

SB3448



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3448

Introduced 2/14/2014, by Sen. Michael Noland

SYNOPSIS AS INTRODUCED:

35 ILCS 120/2a

from Ch. 120, par. 441a

Amends the Retailers' Occupation Tax Act. Provides that the Department of Revenue shall give notice at least 60 days (instead of 120 days) before the expiration date of a certificate of registration if the certificate of registration will not be renewed because the taxpayer is in default for delinquent returns or for moneys due under any State tax law or municipal or county ordinance administered or enforced by the Department of Revenue.

LRB098 19714 HLH 54925 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 Retailers' Occupation Tax Act is amended by
5 changing Section 2a as follows:

6 (35 ILCS 120/2a) (from Ch. 120, par. 441a)

7 Sec. 2a. It is unlawful for any person to engage in the
8 business of selling tangible personal property at retail in
9 this State without a certificate of registration from the
10 Department. Application for a certificate of registration
11 shall be made to the Department upon forms furnished by it.
12 Each such application shall be signed and verified and shall
13 state: (1) the name and social security number of the
14 applicant; (2) the address of his principal place of business;
15 (3) the address of the principal place of business from which
16 he engages in the business of selling tangible personal
17 property at retail in this State and the addresses of all other
18 places of business, if any (enumerating such addresses, if any,
19 in a separate list attached to and made a part of the
20 application), from which he engages in the business of selling
21 tangible personal property at retail in this State; (4) the
22 name and address of the person or persons who will be
23 responsible for filing returns and payment of taxes due under

1 this Act; (5) in the case of a publicly traded corporation, the
2 name and title of the Chief Financial Officer, Chief Operating
3 Officer, and any other officer or employee with responsibility
4 for preparing tax returns under this Act, along with the last 4
5 digits of each of their social security numbers, and, in the
6 case of all other corporations, the name, title, and social
7 security number of each corporate officer; (6) in the case of a
8 limited liability company, the name, social security number,
9 and FEIN number of each manager and member; and (7) such other
10 information as the Department may reasonably require. The
11 application shall contain an acceptance of responsibility
12 signed by the person or persons who will be responsible for
13 filing returns and payment of the taxes due under this Act. If
14 the applicant will sell tangible personal property at retail
15 through vending machines, his application to register shall
16 indicate the number of vending machines to be so operated. If
17 requested by the Department at any time, that person shall
18 verify the total number of vending machines he or she uses in
19 his or her business of selling tangible personal property at
20 retail.

21 The Department may deny a certificate of registration to
22 any applicant if a person who is named as the owner, a partner,
23 a manager or member of a limited liability company, or a
24 corporate officer of the applicant on the application for the
25 certificate of registration, is or has been named as the owner,
26 a partner, a manager or member of a limited liability company,

1 or a corporate officer, on the application for the certificate
2 of registration of another retailer that is in default for
3 moneys due under this Act or any other tax or fee Act
4 administered by the Department. For purposes of this paragraph
5 only, in determining whether a person is in default for moneys
6 due, the Department shall include only amounts established as a
7 final liability within the 20 years prior to the date of the
8 Department's notice of denial of a certificate of registration.

9 The Department may require an applicant for a certificate
10 of registration hereunder to, at the time of filing such
11 application, furnish a bond from a surety company authorized to
12 do business in the State of Illinois, or an irrevocable bank
13 letter of credit or a bond signed by 2 personal sureties who
14 have filed, with the Department, sworn statements disclosing
15 net assets equal to at least 3 times the amount of the bond to
16 be required of such applicant, or a bond secured by an
17 assignment of a bank account or certificate of deposit, stocks
18 or bonds, conditioned upon the applicant paying to the State of
19 Illinois all moneys becoming due under this Act and under any
20 other State tax law or municipal or county tax ordinance or
21 resolution under which the certificate of registration that is
22 issued to the applicant under this Act will permit the
23 applicant to engage in business without registering separately
24 under such other law, ordinance or resolution. In making a
25 determination as to whether to require a bond or other
26 security, the Department shall take into consideration whether

