



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/06/04, by Tom Cross

SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-1

from Ch. 24, par. 8-11-1

Amends the Home Rule Municipal Retailers' Occupation Tax Act in the Illinois Municipal Code. Makes a technical change.

LRB093 16206 MKM 41839 b

1 AN ACT concerning certain taxes.

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 as follows:

6 (65 ILCS 5/8-11-1) (from Ch. 24, par. 8-11-1)

7 Sec. 8-11-1. Home Rule Municipal Retailers' Occupation Tax
8 Act. The corporate authorities of a home rule municipality may
9 impose a tax upon all persons engaged in the business of
10 selling tangible personal property, other than an item of
11 tangible personal property titled or registered with an agency
12 of this State's government, at retail in the municipality on
13 the gross receipts from these sales made in the course of such
14 business. If imposed, the tax shall only be imposed in .25%
15 ~~1/4%~~ increments. On and after September 1, 1991, this
16 additional tax may not be imposed on the sales of food for
17 human consumption that is to be consumed off the premises where
18 it is sold (other than alcoholic beverages, soft drinks and
19 food that has been prepared for immediate consumption) and
20 prescription and nonprescription medicines, drugs, medical
21 appliances and insulin, urine testing materials, syringes and
22 needles used by diabetics. The tax imposed by a home rule
23 municipality under this Section and all civil penalties that
24 may be assessed as an incident of the tax shall be collected
25 and enforced by the State Department of Revenue. The
26 certificate of registration that is issued by the Department to
27 a retailer under the Retailers' Occupation Tax Act shall permit
28 the retailer to engage in a business that is taxable under any
29 ordinance or resolution enacted pursuant to this Section
30 without registering separately with the Department under such
31 ordinance or resolution or under this Section. The Department
32 shall have full power to administer and enforce this Section;

1 to collect all taxes and penalties due hereunder; to dispose of
2 taxes and penalties so collected in the manner hereinafter
3 provided; and to determine all rights to credit memoranda
4 arising on account of the erroneous payment of tax or penalty
5 hereunder. In the administration of, and compliance with, this
6 Section the Department and persons who are subject to this
7 Section shall have the same rights, remedies, privileges,
8 immunities, powers and duties, and be subject to the same
9 conditions, restrictions, limitations, penalties and
10 definitions of terms, and employ the same modes of procedure,
11 as are prescribed in Sections 1, 1a, 1d, 1e, 1f, 1i, 1j, 1k,
12 1m, 1n, 2 through 2-65 (in respect to all provisions therein
13 other than the State rate of tax), 2c, 3 (except as to the
14 disposition of taxes and penalties collected), 4, 5, 5a, 5b,
15 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9,
16 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and
17 Section 3-7 of the Uniform Penalty and Interest Act, as fully
18 as if those provisions were set forth herein.

19 No tax may be imposed by a home rule municipality under
20 this Section unless the municipality also imposes a tax at the
21 same rate under Section 8-11-5 of this Act.

22 Persons subject to any tax imposed under the authority
23 granted in this Section may reimburse themselves for their
24 seller's tax liability hereunder by separately stating that tax
25 as an additional charge, which charge may be stated in
26 combination, in a single amount, with State tax which sellers
27 are required to collect under the Use Tax Act, pursuant to such
28 bracket schedules as the Department may prescribe.

29 Whenever the Department determines that a refund should be
30 made under this Section to a claimant instead of issuing a
31 credit memorandum, the Department shall notify the State
32 Comptroller, who shall cause the order to be drawn for the
33 amount specified and to the person named in the notification
34 from the Department. The refund shall be paid by the State
35 Treasurer out of the home rule municipal retailers' occupation
36 tax fund.

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

25 In addition to the disbursement required by the preceding
26 paragraph and in order to mitigate delays caused by
27 distribution procedures, an allocation shall, if requested, be
28 made within 10 days after January 14, 1991, and in November of
29 1991 and each year thereafter, to each municipality that
30 received more than \$500,000 during the preceding fiscal year,
31 (July 1 through June 30) whether collected by the municipality
32 or disbursed by the Department as required by this Section.
33 Within 10 days after January 14, 1991, participating
34 municipalities shall notify the Department in writing of their
35 intent to participate. In addition, for the initial
36 distribution, participating municipalities shall certify to

