



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5634

by Rep. Fred Crespo

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1035.1

from Ch. 34, par. 5-1035.1

65 ILCS 5/8-11-6

from Ch. 24, par. 8-11-6

Amends the County Motor Fuel Tax Law in the Counties Code and the Home Rule Municipal Use Tax Act in the Illinois Municipal Code. Provides that the State Treasurer shall retain 2% of amount to be paid to each county or municipality under those provisions (not including credit memoranda or refunds) to cover the costs incurred by the Department of Revenue in administering and enforcing those provisions. Provides that the 2% shall be transferred to the Tax Compliance and Administration Fund. Effective immediately.

LRB098 16273 HLH 51333 b

FISCAL NOTE ACT
MAY APPLY

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 Section
5 5-1035.1 as follows:

6 (55 ILCS 5/5-1035.1) (from Ch. 34, par. 5-1035.1)

7 Sec. 5-1035.1. County Motor Fuel Tax Law. The county board
8 of the counties of DuPage, Kane and McHenry may, by an
9 ordinance or resolution adopted by an affirmative vote of a
10 majority of the members elected or appointed to the county
11 board, impose a tax upon all persons engaged in the county in
12 the business of selling motor fuel, as now or hereafter defined
13 in the Motor Fuel Tax Law, at retail for the operation of motor
14 vehicles upon public highways or for the operation of
15 recreational watercraft upon waterways. Kane County may exempt
16 diesel fuel from the tax imposed pursuant to this Section. The
17 tax may be imposed, in half-cent increments, at a rate not
18 exceeding 4 cents per gallon of motor fuel sold at retail
19 within the county for the purpose of use or consumption and not
20 for the purpose of resale. The proceeds from the tax shall be
21 used by the county solely for the purpose of operating,
22 constructing and improving public highways and waterways, and
23 acquiring real property and right-of-ways for public highways

1 and waterways within the county imposing the tax.

2 A tax imposed pursuant to this Section, and all civil
3 penalties that may be assessed as an incident thereof, shall be
4 administered, collected and enforced by the Illinois
5 Department of Revenue in the same manner as the tax imposed
6 under the Retailers' Occupation Tax Act, as now or hereafter
7 amended, insofar as may be practicable; except that in the
8 event of a conflict with the provisions of this Section, this
9 Section shall control. The Department of Revenue shall have
10 full power: to administer and enforce this Section; to collect
11 all taxes and penalties due hereunder; to dispose of taxes and
12 penalties so collected in the manner hereinafter provided; and
13 to determine all rights to credit memoranda arising on account
14 of the erroneous payment of tax or penalty hereunder.

15 Whenever the Department determines that a refund shall be
16 made under this Section to a claimant instead of issuing a
17 credit memorandum, the Department shall notify the State
18 Comptroller, who shall cause the order to be drawn for the
19 amount specified, and to the person named, in the notification
20 from the Department. The refund shall be paid by the State
21 Treasurer out of the County Option Motor Fuel Tax Fund.

22 The Department shall forthwith pay over to the State
23 Treasurer, ex-officio, as trustee, all taxes and penalties
24 collected hereunder, which shall be deposited into the County
25 Option Motor Fuel Tax Fund, a special fund in the State
26 Treasury which is hereby created. On or before the 25th day of

1 each calendar month, the Department shall prepare and certify
2 to the State Comptroller the disbursement of stated sums of
3 money to named counties for which taxpayers have paid taxes or
4 penalties hereunder to the Department during the second
5 preceding calendar month. The amount to be paid to each county
6 shall be the amount (not including credit memoranda) collected
7 hereunder from retailers within the county during the second
8 preceding calendar month by the Department, but not including
9 an amount equal to the amount of refunds made during the second
10 preceding calendar month by the Department on behalf of the
11 county; less 2% of the balance, which sum shall be retained by
12 the State Treasurer to cover the costs incurred by the
13 Department in administering and enforcing the provisions of
14 this Section. The Department, at the time of each monthly
15 disbursement to the counties, shall prepare and certify to the
16 Comptroller the amount so retained by the State Treasurer,
17 which shall be transferred into the Tax Compliance and
18 Administration Fund ~~the amount expended during the second~~
19 ~~preceding month by the Department pursuant to appropriation~~
20 ~~from the County Option Motor Fuel Tax Fund for the~~
21 ~~administration and enforcement of this Section, which~~
22 ~~appropriation shall not exceed \$200,000 for fiscal year 1990~~
23 ~~and, for each year thereafter, shall not exceed 2% of the~~
24 ~~amount deposited into the County Option Motor Fuel Tax Fund~~
25 ~~during the preceding fiscal year.~~

26 A county may direct, by ordinance, that all or a portion of

1 the taxes and penalties collected under the County Option Motor
2 Fuel Tax shall be deposited into the Transportation Development
3 Partnership Trust Fund.

