



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5072

Introduced 1/29/2010, by Rep. William B. Black

SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-1	from Ch. 24, par. 8-11-1
65 ILCS 5/8-11-1.3	from Ch. 24, par. 8-11-1.3

Amends the Illinois Municipal Code. Provides that, for the purpose of imposing a home rule or non-home rule municipal retailers' occupation tax, if a purchase order is received at a retailer's branch location within a municipality, and delivery is made to the consumer within that municipality, then that municipality's tax applies regardless of whether or not the retailer has a primary place of business located in another municipality. Effective immediately.

LRB096 19775 RLJ 35212 b

FISCAL NOTE ACT
MAY APPLY

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 Sections 8-11-1 and 8-11-1.3 as follows:

6 (65 ILCS 5/8-11-1) (from Ch. 24, par. 8-11-1)

7 Sec. 8-11-1. Home Rule Municipal Retailers' Occupation Tax
8 Act. The corporate authorities of a home rule municipality may
9 impose a tax upon all persons engaged in the business of
10 selling tangible personal property, other than an item of
11 tangible personal property titled or registered with an agency
12 of this State's government, at retail in the municipality on
13 the gross receipts from these sales made in the course of such
14 business. If imposed, the tax shall only be imposed in 1/4%
15 increments. On and after September 1, 1991, this additional tax
16 may not be imposed on the sales of food for human consumption
17 that is to be consumed off the premises where it is sold (other
18 than alcoholic beverages, soft drinks and food that has been
19 prepared for immediate consumption) and prescription and
20 nonprescription medicines, drugs, medical appliances and
21 insulin, urine testing materials, syringes and needles used by
22 diabetics. The tax imposed by a home rule municipality under
23 this Section and all civil penalties that may be assessed as an

1 incident of the tax shall be collected and enforced by the
2 State Department of Revenue. The certificate of registration
3 that is issued by the Department to a retailer under the
4 Retailers' Occupation Tax Act shall permit the retailer to
5 engage in a business that is taxable under any ordinance or
6 resolution enacted pursuant to this Section without
7 registering separately with the Department under such
8 ordinance or resolution or under this Section. The Department
9 shall have full power to administer and enforce this Section;
10 to collect all taxes and penalties due hereunder; to dispose of
11 taxes and penalties so collected in the manner hereinafter
12 provided; and to determine all rights to credit memoranda
13 arising on account of the erroneous payment of tax or penalty
14 hereunder. In the administration of, and compliance with, this
15 Section the Department and persons who are subject to this
16 Section shall have the same rights, remedies, privileges,
17 immunities, powers and duties, and be subject to the same
18 conditions, restrictions, limitations, penalties and
19 definitions of terms, and employ the same modes of procedure,
20 as are prescribed in Sections 1, 1a, 1d, 1e, 1f, 1i, 1j, 1k,
21 1m, 1n, 2 through 2-65 (in respect to all provisions therein
22 other than the State rate of tax), 2c, 3 (except as to the
23 disposition of taxes and penalties collected), 4, 5, 5a, 5b,
24 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9,
25 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and
26 Section 3-7 of the Uniform Penalty and Interest Act, as fully

1 as if those provisions were set forth herein.

2 No tax may be imposed by a home rule municipality under
3 this Section unless the municipality also imposes a tax at the
4 same rate under Section 8-11-5 of this Act.

5 Persons subject to any tax imposed under the authority
6 granted in this Section may reimburse themselves for their
7 seller's tax liability hereunder by separately stating that tax
8 as an additional charge, which charge may be stated in
9 combination, in a single amount, with State tax which sellers
10 are required to collect under the Use Tax Act, pursuant to such
11 bracket schedules as the Department may prescribe.

12 Whenever the Department determines that a refund should be
13 made under this Section to a claimant instead of issuing a
14 credit memorandum, the Department shall notify the State
15 Comptroller, who shall cause the order to be drawn for the
16 amount specified and to the person named in the notification
17 from the Department. The refund shall be paid by the State
18 Treasurer out of the home rule municipal retailers' occupation
19 tax fund.