1 the Department the amounts collected by the municipality for
2 each month under its home rule occupation and service
3 occupation tax during the period July 1, 1989 through June 30,
4 1990. The allocation within 10 days after January 14, 1991,
5 shall be in an amount equal to the monthly average of these
6 amounts, excluding the 2 months of highest receipts. The
7 monthly average for the period of July 1, 1990 through June 30,
8 1991 will be determined as follows: the amounts collected by
9 the municipality under its home rule occupation and service
10 occupation tax during the period of July 1, 1990 through
11 September 30, 1990, plus amounts collected by the Department
12 and paid to such municipality through June 30, 1991, excluding
13 the 2 months of highest receipts. The monthly average for each
14 subsequent period of July 1 through June 30 shall be an amount
15 equal to the monthly distribution made to each such
16 municipality under the preceding paragraph during this period,
17 excluding the 2 months of highest receipts. The distribution
18 made in November 1991 and each year thereafter under this
19 paragraph and the preceding paragraph shall be reduced by the
20 amount allocated and disbursed under this paragraph in the
21 preceding period of July 1 through June 30. The Department
22 shall prepare and certify to the Comptroller for disbursement
23 the allocations made in accordance with this paragraph.

24 For the purpose of determining the local governmental unit
25 whose tax is applicable, a retail sale by a producer of coal or
26 other mineral mined in Illinois is a sale at retail at the
27 place where the coal or other mineral mined in Illinois is
28 extracted from the earth. This paragraph does not apply to coal
29 or other mineral when it is delivered or shipped by the seller
30 to the purchaser at a point outside Illinois so that the sale
31 is exempt under the United States Constitution as a sale in
32 interstate or foreign commerce.

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

1 An ordinance or resolution imposing or discontinuing a tax
2 hereunder or effecting a change in the rate thereof shall be
3 adopted and a certified copy thereof filed with the Department
4 on or before the first day of June, whereupon the Department
5 shall proceed to administer and enforce this Section as of the
6 first day of September next following the adoption and filing.
7 Beginning January 1, 1992, an ordinance or resolution imposing
8 or discontinuing the tax hereunder or effecting a change in the
9 rate thereof shall be adopted and a certified copy thereof
10 filed with the Department on or before the first day of July,
11 whereupon the Department shall proceed to administer and
12 enforce this Section as of the first day of October next
13 following such adoption and filing. Beginning January 1, 1993,
14 an ordinance or resolution imposing or discontinuing the tax
15 hereunder or effecting a change in the rate thereof shall be
16 adopted and a certified copy thereof filed with the Department
17 on or before the first day of October, whereupon the Department
18 shall proceed to administer and enforce this Section as of the
19 first day of January next following the adoption and filing.
20 However, a municipality located in a county with a population
21 in excess of 3,000,000 that elected to become a home rule unit
22 at the general primary election in 1994 may adopt an ordinance
23 or resolution imposing the tax under this Section and file a
24 certified copy of the ordinance or resolution with the
25 Department on or before July 1, 1994. The Department shall then
26 proceed to administer and enforce this Section as of October 1,
27 1994. Beginning April 1, 1998, an ordinance or resolution
28 imposing or discontinuing the tax hereunder or effecting a
29 change in the rate thereof shall either (i) be adopted and a
30 certified copy thereof filed with the Department on or before
31 the first day of April, whereupon the Department shall proceed
32 to administer and enforce this Section as of the first day of
33 July next following the adoption and filing; or (ii) be adopted
34 and a certified copy thereof filed with the Department on or
35 before the first day of October, whereupon the Department shall
36 proceed to administer and enforce this Section as of the first

1 day of January next following the adoption and filing.

2 When certifying the amount of a monthly disbursement to a
3 municipality under this Section, the Department shall increase
4 or decrease the amount by an amount necessary to offset any
5 misallocation of previous disbursements. The offset amount
6 shall be the amount erroneously disbursed within the previous 6
7 months from the time a misallocation is discovered.

8 Any unobligated balance remaining in the Municipal
9 Retailers' Occupation Tax Fund on December 31, 1989, which fund
10 was abolished by Public Act 85-1135, and all receipts of
11 municipal tax as a result of audits of liability periods prior
12 to January 1, 1990, shall be paid into the Local Government Tax
13 Fund for distribution as provided by this Section prior to the
14 enactment of Public Act 85-1135. All receipts of municipal tax
15 as a result of an assessment not arising from an audit, for
16 liability periods prior to January 1, 1990, shall be paid into
17 the Local Government Tax Fund for distribution before July 1,
18 1990, as provided by this Section prior to the enactment of
19 Public Act 85-1135; and on and after July 1, 1990, all such
20 receipts shall be distributed as provided in Section 6z-18 of
21 the State Finance Act.

22 As used in this Section, "municipal" and "municipality"
23 means a city, village or incorporated town, including an
24 incorporated town that has superseded a civil township.

25 This Section shall be known and may be cited as the Home
26 Rule Municipal Retailers' Occupation Tax Act.

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