



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2712

Introduced 02/22/05, by Rep. Gary Hannig

SYNOPSIS AS INTRODUCED:

70 ILCS 3610/5.01

from Ch. 111 2/3, par. 355.01

Amends the Local Mass Transit District Act. Provides that, after July 1, 2004, if the voters have approved a referendum to increase the tax rate, the Metro East Mass Transit District Board of Trustees may adopt by a majority vote an ordinance that excludes tangible personal property that is titled or registered with a State agency from an approved tax rate increase and establishes requirements for the administration and enforcement of the rate increase. Prohibits the Board from reimposing a previously excluded tax rate increase. Makes corresponding changes. Deletes provisions (i) requiring the Board to forward a copy of certain fee ordinances to the Secretary of State; (ii) authorizing the Board to impose a penalty against a retailer that fails to pay applicable fees within 30 days of the date of the transaction; and (iii) authorizing the Board to impose a replacement vehicle tax. Effective immediately.

LRB094 03830 MKM 33841 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning taxes.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Local Mass Transit District Act is amended
5 by changing Section 5.01 as follows:

6 (70 ILCS 3610/5.01) (from Ch. 111 2/3, par. 355.01)

7 Sec. 5.01. Metro East Mass Transit District; use and
8 occupation taxes.

9 (a) The Board of Trustees of any Metro East Mass Transit
10 District may, by ordinance adopted with the concurrence of
11 two-thirds of the then trustees, impose throughout the District
12 any or all of the taxes and fees provided in this Section. All
13 taxes and fees imposed under this Section shall be used only
14 for public mass transportation systems, and the amount used to
15 provide mass transit service to unserved areas of the District
16 shall be in the same proportion to the total proceeds as the
17 number of persons residing in the unserved areas is to the
18 total population of the District. Except as otherwise provided
19 in this Act, taxes imposed under this Section and civil
20 penalties imposed incident thereto shall be collected and
21 enforced by the State Department of Revenue. The Department
22 shall have the power to administer and enforce the taxes and to
23 determine all rights for refunds for erroneous payments of the
24 taxes.

25 (b) The Board may impose a Metro East Mass Transit District
26 Retailers' Occupation Tax upon all persons engaged in the
27 business of selling tangible personal property at retail in the
28 district at a rate of 1/4 of 1%, or as authorized under
29 subsection (d-5) of this Section, of the gross receipts from
30 the sales made in the course of such business within the
31 district. The tax imposed under this Section and all civil
32 penalties that may be assessed as an incident thereof shall be

1 collected and enforced by the State Department of Revenue. The
2 Department shall have full power to administer and enforce this
3 Section; to collect all taxes and penalties so collected in the
4 manner hereinafter provided; and to determine all rights to
5 credit memoranda arising on account of the erroneous payment of
6 tax or penalty hereunder. In the administration of, and
7 compliance with, this Section, the Department and persons who
8 are subject to this Section shall have the same rights,
9 remedies, privileges, immunities, powers and duties, and be
10 subject to the same conditions, restrictions, limitations,
11 penalties, exclusions, exemptions and definitions of terms and
12 employ the same modes of procedure, as are prescribed in
13 Sections 1, 1a, 1a-1, 1c, 1d, 1e, 1f, 1i, 1j, 2 through 2-65
14 (in respect to all provisions therein other than the State rate
15 of tax), 2c, 3 (except as to the disposition of taxes and
16 penalties collected), 4, 5, 5a, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j,
17 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13, and 14 of the
18 Retailers' 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 Persons subject to any tax imposed under the Section may
22 reimburse themselves for their seller's tax liability
23 hereunder by separately stating the tax as an additional
24 charge, which charge may be stated in combination, in a single
25 amount, with State taxes that sellers are required to collect
26 under the Use Tax Act, in accordance with such bracket
27 schedules as the Department may prescribe.

28 Whenever the Department determines that a refund should be
29 made under this Section to a claimant instead of issuing a
30 credit memorandum, the Department shall notify the State
31 Comptroller, who shall cause the warrant to be drawn for the
32 amount specified, and to the person named, in the notification
33 from the Department. The refund shall be paid by the State
34 Treasurer out of the Metro East Mass Transit District tax fund
35 established under paragraph (g) of this Section.

36 If a tax is imposed under this subsection (b), a tax shall

1 also be imposed under subsections (c) and (d) of this Section.

