



Rep. Chad Hays

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1 AMENDMENT TO HOUSE BILL 1619

2 AMENDMENT NO. _____. Amend House Bill 1619 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Use Tax Act is amended by changing Section
5 2 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

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

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

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

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

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

25 "Sale at retail" shall also be construed to include any
26 Illinois florist's sales transaction in which the purchase

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

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

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

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

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

1 third-party cellular service provider. The changes made by this
2 amendatory Act of the 98th General Assembly are declarative of
3 existing law.

4 "Wireless cellular device" means any wireless
5 communication device that provides for voice or data
6 communication between 2 or more parties, including, but not
7 limited to, a text messaging device or other device that sends
8 or receives messages or electronic data.

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

17 "Department" means the Department of Revenue.

18 "Person" means any natural individual, firm, partnership,
19 association, joint stock company, joint adventure, public or
20 private corporation, limited liability company, or a receiver,
21 executor, trustee, guardian or other representative appointed
22 by order of any court.

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

25 A person who holds himself or herself out as being engaged
26 (or who habitually engages) in selling tangible personal

1 property at retail is a retailer hereunder with respect to such
2 sales (and not primarily in a service occupation)
3 notwithstanding the fact that such person designs and produces
4 such tangible personal property on special order for the
5 purchaser and in such a way as to render the property of value
6 only to such purchaser, if such tangible personal property so
7 produced on special order serves substantially the same
8 function as stock or standard items of tangible personal
9 property that are sold at retail.

10 A person whose activities are organized and conducted
11 primarily as a not-for-profit service enterprise, and who
12 engages in selling tangible personal property at retail
13 (whether to the public or merely to members and their guests)
14 is a retailer with respect to such transactions, excepting only
15 a person organized and operated exclusively for charitable,
16 religious or educational purposes either (1), to the extent of
17 sales by such person to its members, students, patients or
18 inmates of tangible personal property to be used primarily for
19 the purposes of such person, or (2), to the extent of sales by
20 such person of tangible personal property which is not sold or
21 offered for sale by persons organized for profit. The selling
22 of school books and school supplies by schools at retail to
23 students is not "primarily for the purposes of" the school
24 which does such selling. This paragraph does not apply to nor
25 subject to taxation occasional dinners, social or similar
26 activities of a person organized and operated exclusively for

1 charitable, religious or educational purposes, whether or not
2 such activities are open to the public.

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

10 Persons who engage in the business of transferring tangible
11 personal property upon the redemption of trading stamps are
12 retailers hereunder when engaged in such business.

13 The isolated or occasional sale of tangible personal
14 property at retail by a person who does not hold himself out as
15 being engaged (or who does not habitually engage) in selling
16 such tangible personal property at retail or a sale through a
17 bulk vending machine does not make such person a retailer
18 hereunder. However, any person who is engaged in a business
19 which is not subject to the tax imposed by the "Retailers'
20 Occupation Tax Act" because of involving the sale of or a
21 contract to sell real estate or a construction contract to
22 improve real estate, but who, in the course of conducting such
23 business, transfers tangible personal property to users or
24 consumers in the finished form in which it was purchased, and
25 which does not become real estate, under any provision of a
26 construction contract or real estate sale or real estate sales

1 agreement entered into with some other person arising out of or
2 because of such nontaxable business, is a retailer to the
3 extent of the value of the tangible personal property so
4 transferred. If, in such transaction, a separate charge is made
5 for the tangible personal property so transferred, the value of
6 such property, for the purposes of this Act, is the amount so
7 separately charged, but not less than the cost of such property
8 to the transferor; if no separate charge is made, the value of
9 such property, for the purposes of this Act, is the cost to the
10 transferor of such tangible personal property.

11 "Retailer maintaining a place of business in this State",
12 or any like term, means and includes any of the following
13 retailers:

14 1. A retailer having or maintaining within this State,
15 directly or by a subsidiary, an office, distribution house,
16 sales house, warehouse or other place of business, or any
17 agent or other representative operating within this State
18 under the authority of the retailer or its subsidiary,
19 irrespective of whether such place of business or agent or
20 other representative is located here permanently or
21 temporarily, or whether such retailer or subsidiary is
22 licensed to do business in this State. However, the
23 ownership of property that is located at the premises of a
24 printer with which the retailer has contracted for printing
25 and that consists of the final printed product, property
26 that becomes a part of the final printed product, or copy

1 from which the printed product is produced shall not result
2 in the retailer being deemed to have or maintain an office,
3 distribution house, sales house, warehouse, or other place
4 of business within this State.

