

# HB5785



## 95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5785

by Rep. Donald L. Moffitt

### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.5

Amends the Counties Code concerning the Special County Retailers' Occupation Tax For Public Safety or Transportation. Authorizes counties to share tax proceeds received for public safety purposes, including proceeds received before the effective date of this amendatory Act, with any fire protection district located in the county. Effective immediately.

LRB095 18618 BDD 45539 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 Counties Code is amended by changing Section  
5 5-1006.5 as follows:

6 (55 ILCS 5/5-1006.5)

7 Sec. 5-1006.5. Special County Retailers' Occupation Tax  
8 For Public Safety or Transportation.

9 (a) The county board of any county may impose a tax upon  
10 all persons engaged in the business of selling tangible  
11 personal property, other than personal property titled or  
12 registered with an agency of this State's government, at retail  
13 in the county on the gross receipts from the sales made in the  
14 course of business to provide revenue to be used exclusively  
15 for public safety or transportation purposes in that county, if  
16 a proposition for the tax has been submitted to the electors of  
17 that county and approved by a majority of those voting on the  
18 question. If imposed, this tax shall be imposed only in  
19 one-quarter percent increments. By resolution, the county  
20 board may order the proposition to be submitted at any  
21 election. If the tax is imposed for transportation purposes for  
22 expenditures for public highways or as authorized under the  
23 Illinois Highway Code, the county board must publish notice of

1 the existence of its long-range highway transportation plan as  
2 required or described in Section 5-301 of the Illinois Highway  
3 Code and must make the plan publicly available prior to  
4 approval of the ordinance or resolution imposing the tax. If  
5 the tax is imposed for transportation purposes for expenditures  
6 for passenger rail transportation, the county board must  
7 publish notice of the existence of its long-range passenger  
8 rail transportation plan and must make the plan publicly  
9 available prior to approval of the ordinance or resolution  
10 imposing the tax. The county clerk shall certify the question  
11 to the proper election authority, who shall submit the  
12 proposition at an election in accordance with the general  
13 election law.

14 (1) The proposition for public safety purposes shall be  
15 in substantially the following form:

16 "To pay for public safety purposes, shall (name of  
17 county) be authorized to impose an increase on its share of  
18 local sales taxes by (insert rate)?"

19 As additional information on the ballot below the  
20 question shall appear the following:

21 "This would mean that a consumer would pay an  
22 additional (insert amount) in sales tax for every \$100 of  
23 tangible personal property bought at retail."

24 The county board may also opt to establish a sunset  
25 provision at which time the additional sales tax would  
26 cease being collected, if not terminated earlier by a vote

1 of the county board. If the county board votes to include a  
2 sunset provision, the proposition for public safety  
3 purposes shall be in substantially the following form:

4 "To pay for public safety purposes, shall (name of  
5 county) be authorized to impose an increase on its share of  
6 local sales taxes by (insert rate) for a period not to  
7 exceed (insert number of years)?"

8 As additional information on the ballot below the  
9 question shall appear the following:

10 "This would mean that a consumer would pay an  
11 additional (insert amount) in sales tax for every \$100 of  
12 tangible personal property bought at retail. If imposed,  
13 the additional tax would cease being collected at the end  
14 of (insert number of years), if not terminated earlier by a  
15 vote of the county board."

16 For the purposes of the paragraph, "public safety  
17 purposes" means crime prevention, detention, fire  
18 fighting, police, medical, ambulance, or other emergency  
19 services.

20 Votes shall be recorded as "Yes" or "No".

21 (2) The proposition for transportation purposes shall  
22 be in substantially the following form:

23 "To pay for improvements to roads and other  
24 transportation purposes, shall (name of county) be  
25 authorized to impose an increase on its share of local  
26 sales taxes by (insert rate)?"

1           As additional information on the ballot below the  
2 question shall appear the following:

3           "This would mean that a consumer would pay an  
4 additional (insert amount) in sales tax for every \$100 of  
5 tangible personal property bought at retail."

6           The county board may also opt to establish a sunset  
7 provision at which time the additional sales tax would  
8 cease being collected, if not terminated earlier by a vote  
9 of the county board. If the county board votes to include a  
10 sunset provision, the proposition for transportation  
11 purposes shall be in substantially the following form:

12           "To pay for road improvements and other transportation  
13 purposes, shall (name of county) be authorized to impose an  
14 increase on its share of local sales taxes by (insert rate)  
15 for a period not to exceed (insert number of years)?"