2 For the purpose of determining whether a tax authorized
3 under this Section is applicable, a retail sale, by a producer
4 of coal or other mineral mined in Illinois, is a sale at retail
5 at the place where the coal or other mineral mined in Illinois
6 is extracted from the earth. This paragraph does not apply to
7 coal or other mineral when it is delivered or shipped by the
8 seller to the purchaser at a point outside Illinois so that the
9 sale is exempt under the Federal Constitution as a sale in
10 interstate or foreign commerce.

11 Nothing in this Section shall be construed to authorize the
12 Metro East Mass Transit District to impose a tax upon the
13 privilege of engaging in any business which under the
14 Constitution of the United States may not be made the subject
15 of taxation by this State.

16 (c) If a tax has been imposed under subsection (b), a Metro
17 East Mass Transit District Service Occupation Tax shall also be
18 imposed upon all persons engaged, in the district, in the
19 business of making sales of service, who, as an incident to
20 making those sales of service, transfer tangible personal
21 property within the District, either in the form of tangible
22 personal property or in the form of real estate as an incident
23 to a sale of service. The tax rate shall be 1/4%, or as
24 authorized under subsection (d-5) of this Section, of the
25 selling price of tangible personal property so transferred
26 within the district. The tax imposed under this paragraph and
27 all civil penalties that may be assessed as an incident thereof
28 shall be collected and enforced by the State Department of
29 Revenue. The Department shall have full power to administer and
30 enforce this paragraph; to collect all taxes and penalties due
31 hereunder; to dispose of taxes and penalties so collected in
32 the manner hereinafter provided; and to determine all rights to
33 credit memoranda arising on account of the erroneous payment of
34 tax or penalty hereunder. In the administration of, and
35 compliance with this paragraph, the Department and persons who
36 are subject to this paragraph shall have the same rights,

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

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

30 Whenever the Department determines that a refund should be
31 made under this paragraph to a claimant instead of issuing a
32 credit memorandum, the Department shall notify the State
33 Comptroller, who shall cause the warrant to be drawn for the
34 amount specified, and to the person named, in the notification
35 from the Department. The refund shall be paid by the State
36 Treasurer out of the Metro East Mass Transit District tax fund

1 established under paragraph (g) of this Section.

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

6 (d) If a tax has been imposed under subsection (b), a Metro
7 East Mass Transit District Use Tax shall also be imposed upon
8 the privilege of using, in the district, any item of tangible
9 personal property that is purchased outside the district at
10 retail from a retailer, and that is titled or registered with
11 an agency of this State's government, at a rate of 1/4%, or as
12 authorized under subsection (d-5) of this Section, of the
13 selling price of the tangible personal property within the
14 District, as "selling price" is defined in the Use Tax Act. The
15 tax shall be collected from persons whose Illinois address for
16 titling or registration purposes is given as being in the
17 District. The tax shall be collected by the Department of
18 Revenue for the Metro East Mass Transit District. The tax must
19 be paid to the State, or an exemption determination must be
20 obtained from the Department of Revenue, before the title or
21 certificate of registration for the property may be issued. The
22 tax or proof of exemption may be transmitted to the Department
23 by way of the State agency with which, or the State officer
24 with whom, the tangible personal property must be titled or
25 registered if the Department and the State agency or State
26 officer determine that this procedure will expedite the
27 processing of applications for title or registration.

28 The Department shall have full power to administer and
29 enforce this paragraph; to collect all taxes, penalties and
30 interest due hereunder; to dispose of taxes, penalties and
31 interest so collected in the manner hereinafter provided; and
32 to determine all rights to credit memoranda or refunds arising
33 on account of the erroneous payment of tax, penalty or interest
34 hereunder. In the administration of, and compliance with, this
35 paragraph, the Department and persons who are subject to this
36 paragraph shall have the same rights, remedies, privileges,

1 immunities, powers and duties, and be subject to the same
2 conditions, restrictions, limitations, penalties, exclusions,
3 exemptions and definitions of terms and employ the same modes
4 of procedure, as are prescribed in Sections 2 (except the
5 definition of "retailer maintaining a place of business in this
6 State"), 3 through 3-80 (except provisions pertaining to the
7 State rate of tax, and except provisions concerning collection
8 or refunding of the tax by retailers), 4, 11, 12, 12a, 14, 15,
9 19 (except the portions pertaining to claims by retailers and
10 except the last paragraph concerning refunds), 20, 21 and 22 of
11 the Use Tax Act and Section 3-7 of the Uniform Penalty and
12 Interest Act, that are not inconsistent with this paragraph, as
13 fully as if those provisions were set forth herein.