5 1.1. Beginning July 1, 2011, a retailer having a
6 contract with a person located in this State under which
7 the person, for a commission or other consideration based
8 upon the sale of tangible personal property by the
9 retailer, directly or indirectly refers potential
10 customers to the retailer by a link on the person's
11 Internet website. The provisions of this paragraph 1.1
12 shall apply only if the cumulative gross receipts from
13 sales of tangible personal property by the retailer to
14 customers who are referred to the retailer by all persons
15 in this State under such contracts exceed \$10,000 during
16 the preceding 4 quarterly periods ending on the last day of
17 March, June, September, and December.

18 1.2. Beginning July 1, 2011, a retailer having a
19 contract with a person located in this State under which:

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

25 B. the retailer provides a commission or other
26 consideration to the person located in this State based

1 upon the sale of tangible personal property by the
2 retailer.

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

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

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

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

1 servicing, or repair facilities.

2 5. A retailer that is owned or controlled by the same
3 interests that own or control any retailer engaging in
4 business in the same or similar line of business in this
5 State.

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

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

14 8. A retailer engaging in activities in Illinois, which
15 activities in the state in which the retail business
16 engaging in such activities is located would constitute
17 maintaining a place of business in that state.

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

24 (Source: P.A. 95-723, eff. 6-23-08; 96-1544, eff. 3-10-11.)

25 Section 10. The Service Use Tax Act is amended by changing

1 Section 2 as follows:

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

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

16 "Purchased from a serviceman" means the acquisition of the
17 ownership of, or title to, tangible personal property through a
18 sale of service.

19 "Purchaser" means any person who, through a sale of
20 service, acquires the ownership of, or title to, any tangible
21 personal property.

22 "Cost price" means the consideration paid by the serviceman
23 for a purchase valued in money, whether paid in money or
24 otherwise, including cash, credits and services, and shall be
25 determined without any deduction on account of the supplier's

1 cost of the property sold or on account of any other expense
2 incurred by the supplier. When a serviceman contracts out part
3 or all of the services required in his sale of service, it
4 shall be presumed that the cost price to the serviceman of the
5 property transferred to him or her by his or her subcontractor
6 is equal to 50% of the subcontractor's charges to the
7 serviceman in the absence of proof of the consideration paid by
8 the subcontractor for the purchase of such property.

9 "Selling price" means the consideration for a sale valued
10 in money whether received in money or otherwise, including
11 cash, credits and service, and shall be determined without any
12 deduction on account of the serviceman's cost of the property
13 sold, the cost of materials used, labor or service cost or any
14 other expense whatsoever, but does not include interest or
15 finance charges which appear as separate items on the bill of
16 sale or sales contract nor charges that are added to prices by
17 sellers on account of the seller's duty to collect, from the
18 purchaser, the tax that is imposed by this Act. With respect to
19 sales of cellular telephones or other wireless cellular
20 devices, the term "selling price" does not include
21 consideration paid by a third-party cellular service provider.
22 The changes made by this amendatory Act of the 98th General
23 Assembly are declarative of existing law.

24 "Wireless cellular device" means any wireless
25 communication device that provides for voice or data
26 communication between 2 or more parties, including, but not

1 limited to, a text messaging device or other device that sends
2 or receives messages or electronic data.

3 "Department" means the Department of Revenue.

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

9 "Sale of service" means any transaction except:

10 (1) a retail sale of tangible personal property taxable
11 under the Retailers' Occupation Tax Act or under the Use
12 Tax Act.

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

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

1 company may qualify for the exemption under this paragraph
2 only if the limited liability company is organized and
3 operated exclusively for educational purposes.

