



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4017

by Rep. Frank J. Mautino

SYNOPSIS AS INTRODUCED:

35 ILCS 105/2d new
35 ILCS 120/1

from Ch. 120, par. 440

Amends the Use Tax Act. Provides that the "selling price" shall not include any rebate from a manufacturer to reduce prices to a customer where the seller directly passes the rebate onto the customer and the rebate is deducted by the manufacturer from the price paid by the seller for the item. Amends the Retailers' Occupation Tax Act. Specifies that "sale at retail" shall not include any rebate from a manufacturer to reduce prices to a customer where the seller directly passes the rebate onto the customer and the rebate is deducted by the manufacturer from the price paid by the seller for the item. Effective immediately.

LRB099 06949 SXM 27031 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

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

6 (35 ILCS 105/2d new)

7 Sec. 2d. Retail incentives, rebate. "Selling price" shall
8 not include any rebate from a manufacturer to reduce prices to
9 a customer where the seller directly passes the rebate onto the
10 customer and the rebate is deducted by the manufacturer from
11 the price paid by the seller for the item.

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

14 (35 ILCS 120/1) (from Ch. 120, par. 440)

15 Sec. 1. Definitions. "Sale at retail" means any transfer of
16 the ownership of or title to tangible personal property to a
17 purchaser, for the purpose of use or consumption, and not for
18 the purpose of resale in any form as tangible personal property
19 to the extent not first subjected to a use for which it was
20 purchased, for a valuable consideration: Provided that the
21 property purchased is deemed to be purchased for the purpose of

1 resale, despite first being used, to the extent to which it is
2 resold as an ingredient of an intentionally produced product or
3 byproduct of manufacturing. For this purpose, slag produced as
4 an incident to manufacturing pig iron or steel and sold is
5 considered to be an intentionally produced byproduct of
6 manufacturing. Transactions whereby the possession of the
7 property is transferred but the seller retains the title as
8 security for payment of the selling price shall be deemed to be
9 sales.

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

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

1 "Sale at retail" shall be construed to include any Illinois
2 florist's sales transaction in which the purchase order is
3 received in Illinois by a florist and the sale is for use or
4 consumption, but the Illinois florist has a florist in another
5 state deliver the property to the purchaser or the purchaser's
6 donee in such other state.

7 "Sale at retail" shall not include any rebate from a
8 manufacturer to reduce prices to a customer where the seller
9 directly passes the rebate onto the customer and the rebate is
10 deducted by the manufacturer from the price paid by the seller
11 for the item.

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

25 The purchase, employment and transfer of such tangible
26 personal property as newsprint and ink for the primary purpose

1 of conveying news (with or without other information) is not a
2 purchase, use or sale of tangible personal property.

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

24 A person who is the recipient of a grant or contract under
25 Title VII of the Older Americans Act of 1965 (P.L. 92-258) and
26 serves meals to participants in the federal Nutrition Program

1 for the Elderly in return for contributions established in
2 amount by the individual participant pursuant to a schedule of
3 suggested fees as provided for in the federal Act is not
4 engaged in the business of selling tangible personal property
5 at retail with respect to such transactions.

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

9 "Reseller of motor fuel" means any person engaged in the
10 business of selling or delivering or transferring title of
11 motor fuel to another person other than for use or consumption.
12 No person shall act as a reseller of motor fuel within this
13 State without first being registered as a reseller pursuant to
14 Section 2c or a retailer pursuant to Section 2a.

15 "Selling price" or the "amount of sale" means the
16 consideration for a sale valued in money whether received in
17 money or otherwise, including cash, credits, property, other
18 than as hereinafter provided, and services, but not including
19 the value of or credit given for traded-in tangible personal
20 property where the item that is traded-in is of like kind and
21 character as that which is being sold, and shall be determined
22 without any deduction on account of the cost of the property
23 sold, the cost of materials used, labor or service cost or any
24 other expense whatsoever, but does not include charges that are
25 added to prices by sellers on account of the seller's tax
26 liability under this Act, or on account of the seller's duty to

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

16 Notwithstanding any law to the contrary, for any motor
17 vehicle, as defined in Section 1-146 of the Vehicle Code, that
18 is sold on or after January 1, 2015 for the purpose of leasing
19 the vehicle for a defined period that is longer than one year
20 and (1) is a motor vehicle of the second division that: (A) is
21 a self-contained motor vehicle designed or permanently
22 converted to provide living quarters for recreational,
23 camping, or travel use, with direct walk through access to the
24 living quarters from the driver's seat; (B) is of the van
25 configuration designed for the transportation of not less than
26 7 nor more than 16 passengers; or (C) has a gross vehicle