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

8 An ordinance or resolution imposing a tax hereunder or
9 effecting a change in the rate thereof shall be effective on
10 the first day of the second calendar month next following the
11 month in which the ordinance or resolution is adopted and a
12 certified copy thereof is filed with the Department of Revenue,
13 whereupon the Department of Revenue shall proceed to administer
14 and enforce this Section on behalf of the county as of the
15 effective date of the ordinance or resolution. Upon a change in
16 rate of a tax levied hereunder, or upon the discontinuance of
17 the tax, the county board of the county shall, on or not later
18 than 5 days after the effective date of the ordinance or
19 resolution discontinuing the tax or effecting a change in rate,
20 transmit to the Department of Revenue a certified copy of the
21 ordinance or resolution effecting the change or
22 discontinuance.

23 This Section shall be known and may be cited as the County
24 Motor Fuel Tax Law.

25 (Source: P.A. 96-845, eff. 7-1-12.)

1 Section 10. The Illinois Municipal Code is amended by
2 changing Section 8-11-6 as follows:

3 (65 ILCS 5/8-11-6) (from Ch. 24, par. 8-11-6)

4 Sec. 8-11-6. Home Rule Municipal Use Tax Act.

5 (a) The corporate authorities of a home rule municipality
6 may impose a tax upon the privilege of using, in such
7 municipality, any item of tangible personal property which is
8 purchased at retail from a retailer, and which is titled or
9 registered at a location within the corporate limits of such
10 home rule municipality with an agency of this State's
11 government, at a rate which is an increment of 1/4% and based
12 on the selling price of such tangible personal property, as
13 "selling price" is defined in the Use Tax Act. In home rule
14 municipalities with less than 2,000,000 inhabitants, the tax
15 shall be collected by the municipality imposing the tax from
16 persons whose Illinois address for titling or registration
17 purposes is given as being in such municipality.

18 (b) In home rule municipalities with 2,000,000 or more
19 inhabitants, the corporate authorities of the municipality may
20 additionally impose a tax beginning July 1, 1991 upon the
21 privilege of using in the municipality, any item of tangible
22 personal property, other than tangible personal property
23 titled or registered with an agency of the State's government,
24 that is purchased at retail from a retailer located outside the
25 corporate limits of the municipality, at a rate that is an

1 increment of 1/4% not to exceed 1% and based on the selling
2 price of the tangible personal property, as "selling price" is
3 defined in the Use Tax Act. Such tax shall be collected from
4 the purchaser either by the municipality imposing such tax or
5 by the Department of Revenue pursuant to an agreement between
6 the Department and the municipality.

7 To prevent multiple home rule taxation, the use in a home
8 rule municipality of tangible personal property that is
9 acquired outside the municipality and caused to be brought into
10 the municipality by a person who has already paid a home rule
11 municipal tax in another municipality in respect to the sale,
12 purchase, or use of that property, shall be exempt to the
13 extent of the amount of the tax properly due and paid in the
14 other home rule municipality.

15 (c) If a municipality having 2,000,000 or more inhabitants
16 imposes the tax authorized by subsection (a), then the tax
17 shall be collected by the Illinois Department of Revenue when
18 the property is purchased at retail from a retailer in the
19 county in which the home rule municipality imposing the tax is
20 located, and in all contiguous counties. The tax shall be
21 remitted to the State, or an exemption determination must be
22 obtained from the Department before the title or certificate of
23 registration for the property may be issued. The tax or proof
24 of exemption may be transmitted to the Department by way of the
25 State agency with which, or State officer with whom, the
26 tangible personal property must be titled or registered if the

1 Department and that agency or State officer determine that this
2 procedure will expedite the processing of applications for
3 title or registration.

