

**HB0788**



**99TH GENERAL ASSEMBLY**

**State of Illinois**

**2015 and 2016**

**HB0788**

by Rep. Michael J. Madigan

**SYNOPSIS AS INTRODUCED:**

65 ILCS 5/8-11-5

from Ch. 24, par. 8-11-5

Amends the Home Rule Municipal Service Occupation Tax Act in the Illinois Municipal Code. Makes a technical change in a Section authorizing the imposition of the tax.

LRB099 04601 AWJ 24629 b

**A BILL FOR**

1 AN ACT concerning local government.

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

4 Section 5. The Illinois Municipal Code is amended by  
5 changing Section 8-11-5 as follows:

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

7 Sec. 8-11-5. Home Rule Municipal Service Occupation Tax  
8 Act. The ~~The~~ corporate authorities of a home rule municipality  
9 may impose a tax upon all persons engaged, in such  
10 municipality, in the business of making sales of service at the  
11 same rate of tax imposed pursuant to Section 8-11-1, of the  
12 selling price of all tangible personal property transferred by  
13 such servicemen either in the form of tangible personal  
14 property or in the form of real estate as an incident to a sale  
15 of service. If imposed, such tax shall only be imposed in 1/4%  
16 increments. On and after September 1, 1991, this additional tax  
17 may not be imposed on the sales of food for human consumption  
18 which is to be consumed off the premises where it is sold  
19 (other than alcoholic beverages, soft drinks and food which has  
20 been prepared for immediate consumption) and prescription and  
21 nonprescription medicines, drugs, medical appliances and  
22 insulin, urine testing materials, syringes and needles used by  
23 diabetics. The tax imposed by a home rule municipality pursuant

1 to this Section and all civil penalties that may be assessed as  
2 an incident thereof shall be collected and enforced by the  
3 State Department of Revenue. The certificate of registration  
4 which is issued by the Department to a retailer under the  
5 Retailers' Occupation Tax Act or under the Service Occupation  
6 Tax Act shall permit such registrant to engage in a business  
7 which is taxable under any ordinance or resolution enacted  
8 pursuant to this Section without registering separately with  
9 the Department under such ordinance or resolution or under this  
10 Section. The Department shall have full power to administer and  
11 enforce this Section; to collect all taxes and penalties due  
12 hereunder; to dispose of taxes and penalties so collected in  
13 the manner hereinafter provided, and to determine all rights to  
14 credit memoranda arising on account of the erroneous payment of  
15 tax or penalty hereunder. In the administration of, and  
16 compliance with, this Section the Department and persons who  
17 are subject to this Section shall have the same rights,  
18 remedies, privileges, immunities, powers and duties, and be  
19 subject to the same conditions, restrictions, limitations,  
20 penalties and definitions of terms, and employ the same modes  
21 of procedure, as are prescribed in Sections 1a-1, 2, 2a, 3  
22 through 3-50 (in respect to all provisions therein other than  
23 the State rate of tax), 4 (except that the reference to the  
24 State shall be to the taxing municipality), 5, 7, 8 (except  
25 that the jurisdiction to which the tax shall be a debt to the  
26 extent indicated in that Section 8 shall be the taxing

1 municipality), 9 (except as to the disposition of taxes and  
2 penalties collected, and except that the returned merchandise  
3 credit for this municipal tax may not be taken against any  
4 State tax), 10, 11, 12 (except the reference therein to Section  
5 2b of the Retailers' Occupation Tax Act), 13 (except that any  
6 reference to the State shall mean the taxing municipality), the  
7 first paragraph of Section 15, 16, 17 (except that credit  
8 memoranda issued hereunder may not be used to discharge any  
9 State tax liability), 18, 19 and 20 of the Service Occupation  
10 Tax Act and Section 3-7 of the Uniform Penalty and Interest  
11 Act, as fully as if those provisions were set forth herein.

