



Sen. Thomas Cullerton

Filed: 3/12/2015

09900SB0743sam001

LRB099 05718 HLH 31076 a

1 AMENDMENT TO SENATE BILL 743

2 AMENDMENT NO. _____. Amend Senate Bill 743 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. Definitions.

8 "Use" means the exercise by any person of any right or
9 power over tangible personal property incident to the ownership
10 of that property, except that it does not include the sale of
11 such property in any form as tangible personal property in the
12 regular course of business to the extent that such property is
13 not first subjected to a use for which it was purchased, and
14 does not include the use of such property by its owner for
15 demonstration purposes: Provided that the property purchased
16 is deemed to be purchased for the purpose of resale, despite

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

25 Notwithstanding any law to the contrary, for any motor
26 vehicle, as defined in Section 1-146 of the Vehicle Code, that

1 is sold on or after January 1, 2015 for the purpose of leasing
2 the vehicle for a defined period that is longer than one year
3 and (1) is a motor vehicle of the second division that: (A) is
4 a self-contained motor vehicle designed or permanently
5 converted to provide living quarters for recreational,
6 camping, or travel use, with direct walk through access to the
7 living quarters from the driver's seat; (B) is of the van
8 configuration designed for the transportation of not less than
9 7 nor more than 16 passengers; or (C) has a gross vehicle
10 weight rating of 8,000 pounds or less or (2) is a motor vehicle
11 of the first division, "selling price" or "amount of sale"
12 means the consideration received by the lessor pursuant to the
13 lease contract, including amounts due at lease signing and all
14 monthly or other regular payments charged over the term of the
15 lease. Also included in the selling price is any amount
16 received by the lessor from the lessee for the leased vehicle
17 that is not calculated at the time the lease is executed,
18 including, but not limited to, excess mileage charges and
19 charges for excess wear and tear. For sales that occur in
20 Illinois, with respect to any amount received by the lessor
21 from the lessee for the leased vehicle that is not calculated
22 at the time the lease is executed, the lessor who purchased the
23 motor vehicle does not incur the tax imposed by the Use Tax Act
24 on those amounts, and the retailer who makes the retail sale of
25 the motor vehicle to the lessor is not required to collect the
26 tax imposed by this Act or to pay the tax imposed by the

1 Retailers' Occupation Tax Act on those amounts. However, the
2 lessor who purchased the motor vehicle assumes the liability
3 for reporting and paying the tax on those amounts directly to
4 the Department in the same form (Illinois Retailers' Occupation
5 Tax, and local retailers' occupation taxes, if applicable) in
6 which the retailer would have reported and paid such tax if the
7 retailer had accounted for the tax to the Department. For
8 amounts received by the lessor from the lessee that are not
9 calculated at the time the lease is executed, the lessor must
10 file the return and pay the tax to the Department by the due
11 date otherwise required by this Act for returns other than
12 transaction returns. If the retailer is entitled under this Act
13 to a discount for collecting and remitting the tax imposed
14 under this Act to the Department with respect to the sale of
15 the motor vehicle to the lessor, then the right to the discount
16 provided in this Act shall be transferred to the lessor with
17 respect to the tax paid by the lessor for any amount received
18 by the lessor from the lessee for the leased vehicle that is
19 not calculated at the time the lease is executed; provided that
20 the discount is only allowed if the return is timely filed and
21 for amounts timely paid.

22 The "selling price" of a motor vehicle that is sold on or
23 after January 1, 2015 for the purpose of leasing for a defined
24 period of longer than one year shall not be reduced by the
25 value of or credit given for traded-in tangible personal
26 property owned by the lessor, nor shall it be reduced by the

1 value of or credit given for traded-in tangible personal
2 property owned by the lessee, regardless of whether the
3 trade-in value thereof is assigned by the lessee to the lessor.
4 In the case of a motor vehicle that is sold for the purpose of
5 leasing for a defined period of longer than one year, the sale
6 occurs at the time of the delivery of the vehicle, regardless
7 of the due date of any lease payments. A lessor who incurs a
8 Retailers' Occupation Tax liability on the sale of a motor
9 vehicle coming off lease may not take a credit against that
10 liability for the Use Tax the lessor paid upon the purchase of
11 the motor vehicle (or for any tax the lessor paid with respect
12 to any amount received by the lessor from the lessee for the
13 leased vehicle that was not calculated at the time the lease
14 was executed) if the selling price of the motor vehicle at the
15 time of purchase was calculated using the definition of
16 "selling price" as defined in this paragraph. Notwithstanding
17 any other provision of this Act to the contrary, lessors shall
18 file all returns and make all payments required under this
19 paragraph to the Department by electronic means in the manner
20 and form as required by the Department. This paragraph does not
21 apply to leases of motor vehicles for which, at the time the
22 lease is entered into, the term of the lease is not a defined
23 period, including leases with a defined initial period with the
24 option to continue the lease on a month-to-month or other basis
25 beyond the initial defined period.