20 The Department shall immediately pay over to the State
21 Treasurer, ex officio, as trustee, all taxes and penalties
22 collected hereunder. On or before the 25th day of each calendar
23 month, the Department shall prepare and certify to the
24 Comptroller the disbursement of stated sums of money to named
25 municipalities, the municipalities to be those from which
26 retailers have paid taxes or penalties hereunder to the

1 Department during the second preceding calendar month. The
2 amount to be paid to each municipality shall be the amount (not
3 including credit memoranda) collected hereunder during the
4 second preceding calendar month by the Department plus an
5 amount the Department determines is necessary to offset any
6 amounts that were erroneously paid to a different taxing body,
7 and not including an amount equal to the amount of refunds made
8 during the second preceding calendar month by the Department on
9 behalf of such municipality, and not including any amount that
10 the Department determines is necessary to offset any amounts
11 that were payable to a different taxing body but were
12 erroneously paid to the municipality. Within 10 days after
13 receipt by the Comptroller of the disbursement certification to
14 the municipalities provided for in this Section to be given to
15 the Comptroller by the Department, the Comptroller shall cause
16 the orders to be drawn for the respective amounts in accordance
17 with the directions contained in the certification.

18 In addition to the disbursement required by the preceding
19 paragraph and in order to mitigate delays caused by
20 distribution procedures, an allocation shall, if requested, be
21 made within 10 days after January 14, 1991, and in November of
22 1991 and each year thereafter, to each municipality that
23 received more than \$500,000 during the preceding fiscal year,
24 (July 1 through June 30) whether collected by the municipality
25 or disbursed by the Department as required by this Section.
26 Within 10 days after January 14, 1991, participating

1 municipalities shall notify the Department in writing of their
2 intent to participate. In addition, for the initial
3 distribution, participating municipalities shall certify to
4 the Department the amounts collected by the municipality for
5 each month under its home rule occupation and service
6 occupation tax during the period July 1, 1989 through June 30,
7 1990. The allocation within 10 days after January 14, 1991,
8 shall be in an amount equal to the monthly average of these
9 amounts, excluding the 2 months of highest receipts. The
10 monthly average for the period of July 1, 1990 through June 30,
11 1991 will be determined as follows: the amounts collected by
12 the municipality under its home rule occupation and service
13 occupation tax during the period of July 1, 1990 through
14 September 30, 1990, plus amounts collected by the Department
15 and paid to such municipality through June 30, 1991, excluding
16 the 2 months of highest receipts. The monthly average for each
17 subsequent period of July 1 through June 30 shall be an amount
18 equal to the monthly distribution made to each such
19 municipality under the preceding paragraph during this period,
20 excluding the 2 months of highest receipts. The distribution
21 made in November 1991 and each year thereafter under this
22 paragraph and the preceding paragraph shall be reduced by the
23 amount allocated and disbursed under this paragraph in the
24 preceding period of July 1 through June 30. The Department
25 shall prepare and certify to the Comptroller for disbursement
26 the allocations made in accordance with this paragraph.

1 For the purpose of determining the local governmental unit
2 whose tax is applicable, a retail sale by a producer of coal or
3 other mineral mined in Illinois is a sale at retail at the
4 place where the coal or other mineral mined in Illinois is
5 extracted from the earth. This paragraph does not apply to coal
6 or other mineral when it is delivered or shipped by the seller
7 to the purchaser at a point outside Illinois so that the sale
8 is exempt under the United States Constitution as a sale in
9 interstate or foreign commerce.

10 If a purchase order is received at a retailer's branch
11 location within a municipality that imposes a tax under this
12 Section, and delivery is made to the consumer within that
13 municipality, then that municipality's tax applies regardless
14 of whether or not the retailer has a primary place of business
15 located in another municipality.

