



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0720

Introduced 2/6/2009, by Rep. Sidney H. Mathias

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 1%, unless a higher rate is authorized by referendum. Preempts home rule powers. Effective immediately.

LRB096 04014 RLJ 14052 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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 on
3 the first day of the first month to occur not less than 30
4 calendar days after the effective date of this amendatory Act
5 of the 96th General Assembly, the maximum rate of any tax
6 imposed under this Section is 1%. If the rate of tax exceeds 1%
7 on the effective date of this amendatory Act of the 96th
8 General Assembly, then the rate shall be reduced to 1%
9 beginning on the first day of the first month to occur not less
10 than 30 calendar days after the effective date of this
11 amendatory Act of the 96th General Assembly. The county board
12 of a county that is authorized to impose a tax under this
13 Section may increase the rate to more than 1%, but only after
14 the question is approved by the voters of the county at an
15 election held in accordance with the general election law. The
16 county board proposing the increase shall certify the
17 proposition to the proper election officials who shall submit
18 the proposition to the voters at an election in accordance with
19 the general election law. The proposition shall be in
20 substantially the following form:

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

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

26 A home rule unit may not impose retailers' occupation taxes

1 in a manner that is inconsistent with this Section. This
2 Section is a limitation of home rule powers and functions under
3 subsection (g) of Section 6 of Article VII of the Illinois
4 Constitution.

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

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

8 (55 ILCS 5/5-1007) (from Ch. 34, par. 5-1007)

9 Sec. 5-1007. Home Rule County Service Occupation Tax Law.
10 The corporate authorities of a home rule county may impose a
11 tax upon all persons engaged, in such county, in the business
12 of making sales of service at the same rate of tax imposed
13 pursuant to Section 5-1006 of the selling price of all tangible
14 personal property transferred by such servicemen either in the
15 form of tangible personal property or in the form of real
16 estate as an incident to a sale of service. If imposed, such
17 tax shall only be imposed in 1/4% increments. On and after
18 September 1, 1991, this additional tax may not be imposed on
19 the sales of food for human consumption which is to be consumed
20 off the premises where it is sold (other than alcoholic
21 beverages, soft drinks and food which has been prepared for
22 immediate consumption) and prescription and nonprescription
23 medicines, drugs, medical appliances and insulin, urine
24 testing materials, syringes and needles used by diabetics. The
25 tax imposed by a home rule county pursuant to this Section and

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

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

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

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

21 Whenever the Department determines that a refund should be
22 made under this Section to a claimant instead of issuing credit
23 memorandum, the Department shall notify the State Comptroller,
24 who shall cause the order to be drawn for the amount specified,
25 and to the person named, in such notification from the
26 Department. Such refund shall be paid by the State Treasurer

1 out of the home rule county retailers' occupation tax fund.

2 The Department shall forthwith pay over to the State
3 Treasurer, ex-officio, as trustee, all taxes and penalties
4 collected hereunder. On or before the 25th day of each calendar
5 month, the Department shall prepare and certify to the
6 Comptroller the disbursement of stated sums of money to named
7 counties, the counties to be those from which suppliers and
8 servicemen have paid taxes or penalties hereunder to the
9 Department during the second preceding calendar month. The
10 amount to be paid to each county shall be the amount (not
11 including credit memoranda) collected hereunder during the
12 second preceding calendar month by the Department, and not
13 including an amount equal to the amount of refunds made during
14 the second preceding calendar month by the Department on behalf
15 of such county. Within 10 days after receipt, by the
16 Comptroller, of the disbursement certification to the counties
17 provided for in this Section to be given to the Comptroller by
18 the Department, the Comptroller shall cause the orders to be
19 drawn for the respective amounts in accordance with the
20 directions contained in such certification.

21 In addition to the disbursement required by the preceding
22 paragraph, an allocation shall be made in each year to each
23 county which received more than \$500,000 in disbursements under
24 the preceding paragraph in the preceding calendar year. The
25 allocation shall be in an amount equal to the average monthly
26 distribution made to each such county under the preceding

1 paragraph during the preceding calendar year (excluding the 2
2 months of highest receipts). The distribution made in March of
3 each year subsequent to the year in which an allocation was
4 made pursuant to this paragraph and the preceding paragraph
5 shall be reduced by the amount allocated and disbursed under
6 this paragraph in the preceding calendar year. The Department
7 shall prepare and certify to the Comptroller for disbursement
8 the allocations made in accordance with this paragraph.

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

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

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

17 Except as otherwise provided in this Section, beginning on
18 the first day of the first month to occur not less than 30
19 calendar days after the effective date of this amendatory Act
20 of the 96th General Assembly, the maximum rate of any tax
21 imposed under this Section is 1%. If the rate of tax exceeds 1%
22 on the effective date of this amendatory Act of the 96th
23 General Assembly, then the rate shall be reduced to 1%
24 beginning on the first day of the first month to occur not less
25 than 30 calendar days after the effective date of this
26 amendatory Act of the 96th General Assembly. The county board

1 of a county that is authorized to impose a tax under this
2 Section may increase the rate to more than 1%, but only after
3 the question is approved by the voters of the county at an
4 election held in accordance with the general election law. The
5 county board proposing the increase shall certify the
6 proposition to the proper election officials who shall submit
7 the proposition to the voters at an election in accordance with
8 the general election law. The proposition shall be in
9 substantially the following form:

10 "Shall (county) be authorized to increase its service
11 occupation tax to (percent)?"

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

15 A home rule unit may not impose service occupation taxes in
16 a manner that is inconsistent with this Section. This Section
17 is a limitation of home rule powers and functions under
18 subsection (g) of Section 6 of Article VII of the Illinois
19 Constitution.

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

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.