

1 AN ACT in relation to taxes, amending named Acts.

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 changing
5 Section 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
8 right or power over tangible personal property incident to
9 the ownership of that property, except that it does not
10 include the sale of such property in any form as tangible
11 personal property in the regular course of business to the
12 extent that such property is not first subjected to a use for
13 which it was purchased, and does not include the use of such
14 property by its owner for demonstration purposes: Provided
15 that the property purchased is deemed to be purchased for the
16 purpose of resale, despite first being used, to the extent to
17 which it is resold as an ingredient of an intentionally
18 produced product or by-product of manufacturing. "Use" does
19 not mean the demonstration use or interim use of tangible
20 personal property by a retailer before he sells that tangible
21 personal property. For watercraft or aircraft, if the period
22 of demonstration use or interim use by the retailer exceeds
23 18 months, the retailer shall pay on the retailers' original
24 cost price the tax imposed by this Act, and no credit for
25 that tax is permitted if the watercraft or aircraft is
26 subsequently sold by the retailer. "Use" does not mean the
27 physical incorporation of tangible personal property, to the
28 extent not first subjected to a use for which it was
29 purchased, as an ingredient or constituent, into other
30 tangible personal property (a) which is sold in the regular
31 course of business or (b) which the person incorporating such

1 ingredient or constituent therein has undertaken at the time
2 of such purchase to cause to be transported in interstate
3 commerce to destinations outside the State of Illinois:
4 Provided that the property purchased is deemed to be
5 purchased for the purpose of resale, despite first being
6 used, to the extent to which it is resold as an ingredient of
7 an intentionally produced product or by-product of
8 manufacturing.

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

13 "Purchase at retail" means the acquisition of the
14 ownership of or title to tangible personal property through a
15 sale at retail.

16 "Purchaser" means anyone who, through a sale at retail,
17 acquires the ownership of tangible personal property for a
18 valuable consideration.

19 "Sale at retail" means any transfer of the ownership of
20 or title to tangible personal property to a purchaser, for
21 the purpose of use, and not for the purpose of resale in any
22 form as tangible personal property to the extent not first
23 subjected to a use for which it was purchased, for a valuable
24 consideration: Provided that the property purchased is deemed
25 to be purchased for the purpose of resale, despite first
26 being used, to the extent to which it is resold as an
27 ingredient of an intentionally produced product or by-product
28 of manufacturing. For this purpose, slag produced as an
29 incident to manufacturing pig iron or steel and sold is
30 considered to be an intentionally produced by-product of
31 manufacturing. "Sale at retail" includes any such transfer
32 made for resale unless made in compliance with Section 2c of
33 the Retailers' Occupation Tax Act, as incorporated by
34 reference into Section 12 of this Act. Transactions whereby

1 the possession of the property is transferred but the seller
2 retains the title as security for payment of the selling
3 price are sales.

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

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

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

27 "Selling price" means the consideration for a sale valued
28 in money whether received in money or otherwise, including
29 cash, credits, property other than as hereinafter provided,
30 and services, but not including the value of or credit given
31 for traded-in tangible personal property where the item that
32 is traded-in is of like kind and character as that which is
33 being sold, and shall be determined without any deduction on
34 account of the cost of the property sold, the cost of

1 materials used, labor or service cost or any other expense
2 whatsoever, but does not include interest or finance charges
3 which appear as separate items on the bill of sale or sales
4 contract nor charges that are added to prices by sellers on
5 account of the seller's tax liability under the "Retailers'
6 Occupation Tax Act", or on account of the seller's duty to
7 collect, from the purchaser, the tax that is imposed by this
8 Act, or on account of the seller's tax liability under
9 Section 8-11-1 of the Illinois Municipal Code, as heretofore
10 and hereafter amended, or on account of the seller's tax
11 liability under the "County Retailers' Occupation Tax Act".
12 Effective December 1, 1985, "selling price" shall include
13 charges that are added to prices by sellers on account of the
14 seller's tax liability under the Cigarette Tax Act, on
15 account of the seller's duty to collect, from the purchaser,
16 the tax imposed under the Cigarette Use Tax Act, and on
17 account of the seller's duty to collect, from the purchaser,
18 any cigarette tax imposed by a home rule unit.

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

27 "Department" means the Department of Revenue.

28 "Person" means any natural individual, firm, partnership,
29 association, joint stock company, joint adventure, public or
30 private corporation, limited liability company, or a
31 receiver, executor, trustee, guardian or other representative
32 appointed by order of any court.