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

20 An ordinance or resolution imposing or discontinuing a tax
21 hereunder or effecting a change in the rate thereof shall be
22 adopted and a certified copy thereof filed with the Department
23 on or before the first day of June, whereupon the Department
24 shall proceed to administer and enforce this Section as of the
25 first day of September next following the adoption and filing.
26 Beginning January 1, 1992, an ordinance or resolution imposing

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

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

5 When certifying the amount of a monthly disbursement to a
6 municipality under this Section, the Department shall increase
7 or decrease the amount by an amount necessary to offset any
8 misallocation of previous disbursements. The offset amount
9 shall be the amount erroneously disbursed within the previous 6
10 months from the time a misallocation is discovered.

11 Any unobligated balance remaining in the Municipal
12 Retailers' Occupation Tax Fund on December 31, 1989, which fund
13 was abolished by Public Act 85-1135, and all receipts of
14 municipal tax as a result of audits of liability periods prior
15 to January 1, 1990, shall be paid into the Local Government Tax
16 Fund for distribution as provided by this Section prior to the
17 enactment of Public Act 85-1135. All receipts of municipal tax
18 as a result of an assessment not arising from an audit, for
19 liability periods prior to January 1, 1990, shall be paid into
20 the Local Government Tax Fund for distribution before July 1,
21 1990, as provided by this Section prior to the enactment of
22 Public Act 85-1135; and on and after July 1, 1990, all such
23 receipts shall be distributed as provided in Section 6z-18 of
24 the State Finance Act.

25 As used in this Section, "municipal" and "municipality"
26 means a city, village or incorporated town, including an

1 incorporated town that has superseded a civil township.

2 This Section shall be known and may be cited as the Home
3 Rule Municipal Retailers' Occupation Tax Act.

4 (Source: P.A. 90-689, eff. 7-31-98; 91-51, eff. 6-30-99.)

5 (65 ILCS 5/8-11-1.3) (from Ch. 24, par. 8-11-1.3)

6 Sec. 8-11-1.3. Non-Home Rule Municipal Retailers'
7 Occupation Tax Act. The corporate authorities of a non-home
8 rule municipality may impose a tax upon all persons engaged in
9 the business of selling tangible personal property, other than
10 on an item of tangible personal property which is titled and
11 registered by an agency of this State's Government, at retail
12 in the municipality for expenditure on public infrastructure or
13 for property tax relief or both as defined in Section 8-11-1.2
14 if approved by referendum as provided in Section 8-11-1.1, of
15 the gross receipts from such sales made in the course of such
16 business. The tax imposed may not be more than 1% and may be
17 imposed only in 1/4% increments. The tax may not be imposed on
18 the sale of food for human consumption that is to be consumed
19 off the premises where it is sold (other than alcoholic
20 beverages, soft drinks, and food that has been prepared for
21 immediate consumption) and prescription and nonprescription
22 medicines, drugs, medical appliances, and insulin, urine
23 testing materials, syringes, and needles used by diabetics. The
24 tax imposed by a municipality pursuant to this Section and all
25 civil penalties that may be assessed as an incident thereof

1 shall be collected and enforced by the State Department of
2 Revenue. The certificate of registration which is issued by the
3 Department to a retailer under the Retailers' Occupation Tax
4 Act shall permit such retailer to engage in a business which is
5 taxable under any ordinance or resolution enacted pursuant to
6 this Section without registering separately with the
7 Department under such ordinance or resolution or under this
8 Section. The Department shall have full power to administer and
9 enforce this Section; to collect all taxes and penalties due
10 hereunder; to dispose of taxes and penalties so collected in
11 the manner hereinafter provided, and to determine all rights to
12 credit memoranda, arising on account of the erroneous payment
13 of tax or penalty hereunder. In the administration of, and
14 compliance with, this Section, the Department and persons who
15 are subject to this Section shall have the same rights,
16 remedies, privileges, immunities, powers and duties, and be
17 subject to the same conditions, restrictions, limitations,
18 penalties and definitions of terms, and employ the same modes
19 of procedure, as are prescribed in Sections 1, 1a, 1a-1, 1d,
20 1e, 1f, 1i, 1j, 2 through 2-65 (in respect to all provisions
21 therein other than the State rate of tax), 2c, 3 (except as to
22 the disposition of taxes and penalties collected), 4, 5, 5a,
23 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8,
24 9, 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and
25 Section 3-7 of the Uniform Penalty and Interest Act as fully as
26 if those provisions were set forth herein.

