

# HB6877



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

**HB6877**

by Rep. Jim Durkin

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006  
55 ILCS 5/5-1007

from Ch. 34, par. 5-1006  
from Ch. 34, par. 5-1007

Amends the Home Rule County Retailers' Occupation Tax Law of the Counties Code and the Home Rule County Service Occupation Tax Law of the Counties Code. Provides that the maximum tax rate that is permitted under those Laws is 0.75%, unless a higher rate is authorized by referendum. Preempts home rule powers. Effective immediately.

LRB096 22415 HLH 41592 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Counties Code is amended by changing  
5 Sections 5-1006 and 5-1007 as follows:

6 (55 ILCS 5/5-1006) (from Ch. 34, par. 5-1006)

7 Sec. 5-1006. Home Rule County Retailers' Occupation Tax  
8 Law. Any county that is a home rule unit may impose a tax upon  
9 all persons engaged in the business of selling tangible  
10 personal property, other than an item of tangible personal  
11 property titled or registered with an agency of this State's  
12 government, at retail in the county on the gross receipts from  
13 such sales made in the course of their business. If imposed,  
14 this tax shall only be imposed in 1/4% increments. On and after  
15 September 1, 1991, this additional tax may not be imposed on  
16 the sales of food for human consumption which is to be consumed  
17 off the premises where it is sold (other than alcoholic  
18 beverages, soft drinks and food which has been prepared for  
19 immediate consumption) and prescription and nonprescription  
20 medicines, drugs, medical appliances and insulin, urine  
21 testing materials, syringes and needles used by diabetics. The  
22 tax imposed by a home rule county pursuant to this Section and  
23 all 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 that is issued by the  
3 Department to a retailer under the Retailers' Occupation Tax  
4 Act shall permit the retailer to engage in a business that 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 of  
13 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, 1k, 1m, 1n, 2 through 2-65 (in respect to all  
21 provisions therein other than the State rate of tax), 4, 5, 5a,  
22 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8,  
23 9, 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and  
24 Section 3-7 of the Uniform Penalty and Interest Act, as fully  
25 as if those provisions were set forth herein.

26 No tax may be imposed by a home rule county pursuant to

1 this Section unless the county also imposes a tax at the same  
2 rate pursuant to Section 5-1007.

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

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

18 The Department shall forthwith pay over to the State  
19 Treasurer, ex officio, as trustee, all taxes and penalties  
20 collected hereunder. On or before the 25th day of each calendar  
21 month, the Department shall prepare and certify to the  
22 Comptroller the disbursement of stated sums of money to named  
23 counties, the counties to be those from which retailers have  
24 paid taxes or penalties hereunder to the Department during the  
25 second preceding calendar month. The amount to be paid to each  
26 county shall be the amount (not including credit memoranda)

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

16 In addition to the disbursement required by the preceding  
17 paragraph, an allocation shall be made in March of each year to  
18 each county that received more than \$500,000 in disbursements  
19 under the preceding paragraph in the preceding calendar year.  
20 The allocation shall be in an amount equal to the average  
21 monthly distribution made to each such county under the  
22 preceding paragraph during the preceding calendar year  
23 (excluding the 2 months of highest receipts). The distribution  
24 made in March of each year subsequent to the year in which an  
25 allocation was made pursuant to this paragraph and the  
26 preceding paragraph shall be reduced by the amount allocated

1 and disbursed under this paragraph in the preceding calendar  
2 year. The Department shall prepare and certify to the  
3 Comptroller for disbursement the allocations made in  
4 accordance with this paragraph.

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

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

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

1 filed with the Department on or before the first day of July,  
2 whereupon the Department shall proceed to administer and  
3 enforce this Section as of the first day of October next  
4 following such adoption and filing. Beginning January 1, 1993,  
5 an ordinance or resolution imposing or discontinuing the tax  
6 hereunder or effecting a change in the rate thereof shall be  
7 adopted and a certified copy thereof filed with the Department  
8 on or before the first day of October, whereupon the Department  
9 shall proceed to administer and enforce this Section as of the  
10 first day of January next following such adoption and filing.  
11 Beginning April 1, 1998, an ordinance or resolution imposing or  
12 discontinuing the tax hereunder or effecting a change in the  
13 rate thereof shall either (i) be adopted and a certified copy  
14 thereof filed with the Department on or before the first day of  
15 April, whereupon the Department shall proceed to administer and  
16 enforce this Section as of the first day of July next following  
17 the adoption and filing; or (ii) be adopted and a certified  
18 copy thereof filed with the Department on or before the first  
19 day of October, whereupon the Department shall proceed to  
20 administer and enforce this Section as of the first day of  
21 January next following the adoption and filing.

