



Rep. Dan Brady

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1 AMENDMENT TO HOUSE BILL 3215

2 AMENDMENT NO. _____. Amend House Bill 3215 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Municipal Code is amended by
5 changing Sections 8-11-6a and 8-11-6b as follows:

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

7 Sec. 8-11-6a. Home rule municipalities; preemption of
8 certain taxes. Except as provided in Sections 8-11-1, 8-11-5,
9 8-11-6, 8-11-6b, and 11-74.3-6 on and after September 1, 1990,
10 no home rule municipality has the authority to impose, pursuant
11 to its home rule authority, a retailer's occupation tax,
12 service occupation tax, use tax, sales tax or other tax on the
13 use, sale or purchase of tangible personal property based on
14 the gross receipts from such sales or the selling or purchase
15 price of said tangible personal property. Notwithstanding the
16 foregoing, this Section does not preempt any home rule imposed
17 tax such as the following: (1) a tax on alcoholic beverages,
18 whether based on gross receipts, volume sold or any other
19 measurement; (2) a tax based on the number of units of
20 cigarettes or tobacco products (provided, however, that a home
21 rule municipality that has not imposed a tax based on the
22 number of units of cigarettes or tobacco products before July
23 1, 1993, shall not impose such a tax after that date); (3) a
24 tax, however measured, based on the use of a hotel or motel

1 room or similar facility; (4) a tax, however measured, on the
2 sale or transfer of real property; (5) a tax, however measured,
3 on lease receipts; (6) a tax on food, which includes soft
4 drinks, prepared by the retailer for immediate consumption and
5 on alcoholic beverages sold by a business which provides for on
6 premise consumption of said food or alcoholic beverages; for
7 purposes of this item (6), "soft drink" means that term as
8 defined in Section 2-10 of the Retailers' Occupation Tax Act,
9 except that the term also includes soft drinks contained in a
10 closed or sealed bottle, can, carton, or container if they are
11 chilled, opened by, or otherwise prepared for immediate
12 consumption by a retailer that provides for on premise
13 consumption of the soft drink; or (7) other taxes not based on
14 the selling or purchase price or gross receipts from the use,
15 sale or purchase of tangible personal property. This Section is
16 not intended to affect any existing tax on food and beverages
17 prepared for immediate consumption on the premises where the
18 sale occurs, or any existing tax on alcoholic beverages, or any
19 existing tax imposed on the charge for renting a hotel or motel
20 room, which was in effect January 15, 1988, or any extension of
21 the effective date of such an existing tax by ordinance of the
22 municipality imposing the tax, which extension is hereby
23 authorized, in any non-home rule municipality in which the
24 imposition of such a tax has been upheld by judicial
25 determination, nor is this Section intended to preempt the
26 authority granted by Public Act 85-1006. This Section is a
27 limitation, pursuant to subsection (g) of Section 6 of Article
28 VII of the Illinois Constitution, on the power of home rule
29 units to tax.

30 (Source: P.A. 93-1053, eff. 1-1-05.)

31 (65 ILCS 5/8-11-6b)

32 Sec. 8-11-6b. Home rule soft drink taxes.

33 (a) Except as provided in Sections 8-11-1, 8-11-5 ~~and~~

1 8-11-6, and item (6) of Section 8-11-6a, or as provided in this
2 Section, no home rule municipality has the authority to impose,
3 pursuant to its home rule authority, a tax on the sale,
4 purchase, or use of soft drinks regardless of whether the
5 measure of the tax is selling price, purchase price, gross
6 receipts, unit of volumetric measure, or any other measure. For
7 purposes of this subsection, the term "soft drink" has the
8 meaning set forth in Section 2-10 of the Retailers' Occupation
9 Tax Act, as may be amended from time to time, except that the
10 term shall not be limited to drinks contained in a closed or
11 sealed bottle, can, carton, or container. This Section is a
12 denial and limitation, under subsection (g) of Section 6 of
13 Article VII of the Illinois Constitution, on the power of home
14 rule units to tax.

