

# SB0109



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB0109

Introduced 1/31/2007, by Sen. John O. Jones

#### SYNOPSIS AS INTRODUCED:

35 ILCS 105/2  
35 ILCS 110/2

from Ch. 120, par. 439.2  
from Ch. 120, par. 439.32

Amends the Use Tax Act and the Service Use Tax Act. Provides that the definition of "selling price" under the Acts does not include the amount of any rebate offered by the manufacturer or retailer. Effective immediately.

LRB095 06844 BDD 26962 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

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

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

7 Sec. 2. "Use" means the exercise by any person of any right  
8 or power over tangible personal property incident to the  
9 ownership of that property, except that it does not include the  
10 sale of such property in any form as tangible personal property  
11 in the regular course of business to the extent that such  
12 property is not first subjected to a use for which it was  
13 purchased, and does not include the use of such property by its  
14 owner for demonstration purposes: Provided that the property  
15 purchased is deemed to be purchased for the purpose of resale,  
16 despite first being used, to the extent to which it is resold  
17 as an ingredient of an intentionally produced product or  
18 by-product of manufacturing. "Use" does not mean the  
19 demonstration use or interim use of tangible personal property  
20 by a retailer before he sells that tangible personal property.  
21 For watercraft or aircraft, if the period of demonstration use  
22 or interim use by the retailer exceeds 18 months, the retailer  
23 shall pay on the retailers' original cost price the tax imposed

1 by this Act, and no credit for that tax is permitted if the  
2 watercraft or aircraft is subsequently sold by the retailer.

3 "Use" does not mean the physical incorporation of tangible  
4 personal property, to the extent not first subjected to a use  
5 for which it was purchased, as an ingredient or constituent,  
6 into other tangible personal property (a) which is sold in the  
7 regular course of business or (b) which the person  
8 incorporating such ingredient or constituent therein has  
9 undertaken at the time of such purchase to cause to be  
10 transported in interstate commerce to destinations outside the  
11 State of Illinois: Provided that the property purchased is  
12 deemed to be purchased for the purpose of resale, despite first  
13 being used, to the extent to which it is resold as an  
14 ingredient of an intentionally produced product or by-product  
15 of manufacturing.

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

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

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

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

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

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

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

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

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

15 "Selling price" means the consideration for a sale valued  
16 in money whether received in money or otherwise, including  
17 cash, credits, property other than as hereinafter provided, and  
18 services, but not including the value of or credit given for  
19 traded-in tangible personal property where the item that is  
20 traded-in is of like kind and character as that which is being  
21 sold, and shall be determined without any deduction on account  
22 of the cost of the property sold, the cost of materials used,  
23 labor or service cost or any other expense whatsoever, but does  
24 not include interest or finance charges which appear as  
25 separate items on the bill of sale or sales contract nor  
26 charges that are added to prices by sellers on account of the

1 seller's tax liability under the "Retailers' Occupation Tax  
2 Act", or on account of the seller's duty to collect, from the  
3 purchaser, the tax that is imposed by this Act, or on account  
4 of the seller's tax liability under Section 8-11-1 of the  
5 Illinois Municipal Code, as heretofore and hereafter amended,  
6 or on account of the seller's tax liability under the "County  
7 Retailers' Occupation Tax Act". Effective December 1, 1985,  
8 "selling price" shall include charges that are added to prices  
9 by sellers on account of the seller's tax liability under the  
10 Cigarette Tax Act, on account of the seller's duty to collect,  
11 from the purchaser, the tax imposed under the Cigarette Use Tax  
12 Act, and on account of the seller's duty to collect, from the  
13 purchaser, any cigarette tax imposed by a home rule unit.  
14 Beginning on July 1, 2007, the term "selling price" does not  
15 include the amount of any rebate offered by the manufacturer or  
16 retailer.

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

25 "Department" means the Department of Revenue.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or  
2 private corporation, limited liability company, or a receiver,  
3 executor, trustee, guardian or other representative appointed  
4 by order of any court.

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

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

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

1 the purposes of such person, or (2), to the extent of sales by  
2 such person of tangible personal property which is not sold or  
3 offered for sale by persons organized for profit. The selling  
4 of school books and school supplies by schools at retail to  
5 students is not "primarily for the purposes of" the school  
6 which does such selling. This paragraph does not apply to nor  
7 subject to taxation occasional dinners, social or similar  
8 activities of a person organized and operated exclusively for  
9 charitable, religious or educational purposes, whether or not  
10 such 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 a  
17 retailer under this Act with respect to such transactions.

