

HB1497



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB1497

by Rep. Sam Yingling

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 in a Section authorizing the imposition of the tax.

LRB101 07999 AWJ 53056 b

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 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 ~~The~~ corporate authorities of a home rule municipality
9 may 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 1/4%
15 increments. On and after September 1, 1991, this additional tax
16 may not be imposed on tangible personal property taxed at the
17 1% rate under the Retailers' Occupation Tax Act. The tax
18 imposed by a home rule municipality under this Section and all
19 civil penalties that may be assessed as an incident of the tax
20 shall be collected and enforced by the State Department of
21 Revenue. The certificate of registration that is issued by the
22 Department to a retailer under the Retailers' Occupation Tax
23 Act shall permit the retailer to engage in a business that is

1 taxable under any ordinance or resolution enacted pursuant to
2 this Section without registering separately with the
3 Department under such ordinance or resolution or under this
4 Section. The Department shall have full power to administer and
5 enforce this Section; to collect all taxes and penalties due
6 hereunder; to dispose of taxes and penalties so collected in
7 the manner hereinafter provided; and to determine all rights to
8 credit memoranda arising on account of the erroneous payment of
9 tax or penalty hereunder. In the administration of, and
10 compliance with, this Section the Department and persons who
11 are subject to this Section shall have the same rights,
12 remedies, privileges, immunities, powers and duties, and be
13 subject to the same conditions, restrictions, limitations,
14 penalties and definitions of terms, and employ the same modes
15 of procedure, as are prescribed in Sections 1, 1a, 1d, 1e, 1f,
16 1i, 1j, 1k, 1m, 1n, 2 through 2-65 (in respect to all
17 provisions therein other than the State rate of tax), 2c, 3
18 (except as to the disposition of taxes and penalties
19 collected), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k,
20 5l, 6, 6a, 6b, 6c, 6d, 7, 8, 9, 10, 11, 12 and 13 of the
21 Retailers' Occupation Tax Act and Section 3-7 of the Uniform
22 Penalty and Interest Act, as fully as if those provisions were
23 set forth herein.

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

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

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

16 The Department shall immediately pay over to the State
17 Treasurer, ex officio, as trustee, all taxes and penalties
18 collected hereunder.

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

1 After the monthly transfer to the STAR Bonds Revenue Fund,
2 on or before the 25th day of each calendar month, the
3 Department shall prepare and certify to the Comptroller the
4 disbursement of stated sums of money to named municipalities,
5 the municipalities to be those from which retailers have paid
6 taxes or penalties hereunder to the Department during the
7 second preceding calendar month. The amount to be paid to each
8 municipality shall be the amount (not including credit
9 memoranda) collected hereunder during the second preceding
10 calendar month by the Department plus an amount the Department
11 determines is necessary to offset any amounts that were
12 erroneously paid to a different taxing body, and not including
13 an amount equal to the amount of refunds made during the second
14 preceding calendar month by the Department on behalf of such
15 municipality, and not including any amount that the Department
16 determines is necessary to offset any amounts that were payable
17 to a different taxing body but were erroneously paid to the
18 municipality, and not including any amounts that are
19 transferred to the STAR Bonds Revenue Fund, less 1.5% of the
20 remainder, which the Department shall transfer into the Tax
21 Compliance and Administration Fund. The Department, at the time
22 of each monthly disbursement to the municipalities, shall
23 prepare and certify to the State Comptroller the amount to be
24 transferred into the Tax Compliance and Administration Fund
25 under this Section. Within 10 days after receipt by the
26 Comptroller of the disbursement certification to the

1 municipalities and the Tax Compliance and Administration Fund
2 provided for in this Section to be given to the Comptroller by
3 the Department, the Comptroller shall cause the orders to be
4 drawn for the respective amounts in accordance with the
5 directions contained in the certification.