15 (b) The corporate authorities of a home rule municipality
16 with a population in excess of 1,000,000 may impose a tax,
17 which shall not take effect prior to April 1, 1994, upon all
18 persons engaged in the business of selling soft drinks (other
19 than fountain soft drinks) at retail in the municipality based
20 on the gross receipts from those sales made in the course of
21 such business. If imposed, the tax shall only be in 1/4%
22 increments and shall not exceed 3%. For purposes of this
23 subsection, the term "soft drink" has the meaning set forth in
24 Section 2-10 of the Retailers' Occupation Tax Act, as may be
25 amended from time to time, except that the term shall not be
26 limited to drinks contained in a closed or sealed bottle, can,
27 carton or container; the term "fountain soft drinks" means soft
28 drinks which are prepared by the retail seller of the soft
29 drinks by mixing syrup or concentrate with water, by hand or
30 through a soft drink dispensing machine, at or near the point
31 and time of sale to the retail purchaser; and the term "soft
32 drink dispensing machine" means a device which mixes soft drink
33 syrup or concentrate with water and dispenses the mixture into
34 an open container as a ready to drink soft drink.

1 The tax imposed under this subsection and all civil
2 penalties that may be assessed as an incident to that tax shall
3 be collected and enforced by the Illinois Department of
4 Revenue. The Department shall have full power to administer and
5 enforce this subsection, to collect all taxes and penalties so
6 collected in the manner provided in this subsection, and to
7 determine all rights to credit memoranda arising on account of
8 the erroneous payment of tax or penalty under this subsection.
9 In the administration of and compliance with this subsection,
10 the Department and persons who are subject to this subsection
11 shall have the same rights, remedies, privileges, immunities,
12 powers and duties, shall be subject to the same conditions,
13 restrictions, limitations, penalties, exclusions, exemptions,
14 and definitions of terms, and shall employ the same modes of
15 procedure applicable to the Retailers' Occupation Tax as are
16 prescribed in Sections 1, 2 through 2-65 (in respect to all
17 provisions of those Sections other than the State rate of
18 taxes), 2c, 2h, 2i, 3 (except as to the disposition of taxes
19 and penalties collected), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i,
20 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13 and, until January 1,
21 1994, 13.5 of the Retailers' Occupation Tax Act, and on and
22 after January 1, 1994, all applicable provisions of the Uniform
23 Penalty and Interest Act that are not inconsistent with this
24 subsection, as fully as if provisions contained in those
25 Sections of the Retailers' Occupation Tax Act were set forth in
26 this subsection.

27 Persons subject to any tax imposed under the authority
28 granted by this subsection may reimburse themselves for their
29 seller's tax liability under this subsection by separately
30 stating that tax as an additional charge, which charge may be
31 stated in combination, in a single amount, with State taxes
32 that sellers are required to collect under the Use Tax Act
33 pursuant to bracket schedules as the Department may prescribe.
34 The retailer filing the return shall, at the time of filing the

1 return, pay to the Department the amount of tax imposed under
2 this subsection, less the discount of 1.75%, which is allowed
3 to reimburse the retailer for the expenses incurred in keeping
4 records, preparing the filing returns, remitting the tax, and
5 supplying data to the Department on request.

6 Whenever the Department determines that a refund should be
7 made under this subsection to a claimant instead of issuing a
8 credit memoranda, the Department shall notify the State
9 Comptroller, who shall cause a warrant to be drawn for the
10 amount specified and to the person named in the notification
11 from the Department. The refund shall be paid by the State
12 Treasurer out of the Home Rule Municipal Soft Drink Retailers'
13 Occupation Tax Fund.