16           As additional information on the ballot below the  
17 question shall appear the following:

18           "This would mean that a consumer would pay an  
19 additional (insert amount) in sales tax for every \$100 of  
20 tangible personal property bought at retail. If imposed,  
21 the additional tax would cease being collected at the end  
22 of (insert number of years), if not terminated earlier by a  
23 vote of the county board."

24           For the purposes of this paragraph, transportation  
25 purposes means construction, maintenance, operation, and  
26 improvement of public highways, any other purpose for which

1 a county may expend funds under the Illinois Highway Code,  
2 and passenger rail transportation.

3 The votes shall be recorded as "Yes" or "No".

4 If a majority of the electors voting on the proposition  
5 vote in favor of it, the county may impose the tax. A county  
6 may not submit more than one proposition authorized by this  
7 Section to the electors at any one time.

8 This additional tax may not be imposed on the sales of food  
9 for human consumption that is to be consumed off the premises  
10 where it is sold (other than alcoholic beverages, soft drinks,  
11 and food which has been prepared for immediate consumption) and  
12 prescription and non-prescription medicines, drugs, medical  
13 appliances and insulin, urine testing materials, syringes, and  
14 needles used by diabetics. The tax imposed by a county under  
15 this Section and all civil penalties that may be assessed as an  
16 incident of the tax shall be collected and enforced by the  
17 Illinois Department of Revenue and deposited into a special  
18 fund created for that purpose. The certificate of registration  
19 that is issued by the Department to a retailer under the  
20 Retailers' Occupation Tax Act shall permit the retailer to  
21 engage in a business that is taxable without registering  
22 separately with the Department under an ordinance or resolution  
23 under this Section. The Department has full power to administer  
24 and enforce this Section, to collect all taxes and penalties  
25 due under this Section, to dispose of taxes and penalties so  
26 collected in the manner provided in this Section, and to

1 determine all rights to credit memoranda arising on account of  
2 the erroneous payment of a tax or penalty under this Section.  
3 In the administration of and compliance with this Section, the  
4 Department and persons who are subject to this Section shall  
5 (i) have the same rights, remedies, privileges, immunities,  
6 powers, and duties, (ii) be subject to the same conditions,  
7 restrictions, limitations, penalties, and definitions of  
8 terms, and (iii) employ the same modes of procedure as are  
9 prescribed in Sections 1, 1a, 1a-1, 1d, 1e, 1f, 1i, 1j, 1k, 1m,  
10 1n, 2 through 2-70 (in respect to all provisions contained in  
11 those Sections other than the State rate of tax), 2a, 2b, 2c, 3  
12 (except provisions relating to transaction returns and quarter  
13 monthly payments), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i,  
14 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12, and 13 of  
15 the Retailers' Occupation Tax Act and Section 3-7 of the  
16 Uniform Penalty and Interest Act as if those provisions were  
17 set forth in this Section.

18 Persons subject to any tax imposed under the authority  
19 granted in this Section may reimburse themselves for their  
20 sellers' tax liability by separately stating the tax as an  
21 additional charge, which charge may be stated in combination,  
22 in a single amount, with State tax which sellers are required  
23 to collect under the Use Tax Act, pursuant to such bracketed  
24 schedules as the Department may prescribe.

25 Whenever the Department determines that a refund should be  
26 made under this Section to a claimant instead of issuing a

1 credit memorandum, the Department shall notify the State  
2 Comptroller, who shall cause the order 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 County Public Safety or Transportation  
6 Retailers' Occupation Tax Fund.

7 (b) If a tax has been imposed under subsection (a), a  
8 service occupation tax shall also be imposed at the same rate  
9 upon all persons engaged, in the county, in the business of  
10 making sales of service, who, as an incident to making those  
11 sales of service, transfer tangible personal property within  
12 the county as an incident to a sale of service. This tax may  
13 not be imposed on sales of food for human consumption that is  
14 to be consumed off the premises where it is sold (other than  
15 alcoholic beverages, soft drinks, and food prepared for  
16 immediate consumption) and prescription and non-prescription  
17 medicines, drugs, medical appliances and insulin, urine  
18 testing materials, syringes, and needles used by diabetics. The  
19 tax imposed under this subsection and all civil penalties that  
20 may be assessed as an incident thereof shall be collected and  
21 enforced by the Department of Revenue. The Department has full  
22 power to administer and enforce this subsection; to collect all  
23 taxes and penalties due hereunder; to dispose of taxes and  
24 penalties so collected in the manner hereinafter provided; and  
25 to determine all rights to credit memoranda arising on account  
26 of the erroneous payment of tax or penalty hereunder. In the



