



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3128

Introduced 2/23/2011, by Rep. Karen A. Yarbrough

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.3 new
65 ILCS 5/8-11-6b

Amends the Counties Code. Creates the Home Rule County Soft Drink Retailers' Occupation Tax. Provides that home rule counties may impose a tax upon all persons engaged in the business of selling soft drinks, including those who sell fountain soft drinks. Sets forth requirements for the tax and provides that it shall not take effect prior to the first day of the third month following the passage of the ordinance imposing the tax and receipt of a certified copy of the ordinance by the Department of Revenue. Requires that a certificate of registration must be issued by the Illinois Department of Revenue to a retailer in order to permit the registrant to engage in a business that sells soft drinks. Provides that a certified copy of any ordinance imposing or discontinuing any soft drink tax or effecting a change in the rate of that tax shall be filed with the Department of Revenue. Amends the Illinois Municipal Code. Provides that a home rule municipality may impose a tax upon all persons engaged in the business of selling soft drinks, including those who sell fountain soft drinks. Effective January 1, 2012.

LRB097 08168 KMW 48292 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 adding Section
5 5-1006.3 as follows:

6 (55 ILCS 5/5-1006.3 new)

7 Sec. 5-1006.3. Home rule soft drink taxes.

8 (a) The county board of a home rule county may impose a
9 tax, which shall not take effect prior to the first day of the
10 third month following the passage of the ordinance imposing the
11 tax and receipt of a certified copy of the ordinance by the
12 Department of Revenue, upon all persons engaged in the business
13 of selling soft drinks (other than fountain soft drinks) at
14 retail in the county based on the gross receipts from those
15 sales made in the course of such business. If imposed, the tax
16 shall only be in 1/4% increments and shall not exceed 3%. For
17 purposes of this subsection, the term "soft drink" has the
18 meaning set forth in Section 2-10 of the Retailers' Occupation
19 Tax Act, as may be amended from time to time, except that the
20 term shall not be limited to drinks contained in a closed or
21 sealed bottle, can, carton or container; the term "fountain
22 soft drinks" means soft drinks which are prepared by the retail
23 seller of the soft drinks by mixing syrup or concentrate with

1 water, by hand or through a soft drink dispensing machine, at
2 or near the point and time of sale to the retail purchaser; and
3 the term "soft drink dispensing machine" means a device which
4 mixes soft drink syrup or concentrate with water and dispenses
5 the mixture into an open container as a ready to drink soft
6 drink.

7 The tax imposed under this subsection and all civil
8 penalties that may be assessed as an incident to that tax shall
9 be collected and enforced by the Illinois Department of
10 Revenue. The Department shall have full power to administer and
11 enforce this subsection, to collect all taxes and penalties so
12 collected in the manner provided in this subsection, and to
13 determine all rights to credit memoranda arising on account of
14 the erroneous payment of tax or penalty under this subsection.
15 In the administration of and compliance with this subsection,
16 the Department and persons who are subject to this subsection
17 shall have the same rights, remedies, privileges, immunities,
18 powers and duties, shall be subject to the same conditions,
19 restrictions, limitations, penalties, exclusions, exemptions,
20 and definitions of terms, and shall employ the same modes of
21 procedure applicable to the Retailers' Occupation Tax as are
22 prescribed in Sections 1, 2 through 2-65 (in respect to all
23 provisions of those Sections other than the State rate of
24 taxes), 2c, 2h, 2i, 3 (except as to the disposition of taxes
25 and penalties collected), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i,
26 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13 and, on and after

1 January 1, 1994, all applicable provisions of the Uniform
2 Penalty and Interest Act that are not inconsistent with this
3 subsection, as fully as if provisions contained in those
4 Sections of the Retailers' Occupation Tax Act were set forth in
5 this subsection.