12 No tax may be imposed by a home rule municipality pursuant  
13 to this Section unless such municipality also imposes a tax at  
14 the same rate pursuant to Section 8-11-1 of this Act.

15 Persons subject to any tax imposed pursuant to the  
16 authority granted in this Section may reimburse themselves for  
17 their serviceman's tax liability hereunder by separately  
18 stating such tax as an additional charge, which charge may be  
19 stated in combination, in a single amount, with State tax which  
20 servicemen are authorized to collect under the Service Use Tax  
21 Act, pursuant to such bracket schedules as the Department may  
22 prescribe.

23 Whenever the Department determines that a refund should be  
24 made under this Section to a claimant instead of issuing credit  
25 memorandum, the Department shall notify the State Comptroller,  
26 who shall cause the order to be drawn for the amount specified,

1 and to the person named, in such notification from the  
2 Department. Such refund shall be paid by the State Treasurer  
3 out of the home rule municipal retailers' occupation tax fund.

4 The Department shall forthwith pay over to the State  
5 Treasurer, ex-officio, as trustee, all taxes and penalties  
6 collected hereunder.

7 As soon as possible after the first day of each month,  
8 beginning January 1, 2011, upon certification of the Department  
9 of Revenue, the Comptroller shall order transferred, and the  
10 Treasurer shall transfer, to the STAR Bonds Revenue Fund the  
11 local sales tax increment, as defined in the Innovation  
12 Development and Economy Act, collected under this Section  
13 during the second preceding calendar month for sales within a  
14 STAR bond district.

15 After the monthly transfer to the STAR Bonds Revenue Fund,  
16 on or before the 25th day of each calendar month, the  
17 Department shall prepare and certify to the Comptroller the  
18 disbursement of stated sums of money to named municipalities,  
19 the municipalities to be those from which suppliers and  
20 servicemen have paid taxes or penalties hereunder to the  
21 Department during the second preceding calendar month. The  
22 amount to be paid to each municipality shall be the amount (not  
23 including credit memoranda) collected hereunder during the  
24 second preceding calendar month by the Department, and not  
25 including an amount equal to the amount of refunds made during  
26 the second preceding calendar month by the Department on behalf

1 of such municipality, and not including any amounts that are  
2 transferred to the STAR Bonds Revenue Fund. Within 10 days  
3 after receipt, by the Comptroller, of the disbursement  
4 certification to the municipalities, provided for in this  
5 Section to be given to the Comptroller by the Department, the  
6 Comptroller shall cause the orders to be drawn for the  
7 respective amounts in accordance with the directions contained  
8 in such certification.

9 In addition to the disbursement required by the preceding  
10 paragraph and in order to mitigate delays caused by  
11 distribution procedures, an allocation shall, if requested, be  
12 made within 10 days after January 14, 1991, and in November of  
13 1991 and each year thereafter, to each municipality that  
14 received more than \$500,000 during the preceding fiscal year,  
15 (July 1 through June 30) whether collected by the municipality  
16 or disbursed by the Department as required by this Section.  
17 Within 10 days after January 14, 1991, participating  
18 municipalities shall notify the Department in writing of their  
19 intent to participate. In addition, for the initial  
20 distribution, participating municipalities shall certify to  
21 the Department the amounts collected by the municipality for  
22 each month under its home rule occupation and service  
23 occupation tax during the period July 1, 1989 through June 30,  
24 1990. The allocation within 10 days after January 14, 1991,  
25 shall be in an amount equal to the monthly average of these  
26 amounts, excluding the 2 months of highest receipts. Monthly

1 average for the period of July 1, 1990 through June 30, 1991  
2 will be determined as follows: the amounts collected by the  
3 municipality under its home rule occupation and service  
4 occupation tax during the period of July 1, 1990 through  
5 September 30, 1990, plus amounts collected by the Department  
6 and paid to such municipality through June 30, 1991, excluding  
7 the 2 months of highest receipts. The monthly average for each  
8 subsequent period of July 1 through June 30 shall be an amount  
9 equal to the monthly distribution made to each such  
10 municipality under the preceding paragraph during this period,  
11 excluding the 2 months of highest receipts. The distribution  
12 made in November 1991 and each year thereafter under this  
13 paragraph and the preceding paragraph shall be reduced by the  
14 amount allocated and disbursed under this paragraph in the  
15 preceding period of July 1 through June 30. The Department  
16 shall prepare and certify to the Comptroller for disbursement  
17 the allocations made in accordance with this paragraph.

