



Rep. Dan Brady

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1 AMENDMENT TO HOUSE BILL 3215

2 AMENDMENT NO. _____. Amend House Bill 3215 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Municipal Code is amended by
5 changing Sections 8-11-6a and 8-11-6b as follows:

6 (65 ILCS 5/8-11-6a) (from Ch. 24, par. 8-11-6a)

7 Sec. 8-11-6a. Home rule municipalities; preemption of
8 certain taxes. Except as provided in Sections 8-11-1, 8-11-5,
9 8-11-6, 8-11-6b, and 11-74.3-6 on and after September 1, 1990,
10 no home rule municipality has the authority to impose, pursuant
11 to its home rule authority, a retailer's occupation tax,
12 service occupation tax, use tax, sales tax or other tax on the
13 use, sale or purchase of tangible personal property based on
14 the gross receipts from such sales or the selling or purchase
15 price of said tangible personal property. Notwithstanding the
16 foregoing, this Section does not preempt any home rule imposed
17 tax such as the following: (1) a tax on alcoholic beverages,
18 whether based on gross receipts, volume sold or any other
19 measurement; (2) a tax based on the number of units of
20 cigarettes or tobacco products (provided, however, that a home
21 rule municipality that has not imposed a tax based on the
22 number of units of cigarettes or tobacco products before July
23 1, 1993, shall not impose such a tax after that date); (3) a
24 tax, however measured, based on the use of a hotel or motel

1 room or similar facility; (4) a tax, however measured, on the
2 sale or transfer of real property; (5) a tax, however measured,
3 on lease receipts; (6) a tax on food prepared for immediate
4 consumption, including soft drinks, as defined under Section
5 2-10 of the Retailers' Occupation Tax Act, and on alcoholic
6 beverages sold by a business which provides for on premise
7 consumption of said food or alcoholic beverages; or (7) other
8 taxes not based on the selling or purchase price or gross
9 receipts from the use, sale or purchase of tangible personal
10 property. This Section is not intended to affect any existing
11 tax on food and beverages prepared for immediate consumption on
12 the premises where the sale occurs, or any existing tax on
13 alcoholic beverages, or any existing tax imposed on the charge
14 for renting a hotel or motel room, which was in effect January
15 15, 1988, or any extension of the effective date of such an
16 existing tax by ordinance of the municipality imposing the tax,
17 which extension is hereby authorized, in any non-home rule
18 municipality in which the imposition of such a tax has been
19 upheld by judicial determination, nor is this Section intended
20 to preempt the authority granted by Public Act 85-1006. This
21 Section is a limitation, pursuant to subsection (g) of Section
22 6 of Article VII of the Illinois Constitution, on the power of
23 home rule units to tax.

24 (Source: P.A. 93-1053, eff. 1-1-05.)

25 (65 ILCS 5/8-11-6b)

26 Sec. 8-11-6b. Home rule soft drink taxes.

27 (a) Except as provided in Sections 8-11-1, 8-11-5 and
28 8-11-6, 8-11-6a, or as provided in this Section, no home rule
29 municipality has the authority to impose, pursuant to its home
30 rule authority, a tax on the sale, purchase, or use of soft
31 drinks regardless of whether the measure of the tax is selling
32 price, purchase price, gross receipts, unit of volumetric
33 measure, or any other measure. For purposes of this subsection,

1 the term "soft drink" has the meaning set forth in Section 2-10
2 of the Retailers' Occupation Tax Act, as may be amended from
3 time to time, except that the term shall not be limited to
4 drinks contained in a closed or sealed bottle, can, carton, or
5 container. This Section is a denial and limitation, under
6 subsection (g) of Section 6 of Article VII of the Illinois
7 Constitution, on the power of home rule units to tax.