6 Persons subject to any tax imposed under the authority
7 granted by this subsection may reimburse themselves for their
8 seller's tax liability under this subsection by separately
9 stating that tax as an additional charge, which charge may be
10 stated in combination, in a single amount, with State taxes
11 that sellers are required to collect under the Use Tax Act
12 pursuant to bracket schedules as the Department may prescribe.
13 The retailer filing the return shall, at the time of filing the
14 return, pay to the Department the amount of tax imposed under
15 this subsection, less the discount of 1.75%, which is allowed
16 to reimburse the retailer for the expenses incurred in keeping
17 records, preparing the filing returns, remitting the tax, and
18 supplying data to the Department on request.

19 Whenever the Department determines that a refund should be
20 made under this subsection to a claimant instead of issuing a
21 credit memoranda, the Department shall notify the State
22 Comptroller, who shall cause a warrant to be drawn for the
23 amount specified and to the person named in the notification
24 from the Department. The refund shall be paid by the State
25 Treasurer out of the Home Rule County Soft Drink Retailers'
26 Occupation Tax Fund.

1 The Department shall forthwith pay over to the State
2 Treasurer, ex officio, as trustee, all taxes and penalties
3 collected hereunder. On or before the 25th day of each calendar
4 month, the Department shall prepare and certify to the
5 Comptroller the amount to be paid to named counties, the
6 counties to be those from which retailers have paid taxes or
7 penalties hereunder to the Department during the second
8 preceding calendar month. The amount to be paid to each county
9 shall be the amount collected hereunder during the second
10 preceding calendar month by the Department, less any amounts
11 determined by the Department to be necessary for the payment of
12 refunds, and less 4% for the first year the tax is in effect
13 and 2% thereafter of such balance, which sum shall be deposited
14 by the State Treasurer into the Tax Compliance and
15 Administration Fund in the State treasury from which it shall
16 be appropriated to the Department to cover the costs of the
17 Department in administering and enforcing the provisions of
18 this subsection. Within 10 days after receipt by the
19 Comptroller of the certification, the Comptroller shall cause
20 the orders to be drawn for the respective amount in accordance
21 with the directions contained in such certification.

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

26 A certificate of registration issued by the Illinois

1 Department of Revenue to a retailer under the Retailers'
2 Occupation Tax Act shall permit the registrant to engage in a
3 business that is taxed under the tax imposed under this
4 subsection and no additional registration shall be required
5 under the ordinance imposing a tax or under this subsection.

6 A certified copy of any ordinance imposing or discontinuing
7 any tax under this subsection or effecting a change in the rate
8 of that tax shall be filed with the Department, whereupon the
9 Department shall proceed to administer and enforce this
10 subsection on behalf of such county as of the first day of the
11 third month following the date of filing. This tax shall be
12 known and cited as the Home Rule County Soft Drink Retailers'
13 Occupation Tax.

14 (b) The county board of a home rule county may impose a
15 tax, which shall not take effect prior to the first day of the
16 third month following the passage of the ordinance imposing the
17 tax and receipt of a certified copy of the ordinance by the
18 Department of Revenue, on persons engaged in the business of
19 selling fountain soft drinks at retail at a rate not to exceed
20 9% of the cost price of the fountain soft drinks at retail in
21 such municipality. For purposes of this subsection, the term
22 "soft drink" has the meaning set forth in Section 2-10 of the
23 Retailers' Occupation Tax Act, as may be amended from time to
24 time, except that the term shall not be limited to drinks
25 contained in a closed or sealed bottle, can, carton, or
26 container; the term "fountain soft drinks" means soft drinks

