person who is an Internet auction listing

1 service, as defined by the Auction License Act.

2 "Marketplace seller" means a person that makes sales
3 through a marketplace operated by an unrelated third party
4 marketplace facilitator.

5 (Source: P.A. 101-31, eff. 6-28-19; 101-604, eff. 1-1-20;
6 102-353, eff. 1-1-22; 102-634, eff. 8-27-21; 102-813, eff.
7 5-13-22.)

8 (35 ILCS 120/2) (from Ch. 120, par. 441)

9 Sec. 2. Tax imposed.

10 (a) A tax is imposed upon persons engaged in the business
11 of selling at retail tangible personal property, including
12 computer software, and including photographs, negatives, and
13 positives that are the product of photoprocessing, but not
14 including products of photoprocessing produced for use in
15 motion pictures for public commercial exhibition. Beginning
16 January 1, 2001, prepaid telephone calling arrangements shall
17 be considered tangible personal property subject to the tax
18 imposed under this Act regardless of the form in which those
19 arrangements may be embodied, transmitted, or fixed by any
20 method now known or hereafter developed. Sales of (1)
21 electricity delivered to customers by wire; (2) natural or
22 artificial gas that is delivered to customers through pipes,
23 pipelines, or mains; and (3) water that is delivered to
24 customers through pipes, pipelines, or mains are not subject
25 to tax under this Act. The provisions of this amendatory Act of

1 the 98th General Assembly are declaratory of existing law as
2 to the meaning and scope of this Act.

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

6 (1) the cumulative gross receipts from sales of
7 tangible personal property to purchasers in Illinois are
8 \$100,000 or more; or

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

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

17 The remote retailer shall determine on a quarterly basis,
18 ending on the last day of March, June, September, and
19 December, whether he or she meets the criteria of either
20 paragraph (1) or (2) of this subsection for the preceding
21 12-month period. If the retailer meets the criteria of either
22 paragraph (1) or (2) for a 12-month period, he or she is
23 considered a retailer maintaining a place of business in this
24 State and is required to collect and remit the tax imposed
25 under this Act and all retailers' occupation tax imposed by
26 local taxing jurisdictions in Illinois, provided such local

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

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

1 retailers to Illinois customers from locations outside of
2 Illinois.

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

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

23 (c) Marketplace facilitators engaged in the business of
24 selling at retail tangible personal property in Illinois.
25 Beginning January 1, 2021, a marketplace facilitator is
26 engaged in the occupation of selling at retail tangible

1 personal property in Illinois for purposes of this Act if,
2 during the previous 12-month period:

3 (1) the cumulative gross receipts from sales of
4 tangible personal property on its own behalf or on behalf
5 of marketplace sellers to purchasers in Illinois equals
6 \$100,000 or more; or

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

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

24 The marketplace facilitator shall determine on a quarterly
25 basis, ending on the last day of March, June, September, and
26 December, whether he or she meets the criteria of either

1 paragraph (1) or (2) of this subsection for the preceding
2 12-month period. If the marketplace facilitator meets the
3 criteria of either paragraph (1) or (2) for a 12-month period,
4 he or she is considered a retailer maintaining a place of
5 business in this State and is required to remit the tax imposed
6 under this Act and all retailers' occupation tax imposed by
7 local taxing jurisdictions in Illinois, provided such local
8 taxes are administered by the Department, and to file all
9 applicable returns for one year. At the end of that one-year
10 period, the marketplace facilitator shall determine whether it
11 met the criteria of either paragraph (1) or (2) for the
12 preceding 12-month period. If the marketplace facilitator met
13 the criteria in either paragraph (1) or (2) for the preceding
14 12-month period, it is considered a retailer maintaining a
15 place of business in this State and is required to collect and
16 remit all applicable State and local retailers' occupation
17 taxes and file returns for the subsequent year. If at the end
18 of a one-year period a marketplace facilitator that was
19 required to collect and remit the tax imposed under this Act
20 determines that he or she did not meet the criteria in either
21 paragraph (1) or (2) during the preceding 12-month period, the
22 marketplace facilitator shall subsequently determine on a
23 quarterly basis, ending on the last day of March, June,
24 September, and December, whether he or she meets the criteria
25 of either paragraph (1) or (2) for the preceding 12-month
26 period.