14 Whenever the Department determines that a refund should be
15 made under this paragraph to a claimant instead of issuing a
16 credit memorandum, the Department shall notify the State
17 Comptroller, who shall cause the order to be drawn for the
18 amount specified, and to the person named, in the notification
19 from the Department. The refund shall be paid by the State
20 Treasurer out of the Metro East Mass Transit District tax fund
21 established under paragraph (g) of this Section.

22 (d-5) (A) The county board of any county participating in
23 the Metro East Mass Transit District may authorize, by
24 ordinance, a referendum on the question of whether the tax
25 rates for the Metro East Mass Transit District Retailers'
26 Occupation Tax, the Metro East Mass Transit District Service
27 Occupation Tax, and the Metro East Mass Transit District Use
28 Tax for the District should be increased from 0.25% to 0.75%.
29 Upon adopting the ordinance, the county board shall certify the
30 proposition to the proper election officials who shall submit
31 the proposition to the voters of the District at the next
32 election, in accordance with the general election law.

33 The proposition shall be in substantially the following
34 form:

35 Shall the tax rates for the Metro East Mass Transit
36 District Retailers' Occupation Tax, the Metro East Mass

1 Transit District Service Occupation Tax, and the Metro East
2 Mass Transit District Use Tax be increased from 0.25% to
3 0.75%?

4 (B) Two thousand five hundred electors of any Metro East
5 Mass Transit District may petition the Chief Judge of the
6 Circuit Court, or any judge of that Circuit designated by the
7 Chief Judge, in which that District is located to cause to be
8 submitted to a vote of the electors the question whether the
9 tax rates for the Metro East Mass Transit District Retailers'
10 Occupation Tax, the Metro East Mass Transit District Service
11 Occupation Tax, and the Metro East Mass Transit District Use
12 Tax for the District should be increased from 0.25% to 0.75%.

13 Upon submission of such petition the court shall set a date
14 not less than 10 nor more than 30 days thereafter for a hearing
15 on the sufficiency thereof. Notice of the filing of such
16 petition and of such date shall be given in writing to the
17 District and the County Clerk at least 7 days before the date
18 of such hearing.

19 If such petition is found sufficient, the court shall enter
20 an order to submit that proposition at the next election, in
21 accordance with general election law.

22 The form of the petition shall be in substantially the
23 following form: To the Circuit Court of the County of (name of
24 county):

25 We, the undersigned electors of the (name of transit
26 district), respectfully petition your honor to submit to a
27 vote of the electors of (name of transit district) the
28 following proposition:

29 Shall the tax rates for the Metro East Mass Transit
30 District Retailers' Occupation Tax, the Metro East Mass
31 Transit District Service Occupation Tax, and the Metro East
32 Mass Transit District Use Tax be increased from 0.25% to
33 0.75%?

34 Name Address, with Street and Number.
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(C) The votes shall be recorded as "YES" or "NO". If a majority of all votes cast on the proposition are for the increase in the tax rates, the Metro East Mass Transit District shall begin imposing the increased rates in the District, and the Department of Revenue shall begin collecting the increased amounts, as provided under this Section. An ordinance imposing or discontinuing a tax hereunder or effecting a change in the rate thereof shall be adopted and a certified copy thereof filed with the Department on or before the first day of October, whereupon the Department shall proceed to administer and enforce this Section as of the first day of January next following the adoption and filing, or on or before the first day of April, whereupon the Department shall proceed to administer and enforce this Section as of the first day of July next following the adoption and filing.

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(D) If the voters have approved a referendum under this subsection, before November 1, 1994, to increase the tax rate under this subsection, the Metro East Mass Transit District Board of Trustees may adopt by a majority vote an ordinance at any time before January 1, 1995 that excludes from the rate increase tangible personal property that is titled or registered with an agency of this State's government. The ordinance excluding titled or registered tangible personal property from the rate increase must be filed with the Department at least 15 days before its effective date. At any time after adopting an ordinance excluding from the rate increase tangible personal property that is titled or registered with an agency of this State's government, the Metro East Mass Transit District Board of Trustees may adopt an ordinance applying the rate increase to that tangible personal property. The ordinance shall be adopted, and a certified copy of that ordinance shall be filed with the Department, on or before October 1, whereupon the Department shall proceed to administer and enforce the rate increase against tangible