1 which are prepared by the retail seller of the soft drinks by
2 mixing soft drink syrup or concentrate with water, by hand or
3 through a soft drink dispensing machine at or near the point
4 and time of sale to the retail purchaser; the term "soft drink
5 dispensing machine" means a device which mixes soft drink syrup
6 or concentrate with water and dispenses such mixture into an
7 open container as a ready to drink soft drink; the term "sold
8 at retail" shall mean any transfer of the ownership or title to
9 tangible personal property to a purchaser, for the purpose of
10 use or consumption, and not for the purpose of resale, for
11 valuable consideration; the term "cost price of the fountain
12 soft drinks" means the consideration paid by the retail seller
13 of the fountain soft drink, valued in money, whether paid in
14 money or otherwise, including cash, credits and services, and
15 shall be determined without any deduction on account of the
16 supplier's cost of the property sold or on account or any other
17 expenses incurred by the supplier, for the purchase of soft
18 drink syrup or concentrate which is designed to be further
19 mixed with water before it is consumed as a soft drink; and the
20 term "supplier" means any person who makes sales of soft drink
21 syrup or concentrate to a retail seller of fountain soft drinks
22 for purposes of resale as fountain soft drinks. The tax
23 authorized by this subsection shall be collected, enforced, and
24 administered by the county imposing the tax. Persons subject to
25 the tax may reimburse themselves for their tax liability
26 hereunder by separately stating an amount equal to the tax as

1 an additional charge to their retail purchasers or may include
2 such amount as part of the selling price of the soft drink. The
3 county imposing the tax shall provide for its collection from
4 the person subject to the tax by requiring that the supplier to
5 the person subject to the tax collect and remit the tax to the
6 county. If the supplier fails to collect the tax or if the
7 person subject to the tax fails to pay the tax to its supplier,
8 the person subject to the tax shall make the tax payment
9 directly to the county. Payment of the tax by the retailer to
10 the supplier shall relieve the retailer of any further
11 liability for the tax.

12 (c) If either tax imposed or authorized by this Section
13 5-1006.3 is repealed by the General Assembly or has its maximum
14 rate reduced by the General Assembly, or is declared unlawful
15 or unconstitutional on its face by any court of competent
16 jurisdiction after all appeals have been exhausted or the time
17 to appeal has expired, then this Section 5-1006.3 is
18 automatically repealed and no longer effective without further
19 action by the General Assembly.

20 Section 10. The Illinois Municipal Code is amended by
21 changing Section 8-11-6b as follows:

22 (65 ILCS 5/8-11-6b)

23 Sec. 8-11-6b. Home rule soft drink taxes.

24 (a) Except as provided in Sections 8-11-1, 8-11-5 and

1 8-11-6, or as provided in this Section, no home rule
2 municipality has the authority to impose, pursuant to its home
3 rule authority, a tax on the sale, purchase, or use of soft
4 drinks regardless of whether the measure of the tax is selling
5 price, purchase price, gross receipts, unit of volumetric
6 measure, or any other measure. For purposes of this subsection,
7 the term "soft drink" has the meaning set forth in Section 2-10
8 of the Retailers' Occupation Tax Act, as may be amended from
9 time to time, except that the term shall not be limited to
10 drinks contained in a closed or sealed bottle, can, carton, or
11 container. This Section is a denial and limitation, under
12 subsection (g) of Section 6 of Article VII of the Illinois
13 Constitution, on the power of home rule units to tax.

14 (b) The corporate authorities of a home rule municipality
15 ~~with a population in excess of 1,000,000~~ may impose a tax,
16 which shall not take effect prior to the first day of the third
17 month following the passage of the ordinance imposing the tax
18 and receipt of a certified copy of the ordinance by the
19 Department of Revenue April 1, 1994, upon all persons engaged
20 in the business of selling soft drinks (other than fountain
21 soft drinks) at retail in the municipality based on the gross
22 receipts from those sales made in the course of such business.
23 If imposed, the tax shall only be in 1/4% increments and shall
24 not exceed 3%. For purposes of this subsection, the term "soft
25 drink" has the meaning set forth in Section 2-10 of the
26 Retailers' Occupation Tax Act, as may be amended from time to

1 time, except that the term shall not be limited to drinks
2 contained in a closed or sealed bottle, can, carton or
3 container; the term "fountain soft drinks" means soft drinks
4 which are prepared by the retail seller of the soft drinks by
5 mixing syrup or concentrate with water, by hand or through a
6 soft drink dispensing machine, at or near the point and time of
7 sale to the retail purchaser; and the term "soft drink
8 dispensing machine" means a device which mixes soft drink syrup
9 or concentrate with water and dispenses the mixture into an
10 open container as a ready to drink soft drink.

