

# SB3658



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3658

Introduced 1/21/2022, by Sen. Robert F. Martwick

### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1035.1

from Ch. 34, par. 5-1035.1

Amends the County Motor Fuel Tax Law in the Counties Code. Defines "sold at retail within the county" and "retailers within the county". Effective January 1, 2023.

LRB102 23519 AWJ 32701 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 Counties Code is amended by changing  
5 Section 5-1035.1 as follows:

6 (55 ILCS 5/5-1035.1) (from Ch. 34, par. 5-1035.1)

7 Sec. 5-1035.1. County Motor Fuel Tax Law.

8 (a) The county board of the counties of DuPage, Kane,  
9 Lake, Will, and McHenry may, by an ordinance or resolution  
10 adopted by an affirmative vote of a majority of the members  
11 elected or appointed to the county board, impose a tax upon all  
12 persons engaged in the county in the business of selling motor  
13 fuel, as now or hereafter defined in the Motor Fuel Tax Law, at  
14 retail for the operation of motor vehicles upon public  
15 highways or for the operation of recreational watercraft upon  
16 waterways. The collection of a tax under this Section based on  
17 gallonage of gasoline used for the propulsion of any aircraft  
18 is prohibited, and the collection of a tax based on gallonage  
19 of special fuel used for the propulsion of any aircraft is  
20 prohibited on and after December 1, 2019. Kane County may  
21 exempt diesel fuel from the tax imposed pursuant to this  
22 Section. The initial tax rate may not be less than 4 cents per  
23 gallon of motor fuel sold at retail within the county for the

1 purpose of use or consumption and not for the purpose of resale  
2 and may not exceed 8 cents per gallon of motor fuel sold at  
3 retail within the county for the purpose of use or consumption  
4 and not for the purpose of resale. The proceeds from the tax  
5 shall be used by the county solely for the purposes of  
6 operating, constructing, and improving public highways,  
7 waterways, shared-use paths for nonvehicular public travel,  
8 sidewalks, and bike paths and acquiring real property and  
9 rights-of-way for public highways, waterways, shared-use paths  
10 for nonvehicular public travel, sidewalks, and bike paths  
11 within the county imposing the tax.

12 As used in this subsection, "sold at retail within the  
13 county" means the county where possession of the motor fuel is  
14 taken by the purchaser.

15 (a-5) By June 1, 2020, and by June 1 of each year  
16 thereafter, the Department of Revenue shall determine an  
17 annual rate increase to take effect on July 1 of that calendar  
18 year and continue through June 30 of the next calendar year.  
19 Not later than June 1 of each year, the Department of Revenue  
20 shall publish on its website the rate that will take effect on  
21 July 1 of that calendar year. The rate shall be equal to the  
22 rate in effect increased by an amount equal to the percentage  
23 increase, if any, in the Consumer Price Index for All Urban  
24 Consumers for all items, published by the United States  
25 Department of Labor for the 12 months ending in March of each  
26 year. The rate shall be rounded to the nearest one-tenth of one

1 cent. Each new rate may not exceed the rate in effect on June  
2 30 of the previous year plus one cent.

3 (b) A tax imposed pursuant to this Section, and all civil  
4 penalties that may be assessed as an incident thereof, shall  
5 be administered, collected, and enforced by the Illinois  
6 Department of Revenue in the same manner as the tax imposed  
7 under the Retailers' Occupation Tax Act, as now or hereafter  
8 amended, insofar as may be practicable; except that in the  
9 event of a conflict with the provisions of this Section, this  
10 Section shall control. The Department of Revenue shall have  
11 full power: to administer and enforce this Section; to collect  
12 all taxes and penalties due hereunder; to dispose of taxes and  
13 penalties so collected in the manner hereinafter provided; and  
14 to determine all rights to credit memoranda arising on account  
15 of the erroneous payment of tax or penalty hereunder.

16 (b-5) Persons subject to any tax imposed under the  
17 authority granted in this Section may reimburse themselves for  
18 their seller's tax liability hereunder by separately stating  
19 that tax as an additional charge, which charge may be stated in  
20 combination, in a single amount, with State tax which sellers  
21 are required to collect under the Use Tax Act, pursuant to such  
22 bracket schedules as the Department may prescribe.

23 (c) Whenever the Department determines that a refund shall  
24 be made under this Section to a claimant instead of issuing a  
25 credit memorandum, the Department shall notify the State  
26 Comptroller, who shall cause the order to be drawn for the

1 amount specified, and to the person named, in the notification  
2 from the Department. The refund shall be paid by the State  
3 Treasurer out of the County Option Motor Fuel Tax Fund.

4 (d) The Department shall forthwith pay over to the State  
5 Treasurer, ex officio, as trustee, all taxes and penalties  
6 collected hereunder, which shall be deposited into the County  
7 Option Motor Fuel Tax Fund, a special fund in the State  
8 Treasury which is hereby created. On or before the 25th day of  
9 each calendar month, the Department shall prepare and certify  
10 to the State Comptroller the disbursement of stated sums of  
11 money to named counties for which taxpayers have paid taxes or  
12 penalties hereunder to the Department during the second  
13 preceding calendar month. The amount to be paid to each county  
14 shall be the amount (not including credit memoranda) collected  
15 hereunder from retailers within the county during the second  
16 preceding calendar month by the Department, but not including  
17 an amount equal to the amount of refunds made during the second  
18 preceding calendar month by the Department on behalf of the  
19 county; less 2% of the balance, which sum shall be retained by  
20 the State Treasurer to cover the costs incurred by the  
21 Department in administering and enforcing the provisions of  
22 this Section. The Department, at the time of each monthly  
23 disbursement to the counties, shall prepare and certify to the  
24 Comptroller the amount so retained by the State Treasurer,  
25 which shall be transferred into the Tax Compliance and  
26 Administration Fund.

1       As used in this subsection, "retailers within the county"  
2 include anyone subject to tax under this Section in that  
3 county.

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

9       (f) Until January 1, 2020, an ordinance or resolution  
10 imposing a tax hereunder or effecting a change in the rate  
11 thereof shall be effective on the first day of the second  
12 calendar month next following the month in which the ordinance  
13 or resolution is adopted and a certified copy thereof is filed  
14 with the Department of Revenue, whereupon the Department of  
15 Revenue shall proceed to administer and enforce this Section  
16 on behalf of the county as of the effective date of the  
17 ordinance or resolution.

18       On and after January 1, 2020, an ordinance or resolution  
19 imposing or discontinuing the tax hereunder or effecting a  
20 change in the rate thereof shall either: (i) be adopted and a  
21 certified copy thereof filed with the Department on or before  
22 the first day of April, whereupon the Department shall proceed  
23 to administer and enforce this Section as of the first day of  
24 July next following the adoption and filing; or (ii) be  
25 adopted and a certified copy thereof filed with the Department  
26 on or before the first day of October, whereupon the

1 Department shall proceed to administer and enforce this  
2 Section as of the first day of January next following the  
3 adoption and filing.

4 (g) This Section shall be known and may be cited as the  
5 County Motor Fuel Tax Law.

6 (Source: P.A. 101-10, eff. 6-5-19; 101-32, eff. 6-28-19;  
7 101-275, eff. 8-9-19; 101-604, eff. 12-13-19; 102-452, eff.  
8 8-20-21.)

9 Section 99. Effective date. This Act takes effect January  
10 1, 2023.