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

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

26 (4a-5) on and after July 1, 2003 and through June 30,

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

21 (5) a sale or transfer of machinery and equipment used
22 primarily in the process of the manufacturing or
23 assembling, either in an existing, an expanded or a new
24 manufacturing facility, of tangible personal property for
25 wholesale or retail sale or lease, whether such sale or
26 lease is made directly by the manufacturer or by some other

1 person, whether the materials used in the process are owned
2 by the manufacturer or some other person, or whether such
3 sale or lease is made apart from or as an incident to the
4 seller's engaging in a service occupation and the
5 applicable tax is a Service Use Tax or Service Occupation
6 Tax, rather than Use Tax or Retailers' Occupation Tax.

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

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

1 standard uniform bill of lading showing the seller of the
2 property as the shipper or consignor of such property to a
3 destination outside Illinois, for use outside Illinois.

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

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

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

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

10 Exemption (5) also includes machinery and equipment used in
11 the general maintenance or repair of such exempt machinery and
12 equipment or for in-house manufacture of exempt machinery and
13 equipment. For the purposes of exemption (5), each of these
14 terms shall have the following meanings: (1) "manufacturing
15 process" shall mean the production of any article of tangible
16 personal property, whether such article is a finished product
17 or an article for use in the process of manufacturing or
18 assembling a different article of tangible personal property,
19 by procedures commonly regarded as manufacturing, processing,
20 fabricating, or refining which changes some existing material
21 or materials into a material with a different form, use or
22 name. In relation to a recognized integrated business composed
23 of a series of operations which collectively constitute
24 manufacturing, or individually constitute manufacturing
25 operations, the manufacturing process shall be deemed to
26 commence with the first operation or stage of production in the

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

1 immediate change upon a product being manufactured or assembled
2 for wholesale or retail sale or lease. The purchaser of such
3 machinery and equipment who has an active resale registration
4 number shall furnish such number to the seller at the time of
5 purchase. The user of such machinery and equipment and tools
6 without an active resale registration number shall prepare a
7 certificate of exemption for each transaction stating facts
8 establishing the exemption for that transaction, which
9 certificate shall be available to the Department for inspection
10 or audit. The Department shall prescribe the form of the
11 certificate.

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

25 On and after July 1, 1987, no entity otherwise eligible
26 under exemption (3) of this Section shall make tax free

1 purchases unless it has an active exemption identification
2 number issued by the Department.

3 The purchase, employment and transfer of such tangible
4 personal property as newsprint and ink for the primary purpose
5 of conveying news (with or without other information) is not a
6 purchase, use or sale of service or of tangible personal
7 property within the meaning of this Act.

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

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

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

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

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

26 1.1. beginning July 1, 2011, having a contract with a

1 person located in this State under which the person, for a
2 commission or other consideration based on the sale of
3 service by the serviceman, directly or indirectly refers
4 potential customers to the serviceman by a link on the
5 person's Internet website. The provisions of this
6 paragraph 1.1 shall apply only if the cumulative gross
7 receipts from sales of service by the serviceman to
8 customers who are referred to the serviceman by all persons
9 in this State under such contracts exceed \$10,000 during
10 the preceding 4 quarterly periods ending on the last day of
11 March, June, September, and December;

12 1.2. beginning July 1, 2011, having a contract with a
13 person located in this State under which:

14 A. the serviceman sells the same or substantially
15 similar line of services as the person located in this
16 State and does so using an identical or substantially
17 similar name, trade name, or trademark as the person
18 located in this State; and

19 B. the serviceman provides a commission or other
20 consideration to the person located in this State based
21 upon the sale of services by the serviceman.

22 The provisions of this paragraph 1.2 shall apply only if
23 the cumulative gross receipts from sales of service by the
24 serviceman to customers in this State under all such
25 contracts exceed \$10,000 during the preceding 4 quarterly
26 periods ending on the last day of March, June, September,

1 and December;

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

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

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

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

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

25 7. pursuant to a contract with a cable television
26 operator located in this State, soliciting orders for

1 tangible personal property by means of advertising which is
2 transmitted or distributed over a cable television system
3 in this State; or

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

8 (Source: P.A. 96-1544, eff. 3-10-11.)