4 The Department shall have full power to administer and
5 enforce this Section to collect all taxes, penalties and
6 interest due hereunder, to dispose of taxes, penalties and
7 interest so collected in the manner hereinafter provided, and
8 determine all rights to credit memoranda or refunds arising on
9 account of the erroneous payment of tax, penalty or interest
10 hereunder. In the administration of and compliance with this
11 Section the Department and persons who are subject to this
12 Section shall have the same rights, remedies, privileges,
13 immunities, powers and duties, and be subject to the same
14 conditions, restrictions, limitations, penalties and
15 definitions of terms, and employ the same modes of procedure as
16 are prescribed in Sections 2 (except the definition of
17 "retailer maintaining a place of business in this State"), 3
18 (except provisions pertaining to the State rate of tax, and
19 except provisions concerning collection or refunding of the tax
20 by retailers), 4, 11, 12, 12a, 14, 15, 19, 20, 21 and 22 of the
21 Use Tax Act, which are not inconsistent with this Section, as
22 fully as if provisions contained in those Sections of the Use
23 Tax Act were set forth herein.

24 Whenever the Department determines that a refund shall be
25 made under this Section to a claimant instead of issuing a
26 credit memorandum, the Department shall notify the State

1 Comptroller, who shall cause the order to be drawn for the
2 amount specified, and to the person named, in such notification
3 from the Department. Such refund shall be paid by the State
4 Treasurer out of the home rule municipal retailers' occupation
5 tax fund.

6 The Department shall forthwith pay over to the State
7 Treasurer, ex officio, as trustee, all taxes, penalties and
8 interest collected hereunder. On or before the 25th day of each
9 calendar month, the Department shall prepare and certify to the
10 State Comptroller the disbursement of stated sums of money to
11 named municipalities, the municipality in each instance to be
12 that municipality from which the Department during the second
13 preceding calendar month, collected municipal use tax from any
14 person whose Illinois address for titling or registration
15 purposes is given as being in such municipality. The amount to
16 be paid to each municipality shall be the amount (not including
17 credit memoranda) collected hereunder during the second
18 preceding calendar month by the Department, and not including
19 an amount equal to the amount of refunds made during the second
20 preceding calendar month by the Department on behalf of such
21 municipality, less 2% of the balance, which sum shall be
22 retained by the State Treasurer to cover the costs incurred by
23 the Department in administering and enforcing the provisions of
24 this Section. The Department, at the time of each monthly
25 disbursement to the municipalities, shall prepare and certify
26 to the Comptroller the amount so retained by the State

1 Treasurer, which shall be transferred into the Tax Compliance
2 and Administration Fund ~~the amount expended during the second~~
3 ~~preceding month by the Department to be paid from the~~
4 ~~appropriation to the Department from the Home Rule Municipal~~
5 ~~Retailers' Occupation Tax Trust Fund. The appropriation to~~
6 ~~cover the costs incurred by the Department in administering and~~
7 ~~enforcing this Section shall not exceed 2% of the amount~~
8 ~~estimated to be deposited into the Home Rule Municipal~~
9 ~~Retailers' Occupation Tax Trust Fund during the fiscal year for~~
10 ~~which the appropriation is made.~~ Within 10 days after receipt
11 by the State Comptroller of the disbursement certification to
12 the municipalities provided for in this Section to be given to
13 the State Comptroller by the Department, the State Comptroller
14 shall cause the orders to be drawn for the respective amounts
15 in accordance with the directions contained in that
16 certification.

17 Any ordinance imposing or discontinuing any tax to be
18 collected and enforced by the Department under this Section
19 shall be adopted and a certified copy thereof filed with the
20 Department on or before October 1, whereupon the Department of
21 Revenue shall proceed to administer and enforce this Section on
22 behalf of the municipalities as of January 1 next following
23 such adoption and filing. Beginning April 1, 1998, any
24 ordinance imposing or discontinuing any tax to be collected and
25 enforced by the Department under this Section shall either (i)
26 be adopted and a certified copy thereof filed with the

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

9 Nothing in this subsection (c) shall prevent a home rule
10 municipality from collecting the tax pursuant to subsection (a)
11 in any situation where such tax is not collected by the
12 Department of Revenue under this subsection (c).

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

1 (e) As used in this Section, "Municipal" and "Municipality"
2 means a city, village or incorporated town, including an
3 incorporated town which has superseded a civil township.

4 (f) This Section shall be known and may be cited as the
5 Home Rule Municipal Use Tax Act.

6 (Source: P.A. 91-51, eff. 6-30-99; 92-221, eff. 8-2-01; 92-844,
7 eff. 8-23-02; 92-846, eff. 8-23-02.)

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