



Sen. John J. Cullerton

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09600HB3659sam003

LRB096 09388 PJG 44648 a

1 AMENDMENT TO HOUSE BILL 3659

2 AMENDMENT NO. _____. Amend House Bill 3659, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Use Tax Act is amended by changing Section
6 2 as follows:

7 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

8 Sec. 2. "Use" means the exercise by any person of any right
9 or power over tangible personal property incident to the
10 ownership of that property, except that it does not include the
11 sale of such property in any form as tangible personal property
12 in the regular course of business to the extent that such
13 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,

1 despite first being used, to the extent to which it is resold
2 as an ingredient of an intentionally produced product or
3 by-product of manufacturing. "Use" does not mean the
4 demonstration use or interim use of tangible personal property
5 by a retailer before he sells that tangible personal property.
6 For watercraft or aircraft, if the period of demonstration use
7 or interim use by the retailer exceeds 18 months, the retailer
8 shall pay on the retailers' original cost price the tax imposed
9 by this Act, and no credit for that tax is permitted if the
10 watercraft or aircraft is subsequently sold by the retailer.
11 "Use" does not mean the physical incorporation of tangible
12 personal property, to the extent not first subjected to a use
13 for which it was purchased, as an ingredient or constituent,
14 into other tangible personal property (a) which is sold in the
15 regular course of business or (b) which the person
16 incorporating such ingredient or constituent therein has
17 undertaken at the time of such purchase to cause to be
18 transported in interstate commerce to destinations outside the
19 State of Illinois: Provided that the property purchased is
20 deemed to be purchased for the purpose of resale, despite first
21 being used, to the extent to which it is resold as an
22 ingredient of an intentionally produced product or by-product
23 of manufacturing.

24 "Watercraft" means a Class 2, Class 3, or Class 4
25 watercraft as defined in Section 3-2 of the Boat Registration
26 and Safety Act, a personal watercraft, or any boat equipped

1 with an inboard motor.

2 "Purchase at retail" means the acquisition of the ownership
3 of or title to tangible personal property through a sale at
4 retail.

5 "Purchaser" means anyone who, through a sale at retail,
6 acquires the ownership of tangible personal property for a
7 valuable consideration.

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

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

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

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

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

23 "Selling price" means the consideration for a sale valued
24 in money whether received in money or otherwise, including
25 cash, credits, property other than as hereinafter provided, and
26 services, but not including the value of or credit given for

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

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

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

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

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

1 transferor of such tangible personal property.

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

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

22 1.1. Beginning July 1, 2011, a retailer having a
23 contract with a person located in this State under which
24 the person, for a commission or other consideration based
25 upon the sale of tangible personal property by the
26 retailer, directly or indirectly refers potential

1 customers to the retailer by a link on the person's
2 Internet website. The provisions of this paragraph 1.1
3 shall apply only if the cumulative gross receipts from
4 sales of tangible personal property by the retailer to
5 customers who are referred to the retailer by all persons
6 in this State under such contracts exceed \$10,000 during
7 the preceding 4 quarterly periods ending on the last day of
8 March, June, September, and December.

9 1.2. Beginning July 1, 2011, a retailer having a
10 contract with a person located in this State under which:

11 A. the retailer sells the same or substantially
12 similar line of products as the person located in this
13 State and does so using an identical or substantially
14 similar name, trade name, or trademark as the person
15 located in this State; and

16 B. the retailer provides a commission or other
17 consideration to the person located in this State based
18 upon the sale of tangible personal property by the
19 retailer.

20 The provisions of this paragraph 1.2 shall apply only if
21 the cumulative gross receipts from sales of tangible
22 personal property by the retailer to customers in this
23 State under all such contracts exceed \$10,000 during the
24 preceding 4 quarterly periods ending on the last day of
25 March, June, September, and December.

26 2. A retailer soliciting orders for tangible personal

1 property by means of a telecommunication or television
2 shopping system (which utilizes toll free numbers) which is
3 intended by the retailer to be broadcast by cable
4 television or other means of broadcasting, to consumers
5 located in this State.

6 3. A retailer, pursuant to a contract with a
7 broadcaster or publisher located in this State, soliciting
8 orders for tangible personal property by means of
9 advertising which is disseminated primarily to consumers
10 located in this State and only secondarily to bordering
11 jurisdictions.

