

# SB0157



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB0157

Introduced 2/8/2011, by Sen. Matt Murphy

#### 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 0.75%, unless a higher rate is authorized by referendum. Preempts home rule powers. Effective immediately.

LRB097 06182 HLH 46256 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

A BILL FOR

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.

21 As soon as possible after the first day of each month,  
22 beginning January 1, 2011, upon certification of the Department  
23 of Revenue, the Comptroller shall order transferred, and the  
24 Treasurer shall transfer, to the STAR Bonds Revenue Fund the  
25 local sales tax increment, as defined in the Innovation  
26 Development and Economy Act, collected under this Section

1 during the second preceding calendar month for sales within a  
2 STAR bond district.

3 After the monthly transfer to the STAR Bonds Revenue Fund,  
4 on or before the 25th day of each calendar month, the  
5 Department shall prepare and certify to the Comptroller the  
6 disbursement of stated sums of money to named counties, the  
7 counties to be those from which retailers have paid taxes or  
8 penalties hereunder to the Department during the second  
9 preceding calendar month. The amount to be paid to each county  
10 shall be the amount (not including credit memoranda) collected  
11 hereunder during the second preceding calendar month by the  
12 Department plus an amount the Department determines is  
13 necessary to offset any amounts that were erroneously paid to a  
14 different taxing body, and not including an amount equal to the  
15 amount of refunds made during the second preceding calendar  
16 month by the Department on behalf of such county, and not  
17 including any amount which the Department determines is  
18 necessary to offset any amounts which were payable to a  
19 different taxing body but were erroneously paid to the county,  
20 and not including any amounts that are transferred to the STAR  
21 Bonds Revenue Fund. Within 10 days after receipt, by the  
22 Comptroller, of the disbursement certification to the counties  
23 provided for in this Section to be given to the Comptroller by  
24 the Department, the Comptroller shall cause the orders to be  
25 drawn for the respective amounts in accordance with the  
26 directions contained in the certification.

1           In addition to the disbursement required by the preceding  
2 paragraph, an allocation shall be made in March of each year to  
3 each county that received more than \$500,000 in disbursements  
4 under the preceding paragraph in the preceding calendar year.  
5 The allocation shall be in an amount equal to the average  
6 monthly distribution made to each such county under the  
7 preceding paragraph during the preceding calendar year  
8 (excluding the 2 months of highest receipts). The distribution  
9 made in March of each year subsequent to the year in which an  
10 allocation was made pursuant to this paragraph and the  
11 preceding paragraph shall be reduced by the amount allocated  
12 and disbursed under this paragraph in the preceding calendar  
13 year. The Department shall prepare and certify to the  
14 Comptroller for disbursement the allocations made in  
15 accordance with this paragraph.

16           For the purpose of determining the local governmental unit  
17 whose tax is applicable, a retail sale by a producer of coal or  
18 other mineral mined in Illinois is a sale at retail at the  
19 place where the coal or other mineral mined in Illinois is  
20 extracted from the earth. This paragraph does not apply to coal  
21 or other mineral when it is delivered or shipped by the seller  
22 to the purchaser at a point outside Illinois so that the sale  
23 is exempt under the United States Constitution as a sale in  
24 interstate or foreign commerce.

25           Nothing in this Section shall be construed to authorize a  
26 county to impose a tax upon the privilege of engaging in any

1 business which under the Constitution of the United States may  
2 not be made the subject of taxation by this State.

3 An ordinance or resolution imposing or discontinuing a tax  
4 hereunder or effecting a change in the rate thereof shall be  
5 adopted and a certified copy thereof filed with the Department  
6 on or before the first day of June, whereupon the Department  
7 shall proceed to administer and enforce this Section as of the  
8 first day of September next following such adoption and filing.  
9 Beginning January 1, 1992, an ordinance or resolution imposing  
10 or discontinuing the tax hereunder or effecting a change in the  
11 rate thereof shall be adopted and a certified copy thereof  
12 filed with the Department on or before the first day of July,  
13 whereupon the Department shall proceed to administer and  
14 enforce this Section as of the first day of October next  
15 following such adoption and filing. Beginning January 1, 1993,  
16 an ordinance or resolution imposing or discontinuing the tax  
17 hereunder or effecting a change in the rate thereof shall be  
18 adopted and a certified copy thereof filed with the Department  
19 on or before the first day of October, whereupon the Department  
20 shall proceed to administer and enforce this Section as of the  
21 first day of January next following such adoption and filing.  
22 Beginning April 1, 1998, an ordinance or resolution imposing or  
23 discontinuing the tax hereunder or effecting a change in the  
24 rate thereof shall either (i) be adopted and a certified copy  
25 thereof filed with the Department on or before the first day of  
26 April, whereupon the Department shall proceed to administer and