1 the owner, any partner, any manager or member of a limited
2 liability company, or a corporate officer of the applicant is
3 or has been the owner, a partner, a manager or member of a
4 limited liability company, or a corporate officer of another
5 retailer that is in default for moneys due under this Act or
6 any other tax or fee Act administered by the Department; and
7 whether the owner, any partner, any manager or member of a
8 limited liability company, or a corporate officer of the
9 applicant is or has been the owner, a partner, a manager or
10 member of a limited liability company, or a corporate officer
11 of another retailer whose certificate of registration has been
12 revoked within the previous 5 years under this Act or any other
13 tax or fee Act administered by the Department. If a bond or
14 other security is required, the Department shall fix the amount
15 of the bond or other security, taking into consideration the
16 amount of money expected to become due from the applicant under
17 this Act and under any other State tax law or municipal or
18 county tax ordinance or resolution under which the certificate
19 of registration that is issued to the applicant under this Act
20 will permit the applicant to engage in business without
21 registering separately under such other law, ordinance, or
22 resolution. The amount of security required by the Department
23 shall be such as, in its opinion, will protect the State of
24 Illinois against failure to pay the amount which may become due
25 from the applicant under this Act and under any other State tax
26 law or municipal or county tax ordinance or resolution under

1 which the certificate of registration that is issued to the
2 applicant under this Act will permit the applicant to engage in
3 business without registering separately under such other law,
4 ordinance or resolution, but the amount of the security
5 required by the Department shall not exceed three times the
6 amount of the applicant's average monthly tax liability, or
7 \$50,000.00, whichever amount is lower.

8 No certificate of registration under this Act shall be
9 issued by the Department until the applicant provides the
10 Department with satisfactory security, if required, as herein
11 provided for.

12 Upon receipt of the application for certificate of
13 registration in proper form, and upon approval by the
14 Department of the security furnished by the applicant, if
15 required, the Department shall issue to such applicant a
16 certificate of registration which shall permit the person to
17 whom it is issued to engage in the business of selling tangible
18 personal property at retail in this State. The certificate of
19 registration shall be conspicuously displayed at the place of
20 business which the person so registered states in his
21 application to be the principal place of business from which he
22 engages in the business of selling tangible personal property
23 at retail in this State.

24 No certificate of registration issued to a taxpayer who
25 files returns required by this Act on a monthly basis shall be
26 valid after the expiration of 5 years from the date of its

1 issuance or last renewal. The expiration date of a
2 sub-certificate of registration shall be that of the
3 certificate of registration to which the sub-certificate
4 relates. A certificate of registration shall automatically be
5 renewed, subject to revocation as provided by this Act, for an
6 additional 5 years from the date of its expiration unless
7 otherwise notified by the Department as provided by this
8 paragraph. Where a taxpayer to whom a certificate of
9 registration is issued under this Act is in default to the
10 State of Illinois for delinquent returns or for moneys due
11 under this Act or any other State tax law or municipal or
12 county ordinance administered or enforced by the Department,
13 the Department shall, not less than 60 ~~120~~ days before the
14 expiration date of such certificate of registration, give
15 notice to the taxpayer to whom the certificate was issued of
16 the account period of the delinquent returns, the amount of
17 tax, penalty and interest due and owing from the taxpayer, and
18 that the certificate of registration shall not be automatically
19 renewed upon its expiration date unless the taxpayer, on or
20 before the date of expiration, has filed and paid the
21 delinquent returns or paid the defaulted amount in full. A
22 taxpayer to whom such a notice is issued shall be deemed an
23 applicant for renewal. The Department shall promulgate
24 regulations establishing procedures for taxpayers who file
25 returns on a monthly basis but desire and qualify to change to
26 a quarterly or yearly filing basis and will no longer be

1 subject to renewal under this Section, and for taxpayers who
2 file returns on a yearly or quarterly basis but who desire or
3 are required to change to a monthly filing basis and will be
4 subject to renewal under this Section.

5 The Department may in its discretion approve renewal by an
6 applicant who is in default if, at the time of application for
7 renewal, the applicant files all of the delinquent returns or
8 pays to the Department such percentage of the defaulted amount
9 as may be determined by the Department and agrees in writing to
10 waive all limitations upon the Department for collection of the
11 remaining defaulted amount to the Department over a period not
12 to exceed 5 years from the date of renewal of the certificate;
13 however, no renewal application submitted by an applicant who
14 is in default shall be approved if the immediately preceding
15 renewal by the applicant was conditioned upon the installment
16 payment agreement described in this Section. The payment
17 agreement herein provided for shall be in addition to and not
18 in lieu of the security that may be required by this Section of
19 a taxpayer who is no longer considered a prior continuous
20 compliance taxpayer. The execution of the payment agreement as
21 provided in this Act shall not toll the accrual of interest at
22 the statutory rate.