8 (b) The corporate authorities of a home rule municipality
9 with a population in excess of 1,000,000 may impose a tax,
10 which shall not take effect prior to April 1, 1994, upon all
11 persons engaged in the business of selling soft drinks (other
12 than fountain soft drinks) at retail in the municipality based
13 on the gross receipts from those sales made in the course of
14 such business. If imposed, the tax shall only be in 1/4%
15 increments and shall not exceed 3%. For purposes of this
16 subsection, the term "soft drink" has the meaning set forth in
17 Section 2-10 of the Retailers' Occupation Tax Act, as may be
18 amended from time to time, except that the term shall not be
19 limited to drinks contained in a closed or sealed bottle, can,
20 carton or container; the term "fountain soft drinks" means soft
21 drinks which are prepared by the retail seller of the soft
22 drinks by mixing syrup or concentrate with water, by hand or
23 through a soft drink dispensing machine, at or near the point
24 and time of sale to the retail purchaser; and the term "soft
25 drink dispensing machine" means a device which mixes soft drink
26 syrup or concentrate with water and dispenses the mixture into
27 an open container as a ready to drink soft drink.

28 The tax imposed under this subsection and all civil
29 penalties that may be assessed as an incident to that tax shall
30 be collected and enforced by the Illinois Department of
31 Revenue. The Department shall have full power to administer and
32 enforce this subsection, to collect all taxes and penalties so
33 collected in the manner provided in this subsection, and to
34 determine all rights to credit memoranda arising on account of

1 the erroneous payment of tax or penalty under this subsection.
2 In the administration of and compliance with this subsection,
3 the Department and persons who are subject to this subsection
4 shall have the same rights, remedies, privileges, immunities,
5 powers and duties, shall be subject to the same conditions,
6 restrictions, limitations, penalties, exclusions, exemptions,
7 and definitions of terms, and shall employ the same modes of
8 procedure applicable to the Retailers' Occupation Tax as are
9 prescribed in Sections 1, 2 through 2-65 (in respect to all
10 provisions of those Sections other than the State rate of
11 taxes), 2c, 2h, 2i, 3 (except as to the disposition of taxes
12 and penalties collected), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i,
13 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13 and, until January 1,
14 1994, 13.5 of the Retailers' Occupation Tax Act, and on and
15 after January 1, 1994, all applicable provisions of the Uniform
16 Penalty and Interest Act that are not inconsistent with this
17 subsection, as fully as if provisions contained in those
18 Sections of the Retailers' Occupation Tax Act were set forth in
19 this subsection.

20 Persons subject to any tax imposed under the authority
21 granted by this subsection may reimburse themselves for their
22 seller's tax liability under this subsection by separately
23 stating that tax as an additional charge, which charge may be
24 stated in combination, in a single amount, with State taxes
25 that sellers are required to collect under the Use Tax Act
26 pursuant to bracket schedules as the Department may prescribe.
27 The retailer filing the return shall, at the time of filing the
28 return, pay to the Department the amount of tax imposed under
29 this subsection, less the discount of 1.75%, which is allowed
30 to reimburse the retailer for the expenses incurred in keeping
31 records, preparing the filing returns, remitting the tax, and
32 supplying data to the Department on request.

33 Whenever the Department determines that a refund should be
34 made under this subsection to a claimant instead of issuing a

1 credit memoranda, the Department shall notify the State
2 Comptroller, who shall cause a warrant to be drawn for the
3 amount specified and to the person named in the notification
4 from the Department. The refund shall be paid by the State
5 Treasurer out of the Home Rule Municipal Soft Drink Retailers'
6 Occupation Tax Fund.

7 The Department shall forthwith pay over to the State
8 Treasurer, ex officio, as trustee, all taxes and penalties
9 collected hereunder. On or before the 25th day of each calendar
10 month, the Department shall prepare and certify to the
11 Comptroller the amount to be paid to named municipalities, the
12 municipalities to be those from which retailers have paid taxes
13 or penalties hereunder to the Department during the second
14 preceding calendar month. The amount to be paid to each
15 municipality shall be the amount collected hereunder during the
16 second preceding calendar month by the Department, less any
17 amounts determined by the Department to be necessary for the
18 payment of refunds, and less 4% for the first year the tax is
19 in effect and 2% thereafter of such balance, which sum shall be
20 deposited by the State Treasurer into the Tax Compliance and
21 Administration Fund in the State treasury from which it shall
22 be appropriated to the Department to cover the costs of the
23 Department in administering and enforcing the provisions of
24 this subsection. Within 10 days after receipt by the
25 Comptroller of the certification, the Comptroller shall cause
26 the orders to be drawn for the respective amount in accordance
27 with the directions contained in such certification.

28 Nothing in this Section shall be construed to authorize a
29 municipality to impose a tax upon the privilege of engaging in
30 any business which under the Constitution of the United States
31 may not be made the subject of taxation by the State.