22 When certifying the amount of a monthly disbursement to a  
23 county under this Section, the Department shall increase or  
24 decrease such amount by an amount necessary to offset any  
25 misallocation of previous disbursements. The offset amount  
26 shall be the amount erroneously disbursed within the previous 6

1 months from the time a misallocation is discovered.

2 Except as otherwise provided in this Section, beginning  
3 January 1, 2011, the maximum rate of any tax imposed under this  
4 Section is 0.75%. If the rate of tax exceeds 0.75% on the  
5 effective date of this amendatory Act of the 96th General  
6 Assembly, then the rate shall be reduced to 0.75% beginning  
7 January 1, 2011. The county board of a county that is  
8 authorized to impose a tax under this Section may increase the  
9 rate to more than 0.75%, but only after the question is  
10 approved by the voters of the county at an election held in  
11 accordance with the general election law. The county board  
12 proposing the increase shall certify the proposition to the  
13 proper election officials who shall submit the proposition to  
14 the voters at an election in accordance with the general  
15 election law. The proposition shall be in substantially the  
16 following form:

17 "Shall (county) be authorized to increase its  
18 retailers' occupation tax to (percent)?"

19 Votes shall be recorded as "Yes" or "No". If a majority of  
20 the votes cast on the proposition are in favor of the increase,  
21 then the increase is authorized.

22 A home rule unit may not impose retailers' occupation taxes  
23 in a manner that is inconsistent with this Section. This  
24 Section is a limitation of home rule powers and functions under  
25 subsection (g) of Section 6 of Article VII of the Illinois  
26 Constitution.



1           This Section shall be known and may be cited as the Home  
2 Rule County Retailers' Occupation Tax Law.

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

4           (55 ILCS 5/5-1007) (from Ch. 34, par. 5-1007)

5           Sec. 5-1007. Home Rule County Service Occupation Tax Law.

6           The corporate authorities of a home rule county may impose a  
7 tax upon all persons engaged, in such county, in the business  
8 of making sales of service at the same rate of tax imposed  
9 pursuant to Section 5-1006 of the selling price of all tangible  
10 personal property transferred by such servicemen either in the  
11 form of tangible personal property or in the form of real  
12 estate as an incident to a sale of service. If imposed, such  
13 tax shall only be imposed in 1/4% increments. On and after  
14 September 1, 1991, this additional tax may not be imposed on  
15 the sales of food for human consumption which is to be consumed  
16 off the premises where it is sold (other than alcoholic  
17 beverages, soft drinks and food which has been prepared for  
18 immediate consumption) and prescription and nonprescription  
19 medicines, drugs, medical appliances and insulin, urine  
20 testing materials, syringes and needles used by diabetics. The  
21 tax imposed by a home rule county pursuant to this Section and  
22 all civil penalties that may be assessed as an incident thereof  
23 shall be collected and enforced by the State Department of  
24 Revenue. The certificate of registration which is issued by the  
25 Department to a retailer under the Retailers' Occupation Tax

1 Act or under the Service Occupation Tax Act shall permit such  
2 registrant to engage in a business which is taxable under any  
3 ordinance or resolution enacted pursuant to this Section  
4 without registering separately with the Department under such  
5 ordinance or resolution or under this Section. The Department  
6 shall have full power to administer and enforce this Section;  
7 to collect all taxes and penalties due hereunder; to dispose of  
8 taxes and penalties so collected in the manner hereinafter  
9 provided; and to determine all rights to credit memoranda  
10 arising on account of the erroneous payment of tax or penalty  
11 hereunder. In the administration of, and compliance with, this  
12 Section the Department and persons who are subject to this  
13 Section shall have the same rights, remedies, privileges,  
14 immunities, powers and duties, and be subject to the same  
15 conditions, restrictions, limitations, penalties and  
16 definitions of terms, and employ the same modes of procedure,  
17 as are prescribed in Sections 1a-1, 2, 2a, 3 through 3-50 (in  
18 respect to all provisions therein other than the State rate of  
19 tax), 4 (except that the reference to the State shall be to the  
20 taxing county), 5, 7, 8 (except that the jurisdiction to which  
21 the tax shall be a debt to the extent indicated in that Section  
22 8 shall be the taxing county), 9 (except as to the disposition  
23 of taxes and penalties collected, and except that the returned  
24 merchandise credit for this county tax may not be taken against  
25 any State tax), 10, 11, 12 (except the reference therein to  
26 Section 2b of the Retailers' Occupation Tax Act), 13 (except

1 that any reference to the State shall mean the taxing county),  
2 the first paragraph of Section 15, 16, 17, 18, 19 and 20 of the  
3 Service Occupation Tax Act and Section 3-7 of the Uniform  
4 Penalty and Interest Act, as fully as if those provisions were  
5 set forth herein.

6 No tax may be imposed by a home rule county pursuant to  
7 this Section unless such county also imposes a tax at the same  
8 rate pursuant to Section 5-1006.