18 Persons who engage in the business of transferring tangible  
19 personal property upon the redemption of trading stamps are  
20 retailers hereunder when engaged in such business.

21 The isolated or occasional sale of tangible personal  
22 property at retail by a person who does not hold himself out as  
23 being engaged (or who does not habitually engage) in selling  
24 such tangible personal property at retail or a sale through a  
25 bulk vending machine does not make such person a retailer  
26 hereunder. However, any person who is engaged in a business



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

19 "Retailer maintaining a place of business in this State",  
20 or any like term, means and includes any of the following  
21 retailers:

- 22 1. A retailer having or maintaining within this State,  
23 directly or by a subsidiary, an office, distribution house,  
24 sales house, warehouse or other place of business, or any  
25 agent or other representative operating within this State  
26 under the authority of the retailer or its subsidiary,

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

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

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

25                 4. A retailer soliciting orders for tangible personal  
26           property by mail if the solicitations are substantial and

1 recurring and if the retailer benefits from any banking,  
2 financing, debt collection, telecommunication, or  
3 marketing activities occurring in this State or benefits  
4 from the location in this State of authorized installation,  
5 servicing, or repair facilities.

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

10 6. A retailer having a franchisee or licensee operating  
11 under its trade name if the franchisee or licensee is  
12 required to collect the tax under this Section.

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

18 8. A retailer engaging in activities in Illinois, which  
19 activities in the state in which the retail business  
20 engaging in such activities is located would constitute  
21 maintaining a place of business in that state.

22 "Bulk vending machine" means a vending machine, containing  
23 unsorted confections, nuts, toys, or other items designed  
24 primarily to be used or played with by children which, when a  
25 coin or coins of a denomination not larger than \$0.50 are  
26 inserted, are dispensed in equal portions, at random and

1 without selection by the customer.

2 (Source: P.A. 94-1074, eff. 12-26-06.)

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

5 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

6 Sec. 2. "Use" means the exercise by any person of any right  
7 or power over tangible personal property incident to the  
8 ownership of that property, but does not include the sale or  
9 use for demonstration by him of that property in any form as  
10 tangible personal property in the regular course of business.  
11 "Use" does not mean the interim use of tangible personal  
12 property nor the physical incorporation of tangible personal  
13 property, as an ingredient or constituent, into other tangible  
14 personal property, (a) which is sold in the regular course of  
15 business or (b) which the person incorporating such ingredient  
16 or constituent therein has undertaken at the time of such  
17 purchase to cause to be transported in interstate commerce to  
18 destinations outside the State of Illinois.

19 "Purchased from a serviceman" means the acquisition of the  
20 ownership of, or title to, tangible personal property through a  
21 sale of service.

22 "Purchaser" means any person who, through a sale of  
23 service, acquires the ownership of, or title to, any tangible  
24 personal property.

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

13 "Selling price" means the consideration for a sale valued  
14 in money whether received in money or otherwise, including  
15 cash, credits and service, and shall be determined without any  
16 deduction on account of the serviceman's cost of the property  
17 sold, the cost of materials used, labor or service cost or any  
18 other expense whatsoever, but does not include interest or  
19 finance charges which appear as separate items on the bill of  
20 sale or sales contract nor charges that are added to prices by  
21 sellers on account of the seller's duty to collect, from the  
22 purchaser, the tax that is imposed by this Act. Beginning on  
23 July 1, 2007, the term "selling price" does not include the  
24 amount of any rebate offered by the manufacturer or retailer.

25 "Department" means the Department of Revenue.

26 "Person" means any natural individual, firm, partnership,

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

5 "Sale of service" means any transaction except:

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

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

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

26 (4) a sale or transfer of tangible personal property as

1 an incident to the rendering of service for interstate  
2 carriers for hire for use as rolling stock moving in  
3 interstate commerce or by lessors under a lease of one year  
4 or longer, executed or in effect at the time of purchase of  
5 personal property, to interstate carriers for hire for use  
6 as rolling stock moving in interstate commerce so long as  
7 so used by such interstate carriers for hire, and equipment  
8 operated by a telecommunications provider, licensed as a  
9 common carrier by the Federal Communications Commission,  
10 which is permanently installed in or affixed to aircraft  
11 moving in interstate commerce.