33 "Retailer" means and includes every person engaged in the
34 business of making sales at retail as defined in this

1 Section.

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

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

33 A person who is the recipient of a grant or contract
34 under Title VII of the Older Americans Act of 1965 (P.L.

1 92-258) and serves meals to participants in the federal
2 Nutrition Program for the Elderly in return for contributions
3 established in amount by the individual participant pursuant
4 to a schedule of suggested fees as provided for in the
5 federal Act is not a retailer under this Act with respect to
6 such transactions.

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

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

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

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

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

28 3. A retailer, pursuant to a contract with a
29 broadcaster or publisher located in this State,
30 soliciting orders for tangible personal property by means
31 of advertising which is disseminated primarily to
32 consumers located in this State and only secondarily to
33 bordering jurisdictions.

34 4. A retailer soliciting orders for tangible

1 personal property by mail if the solicitations are
 2 substantial and recurring and if the retailer benefits
 3 from any banking, financing, debt collection,
 4 telecommunication, or marketing activities occurring in
 5 this State or benefits from the location in this State of
 6 authorized installation, servicing, or repair facilities.

7 5. A retailer that is owned or controlled by the
 8 same interests that own or control any retailer engaging
 9 in business in the same or similar line of business in
 10 this State.

11 6. A retailer having a franchisee or licensee
 12 operating under its trade name if the franchisee or
 13 licensee is required to collect the tax under this
 14 Section.

15 7. A retailer, pursuant to a contract with a cable
 16 television operator located in this State, soliciting
 17 orders for tangible personal property by means of
 18 advertising which is transmitted or distributed over a
 19 cable television system in this State.

20 8. A retailer engaging in activities in Illinois,
 21 which activities in the state in which the retail
 22 business engaging in such activities is located would
 23 constitute maintaining a place of business in that state.

24 "Bulk vending machine" means a ~~nonelectrically--operated~~
 25 vending machine, containing unsorted confections, nuts, toys,
 26 or other items designed primarily to be used or played with
 27 by children ~~or other merchandise~~ which, when a coin or coins
 28 of a denomination not larger than \$0.50 ~~are one-cent-is~~
 29 inserted, are dispensed in equal portions, at random and
 30 without selection by the customer.

31 (Source: P.A. 90-289, eff. 8-1-97.)

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

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

2 Sec. 1. Definitions. "Sale at retail" means any
3 transfer of the ownership of or title to tangible personal
4 property to a purchaser, for the purpose of use or
5 consumption, and not for the purpose of resale in any form as
6 tangible personal property to the extent not first subjected
7 to a use for which it was purchased, for a valuable
8 consideration: Provided that the property purchased is
9 deemed to be purchased for the purpose of resale, despite
10 first being used, to the extent to which it is resold as an
11 ingredient of an intentionally produced product or byproduct
12 of manufacturing. For this purpose, slag produced as an
13 incident to manufacturing pig iron or steel and sold is
14 considered to be an intentionally produced byproduct of
15 manufacturing. Transactions whereby the possession of the
16 property is transferred but the seller retains the title as
17 security for payment of the selling price shall be deemed to
18 be sales.

19 "Sale at retail" shall be construed to include any
20 transfer of the ownership of or title to tangible personal
21 property to a purchaser, for use or consumption by any other
22 person to whom such purchaser may transfer the tangible
23 personal property without a valuable consideration, and to
24 include any transfer, whether made for or without a valuable
25 consideration, for resale in any form as tangible personal
26 property unless made in compliance with Section 2c of this
27 Act.

28 Sales of tangible personal property, which property, to
29 the extent not first subjected to a use for which it was
30 purchased, as an ingredient or constituent, goes into and
31 forms a part of tangible personal property subsequently the
32 subject of a "Sale at retail", are not sales at retail as
33 defined in this Act: Provided that the property purchased is
34 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 byproduct
3 of manufacturing.

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

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

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

27 A person whose activities are organized and conducted
28 primarily as a not-for-profit service enterprise, and who
29 engages in selling tangible personal property at retail
30 (whether to the public or merely to members and their guests)
31 is engaged in the business of selling tangible personal
32 property at retail with respect to such transactions,
33 excepting only a person organized and operated exclusively
34 for charitable, religious or educational purposes either (1),

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

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

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

26 "Reseller of motor fuel" means any person engaged in the
27 business of selling or delivering or transferring title of
28 motor fuel to another person other than for use or
29 consumption. No person shall act as a reseller of motor fuel
30 within this State without first being registered as a
31 reseller pursuant to Section 2c or a retailer pursuant to
32 Section 2a.