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

17 Whenever the Department determines that a refund should be  
18 made under this Section to a claimant instead of issuing credit  
19 memorandum, the Department shall notify the State Comptroller,  
20 who shall cause the order to be drawn for the amount specified,  
21 and to the person named, in such notification from the  
22 Department. Such refund shall be paid by the State Treasurer  
23 out of the home rule county retailers' occupation tax fund.

24 The Department shall forthwith pay over to the State  
25 Treasurer, ex-officio, as trustee, all taxes and penalties  
26 collected hereunder. On or before the 25th day of each calendar

1 month, the Department shall prepare and certify to the  
2 Comptroller the disbursement of stated sums of money to named  
3 counties, the counties to be those from which suppliers and  
4 servicemen have paid taxes or penalties hereunder to the  
5 Department during the second preceding calendar month. The  
6 amount to be paid to each county shall be the amount (not  
7 including credit memoranda) collected hereunder during the  
8 second preceding calendar month by the Department, and not  
9 including an amount equal to the amount of refunds made during  
10 the second preceding calendar month by the Department on behalf  
11 of such county. Within 10 days after receipt, by the  
12 Comptroller, of the disbursement certification to the counties  
13 provided for in this Section to be given to the Comptroller by  
14 the Department, the Comptroller shall cause the orders to be  
15 drawn for the respective amounts in accordance with the  
16 directions contained in such certification.

17 In addition to the disbursement required by the preceding  
18 paragraph, an allocation shall be made in each year to each  
19 county which received more than \$500,000 in disbursements under  
20 the preceding paragraph in the preceding calendar year. The  
21 allocation shall be in an amount equal to the average monthly  
22 distribution made to each such county under the preceding  
23 paragraph during the preceding calendar year (excluding the 2  
24 months of highest receipts). The distribution made in March of  
25 each year subsequent to the year in which an allocation was  
26 made pursuant to this paragraph and the preceding paragraph

1 shall be reduced by the amount allocated and disbursed under  
2 this paragraph in the preceding calendar year. The Department  
3 shall prepare and certify to the Comptroller for disbursement  
4 the allocations made in accordance with this paragraph.

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

9 An ordinance or resolution imposing or discontinuing a 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 June, whereupon the Department  
13 shall proceed to administer and enforce this Section as of the  
14 first day of September next following such adoption and filing.  
15 Beginning January 1, 1992, an ordinance or resolution imposing  
16 or discontinuing the tax hereunder or effecting a change in the  
17 rate thereof shall be adopted and a certified copy thereof  
18 filed with the Department on or before the first day of July,  
19 whereupon the Department shall proceed to administer and  
20 enforce this Section as of the first day of October next  
21 following such adoption and filing. Beginning January 1, 1993,  
22 an ordinance or resolution imposing or discontinuing the tax  
23 hereunder or effecting a change in the rate thereof shall be  
24 adopted and a certified copy thereof filed with the Department  
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26 shall proceed to administer and enforce this Section as of the

1 first day of January next following such adoption and filing.  
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3 discontinuing the tax hereunder or effecting a change in the  
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5 thereof filed with the Department on or before the first day of  
6 April, whereupon the Department shall proceed to administer and  
7 enforce this Section as of the first day of July next following  
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9 copy thereof filed with the Department on or before the first  
10 day of October, whereupon the Department shall proceed to  
11 administer and enforce this Section as of the first day of  
12 January next following the adoption and filing.

13 Except as otherwise provided in this Section, beginning  
14 January 1, 2011, the maximum rate of any tax imposed under this  
15 Section is 0.75%. If the rate of tax exceeds 0.75% on the  
16 effective date of this amendatory Act of the 96th General  
17 Assembly, then the rate shall be reduced to 0.75% beginning  
18 January 1, 2011. The county board of a county that is  
19 authorized to impose a tax under this Section may increase the  
20 rate to more than 0.75%, but only after the question is  
21 approved by the voters of the county at an election held in  
22 accordance with the general election law. The county board  
23 proposing the increase shall certify the proposition to the  
24 proper election officials who shall submit the proposition to  
25 the voters at an election in accordance with the general  
26 election law. The proposition shall be in substantially the

1 following form:

2 "Shall (county) be authorized to increase its service  
3 occupation tax to (percent)?"

4 Votes shall be recorded as "Yes" or "No". If a majority of  
5 the votes cast on the proposition are in favor of the increase,  
6 then the increase is authorized.

7 A home rule unit may not impose service occupation taxes in  
8 a manner that is inconsistent with this Section. This Section  
9 is a limitation of home rule powers and functions under  
10 subsection (g) of Section 6 of Article VII of the Illinois  
11 Constitution.

12 This Section shall be known and may be cited as the Home  
13 Rule County Service Occupation Tax Law.

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

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law.