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

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

1 imposed under Section 3-815.1 of the Illinois Vehicle Code.  
2 Beginning on July 1, 2004 and through June 30, 2005, the  
3 use in this State of motor vehicles of the second division:  
4 (i) with a gross vehicle weight rating in excess of 8,000  
5 pounds; (ii) that are subject to the commercial  
6 distribution fee imposed under Section 3-815.1 of the  
7 Illinois Vehicle Code; and (iii) that are primarily used  
8 for commercial purposes. Through June 30, 2005, this  
9 exemption applies to repair and replacement parts added  
10 after the initial purchase of such a motor vehicle if that  
11 motor vehicle is used in a manner that would qualify for  
12 the rolling stock exemption otherwise provided for in this  
13 Act. For purposes of this paragraph, "used for commercial  
14 purposes" means the transportation of persons or property  
15 in furtherance of any commercial or industrial enterprise  
16 whether for-hire or not.

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



1 applicable tax is a Service Use Tax or Service Occupation  
2 Tax, rather than Use Tax or Retailers' Occupation Tax.

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

14 (5b) a sale or transfer of tangible personal property  
15 which is produced by the seller thereof on special order in  
16 such a way as to have made the applicable tax the Service  
17 Occupation Tax or the Service Use Tax, rather than the  
18 Retailers' Occupation Tax or the Use Tax, for an interstate  
19 carrier by rail which receives the physical possession of  
20 such property in Illinois, and which transports such  
21 property, or shares with another common carrier in the  
22 transportation of such property, out of Illinois on a  
23 standard uniform bill of lading showing the seller of the  
24 property as the shipper or consignor of such property to a  
25 destination outside Illinois, for use outside Illinois.

26 (6) until July 1, 2003, a sale or transfer of

1 distillation machinery and equipment, sold as a unit or kit  
2 and assembled or installed by the retailer, which machinery  
3 and equipment is certified by the user to be used only for  
4 the production of ethyl alcohol that will be used for  
5 consumption as motor fuel or as a component of motor fuel  
6 for the personal use of such user and not subject to sale  
7 or resale.

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

1 and (ii) certifies that fact in writing to the primary  
2 serviceman.

3 Tangible personal property transferred incident to the  
4 completion of a maintenance agreement is exempt from the tax  
5 imposed pursuant to this Act.

6 Exemption (5) also includes machinery and equipment used in  
7 the general maintenance or repair of such exempt machinery and  
8 equipment or for in-house manufacture of exempt machinery and  
9 equipment. For the purposes of exemption (5), each of these  
10 terms shall have the following meanings: (1) "manufacturing  
11 process" shall mean the production of any article of tangible  
12 personal property, whether such article is a finished product  
13 or an article for use in the process of manufacturing or  
14 assembling a different article of tangible personal property,  
15 by procedures commonly regarded as manufacturing, processing,  
16 fabricating, or refining which changes some existing material  
17 or materials into a material with a different form, use or  
18 name. In relation to a recognized integrated business composed  
19 of a series of operations which collectively constitute  
20 manufacturing, or individually constitute manufacturing  
21 operations, the manufacturing process shall be deemed to  
22 commence with the first operation or stage of production in the  
23 series, and shall not be deemed to end until the completion of  
24 the final product in the last operation or stage of production  
25 in the series; and further, for purposes of exemption (5),  
26 photoprocessing is deemed to be a manufacturing process of

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

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

8 Any informal rulings, opinions or letters issued by the  
9 Department in response to an inquiry or request for any opinion  
10 from any person regarding the coverage and applicability of  
11 exemption (5) to specific devices shall be published,  
12 maintained as a public record, and made available for public  
13 inspection and copying. If the informal ruling, opinion or  
14 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 "Sale at retail" means "sale at retail" as defined in the  
7 Retailers' Occupation Tax Act.

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

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

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

22 2. soliciting orders for tangible personal property by  
23 means of a telecommunication or television shopping system  
24 (which utilizes toll free numbers) which is intended by the  
25 retailer to be broadcast by cable television or other means  
26 of broadcasting, to consumers located in this State;

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

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

13           5. being owned or controlled by the same interests  
14 which own or control any retailer engaging in business in  
15 the same or similar line of business in this State;

16           6. having a franchisee or licensee operating under its  
17 trade name if the franchisee or licensee is required to  
18 collect the tax under this Section;

19           7. pursuant to a contract with a cable television  
20 operator located in this State, soliciting orders for  
21 tangible personal property by means of advertising which is  
22 transmitted or distributed over a cable television system  
23 in this State; or

24           8. engaging in activities in Illinois, which  
25 activities in the state in which the supply business  
26 engaging in such activities is located would constitute

1           maintaining a place of business in that state.

2           (Source: P.A. 92-484, eff. 8-23-01; 93-23, eff. 6-20-03; 93-24,  
3           eff. 6-20-03; 93-1033, eff. 9-3-04.)

4           Section 99. Effective date. This Act takes effect upon  
5           becoming law.