6 In addition to the disbursement required by the preceding
7 paragraph and in order to mitigate delays caused by
8 distribution procedures, an allocation shall, if requested, be
9 made within 10 days after January 14, 1991, and in November of
10 1991 and each year thereafter, to each municipality that
11 received more than \$500,000 during the preceding fiscal year,
12 (July 1 through June 30) whether collected by the municipality
13 or disbursed by the Department as required by this Section.
14 Within 10 days after January 14, 1991, participating
15 municipalities shall notify the Department in writing of their
16 intent to participate. In addition, for the initial
17 distribution, participating municipalities shall certify to
18 the Department the amounts collected by the municipality for
19 each month under its home rule occupation and service
20 occupation tax during the period July 1, 1989 through June 30,
21 1990. The allocation within 10 days after January 14, 1991,
22 shall be in an amount equal to the monthly average of these
23 amounts, excluding the 2 months of highest receipts. The
24 monthly average for the period of July 1, 1990 through June 30,
25 1991 will be determined as follows: the amounts collected by
26 the municipality under its home rule occupation and service

1 occupation tax during the period of July 1, 1990 through
2 September 30, 1990, plus amounts collected by the Department
3 and paid to such municipality through June 30, 1991, excluding
4 the 2 months of highest receipts. The monthly average for each
5 subsequent period of July 1 through June 30 shall be an amount
6 equal to the monthly distribution made to each such
7 municipality under the preceding paragraph during this period,
8 excluding the 2 months of highest receipts. The distribution
9 made in November 1991 and each year thereafter under this
10 paragraph and the preceding paragraph shall be reduced by the
11 amount allocated and disbursed under this paragraph in the
12 preceding period of July 1 through June 30. The Department
13 shall prepare and certify to the Comptroller for disbursement
14 the allocations made in accordance with this paragraph.

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

24 Nothing in this Section shall be construed to authorize a
25 municipality to impose a tax upon the privilege of engaging in
26 any business which under the Constitution of the United States

1 may not be made the subject of taxation by this State.

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

1 proceed to administer and enforce this Section as of October 1,
2 1994. Beginning April 1, 1998, an ordinance or resolution
3 imposing or discontinuing the tax hereunder or effecting a
4 change in the rate thereof shall either (i) be adopted and a
5 certified copy thereof filed with the Department on or before
6 the first day of April, whereupon the Department shall proceed
7 to administer and enforce this Section as of the first day of
8 July next following the adoption and filing; or (ii) be adopted
9 and a certified copy thereof filed with the Department on or
10 before the first day of October, whereupon the Department shall
11 proceed to administer and enforce this Section as of the first
12 day of January next following the adoption and filing.

13 When certifying the amount of a monthly disbursement to a
14 municipality under this Section, the Department shall increase
15 or decrease the amount by an amount necessary to offset any
16 misallocation of previous disbursements. The offset amount
17 shall be the amount erroneously disbursed within the previous 6
18 months from the time a misallocation is discovered.

19 Any unobligated balance remaining in the Municipal
20 Retailers' Occupation Tax Fund on December 31, 1989, which fund
21 was abolished by Public Act 85-1135, and all receipts of
22 municipal tax as a result of audits of liability periods prior
23 to January 1, 1990, shall be paid into the Local Government Tax
24 Fund for distribution as provided by this Section prior to the
25 enactment of Public Act 85-1135. All receipts of municipal tax
26 as a result of an assessment not arising from an audit, for

1 liability periods prior to January 1, 1990, shall be paid into
2 the Local Government Tax Fund for distribution before July 1,
3 1990, as provided by this Section prior to the enactment of
4 Public Act 85-1135; and on and after July 1, 1990, all such
5 receipts shall be distributed as provided in Section 6z-18 of
6 the State Finance Act.

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

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

12 (Source: P.A. 99-217, eff. 7-31-15; 100-23, eff. 7-6-17;
13 100-587, eff. 6-4-18; 100-1171, eff. 1-4-19; revised 1-9-19.)