1 No municipality may impose a tax under this Section unless
2 the municipality also imposes a tax at the same rate under
3 Section 8-11-1.4 of this Code.

4 Persons subject to any tax imposed pursuant to the
5 authority granted in this Section may reimburse themselves for
6 their seller's tax liability hereunder by separately stating
7 such tax as an additional charge, which charge may be stated in
8 combination, in a single amount, with State tax which sellers
9 are required to collect under the Use Tax Act, pursuant to such
10 bracket schedules as the Department may prescribe.

11 Whenever the Department determines that a refund should be
12 made under this Section to a claimant instead of issuing a
13 credit memorandum, the Department shall notify the State
14 Comptroller, who shall cause the order to be drawn for the
15 amount specified, and to the person named, in such notification
16 from the Department. Such refund shall be paid by the State
17 Treasurer out of the non-home rule municipal retailers'
18 occupation tax fund.

19 The Department shall forthwith pay over to the State
20 Treasurer, ex officio, as trustee, all taxes and penalties
21 collected hereunder. On or before the 25th day of each calendar
22 month, the Department shall prepare and certify to the
23 Comptroller the disbursement of stated sums of money to named
24 municipalities, the municipalities to be those from which
25 retailers have paid taxes or penalties hereunder to the
26 Department during the second preceding calendar month. The

1 amount to be paid to each municipality shall be the amount (not
2 including credit memoranda) collected hereunder during the
3 second preceding calendar month by the Department plus an
4 amount the Department determines is necessary to offset any
5 amounts which were erroneously paid to a different taxing body,
6 and not including an amount equal to the amount of refunds made
7 during the second preceding calendar month by the Department on
8 behalf of such municipality, and not including any amount which
9 the Department determines is necessary to offset any amounts
10 which were payable to a different taxing body but were
11 erroneously paid to the municipality. Within 10 days after
12 receipt, by the Comptroller, of the disbursement certification
13 to the municipalities, provided for in this Section to be given
14 to the Comptroller by the Department, the Comptroller shall
15 cause the orders to be drawn for the respective amounts in
16 accordance with the directions contained in such
17 certification.

18 For the purpose of determining the local governmental unit
19 whose tax is applicable, a retail sale, by a producer of coal
20 or other mineral mined in Illinois, is a sale at retail at the
21 place where the coal or other mineral mined in Illinois is
22 extracted from the earth. This paragraph does not apply to coal
23 or other mineral when it is delivered or shipped by the seller
24 to the purchaser at a point outside Illinois so that the sale
25 is exempt under the Federal Constitution as a sale in
26 interstate or foreign commerce.

1 If a purchase order is received at a retailer's branch
2 location within a municipality that imposes a tax under this
3 Section, and delivery is made to the consumer within that
4 municipality, then that municipality's tax applies regardless
5 of whether or not the retailer has a primary place of business
6 located in another municipality.

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

11 When certifying the amount of a monthly disbursement to a
12 municipality under this Section, the Department shall increase
13 or decrease such amount by an amount necessary to offset any
14 misallocation of previous disbursements. The offset amount
15 shall be the amount erroneously disbursed within the previous 6
16 months from the time a misallocation is discovered.

17 The Department of Revenue shall implement this amendatory
18 Act of the 91st General Assembly so as to collect the tax on
19 and after January 1, 2002.

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

23 This Section shall be known and may be cited as the
24 "Non-Home Rule Municipal Retailers' Occupation Tax Act".

25 (Source: P.A. 94-679, eff. 1-1-06.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.