23 The Department may suspend a certificate of registration if
24 the Department finds that the person to whom the certificate of
25 registration has been issued knowingly sold contraband
26 cigarettes.

1 A certificate of registration issued under this Act more
2 than 5 years before the effective date of this amendatory Act
3 of 1989 shall expire and be subject to the renewal provisions
4 of this Section on the next anniversary of the date of issuance
5 of such certificate which occurs more than 6 months after the
6 effective date of this amendatory Act of 1989. A certificate of
7 registration issued less than 5 years before the effective date
8 of this amendatory Act of 1989 shall expire and be subject to
9 the renewal provisions of this Section on the 5th anniversary
10 of the issuance of the certificate.

11 If the person so registered states that he operates other
12 places of business from which he engages in the business of
13 selling tangible personal property at retail in this State, the
14 Department shall furnish him with a sub-certificate of
15 registration for each such place of business, and the applicant
16 shall display the appropriate sub-certificate of registration
17 at each such place of business. All sub-certificates of
18 registration shall bear the same registration number as that
19 appearing upon the certificate of registration to which such
20 sub-certificates relate.

21 If the applicant will sell tangible personal property at
22 retail through vending machines, the Department shall furnish
23 him with a sub-certificate of registration for each such
24 vending machine, and the applicant shall display the
25 appropriate sub-certificate of registration on each such
26 vending machine by attaching the sub-certificate of

1 registration to a conspicuous part of such vending machine. If
2 a person who is registered to sell tangible personal property
3 at retail through vending machines adds an additional vending
4 machine or additional vending machines to the number of vending
5 machines he or she uses in his or her business of selling
6 tangible personal property at retail, he or she shall notify
7 the Department, on a form prescribed by the Department, to
8 request an additional sub-certificate or additional
9 sub-certificates of registration, as applicable. With each
10 such request, the applicant shall report the number of
11 sub-certificates of registration he or she is requesting as
12 well as the total number of vending machines from which he or
13 she makes retail sales.

14 Where the same person engages in 2 or more businesses of
15 selling tangible personal property at retail in this State,
16 which businesses are substantially different in character or
17 engaged in under different trade names or engaged in under
18 other substantially dissimilar circumstances (so that it is
19 more practicable, from an accounting, auditing or bookkeeping
20 standpoint, for such businesses to be separately registered),
21 the Department may require or permit such person (subject to
22 the same requirements concerning the furnishing of security as
23 those that are provided for hereinbefore in this Section as to
24 each application for a certificate of registration) to apply
25 for and obtain a separate certificate of registration for each
26 such business or for any of such businesses, under a single

1 certificate of registration supplemented by related
2 sub-certificates of registration.

3 Any person who is registered under the "Retailers'
4 Occupation Tax Act" as of March 8, 1963, and who, during the
5 3-year period immediately prior to March 8, 1963, or during a
6 continuous 3-year period part of which passed immediately
7 before and the remainder of which passes immediately after
8 March 8, 1963, has been so registered continuously and who is
9 determined by the Department not to have been either delinquent
10 or deficient in the payment of tax liability during that period
11 under this Act or under any other State tax law or municipal or
12 county tax ordinance or resolution under which the certificate
13 of registration that is issued to the registrant under this Act
14 will permit the registrant to engage in business without
15 registering separately under such other law, ordinance or
16 resolution, shall be considered to be a Prior Continuous
17 Compliance taxpayer. Also any taxpayer who has, as verified by
18 the Department, faithfully and continuously complied with the
19 condition of his bond or other security under the provisions of
20 this Act for a period of 3 consecutive years shall be
21 considered to be a Prior Continuous Compliance taxpayer.