1 weight rating of 8,000 pounds or less or (2) is a motor vehicle
2 of the first division, "selling price" or "amount of sale"
3 means the consideration received by the lessor pursuant to the
4 lease contract, including amounts due at lease signing and all
5 monthly or other regular payments charged over the term of the
6 lease. Also included in the selling price is any amount
7 received by the lessor from the lessee for the leased vehicle
8 that is not calculated at the time the lease is executed,
9 including, but not limited to, excess mileage charges and
10 charges for excess wear and tear. For sales that occur in
11 Illinois, with respect to any amount received by the lessor
12 from the lessee for the leased vehicle that is not calculated
13 at the time the lease is executed, the lessor who purchased the
14 motor vehicle does not incur the tax imposed by the Use Tax Act
15 on those amounts, and the retailer who makes the retail sale of
16 the motor vehicle to the lessor is not required to collect the
17 tax imposed by the Use Tax Act or to pay the tax imposed by this
18 Act on those amounts. However, the lessor who purchased the
19 motor vehicle assumes the liability for reporting and paying
20 the tax on those amounts directly to the Department in the same
21 form (Illinois Retailers' Occupation Tax, and local retailers'
22 occupation taxes, if applicable) in which the retailer would
23 have reported and paid such tax if the retailer had accounted
24 for the tax to the Department. For amounts received by the
25 lessor from the lessee that are not calculated at the time the
26 lease is executed, the lessor must file the return and pay the

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

1 the motor vehicle (or for any tax the lessor paid with respect
2 to any amount received by the lessor from the lessee for the
3 leased vehicle that was not calculated at the time the lease
4 was executed) if the selling price of the motor vehicle at the
5 time of purchase was calculated using the definition of
6 "selling price" as defined in this paragraph. Notwithstanding
7 any other provision of this Act to the contrary, lessors shall
8 file all returns and make all payments required under this
9 paragraph to the Department by electronic means in the manner
10 and form as required by the Department. This paragraph does not
11 apply to leases of motor vehicles for which, at the time the
12 lease is entered into, the term of the lease is not a defined
13 period, including leases with a defined initial period with the
14 option to continue the lease on a month-to-month or other basis
15 beyond the initial defined period.

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

24 "Gross receipts" from the sales of tangible personal
25 property at retail means the total selling price or the amount
26 of such sales, as hereinbefore defined. In the case of charge

1 and time sales, the amount thereof shall be included only as
2 and when payments are received by the seller. Receipts or other
3 consideration derived by a seller from the sale, transfer or
4 assignment of accounts receivable to a wholly owned subsidiary
5 will not be deemed payments prior to the time the purchaser
6 makes payment on such accounts.

7 "Department" means the Department of Revenue.

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

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 constitute engaging in a
18 business of selling such tangible personal property at retail
19 within the meaning of this Act; provided that any person who is
20 engaged in a business which is not subject to the tax imposed
21 by this Act because of involving the sale of or a contract to
22 sell real estate or a construction contract to improve real
23 estate or a construction contract to engineer, install, and
24 maintain an integrated system of products, but who, in the
25 course of conducting such business, transfers tangible
26 personal property to users or consumers in the finished form in

1 which it was purchased, and which does not become real estate
2 or was not engineered and installed, under any provision of a
3 construction contract or real estate sale or real estate sales
4 agreement entered into with some other person arising out of or
5 because of such nontaxable business, is engaged in the business
6 of selling tangible personal property at retail to the extent
7 of the value of the tangible personal property so transferred.
8 If, in such a transaction, a separate charge is made for the
9 tangible personal property so transferred, the value of such
10 property, for the purpose of this Act, shall be the amount so
11 separately charged, but not less than the cost of such property
12 to the transferor; if no separate charge is made, the value of
13 such property, for the purposes of this Act, is the cost to the
14 transferor of such tangible personal property. Construction
15 contracts for the improvement of real estate consisting of
16 engineering, installation, and maintenance of voice, data,
17 video, security, and all telecommunication systems do not
18 constitute engaging in a business of selling tangible personal
19 property at retail within the meaning of this Act if they are
20 sold at one specified contract price.

21 A person who holds himself or herself out as being engaged
22 (or who habitually engages) in selling tangible personal
23 property at retail is a person engaged in the business of
24 selling tangible personal property at retail hereunder with
25 respect to such sales (and not primarily in a service
26 occupation) notwithstanding the fact that such person designs

1 and produces such tangible personal property on special order
2 for the purchaser and in such a way as to render the property
3 of value only to such purchaser, if such tangible personal
4 property so produced on special order serves substantially the
5 same function as stock or standard items of tangible personal
6 property that are sold at retail.

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

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

19 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14.)

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