11 The tax imposed under this subsection and all civil
12 penalties that may be assessed as an incident to that tax shall
13 be collected and enforced by the Illinois Department of
14 Revenue. The Department shall have full power to administer and
15 enforce this subsection, to collect all taxes and penalties so
16 collected in the manner provided in this subsection, and to
17 determine all rights to credit memoranda arising on account of
18 the erroneous payment of tax or penalty under this subsection.
19 In the administration of and compliance with this subsection,
20 the Department and persons who are subject to this subsection
21 shall have the same rights, remedies, privileges, immunities,
22 powers and duties, shall be subject to the same conditions,
23 restrictions, limitations, penalties, exclusions, exemptions,
24 and definitions of terms, and shall employ the same modes of
25 procedure applicable to the Retailers' Occupation Tax as are
26 prescribed in Sections 1, 2 through 2-65 (in respect to all

1 provisions of those Sections other than the State rate of
2 taxes), 2c, 2h, 2i, 3 (except as to the disposition of taxes
3 and penalties collected), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i,
4 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13 and, until January 1,
5 1994, 13.5 of the Retailers' Occupation Tax Act, and on and
6 after January 1, 1994, all applicable provisions of the Uniform
7 Penalty and Interest Act that are not inconsistent with this
8 subsection, as fully as if provisions contained in those
9 Sections of the Retailers' Occupation Tax Act were set forth in
10 this subsection.

11 Persons subject to any tax imposed under the authority
12 granted by this subsection may reimburse themselves for their
13 seller's tax liability under this subsection by separately
14 stating that tax as an additional charge, which charge may be
15 stated in combination, in a single amount, with State taxes
16 that sellers are required to collect under the Use Tax Act
17 pursuant to bracket schedules as the Department may prescribe.
18 The retailer filing the return shall, at the time of filing the
19 return, pay to the Department the amount of tax imposed under
20 this subsection, less the discount of 1.75%, which is allowed
21 to reimburse the retailer for the expenses incurred in keeping
22 records, preparing the filing returns, remitting the tax, and
23 supplying data to the Department on request.

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

1 Comptroller, who shall cause a warrant to be drawn for the
2 amount specified and to the person named in the notification
3 from the Department. The refund shall be paid by the State
4 Treasurer out of the Home Rule Municipal Soft Drink Retailers'
5 Occupation Tax Fund.

6 The Department shall forthwith pay over to the State
7 Treasurer, ex officio, as trustee, all taxes and penalties
8 collected hereunder. On or before the 25th day of each calendar
9 month, the Department shall prepare and certify to the
10 Comptroller the amount to be paid to named municipalities, the
11 municipalities to be those from which retailers have paid taxes
12 or penalties hereunder to the Department during the second
13 preceding calendar month. The amount to be paid to each
14 municipality shall be the amount collected hereunder during the
15 second preceding calendar month by the Department, less any
16 amounts determined by the Department to be necessary for the
17 payment of refunds, and less 4% for the first year the tax is
18 in effect and 2% thereafter of such balance, which sum shall be
19 deposited by the State Treasurer into the Tax Compliance and
20 Administration Fund in the State treasury from which it shall
21 be appropriated to the Department to cover the costs of the
22 Department in administering and enforcing the provisions of
23 this subsection. Within 10 days after receipt by the
24 Comptroller of the certification, the Comptroller shall cause
25 the orders to be drawn for the respective amount in accordance
26 with the directions contained in such certification.

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

5 A certificate of registration issued by the Illinois
6 Department of Revenue to a retailer under the Retailers'
7 Occupation Tax Act shall permit the registrant to engage in a
8 business that is taxed under the tax imposed under this
9 subsection and no additional registration shall be required
10 under the ordinance imposing a tax or under this subsection.