33 "Selling price" or the "amount of sale" means the
34 consideration for a sale valued in money whether received in

1 money or otherwise, including cash, credits, property, other
2 than as hereinafter provided, and services, but not including
3 the value of or credit given for traded-in tangible personal
4 property where the item that is traded-in is of like kind and
5 character as that which is being sold, and shall be
6 determined without any deduction on account of the cost of
7 the property sold, the cost of materials used, labor or
8 service cost or any other expense whatsoever, but does not
9 include charges that are added to prices by sellers on
10 account of the seller's tax liability under this Act, or on
11 account of the seller's duty to collect, from the purchaser,
12 the tax that is imposed by the Use Tax Act, or on account of
13 the seller's tax liability under Section 8-11-1 of the
14 Illinois Municipal Code, as heretofore and hereafter amended,
15 or on account of the seller's tax liability under the County
16 Retailers' Occupation Tax Act, or on account of the seller's
17 tax liability under the Home Rule Municipal Soft Drink
18 Retailers' Occupation Tax, or on account of the seller's tax
19 liability under any tax imposed under the "Regional
20 Transportation Authority Act", approved December 12, 1973.
21 Effective December 1, 1985, "selling price" shall include
22 charges that are added to prices by sellers on account of the
23 seller's tax liability under the Cigarette Tax Act, on
24 account of the sellers' duty to collect, from the purchaser,
25 the tax imposed under the Cigarette Use Tax Act, and on
26 account of the seller's duty to collect, from the purchaser,
27 any cigarette tax imposed by a home rule unit.

28 The phrase "like kind and character" shall be liberally
29 construed (including but not limited to any form of motor
30 vehicle for any form of motor vehicle, or any kind of farm or
31 agricultural implement for any other kind of farm or
32 agricultural implement), while not including a kind of item
33 which, if sold at retail by that retailer, would be exempt
34 from retailers' occupation tax and use tax as an isolated or

1 occasional sale.

2 "Gross receipts" from the sales of tangible personal
3 property at retail means the total selling price or the
4 amount of such sales, as hereinbefore defined. In the case
5 of charge and time sales, the amount thereof shall be
6 included only as and when payments are received by the
7 seller. Receipts or other consideration derived by a seller
8 from the sale, transfer or assignment of accounts receivable
9 to a wholly owned subsidiary will not be deemed payments
10 prior to the time the purchaser makes payment on such
11 accounts.

12 "Department" means the Department of Revenue.

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

18 The isolated or occasional sale of tangible personal
19 property at retail by a person who does not hold himself out
20 as being engaged (or who does not habitually engage) in
21 selling such tangible personal property at retail, or a sale
22 through a bulk vending machine, does not constitute engaging
23 in a business of selling such tangible personal property at
24 retail within the meaning of this Act; provided that any
25 person who is engaged in a business which is not subject to
26 the tax imposed by this Act because of involving the sale of
27 or a contract to sell real estate or a construction contract
28 to improve real estate or a construction contract to
29 engineer, install, and maintain an integrated system of
30 products, but who, in the course of conducting such business,
31 transfers tangible personal property to users or consumers in
32 the finished form in which it was purchased, and which does
33 not become real estate or was not engineered and installed,
34 under any provision of a construction contract or real estate

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

20 A person who holds himself or herself out as being
21 engaged (or who habitually engages) in selling tangible
22 personal property at retail is a person engaged in the
23 business of selling tangible personal property at retail
24 hereunder with respect to such sales (and not primarily in a
25 service occupation) notwithstanding the fact that such person
26 designs and produces such tangible personal property on
27 special order for the purchaser and in such a way as to
28 render the property of value only to such purchaser, if such
29 tangible personal property so produced on special order
30 serves substantially the same function as stock or standard
31 items of tangible personal property that are sold at retail.

32 Persons who engage in the business of transferring
33 tangible personal property upon the redemption of trading
34 stamps are engaged in the business of selling such property

1 at retail and shall be liable for and shall pay the tax
2 imposed by this Act on the basis of the retail value of the
3 property transferred upon redemption of such stamps.

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

11 (Source: P.A. 90-289, eff. 8-1-97.)

12 Section 99. Effective date. This Act takes effect on
13 January 1, 2002.