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

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

13 Except as otherwise provided in this Section, beginning on  
14 the first day of the first month to occur not less than 30  
15 calendar days after the effective date of this amendatory Act  
16 of the 97th General Assembly, the maximum rate of any tax  
17 imposed under this Section is 0.75%. If the rate of tax exceeds  
18 0.75% on the effective date of this amendatory Act of the 97th  
19 General Assembly, then the rate shall be reduced to 0.75%  
20 beginning on the first day of the first month to occur not less  
21 than 30 calendar days after the effective date of this  
22 amendatory Act of the 97th General Assembly. The county board  
23 of a county that is authorized to impose a tax under this  
24 Section may increase the rate to more than 0.75%, but only  
25 after the question is approved by the voters of the county at  
26 an election held in accordance with the general election law.



1 The county board proposing the increase shall certify the  
2 proposition to the proper election officials who shall submit  
3 the proposition to the voters at an election in accordance with  
4 the general election law. The proposition shall be in  
5 substantially the following form:

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

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

11 A home rule unit may not impose retailers' occupation taxes  
12 in a manner that is inconsistent with this Section. This  
13 Section is a limitation of home rule powers and functions under  
14 subsection (g) of Section 6 of Article VII of the Illinois  
15 Constitution.

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

18 (Source: P.A. 96-939, eff. 6-24-10.)

19 (55 ILCS 5/5-1007) (from Ch. 34, par. 5-1007)

20 Sec. 5-1007. Home Rule County Service Occupation Tax Law.  
21 The corporate authorities of a home rule county may impose a  
22 tax upon all persons engaged, in such county, in the business  
23 of making sales of service at the same rate of tax imposed  
24 pursuant to Section 5-1006 of the selling price of all tangible  
25 personal property transferred by such servicemen either in the

1 form of tangible personal property or in the form of real  
2 estate as an incident to a sale of service. If imposed, such  
3 tax shall only be imposed in 1/4% increments. On and after  
4 September 1, 1991, this additional tax may not be imposed on  
5 the sales of food for human consumption which is to be consumed  
6 off the premises where it is sold (other than alcoholic  
7 beverages, soft drinks and food which has been prepared for  
8 immediate consumption) and prescription and nonprescription  
9 medicines, drugs, medical appliances and insulin, urine  
10 testing materials, syringes and needles used by diabetics. The  
11 tax imposed by a home rule county pursuant to this Section and  
12 all civil penalties that may be assessed as an incident thereof  
13 shall be collected and enforced by the State Department of  
14 Revenue. The certificate of registration which is issued by the  
15 Department to a retailer under the Retailers' Occupation Tax  
16 Act or under the Service Occupation Tax Act shall permit such  
17 registrant to engage in a business which is taxable under any  
18 ordinance or resolution enacted pursuant to this Section  
19 without registering separately with the Department under such  
20 ordinance or resolution or under this Section. The Department  
21 shall have full power to administer and enforce this Section;  
22 to collect all taxes and penalties due hereunder; to dispose of  
23 taxes and penalties so collected in the manner hereinafter  
24 provided; and to determine all rights to credit memoranda  
25 arising on account of the erroneous payment of tax or penalty  
26 hereunder. In the administration of, and compliance with, this