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

18 The marketplace facilitator is liable for the remittance
19 of all applicable State retailers' occupation taxes under this
20 Act and local retailers' occupation taxes administered by the
21 Department on sales through the marketplace and is subject to
22 audit on all such sales. The Department shall not audit
23 marketplace sellers for their marketplace sales where a
24 marketplace facilitator remitted the applicable State and
25 local retailers' occupation taxes unless the marketplace
26 facilitator seeks relief as a result of incorrect information

1 provided to the marketplace facilitator by a marketplace
2 seller as set forth in this Section. The marketplace
3 facilitator shall not be held liable for tax on any sales made
4 by a marketplace seller that take place outside of the
5 marketplace and which are not a part of any agreement between a
6 marketplace facilitator and a marketplace seller. In addition,
7 marketplace facilitators shall not be held liable to State and
8 local governments of Illinois for having charged and remitted
9 an incorrect amount of State and local retailers' occupation
10 tax if, at the time of the sale, the tax is computed based on
11 erroneous data provided by the State in database files on tax
12 rates, boundaries, or taxing jurisdictions or incorrect
13 information provided to the marketplace facilitator by the
14 marketplace seller.

15 (d) A marketplace facilitator shall:

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

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

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

25 (f) A marketplace facilitator is subject to audit on all
26 marketplace sales for which it is considered to be the

1 retailer, but shall not be liable for tax or subject to audit
2 on sales made by marketplace sellers outside of the
3 marketplace.

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

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

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

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

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

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

1 (35 ILCS 120/2-12)

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

16 (1) If a purchaser who is present at the retailer's
17 place of business, having no prior commitment to the
18 retailer, agrees to purchase and makes payment for
19 tangible personal property at the retailer's place of
20 business, then the transaction shall be deemed an
21 over-the-counter sale occurring at the retailer's same
22 place of business where the purchaser was present and made
23 payment for that tangible personal property if the
24 retailer regularly stocks the purchased tangible personal
25 property or similar tangible personal property in the

1 quantity, or similar quantity, for sale at the retailer's
2 same place of business and then either (i) the purchaser
3 takes possession of the tangible personal property at the
4 same place of business or (ii) the retailer delivers or
5 arranges for the tangible personal property to be
6 delivered to the purchaser.

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

17 (3) A retailer is deemed to be engaged in the business
18 of selling food, beverages, or other tangible personal
19 property through a vending machine at the location where
20 the vending machine is located at the time the sale is made
21 if (i) the vending machine is a device operated by coin,
22 currency, credit card, token, coupon or similar device;
23 (2) the food, beverage or other tangible personal property
24 is contained within the vending machine and dispensed from
25 the vending machine; and (3) the purchaser takes
26 possession of the purchased food, beverage or other

1 tangible personal property immediately.

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

17 (5) A retailer selling tangible personal property to a
18 nominal lessee or bailee pursuant to a lease with a dollar
19 or other nominal option to purchase is engaged in the
20 business of selling at the location where the property is
21 first delivered to the lessee or bailee for its intended
22 use.

23 (6) Beginning on January 1, 2021, a remote retailer
24 making retail sales of tangible personal property that
25 meet or exceed the thresholds established in paragraph (1)
26 or (2) of subsection (b) of Section 2 of this Act is

1 engaged in the business of selling at the Illinois
2 location to which the tangible personal property is
3 shipped or delivered or at which possession is taken by
4 the purchaser.

5 (7) Beginning January 1, 2021, a marketplace
6 facilitator facilitating sales of tangible personal
7 property that meet or exceed one of the thresholds
8 established in paragraph (1) or (2) of subsection (c) of
9 Section 2 of this Act is deemed to be engaged in the
10 business of selling at the Illinois location to which the
11 tangible personal property is shipped or delivered or at
12 which possession is taken by the purchaser when the sale
13 is made by a marketplace seller on the marketplace
14 facilitator's marketplace.

15 (8) Beginning on January 1, 2025, for sales that would
16 otherwise be sourced outside of this State, a retailer
17 maintaining a place of business in this State that makes
18 retail sales of tangible personal property to Illinois
19 customers from a location or locations outside of Illinois
20 is engaged in the business of selling at the Illinois
21 location to which the tangible personal property is
22 shipped or delivered or at which possession is taken by
23 the purchaser.

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

25 Section 99. Effective date. This Act takes effect January
26 1, 2025.