1 administration of, and compliance with this subsection, the  
2 Department and persons who are subject to this paragraph shall  
3 (i) have the same rights, remedies, privileges, immunities,  
4 powers, and duties, (ii) be subject to the same conditions,  
5 restrictions, limitations, penalties, exclusions, exemptions,  
6 and definitions of terms, and (iii) employ the same modes of  
7 procedure as are prescribed in Sections 2 (except that the  
8 reference to State in the definition of supplier maintaining a  
9 place of business in this State shall mean the county), 2a, 2b,  
10 2c, 3 through 3-50 (in respect to all provisions therein other  
11 than the State rate of tax), 4 (except that the reference to  
12 the State shall be to the county), 5, 7, 8 (except that the  
13 jurisdiction to which the tax shall be a debt to the extent  
14 indicated in that Section 8 shall be the county), 9 (except as  
15 to the disposition of taxes and penalties collected), 10, 11,  
16 12 (except the reference therein to Section 2b of the  
17 Retailers' Occupation Tax Act), 13 (except that any reference  
18 to the State shall mean the county), Section 15, 16, 17, 18, 19  
19 and 20 of the Service Occupation Tax Act and Section 3-7 of the  
20 Uniform Penalty and Interest Act, as fully as if those  
21 provisions were set forth herein.

22 Persons subject to any tax imposed under the authority  
23 granted in this subsection may reimburse themselves for their  
24 serviceman's tax liability by separately stating the tax as an  
25 additional charge, which charge may be stated in combination,  
26 in a single amount, with State tax that servicemen are

1 authorized to collect under the Service Use Tax Act, in  
2 accordance with such bracket schedules as the Department may  
3 prescribe.

4 Whenever the Department determines that a refund should be  
5 made under this subsection to a claimant instead of issuing a  
6 credit memorandum, the Department shall notify the State  
7 Comptroller, who shall cause the warrant to be drawn for the  
8 amount specified, and to the person named, in the notification  
9 from the Department. The refund shall be paid by the State  
10 Treasurer out of the County Public Safety or Transportation  
11 Retailers' Occupation Fund.

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

16 (c) The Department shall immediately pay over to the State  
17 Treasurer, ex officio, as trustee, all taxes and penalties  
18 collected under this Section to be deposited into the County  
19 Public Safety or Transportation Retailers' Occupation Tax  
20 Fund, which shall be an unappropriated trust fund held outside  
21 of the State treasury. On or before the 25th day of each  
22 calendar month, the Department shall prepare and certify to the  
23 Comptroller the disbursement of stated sums of money to the  
24 counties from which retailers have paid taxes or penalties to  
25 the Department during the second preceding calendar month. The  
26 amount to be paid to each county, and deposited by the county

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

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

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

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

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

19 (e-5) If a county imposes a tax under this Section, the  
20 county board may, by ordinance, discontinue or lower the rate  
21 of the tax. If the county board lowers the tax rate or  
22 discontinues the tax, a referendum must be held in accordance  
23 with subsection (a) of this Section in order to increase the  
24 rate of the tax or to reimpose the discontinued tax.

25 (f) Beginning April 1, 1998, the results of any election  
26 authorizing a proposition to impose a tax under this Section or

1 effecting a change in the rate of tax, or any ordinance  
2 lowering the rate or discontinuing the tax, shall be certified  
3 by the county clerk and filed with the Illinois Department of  
4 Revenue either (i) on or before the first day of April,  
5 whereupon the Department shall proceed to administer and  
6 enforce the tax as of the first day of July next following the  
7 filing; or (ii) on or before the first day of October,  
8 whereupon the Department shall proceed to administer and  
9 enforce the tax as of the first day of January next following  
10 the filing.

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

17 (h) This Section may be cited as the "Special County  
18 Occupation Tax For Public Safety or Transportation Law".

19 (i) For purposes of this Section, "public safety" includes,  
20 but is not limited to, crime prevention, detention, fire  
21 fighting, police, medical, ambulance, or other emergency  
22 services. The county may share tax proceeds received under this  
23 Section for public safety purposes, including proceeds  
24 received before the effective date of this amendatory Act of  
25 the 95th General Assembly, with any fire protection district  
26 located in the county. For the purposes of this Section,

1 "transportation" includes, but is not limited to, the  
2 construction, maintenance, operation, and improvement of  
3 public highways, any other purpose for which a county may  
4 expend funds under the Illinois Highway Code, and passenger  
5 rail transportation.

6 (Source: P.A. 94-781, eff. 5-19-06; 95-474, eff. 1-1-08.)

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