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

19 5. A retailer that is owned or controlled by the same
20 interests that own or control any retailer engaging in
21 business in the same or similar line of business in this
22 State.

23 6. A retailer having a franchisee or licensee operating
24 under its trade name if the franchisee or licensee is
25 required to collect the tax under this Section.

26 7. A retailer, pursuant to a contract with a cable

1 television operator located in this State, soliciting
2 orders for tangible personal property by means of
3 advertising which is transmitted or distributed over a
4 cable television system in this State.

5 8. A retailer engaging in activities in Illinois, which
6 activities in the state in which the retail business
7 engaging in such activities is located would constitute
8 maintaining a place of business in that state.

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 (Source: P.A. 94-1074, eff. 12-26-06; 95-723, eff. 6-23-08.)

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

18 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

19 Sec. 2. "Use" means the exercise by any person of any right
20 or power over tangible personal property incident to the
21 ownership of that property, but does not include the sale or
22 use for demonstration by him of that property in any form as
23 tangible personal property in the regular course of business.

24 "Use" does not mean the interim use of tangible personal

1 property nor the physical incorporation of tangible personal
2 property, as an ingredient or constituent, into other tangible
3 personal property, (a) which is sold in the regular course of
4 business or (b) which the person incorporating such ingredient
5 or constituent therein has undertaken at the time of such
6 purchase to cause to be transported in interstate commerce to
7 destinations outside the State of Illinois.

8 "Purchased from a serviceman" means the acquisition of the
9 ownership of, or title to, tangible personal property through a
10 sale of service.

11 "Purchaser" means any person who, through a sale of
12 service, acquires the ownership of, or title to, any tangible
13 personal property.

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

26 "Selling price" means the consideration for a sale valued

1 in money whether received in money or otherwise, including
2 cash, credits and service, and shall be determined without any
3 deduction on account of the serviceman's 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 duty to collect, from the
9 purchaser, the tax that is imposed by this Act.

10 "Department" means the Department of Revenue.

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

16 "Sale of service" means any transaction except:

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

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

23 (3) except as hereinafter provided, a sale or transfer
24 of tangible personal property as an incident to the
25 rendering of service for or by any governmental body, or
26 for or by any corporation, society, association,

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

11 (4) a sale or transfer of tangible personal property as
12 an incident to the rendering of service for interstate
13 carriers for hire for use as rolling stock moving in
14 interstate commerce or by lessors under a lease of one year
15 or longer, executed or in effect at the time of purchase of
16 personal property, to interstate carriers for hire for use
17 as rolling stock moving in interstate commerce so long as
18 so used by such interstate carriers for hire, and equipment
19 operated by a telecommunications provider, licensed as a
20 common carrier by the Federal Communications Commission,
21 which is permanently installed in or affixed to aircraft
22 moving in interstate commerce.

23 (4a) a sale or transfer of tangible personal property
24 as an incident to the rendering of service for owners,
25 lessors, or shippers of tangible personal property which is
26 utilized by interstate carriers for hire for use as rolling

1 stock moving in interstate commerce so long as so used by
2 interstate carriers for hire, and equipment operated by a
3 telecommunications provider, licensed as a common carrier
4 by the Federal Communications Commission, which is
5 permanently installed in or affixed to aircraft moving in
6 interstate commerce.

7 (4a-5) on and after July 1, 2003 and through June 30,
8 2004, a sale or transfer of a motor vehicle of the second
9 division with a gross vehicle weight in excess of 8,000
10 pounds as an incident to the rendering of service if that
11 motor vehicle is subject to the commercial distribution fee
12 imposed under Section 3-815.1 of the Illinois Vehicle Code.
13 Beginning on July 1, 2004 and through June 30, 2005, the
14 use in this State of motor vehicles of the second division:
15 (i) with a gross vehicle weight rating in excess of 8,000
16 pounds; (ii) that are subject to the commercial
17 distribution fee imposed under Section 3-815.1 of the
18 Illinois Vehicle Code; and (iii) that are primarily used
19 for commercial purposes. Through June 30, 2005, this
20 exemption applies to repair and replacement parts added
21 after the initial purchase of such a motor vehicle if that
22 motor vehicle is used in a manner that would qualify for
23 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
26 in furtherance of any commercial or industrial enterprise

1 whether for-hire or not.