26 Notwithstanding any other provision of law, for any

1 tangible personal property that is sold on or after July 1,
2 2015 to a merchant who will act as lessor of that tangible
3 personal property under a rental-purchase agreement, as
4 defined in Section 1 of the Rental-Purchase Agreement Act,
5 "selling price" or "amount of sale" means consideration
6 received by the merchant pursuant to the rental-purchase
7 agreement, including amounts due at signing and all monthly or
8 other regular payments charged over the term of the agreement.
9 The retailer who makes the retail sale of that property to the
10 merchant is not required to collect the tax imposed by this Act
11 or to pay the tax imposed by the Retailers' Occupation Tax Act
12 on those amounts. The merchant assumes the liability for
13 reporting, collecting, and remitting tax on the selling price
14 directly to the Department in the same form and manner in which
15 the retailer would have reported and paid such tax if the
16 retailer had been required to pay the tax to the Department.
17 The merchant must file the return and pay the tax to the
18 Department by the due date otherwise required by this Act for
19 returns other than transaction returns. A merchant who incurs a
20 retailers' occupation tax liability on the sale of the tangible
21 personal property at the end of the rental-purchase agreement
22 may not take a credit against that liability for the use tax
23 the merchant paid upon the purchase of the tangible personal
24 property (or for any tax the merchant paid with respect to any
25 amount received by the merchant from the consumer for the
26 leased property that was not calculated at the time the

1 rental-purchase agreement was executed) if the selling price of
2 the property at the time of purchase was calculated using the
3 definition of "selling price" as defined in this paragraph;
4 however, the merchant may file for a one-time credit with the
5 Department for the use tax paid on and after July 1, 2014 and
6 prior to July 1, 2015.

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

15 "Department" means the Department of Revenue.

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

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

23 A person who holds himself or herself out as being engaged
24 (or who habitually engages) in selling tangible personal
25 property at retail is a retailer hereunder with respect to such
26 sales (and not primarily in a service occupation)

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

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

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

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

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

1 extent of the value of the tangible personal property so
2 transferred. If, in such transaction, a separate charge is made
3 for the tangible personal property so transferred, the value of
4 such property, for the purposes of this Act, is the amount so
5 separately charged, but not less than the cost of such property
6 to the transferor; if no separate charge is made, the value of
7 such property, for the purposes of this Act, is the cost to the
8 transferor of such tangible personal property.

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

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

1 distribution house, sales house, warehouse, or other place
2 of business within this State.

3 1.1. A retailer having a contract with a person located
4 in this State under which the person, for a commission or
5 other consideration based upon the sale of tangible
6 personal property by the retailer, directly or indirectly
7 refers potential customers to the retailer by providing to
8 the potential customers a promotional code or other
9 mechanism that allows the retailer to track purchases
10 referred by such persons. Examples of mechanisms that allow
11 the retailer to track purchases referred by such persons
12 include but are not limited to the use of a link on the
13 person's Internet website, promotional codes distributed
14 through the person's hand-delivered or mailed material,
15 and promotional codes distributed by the person through
16 radio or other broadcast media. The provisions of this
17 paragraph 1.1 shall apply only if the cumulative gross
18 receipts from sales of tangible personal property by the
19 retailer to customers who are referred to the retailer by
20 all persons in this State under such contracts exceed
21 \$10,000 during the preceding 4 quarterly periods ending on
22 the last day of March, June, September, and December. A
23 retailer meeting the requirements of this paragraph 1.1
24 shall be presumed to be maintaining a place of business in
25 this State but may rebut this presumption by submitting
26 proof that the referrals or other activities pursued within

1 this State by such persons were not sufficient to meet the
2 nexus standards of the United States Constitution during
3 the preceding 4 quarterly periods.