9 Section 15. The Retailers' Occupation Tax Act is amended by
10 changing Section 1 as follows:

11 (35 ILCS 120/1) (from Ch. 120, par. 440)

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

1 property is transferred but the seller retains the title as
2 security for payment of the selling price shall be deemed to be
3 sales.

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

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

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

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

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

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 engaged in the business of selling tangible personal
23 property at retail with respect to such transactions, excepting
24 only a person organized and operated exclusively for
25 charitable, religious or educational purposes either (1), to
26 the extent of sales by such person to its members, students,

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

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

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

24 "Reseller of motor fuel" means any person engaged in the
25 business of selling or delivering or transferring title of
26 motor fuel to another person other than for use or consumption.

1 No person shall act as a reseller of motor fuel within this
2 State without first being registered as a reseller pursuant to
3 Section 2c or a retailer pursuant to Section 2a.

4 "Selling price" or the "amount of sale" means the
5 consideration for a sale valued in money whether received in
6 money or otherwise, including cash, credits, property, other
7 than as hereinafter provided, and services, but not including
8 the value of or credit given for traded-in tangible personal
9 property where the item that is traded-in is of like kind and
10 character as that which is being sold, and shall be determined
11 without any deduction on account of the cost of the property
12 sold, the cost of materials used, labor or service cost or any
13 other expense whatsoever, but does not include charges that are
14 added to prices by sellers on account of the seller's tax
15 liability under this Act, or on account of the seller's duty to
16 collect, from the purchaser, the tax that is imposed by the Use
17 Tax Act, or, except as otherwise provided with respect to any
18 cigarette tax imposed by a home rule unit, on account of the
19 seller's tax liability under any local occupation tax
20 administered by the Department, or, except as otherwise
21 provided with respect to any cigarette tax imposed by a home
22 rule unit on account of the seller's duty to collect, from the
23 purchasers, the tax that is imposed under any local use tax
24 administered by the Department. Effective December 1, 1985,
25 "selling price" shall include charges that are added to prices
26 by sellers on account of the seller's tax liability under the

1 Cigarette Tax Act, on account of the sellers' duty to collect,
2 from the purchaser, the tax imposed under the Cigarette Use Tax
3 Act, and on account of the seller's duty to collect, from the
4 purchaser, any cigarette tax imposed by a home rule unit. With
5 respect to sales of cellular telephones or other wireless
6 cellular devices, the term "selling price" does not include
7 consideration paid by a third-party cellular service provider.
8 The changes made by this amendatory Act of the 98th General
9 Assembly are declarative of existing law.

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

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

1 cellular telephones or other wireless cellular devices, the
2 term "gross receipts" does not include consideration paid by a
3 third-party cellular service provider. The changes made by this
4 amendatory Act of the 98th General Assembly are declarative of
5 existing law.

6 "Wireless cellular device" means any wireless
7 communication device that provides for voice or data
8 communication between 2 or more parties, including, but not
9 limited to, a text messaging device or other device that sends
10 or receives messages or electronic data.

11 "Department" means the Department of Revenue.

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

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

1 estate or a construction contract to engineer, install, and
2 maintain an integrated system of products, but who, in the
3 course of conducting such business, transfers tangible
4 personal property to users or consumers in the finished form in
5 which it was purchased, and which does not become real estate
6 or was not engineered and installed, under any provision of a
7 construction contract or real estate sale or real estate sales
8 agreement entered into with some other person arising out of or
9 because of such nontaxable business, is engaged in the business
10 of selling tangible personal property at retail to the extent
11 of the value of the tangible personal property so transferred.
12 If, in such a transaction, a separate charge is made for the
13 tangible personal property so transferred, the value of such
14 property, for the purpose of this Act, shall be 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. Construction
19 contracts for the improvement of real estate consisting of
20 engineering, installation, and maintenance of voice, data,
21 video, security, and all telecommunication systems do not
22 constitute engaging in a business of selling tangible personal
23 property at retail within the meaning of this Act if they are
24 sold at one specified contract price.

25 A person who holds himself or herself out as being engaged
26 (or who habitually engages) in selling tangible personal

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

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

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

23 (Source: P.A. 95-723, eff. 6-23-08.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."