11 A certified copy of any ordinance imposing or discontinuing
12 any tax under this subsection or effecting a change in the rate
13 of that tax shall be filed with the Department, whereupon the
14 Department shall proceed to administer and enforce this
15 subsection on behalf of such municipality as of the first day
16 of February following the date of filing. This tax shall be
17 known and cited as the Home Rule Municipal Soft Drink
18 Retailers' Occupation Tax.

19 (c) The corporate authorities of a home rule municipality
20 ~~with a population in excess of 1,000,000~~ may impose a tax,
21 which shall not take effect prior to the first day of the third
22 month following the passage of the ordinance imposing the tax
23 and receipt of a certified copy of the ordinance by the
24 Department of Revenue ~~April 1, 1994~~, on persons engaged in the
25 business of selling fountain soft drinks at retail at a rate
26 not to exceed 9% of the cost price of the fountain soft drinks

1 at retail in such municipality. For purposes of this
2 subsection, the term "soft drink" has the meaning set forth in
3 Section 2-10 of the Retailers' Occupation Tax Act, as may be
4 amended from time to time, except that the term shall not be
5 limited to drinks contained in a closed or sealed bottle, can,
6 carton, or container; the term "fountain soft drinks" means
7 soft drinks which are prepared by the retail seller of the soft
8 drinks by mixing soft drink syrup or concentrate with water, by
9 hand or through a soft drink dispensing machine at or near the
10 point and time of sale to the retail purchaser; the term "soft
11 drink dispensing machine" means a device which mixes soft drink
12 syrup or concentrate with water and dispenses such mixture into
13 an open container as a ready to drink soft drink; the term
14 "sold at retail" shall mean any transfer of the ownership or
15 title to tangible personal property to a purchaser, for the
16 purpose of use or consumption, and not for the purpose of
17 resale, for valuable consideration; the term "cost price of the
18 fountain soft drinks" means the consideration paid by the
19 retail seller of the fountain soft drink, valued in money,
20 whether paid in money or otherwise, including cash, credits and
21 services, and shall be determined without any deduction on
22 account of the supplier's cost of the property sold or on
23 account or any other expenses incurred by the supplier, for the
24 purchase of soft drink syrup or concentrate which is designed
25 to be further mixed with water before it is consumed as a soft
26 drink; and the term "supplier" means any person who makes sales

1 of soft drink syrup or concentrate to a retail seller of
2 fountain soft drinks for purposes of resale as fountain soft
3 drinks. The tax authorized by this subsection shall be
4 collected, enforced, and administered by the municipality
5 imposing the tax. Persons subject to the tax may reimburse
6 themselves for their tax liability hereunder by separately
7 stating an amount equal to the tax as an additional charge to
8 their retail purchasers or may include such amount as part of
9 the selling price of the soft drink. The municipality imposing
10 the tax shall provide for its collection from the person
11 subject to the tax by requiring that the supplier to the person
12 subject to the tax collect and remit the tax to the
13 municipality. If the supplier fails to collect the tax or if
14 the person subject to the tax fails to pay the tax to its
15 supplier, the person subject to the tax shall make the tax
16 payment directly to the municipality. Payment of the tax by the
17 retailer to the supplier shall relieve the retailer of any
18 further liability for the tax.

19 (d) If either tax imposed or authorized by this Section
20 8-11-6b is repealed by the General Assembly or has its maximum
21 rate reduced by the General Assembly, or is declared unlawful
22 or unconstitutional on its face by any court of competent
23 jurisdiction after all appeals have been exhausted or the time
24 to appeal has expired, then this Section 8-11-6b is
25 automatically repealed and no longer effective without further
26 action by the General Assembly.

1 (e) Notwithstanding the preemption of taxes on the sale,
2 purchase or use of soft drinks, taxes on the sale, purchase, or
3 use of soft drinks which had been imposed by a municipality
4 prior to the effective date of this amendatory Act of 1993 are
5 specifically authorized under this Section for sales made on or
6 after the effective date of this amendatory Act of 1993 through
7 March 31, 1994.

8 (Source: P.A. 88-507.)

9 Section 99. Effective date. This Act takes effect January
10 1, 2012.