4 1.2. Beginning July 1, 2011, a retailer having a
5 contract with a person located in this State under which:

6 A. the retailer sells the same or substantially
7 similar line of products as the person located in this
8 State and does so using an identical or substantially
9 similar name, trade name, or trademark as the person
10 located in this State; and

11 B. the retailer provides a commission or other
12 consideration to the person located in this State based
13 upon the sale of tangible personal property by the
14 retailer.

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

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

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

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

14 5. A retailer that is owned or controlled by the same
15 interests that own or control any retailer engaging in
16 business in the same or similar line of business in this
17 State.

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

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

26 8. A retailer engaging in activities in Illinois, which

1 activities in the state in which the retail business
2 engaging in such activities is located would constitute
3 maintaining a place of business in that state.

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

10 (Source: P.A. 98-628, eff. 1-1-15; 98-1080, eff. 8-26-14;
11 98-1089, eff. 1-1-15; revised 10-1-14.)

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
22 resale, despite first being used, to the extent to which it is
23 resold as an ingredient of an intentionally produced product or
24 byproduct of manufacturing. For this purpose, slag produced as

1 an incident to manufacturing pig iron or steel and sold is
2 considered to be an intentionally produced byproduct of
3 manufacturing. Transactions whereby the possession of the
4 property is transferred but the seller retains the title as
5 security for payment of the selling price shall be deemed to be
6 sales.

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

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

24 "Sale at retail" shall be construed to include any Illinois
25 florist's sales transaction in which the purchase order is
26 received in Illinois by a florist and the sale is for use or

1 consumption, but the Illinois florist has a florist in another
2 state deliver the property to the purchaser or the purchaser's
3 donee in such other state.

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

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

21 A person whose activities are organized and conducted
22 primarily as a not-for-profit service enterprise, and who
23 engages in selling tangible personal property at retail
24 (whether to the public or merely to members and their guests)
25 is engaged in the business of selling tangible personal
26 property at retail with respect to such transactions, excepting

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

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

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

1 "Reseller of motor fuel" means any person engaged in the
2 business of selling or delivering or transferring title of
3 motor fuel to another person other than for use or consumption.
4 No person shall act as a reseller of motor fuel within this
5 State without first being registered as a reseller pursuant to
6 Section 2c or a retailer pursuant to Section 2a.

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

1 administered by the Department. Effective December 1, 1985,
2 "selling price" shall include charges that are added to prices
3 by sellers on account of the seller's tax liability under the
4 Cigarette Tax Act, on account of the sellers' duty to collect,
5 from the purchaser, the tax imposed under the Cigarette Use Tax
6 Act, and on account of the seller's duty to collect, from the
7 purchaser, any cigarette tax imposed by a home rule unit.

8 Notwithstanding any law to the contrary, for any motor
9 vehicle, as defined in Section 1-146 of the Vehicle Code, that
10 is sold on or after January 1, 2015 for the purpose of leasing
11 the vehicle for a defined period that is longer than one year
12 and (1) is a motor vehicle of the second division that: (A) is
13 a self-contained motor vehicle designed or permanently
14 converted to provide living quarters for recreational,
15 camping, or travel use, with direct walk through access to the
16 living quarters from the driver's seat; (B) is of the van
17 configuration designed for the transportation of not less than
18 7 nor more than 16 passengers; or (C) has a gross vehicle
19 weight rating of 8,000 pounds or less or (2) is a motor vehicle
20 of the first division, "selling price" or "amount of sale"
21 means the consideration received by the lessor pursuant to the
22 lease contract, including amounts due at lease signing and all
23 monthly or other regular payments charged over the term of the
24 lease. Also included in the selling price is any amount
25 received by the lessor from the lessee for the leased vehicle
26 that is not calculated at the time the lease is executed,