32 A certificate of registration issued by the Illinois
33 Department of Revenue to a retailer under the Retailers'
34 Occupation Tax Act shall permit the registrant to engage in a

1 business that is taxed under the tax imposed under this
2 subsection and no additional registration shall be required
3 under the ordinance imposing a tax or under this subsection.

4 A certified copy of any ordinance imposing or discontinuing
5 any tax under this subsection or effecting a change in the rate
6 of that tax shall be filed with the Department, whereupon the
7 Department shall proceed to administer and enforce this
8 subsection on behalf of such municipality as of the first day
9 of February following the date of filing. This tax shall be
10 known and cited as the Home Rule Municipal Soft Drink
11 Retailers' Occupation Tax.

12 (c) The corporate authorities of a home rule municipality
13 with a population in excess of 1,000,000 may impose a tax,
14 which shall not take effect prior to April 1, 1994, on persons
15 engaged in the business of selling fountain soft drinks at
16 retail at a rate not to exceed 9% of the cost price of the
17 fountain soft drinks at retail in such municipality. For
18 purposes of this subsection, the term "soft drink" has the
19 meaning set forth in Section 2-10 of the Retailers' Occupation
20 Tax Act, as may be amended from time to time, except that the
21 term shall not be limited to drinks contained in a closed or
22 sealed bottle, can, carton, or container; the term "fountain
23 soft drinks" means soft drinks which are prepared by the retail
24 seller of the soft drinks by mixing soft drink syrup or
25 concentrate with water, by hand or through a soft drink
26 dispensing machine at or near the point and time of sale to the
27 retail purchaser; the term "soft drink dispensing machine"
28 means a device which mixes soft drink syrup or concentrate with
29 water and dispenses such mixture into an open container as a
30 ready to drink soft drink; the term "sold at retail" shall mean
31 any transfer of the ownership or title to tangible personal
32 property to a purchaser, for the purpose of use or consumption,
33 and not for the purpose of resale, for valuable consideration;
34 the term "cost price of the fountain soft drinks" means the

1 consideration paid by the retail seller of the fountain soft
2 drink, valued in money, whether paid in money or otherwise,
3 including cash, credits and services, and shall be determined
4 without any deduction on account of the supplier's cost of the
5 property sold or on account or any other expenses incurred by
6 the supplier, for the purchase of soft drink syrup or
7 concentrate which is designed to be further mixed with water
8 before it is consumed as a soft drink; and the term "supplier"
9 means any person who makes sales of soft drink syrup or
10 concentrate to a retail seller of fountain soft drinks for
11 purposes of resale as fountain soft drinks. The tax authorized
12 by this subsection shall be collected, enforced, and
13 administered by the municipality imposing the tax. Persons
14 subject to the tax may reimburse themselves for their tax
15 liability hereunder by separately stating an amount equal to
16 the tax as an additional charge to their retail purchasers or
17 may include such amount as part of the selling price of the
18 soft drink. The municipality imposing the tax shall provide for
19 its collection from the person subject to the tax by requiring
20 that the supplier to the person subject to the tax collect and
21 remit the tax to the municipality. If the supplier fails to
22 collect the tax or if the person subject to the tax fails to
23 pay the tax to its supplier, the person subject to the tax
24 shall make the tax payment directly to the municipality.
25 Payment of the tax by the retailer to the supplier shall
26 relieve the retailer of any further liability for the tax.

27 (d) If either tax imposed or authorized by this Section
28 8-11-6b is repealed by the General Assembly or has its maximum
29 rate reduced by the General Assembly, or is declared unlawful
30 or unconstitutional on its face by any court of competent
31 jurisdiction after all appeals have been exhausted or the time
32 to appeal has expired, then this Section 8-11-6b is
33 automatically repealed and no longer effective without further
34 action by the General Assembly.

1 (e) Notwithstanding the preemption of taxes on the sale,
2 purchase or use of soft drinks, taxes on the sale, purchase, or
3 use of soft drinks which had been imposed by a municipality
4 prior to the effective date of this amendatory Act of 1993 are
5 specifically authorized under this Section for sales made on or
6 after the effective date of this amendatory Act of 1993 through
7 March 31, 1994.

8 (Source: P.A. 88-507.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.".