1 personal property titled or registered with an agency of this
2 State's government as of the following January 1. After
3 December 31, 1995, any reimposed rate increase in effect under
4 this subsection shall no longer apply to tangible personal
5 property titled or registered with an agency of this State's
6 government. Beginning January 1, 1996, the Board of Trustees of
7 any Metro East Mass Transit District may never reimpose a
8 previously excluded tax rate increase on tangible personal
9 property titled or registered with an agency of this State's
10 government. After July 1, 2004, if the voters have approved a
11 referendum under this subsection to increase the tax rate under
12 this subsection, the Metro East Mass Transit District Board of
13 Trustees may adopt by a majority vote an ordinance that
14 excludes from the rate increase tangible personal property that
15 is titled or registered with an agency of this State's
16 government. The ordinance shall be adopted, and a certified
17 copy of that ordinance shall be filed with the Department, on
18 or before October 1, whereupon the Department shall proceed to
19 administer and enforce the rate increase against tangible
20 personal property titled or registered with an agency of this
21 State's government as of the following January 1, or on or
22 before April 1, whereupon the Department shall proceed to
23 administer and enforce the rate against tangible personal
24 property titled or registered with an agency of this State's
25 government as of the following July 1. The Board of Trustees of
26 any Metro East Mass Transit District may never reimpose a
27 previously excluded tax rate increase on tangible personal
28 property titled or registered with an agency of this State's
29 government.

30 (d-6) If the Board of Trustees of any Metro East Mass
31 Transit District has imposed a rate increase under subsection
32 (d-5) and filed an ordinance with the Department of Revenue
33 excluding titled property from the higher rate, then that Board
34 may, by ordinance adopted with the concurrence of two-thirds of
35 the then trustees, impose throughout the District a fee. The
36 fee on the excluded property shall not exceed \$20 per retail

1 transaction or an amount equal to the amount of tax excluded,
2 whichever is less, on tangible personal property that is titled
3 or registered with an agency of this State's government.
4 Beginning July 1, 2005, the fee shall apply only to titled
5 property that is subject to either the Metro East Mass Transit
6 District Retailers' Occupation Tax or the Metro East Mass
7 Transit District Service Occupation Tax.

8 (d-7) Until June 30, 2005, if a fee has been imposed under
9 subsection (d-6), a fee shall also be imposed upon the
10 privilege of using, in the district, any item of tangible
11 personal property that is titled or registered with any agency
12 of this State's government, in an amount equal to the amount of
13 the fee imposed under subsection (d-6).

14 (d-7.1) Beginning July 1, 2005, any fee imposed by the
15 Board of Trustees of any Metro East Mass Transit District under
16 subsection (d-6) and all civil penalties that may be assessed
17 as an incident of the fees shall be collected and enforced by
18 the State Department of Revenue. Reference to "taxes" in this
19 Section shall be construed to apply to the administration,
20 payment, and remittance of all fees under this Section. For
21 purposes of any fee imposed under subsection (d-6), 4% of the
22 fee, penalty, and interest received by the Department in the
23 first 12 months that the fee is collected and enforced by the
24 Department and 2% of the fee, penalty, and interest following
25 the first 12 months shall be deposited into the Tax Compliance
26 and Administration Fund and shall be used by the Department,
27 subject to appropriation, to cover the costs of the Department.
28 No retailers' discount shall apply to any fee imposed under
29 subsection (d-6).

30 (d-8) No item of titled property shall be subject to both
31 the higher rate approved by referendum, as authorized under
32 subsection (d-5), and any fee imposed under subsection (d-6) or
33 (d-7).

34 (d-9) (Blank). ~~If fees have been imposed under subsections~~
35 ~~(d-6) and (d-7), the Board shall forward a copy of the~~
36 ~~ordinance adopting such fees, which shall include all zip codes~~

1 ~~in whole or in part within the boundaries of the district, to~~
2 ~~the Secretary of State within thirty days. By the 25th of each~~
3 ~~month, the Secretary of State shall subsequently provide the~~
4 ~~Illinois Department of Revenue with a list of identifiable~~
5 ~~retail transactions subject to the .25% rate occurring within~~
6 ~~the zip codes which are in whole or in part within the~~
7 ~~boundaries of the district and a list of title applications for~~
8 ~~addresses within the boundaries of the district for the~~
9 ~~previous month.~~

