



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB1638

Introduced 2/18/2009, by Rep. Michael J. Madigan - Barbara Flynn Currie - Paul D. Froehlich

SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-1.3

from Ch. 24, par. 8-11-1.3

Amends the Non-Home Rule Municipal Retailers' Occupation Tax Act in the Illinois Municipal Code. Makes a technical change in a Section authorizing the imposition of the tax.

LRB096 05208 RLJ 15274 b

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 Section 8-11-1.3 as follows:

6 (65 ILCS 5/8-11-1.3) (from Ch. 24, par. 8-11-1.3)

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

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

1 9, 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and
2 Section 3-7 of the Uniform Penalty and Interest Act as fully as
3 if those provisions were set forth herein.

4 No municipality may impose a tax under this Section unless
5 the municipality also imposes a tax at the same rate under
6 Section 8-11-1.4 of this Code.

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

14 Whenever the Department determines that a refund should be
15 made under this Section to a claimant instead of issuing a
16 credit memorandum, the Department shall notify the State
17 Comptroller, who shall cause the order to be drawn for the
18 amount specified, and to the person named, in such notification
19 from the Department. Such refund shall be paid by the State
20 Treasurer out of the non-home rule municipal retailers'
21 occupation 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. On or before the 25th day of each calendar
25 month, the Department shall prepare and certify to the
26 Comptroller the disbursement of stated sums of money to named

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

21 For the purpose of determining the local governmental unit
22 whose tax is applicable, a retail sale, by a producer of coal
23 or other mineral mined in Illinois, is a sale at retail at the
24 place where the coal or other mineral mined in Illinois is
25 extracted from the earth. This paragraph does not apply to coal
26 or other mineral when it is delivered or shipped by the seller

1 to the purchaser at a point outside Illinois so that the sale
2 is exempt under the Federal Constitution as a sale in
3 interstate or foreign commerce.

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

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

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

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

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

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