22 Every Prior Continuous Compliance taxpayer shall be exempt
23 from all requirements under this Act concerning the furnishing
24 of a bond or other security as a condition precedent to his
25 being authorized to engage in the business of selling tangible
26 personal property at retail in this State. This exemption shall

1 continue for each such taxpayer until such time as he may be
2 determined by the Department to be delinquent in the filing of
3 any returns, or is determined by the Department (either through
4 the Department's issuance of a final assessment which has
5 become final under the Act, or by the taxpayer's filing of a
6 return which admits tax that is not paid to be due) to be
7 delinquent or deficient in the paying of any tax under this Act
8 or under any other State tax law or municipal or county tax
9 ordinance or resolution under which the certificate of
10 registration that is issued to the registrant under this Act
11 will permit the registrant to engage in business without
12 registering separately under such other law, ordinance or
13 resolution, at which time that taxpayer shall become subject to
14 all the financial responsibility requirements of this Act and,
15 as a condition of being allowed to continue to engage in the
16 business of selling tangible personal property at retail, may
17 be required to post bond or other acceptable security with the
18 Department covering liability which such taxpayer may
19 thereafter incur. Any taxpayer who fails to pay an admitted or
20 established liability under this Act may also be required to
21 post bond or other acceptable security with this Department
22 guaranteeing the payment of such admitted or established
23 liability.

24 No certificate of registration shall be issued to any
25 person who is in default to the State of Illinois for moneys
26 due under this Act or under any other State tax law or

1 municipal or county tax ordinance or resolution under which the
2 certificate of registration that is issued to the applicant
3 under this Act will permit the applicant to engage in business
4 without registering separately under such other law, ordinance
5 or resolution.

6 Any person aggrieved by any decision of the Department
7 under this Section may, within 20 days after notice of such
8 decision, protest and request a hearing, whereupon the
9 Department shall give notice to such person of the time and
10 place fixed for such hearing and shall hold a hearing in
11 conformity with the provisions of this Act and then issue its
12 final administrative decision in the matter to such person. In
13 the absence of such a protest within 20 days, the Department's
14 decision shall become final without any further determination
15 being made or notice given.

16 With respect to security other than bonds (upon which the
17 Department may sue in the event of a forfeiture), if the
18 taxpayer fails to pay, when due, any amount whose payment such
19 security guarantees, the Department shall, after such
20 liability is admitted by the taxpayer or established by the
21 Department through the issuance of a final assessment that has
22 become final under the law, convert the security which that
23 taxpayer has furnished into money for the State, after first
24 giving the taxpayer at least 10 days' written notice, by
25 registered or certified mail, to pay the liability or forfeit
26 such security to the Department. If the security consists of

1 stocks or bonds or other securities which are listed on a
2 public exchange, the Department shall sell such securities
3 through such public exchange. If the security consists of an
4 irrevocable bank letter of credit, the Department shall convert
5 the security in the manner provided for in the Uniform
6 Commercial Code. If the security consists of a bank certificate
7 of deposit, the Department shall convert the security into
8 money by demanding and collecting the amount of such bank
9 certificate of deposit from the bank which issued such
10 certificate. If the security consists of a type of stocks or
11 other securities which are not listed on a public exchange, the
12 Department shall sell such security to the highest and best
13 bidder after giving at least 10 days' notice of the date, time
14 and place of the intended sale by publication in the "State
15 Official Newspaper". If the Department realizes more than the
16 amount of such liability from the security, plus the expenses
17 incurred by the Department in converting the security into
18 money, the Department shall pay such excess to the taxpayer who
19 furnished such security, and the balance shall be paid into the
20 State Treasury.

21 The Department shall discharge any surety and shall release
22 and return any security deposited, assigned, pledged or
23 otherwise provided to it by a taxpayer under this Section
24 within 30 days after:

- 25 (1) such taxpayer becomes a Prior Continuous
26 Compliance taxpayer; or

1 (2) such taxpayer has ceased to collect receipts on
2 which he is required to remit tax to the Department, has
3 filed a final tax return, and has paid to the Department an
4 amount sufficient to discharge his remaining tax
5 liability, as determined by the Department, under this Act
6 and under every other State tax law or municipal or county
7 tax ordinance or resolution under which the certificate of
8 registration issued under this Act permits the registrant
9 to engage in business without registering separately under
10 such other law, ordinance or resolution. The Department
11 shall make a final determination of the taxpayer's
12 outstanding tax liability as expeditiously as possible
13 after his final tax return has been filed; if the
14 Department cannot make such final determination within 45
15 days after receiving the final tax return, within such
16 period it shall so notify the taxpayer, stating its reasons
17 therefor.

18 (Source: P.A. 97-335, eff. 1-1-12; 98-496, eff. 1-1-14; 98-583,
19 eff. 1-1-14; revised 9-9-13.)