10 (d-10) (Blank). ~~In the event that a retailer fails to pay~~
11 ~~applicable fees within 30 days of the date of the transaction,~~
12 ~~a penalty shall be assessed at the rate of 25% of the amount of~~
13 ~~fees. Interest on both late fees and penalties shall be~~
14 ~~assessed at the rate of 1% per month. All fees, penalties, and~~
15 ~~attorney fees shall constitute a lien on the personal and real~~
16 ~~property of the retailer.~~

17 (e) A certificate of registration issued by the State
18 Department of Revenue to a retailer under the Retailers'
19 Occupation Tax Act or under the Service Occupation Tax Act
20 shall permit the registrant to engage in a business that is
21 taxed under the tax imposed under paragraphs (b), (c) or (d) of
22 this Section and no additional registration shall be required
23 under the tax. A certificate issued under the Use Tax Act or
24 the Service Use Tax Act shall be applicable with regard to any
25 tax imposed under paragraph (c) of this Section.

26 (f) (Blank). ~~The Board may impose a replacement vehicle tax~~
27 ~~of \$50 on any passenger car, as defined in Section 1-157 of the~~
28 ~~Illinois Vehicle Code, purchased within the district area by or~~
29 ~~on behalf of an insurance company to replace a passenger car of~~
30 ~~an insured person in settlement of a total loss claim. The tax~~
31 ~~imposed may not become effective before the first day of the~~
32 ~~month following the passage of the ordinance imposing the tax~~
33 ~~and receipt of a certified copy of the ordinance by the~~
34 ~~Department of Revenue. The Department of Revenue shall collect~~
35 ~~the tax for the district in accordance with Sections 3-2002 and~~
36 ~~3-2003 of the Illinois Vehicle Code.~~

1 ~~The Department shall immediately pay over to the State~~
2 ~~Treasurer, ex officio, as trustee, all taxes collected~~
3 ~~hereunder. On or before the 25th day of each calendar month,~~
4 ~~the Department shall prepare and certify to the Comptroller the~~
5 ~~disbursement of stated sums of money to named districts, the~~
6 ~~districts 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~~
9 ~~district shall be the amount collected hereunder during the~~
10 ~~second preceding calendar month by the Department, less any~~
11 ~~amount determined by the Department to be necessary for the~~
12 ~~payment of refunds. Within 10 days after receipt by the~~
13 ~~Comptroller of the disbursement certification to the~~
14 ~~districts, provided for in this Section to be given to the~~
15 ~~Comptroller by the Department, the Comptroller shall cause the~~
16 ~~orders to be drawn for the respective amounts in accordance~~
17 ~~with the directions contained in the certification.~~

18 (g) Any ordinance imposing or discontinuing any tax under
19 this Section shall be adopted and a certified copy thereof
20 filed with the Department on or before June 1, whereupon the
21 Department of Revenue shall proceed to administer and enforce
22 this Section on behalf of the Metro East Mass Transit District
23 as of September 1 next following such adoption and filing.
24 Beginning January 1, 1992, an ordinance or resolution imposing
25 or discontinuing the tax hereunder shall be adopted and a
26 certified copy thereof filed with the Department on or before
27 the first day of July, whereupon the Department shall proceed
28 to administer and enforce this Section as of the first day of
29 October next following such adoption and filing. Beginning
30 January 1, 1993, except as provided in subsection (d-5) of this
31 Section, an ordinance or resolution imposing or discontinuing
32 the tax hereunder shall be adopted and a certified copy thereof
33 filed with the Department on or before the first day of
34 October, whereupon the Department shall proceed to administer
35 and enforce this Section as of the first day of January next
36 following such adoption and filing, or, beginning January 1,

1 2005, on or before the first day of April, whereupon the
2 Department shall proceed to administer and enforce this Section
3 as of the first day of July next following the adoption and
4 filing.

5 (h) Except as provided in subsection (d-7.1), the State
6 Department of Revenue shall, upon collecting any taxes as
7 provided in this Section, pay the taxes over to the State
8 Treasurer as trustee for the District. The taxes shall be held
9 in a trust fund outside the State Treasury. On or before the
10 25th day of each calendar month, the State Department of
11 Revenue shall prepare and certify to the Comptroller of the
12 State of Illinois the amount to be paid to the District, which
13 shall be the then balance in the fund, less any amount
14 determined by the Department to be necessary for the payment of
15 refunds. Within 10 days after receipt by the Comptroller of the
16 certification of the amount to be paid to the District, the
17 Comptroller shall cause an order to be drawn for payment for
18 the amount in accordance with the direction in the
19 certification.

20 (Source: P.A. 93-590; eff. 1-1-04.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.