18 Nothing in this Section shall be construed to authorize a  
19 municipality to impose a tax upon the privilege of engaging in  
20 any business which under the constitution of the United States  
21 may not be made the subject of taxation by this State.

22 An ordinance or resolution imposing or discontinuing a tax  
23 hereunder or effecting a change in the rate thereof shall be  
24 adopted and a certified copy thereof filed with the Department  
25 on or before the first day of June, whereupon the Department  
26 shall proceed to administer and enforce this Section as of the

1 first day of September next following such adoption and filing.  
2 Beginning January 1, 1992, an ordinance or resolution imposing  
3 or discontinuing the tax hereunder or effecting a change in the  
4 rate thereof shall be adopted and a certified copy thereof  
5 filed with the Department on or before the first day of July,  
6 whereupon the Department shall proceed to administer and  
7 enforce this Section as of the first day of October next  
8 following such adoption and filing. Beginning January 1, 1993,  
9 an ordinance or resolution imposing or discontinuing the tax  
10 hereunder or effecting a change in the rate thereof shall be  
11 adopted and a certified copy thereof filed with the Department  
12 on or before the first day of October, whereupon the Department  
13 shall proceed to administer and enforce this Section as of the  
14 first day of January next following such adoption and filing.  
15 However, a municipality located in a county with a population  
16 in excess of 3,000,000 that elected to become a home rule unit  
17 at the general primary election in 1994 may adopt an ordinance  
18 or resolution imposing the tax under this Section and file a  
19 certified copy of the ordinance or resolution with the  
20 Department on or before July 1, 1994. The Department shall then  
21 proceed to administer and enforce this Section as of October 1,  
22 1994. Beginning April 1, 1998, an ordinance or resolution  
23 imposing or discontinuing the tax hereunder or effecting a  
24 change in the rate thereof shall either (i) be adopted and a  
25 certified copy thereof filed with the Department on or before  
26 the first day of April, whereupon the Department shall proceed



1 to administer and enforce this Section as of the first day of  
2 July next following the adoption and filing; or (ii) be adopted  
3 and a certified copy thereof filed with the Department on or  
4 before the first day of October, whereupon the Department shall  
5 proceed to administer and enforce this Section as of the first  
6 day of January next following the adoption and filing.

7 Any unobligated balance remaining in the Municipal  
8 Retailers' Occupation Tax Fund on December 31, 1989, which fund  
9 was abolished by Public Act 85-1135, and all receipts of  
10 municipal tax as a result of audits of liability periods prior  
11 to January 1, 1990, shall be paid into the Local Government Tax  
12 Fund, for distribution as provided by this Section prior to the  
13 enactment of Public Act 85-1135. All receipts of municipal tax  
14 as a result of an assessment not arising from an audit, for  
15 liability periods prior to January 1, 1990, shall be paid into  
16 the Local Government Tax Fund for distribution before July 1,  
17 1990, as provided by this Section prior to the enactment of  
18 Public Act 85-1135, and on and after July 1, 1990, all such  
19 receipts shall be distributed as provided in Section 6z-18 of  
20 the State Finance Act.

21 As used in this Section, "municipal" and "municipality"  
22 means a city, village or incorporated town, including an  
23 incorporated town which has superseded a civil township.

24 This Section shall be known and may be cited as the Home  
25 Rule Municipal Service Occupation Tax Act.

26 (Source: P.A. 96-939, eff. 6-24-10.)