2 (5) a sale or transfer of machinery and equipment used
3 primarily in the process of the manufacturing or
4 assembling, either in an existing, an expanded or a new
5 manufacturing facility, of tangible personal property for
6 wholesale or retail sale or lease, whether such sale or
7 lease is made directly by the manufacturer or by some other
8 person, whether the materials used in the process are owned
9 by the manufacturer or some other person, or whether such
10 sale or lease is made apart from or as an incident to the
11 seller's engaging in a service occupation and the
12 applicable tax is a Service Use Tax or Service Occupation
13 Tax, rather than Use Tax or Retailers' Occupation Tax.

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

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

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

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

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

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

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

17 Exemption (5) also includes machinery and equipment used in
18 the general maintenance or repair of such exempt machinery and
19 equipment or for in-house manufacture of exempt machinery and
20 equipment. For the purposes of exemption (5), each of these
21 terms shall have the following meanings: (1) "manufacturing
22 process" shall mean the production of any article of tangible
23 personal property, whether such article is a finished product
24 or an article for use in the process of manufacturing or
25 assembling a different article of tangible personal property,
26 by procedures commonly regarded as manufacturing, processing,

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

1 any subunit or assembly comprising a component of any machinery
2 or auxiliary, adjunct or attachment parts of machinery, such as
3 tools, dies, jigs, fixtures, patterns and molds; or any parts
4 which require periodic replacement in the course of normal
5 operation; but shall not include hand tools. Equipment includes
6 chemicals or chemicals acting as catalysts but only if the
7 chemicals or chemicals acting as catalysts effect a direct and
8 immediate change upon a product being manufactured or assembled
9 for wholesale or retail sale or lease. The purchaser of such
10 machinery and equipment who has an active resale registration
11 number shall furnish such number to the seller at the time of
12 purchase. The user of such machinery and equipment and tools
13 without an active resale registration number shall prepare a
14 certificate of exemption for each transaction stating facts
15 establishing the exemption for that transaction, which
16 certificate shall be available to the Department for inspection
17 or audit. The Department shall prescribe the form of the
18 certificate.

19 Any informal rulings, opinions or letters issued by the
20 Department in response to an inquiry or request for any opinion
21 from any person regarding the coverage and applicability of
22 exemption (5) to specific devices shall be published,
23 maintained as a public record, and made available for public
24 inspection and copying. If the informal ruling, opinion or
25 letter contains trade secrets or other confidential
26 information, where possible the Department shall delete such

1 information prior to publication. Whenever such informal
2 rulings, opinions, or letters contain any policy of general
3 applicability, the Department shall formulate and adopt such
4 policy as a rule in accordance with the provisions of the
5 Illinois Administrative Procedure Act.

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

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

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

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 an
21 incident to a sale of service.

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

- 24 1. having or maintaining within this State, directly or
25 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. beginning July 1, 2011, having a contract with a
8 person located in this State under which the person, for a
9 commission or other consideration based on the sale of
10 service by the, directly or indirectly refers potential
11 customers to the serviceman by a link on the person's
12 Internet website. The provisions of this paragraph 1.1
13 shall apply only if the cumulative gross receipts from
14 sales of service by the serviceman to customers who are
15 referred to the serviceman by all persons in this State
16 under such contracts exceed \$10,000 during the preceding 4
17 quarterly periods ending on the last day of March, June,
18 September, and December;

19 1.2. beginning July 1, 2011, having a contract with a
20 person located in this State under which:

21 A. the serviceman sells the same or substantially
22 similar line of services as the person located in this
23 State and does so using an identical or substantially
24 similar name, trade name, or trademark as the person
25 located in this State; and

26 B. the serviceman provides a commission or other

1 consideration to the person located in this State based
2 upon the sale of services by the serviceman.

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

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

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

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

26 5. being owned or controlled by the same interests

1 which own or control any retailer engaging in business in
2 the same or similar line of business in this State;

3 6. having a franchisee or licensee operating under its
4 trade name if the franchisee or licensee is required to
5 collect the tax under this Section;

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

11 8. engaging in activities in Illinois, which
12 activities in the state in which the supply business
13 engaging in such activities is located would constitute
14 maintaining a place of business in that state.

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

17 Section 97. Severability. The provisions of this Act are
18 severable under Section 1.31 of the Statute on Statutes.

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