1 including, but not limited to, excess mileage charges and
2 charges for excess wear and tear. For sales that occur in
3 Illinois, with respect to any amount received by the lessor
4 from the lessee for the leased vehicle that is not calculated
5 at the time the lease is executed, the lessor who purchased the
6 motor vehicle does not incur the tax imposed by the Use Tax Act
7 on those amounts, and the retailer who makes the retail sale of
8 the motor vehicle to the lessor is not required to collect the
9 tax imposed by the Use Tax Act or to pay the tax imposed by this
10 Act on those amounts. However, the lessor who purchased the
11 motor vehicle assumes the liability for reporting and paying
12 the tax on those amounts directly to the Department in the same
13 form (Illinois Retailers' Occupation Tax, and local retailers'
14 occupation taxes, if applicable) in which the retailer would
15 have reported and paid such tax if the retailer had accounted
16 for the tax to the Department. For amounts received by the
17 lessor from the lessee that are not calculated at the time the
18 lease is executed, the lessor must file the return and pay the
19 tax to the Department by the due date otherwise required by
20 this Act for returns other than transaction returns. If the
21 retailer is entitled under this Act to a discount for
22 collecting and remitting the tax imposed under this Act to the
23 Department with respect to the sale of the motor vehicle to the
24 lessor, then the right to the discount provided in this Act
25 shall be transferred to the lessor with respect to the tax paid
26 by the lessor for any amount received by the lessor from the

1 lessee for the leased vehicle that is not calculated at the
2 time the lease is executed; provided that the discount is only
3 allowed if the return is timely filed and for amounts timely
4 paid.

5 The "selling price" of a motor vehicle that is sold on or
6 after January 1, 2015 for the purpose of leasing for a defined
7 period of longer than one year shall not be reduced by the
8 value of or credit given for traded-in tangible personal
9 property owned by the lessor, nor shall it be reduced by the
10 value of or credit given for traded-in tangible personal
11 property owned by the lessee, regardless of whether the
12 trade-in value thereof is assigned by the lessee to the lessor.
13 In the case of a motor vehicle that is sold for the purpose of
14 leasing for a defined period of longer than one year, the sale
15 occurs at the time of the delivery of the vehicle, regardless
16 of the due date of any lease payments. A lessor who incurs a
17 Retailers' Occupation Tax liability on the sale of a motor
18 vehicle coming off lease may not take a credit against that
19 liability for the Use Tax the lessor paid upon the purchase of
20 the motor vehicle (or for any tax the lessor paid with respect
21 to any amount received by the lessor from the lessee for the
22 leased vehicle that was not calculated at the time the lease
23 was executed) if the selling price of the motor vehicle at the
24 time of purchase was calculated using the definition of
25 "selling price" as defined in this paragraph. Notwithstanding
26 any other provision of this Act to the contrary, lessors shall

1 file all returns and make all payments required under this
2 paragraph to the Department by electronic means in the manner
3 and form as required by the Department. This paragraph does not
4 apply to leases of motor vehicles for which, at the time the
5 lease is entered into, the term of the lease is not a defined
6 period, including leases with a defined initial period with the
7 option to continue the lease on a month-to-month or other basis
8 beyond the initial defined period.

9 Notwithstanding any other provision of law, for any
10 tangible personal property that is sold on or after July 1,
11 2015 to a merchant who will act as lessor of that tangible
12 personal property under a rental-purchase agreement, as
13 defined in Section 1 of the Rental-Purchase Agreement Act,
14 "selling price" or "amount of sale" means consideration
15 received by the merchant pursuant to the rental-purchase
16 agreement, including amounts due at signing and all monthly or
17 other regular payments charged over the term of the agreement.
18 The retailer who makes the retail sale of that property to the
19 merchant is not required to collect the tax imposed by the Use
20 Tax Act or to pay the tax imposed by this Act on those amounts.
21 The merchant assumes the liability for reporting, collecting,
22 and remitting tax on the selling price directly to the
23 Department in the same form and manner in which the retailer
24 would have reported and paid such tax if the retailer had been
25 required to pay the tax to the Department. The merchant must
26 file the return and pay the tax to the Department by the due

1 date otherwise required by this Act for returns other than
2 transaction returns. A merchant who incurs a retailers'
3 occupation tax liability on the sale of the tangible personal
4 property at the end of the rental-purchase agreement may not
5 take a credit against that liability for the use tax the
6 merchant paid upon the purchase of the tangible personal
7 property (or for any tax the merchant paid with respect to any
8 amount received by the merchant from the consumer for the
9 leased property that was not calculated at the time the
10 rental-purchase agreement was executed) if the selling price of
11 the property at the time of purchase was calculated using the
12 definition of "selling price" as defined in this paragraph;
13 however, the merchant may file for a one-time credit with the
14 Department for the use tax paid on and after July 1, 2014 and
15 prior to July 1, 2015.

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.)".