1 Section the Department and persons who are subject to this  
2 Section shall have the same rights, remedies, privileges,  
3 immunities, powers and duties, and be subject to the same  
4 conditions, restrictions, limitations, penalties and  
5 definitions of terms, and employ the same modes of procedure,  
6 as are prescribed in Sections 1a-1, 2, 2a, 3 through 3-50 (in  
7 respect to all provisions therein other than the State rate of  
8 tax), 4 (except that the reference to the State shall be to the  
9 taxing county), 5, 7, 8 (except that the jurisdiction to which  
10 the tax shall be a debt to the extent indicated in that Section  
11 8 shall be the taxing county), 9 (except as to the disposition  
12 of taxes and penalties collected, and except that the returned  
13 merchandise credit for this county tax may not be taken against  
14 any State tax), 10, 11, 12 (except the reference therein to  
15 Section 2b of the Retailers' Occupation Tax Act), 13 (except  
16 that any reference to the State shall mean the taxing county),  
17 the first paragraph of Section 15, 16, 17, 18, 19 and 20 of the  
18 Service Occupation Tax Act and Section 3-7 of the Uniform  
19 Penalty and Interest Act, as fully as if those provisions were  
20 set forth herein.

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

24 Persons subject to any tax imposed pursuant to the  
25 authority granted in this Section may reimburse themselves for  
26 their serviceman's tax liability hereunder by separately

1 stating such tax as an additional charge, which charge may be  
2 stated in combination, in a single amount, with State tax which  
3 servicemen are authorized to collect under the Service Use Tax  
4 Act, pursuant to such bracket schedules as the Department may  
5 prescribe.

6 Whenever the Department determines that a refund should be  
7 made under this Section to a claimant instead of issuing credit  
8 memorandum, the Department shall notify the State Comptroller,  
9 who shall cause the order to be drawn for the amount specified,  
10 and to the person named, in such notification from the  
11 Department. Such refund shall be paid by the State Treasurer  
12 out of the home rule county retailers' occupation tax fund.

13 The Department shall forthwith pay over to the State  
14 Treasurer, ex-officio, as trustee, all taxes and penalties  
15 collected hereunder.

16 As soon as possible after the first day of each month,  
17 beginning January 1, 2011, upon certification of the Department  
18 of Revenue, the Comptroller shall order transferred, and the  
19 Treasurer shall transfer, to the STAR Bonds Revenue Fund the  
20 local sales tax increment, as defined in the Innovation  
21 Development and Economy Act, collected under this Section  
22 during the second preceding calendar month for sales within a  
23 STAR bond district.

24 After the monthly transfer to the STAR Bonds Revenue Fund,  
25 on or before the 25th day of each calendar month, the  
26 Department shall prepare and certify to the Comptroller the

1 disbursement of stated sums of money to named counties, the  
2 counties to be those from which suppliers and servicemen have  
3 paid taxes or penalties hereunder to the Department during the  
4 second preceding calendar month. The amount to be paid to each  
5 county shall be the amount (not including credit memoranda)  
6 collected hereunder during the second preceding calendar month  
7 by the Department, and not including an amount equal to the  
8 amount of refunds made during the second preceding calendar  
9 month by the Department on behalf of such county, and not  
10 including any amounts that are transferred to the STAR Bonds  
11 Revenue Fund. Within 10 days after receipt, by the Comptroller,  
12 of the disbursement certification to the counties provided for  
13 in this Section to be given to the Comptroller by the  
14 Department, the Comptroller shall cause the orders to be drawn  
15 for the respective amounts in accordance with the directions  
16 contained in such certification.

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

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

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

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

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

13 Except as otherwise provided in this Section, beginning on  
14 the first day of the first month to occur not less than 30  
15 calendar days after the effective date of this amendatory Act  
16 of the 97th General Assembly, the maximum rate of any tax  
17 imposed under this Section is 0.75%. If the rate of tax exceeds  
18 0.75% on the effective date of this amendatory Act of the 97th  
19 General Assembly, then the rate shall be reduced to 0.75%  
20 beginning on the first day of the first month to occur not less  
21 than 30 calendar days after the effective date of this  
22 amendatory Act of the 97th General Assembly. The county board  
23 of a county that is authorized to impose a tax under this  
24 Section may increase the rate to more than 0.75%, but only  
25 after the question is approved by the voters of the county at  
26 an election held in accordance with the general election law.

1 The county board proposing the increase shall certify the  
2 proposition to the proper election officials who shall submit  
3 the proposition to the voters at an election in accordance with  
4 the general election law. The proposition shall be in  
5 substantially the following form:

6 "Shall (county) be authorized to increase its service  
7 occupation tax to (percent)?"

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

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

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

18 (Source: P.A. 96-939, eff. 6-24-10.)

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law.