14 The Department shall forthwith pay over to the State
15 Treasurer, ex officio, as trustee, all taxes and penalties
16 collected hereunder. On or before the 25th day of each calendar
17 month, the Department shall prepare and certify to the
18 Comptroller the amount to be paid to named municipalities, the
19 municipalities to be those from which retailers have paid taxes
20 or penalties hereunder to the Department during the second
21 preceding calendar month. The amount to be paid to each
22 municipality shall be the amount collected hereunder during the
23 second preceding calendar month by the Department, less any
24 amounts determined by the Department to be necessary for the
25 payment of refunds, and less 4% for the first year the tax is
26 in effect and 2% thereafter of such balance, which sum shall be
27 deposited by the State Treasurer into the Tax Compliance and
28 Administration Fund in the State treasury from which it shall
29 be appropriated to the Department to cover the costs of the
30 Department in administering and enforcing the provisions of
31 this subsection. Within 10 days after receipt by the
32 Comptroller of the certification, the Comptroller shall cause
33 the orders to be drawn for the respective amount in accordance
34 with the directions contained in such certification.

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

5 A certificate of registration issued by the Illinois
6 Department of Revenue to a retailer under the Retailers'
7 Occupation Tax Act shall permit the registrant to engage in a
8 business that is taxed under the tax imposed under this
9 subsection and no additional registration shall be required
10 under the ordinance imposing a tax or under this subsection.

11 A certified copy of any ordinance imposing or discontinuing
12 any tax under this subsection or effecting a change in the rate
13 of that tax shall be filed with the Department, whereupon the
14 Department shall proceed to administer and enforce this
15 subsection on behalf of such municipality as of the first day
16 of February following the date of filing. This tax shall be
17 known and cited as the Home Rule Municipal Soft Drink
18 Retailers' Occupation Tax.

19 (c) The corporate authorities of a home rule municipality
20 with a population in excess of 1,000,000 may impose a tax,
21 which shall not take effect prior to April 1, 1994, on persons
22 engaged in the business of selling fountain soft drinks at
23 retail at a rate not to exceed 9% of the cost price of the
24 fountain soft drinks at retail in such municipality. For
25 purposes of this subsection, the term "soft drink" has the
26 meaning set forth in Section 2-10 of the Retailers' Occupation
27 Tax Act, as may be amended from time to time, except that the
28 term shall not be limited to drinks contained in a closed or
29 sealed bottle, can, carton, or container; the term "fountain
30 soft drinks" means soft drinks which are prepared by the retail
31 seller of the soft drinks by mixing soft drink syrup or
32 concentrate with water, by hand or through a soft drink
33 dispensing machine at or near the point and time of sale to the
34 retail purchaser; the term "soft drink dispensing machine"

1 means a device which mixes soft drink syrup or concentrate with
2 water and dispenses such mixture into an open container as a
3 ready to drink soft drink; the term "sold at retail" shall mean
4 any transfer of the ownership or title to tangible personal
5 property to a purchaser, for the purpose of use or consumption,
6 and not for the purpose of resale, for valuable consideration;
7 the term "cost price of the fountain soft drinks" means the
8 consideration paid by the retail seller of the fountain soft
9 drink, valued in money, whether paid in money or otherwise,
10 including cash, credits and services, and shall be determined
11 without any deduction on account of the supplier's cost of the
12 property sold or on account or any other expenses incurred by
13 the supplier, for the purchase of soft drink syrup or
14 concentrate which is designed to be further mixed with water
15 before it is consumed as a soft drink; and the term "supplier"
16 means any person who makes sales of soft drink syrup or
17 concentrate to a retail seller of fountain soft drinks for
18 purposes of resale as fountain soft drinks. The tax authorized
19 by this subsection shall be collected, enforced, and
20 administered by the municipality imposing the tax. Persons
21 subject to the tax may reimburse themselves for their tax
22 liability hereunder by separately stating an amount equal to
23 the tax as an additional charge to their retail purchasers or
24 may include such amount as part of the selling price of the
25 soft drink. The municipality imposing the tax shall provide for
26 its collection from the person subject to the tax by requiring
27 that the supplier to the person subject to the tax collect and
28 remit the tax to the municipality. If the supplier fails to
29 collect the tax or if the person subject to the tax fails to
30 pay the tax to its supplier, the person subject to the tax
31 shall make the tax payment directly to the municipality.
32 Payment of the tax by the retailer to the supplier shall
33 relieve the retailer of any further liability for the tax.

34 (d) If either tax imposed or authorized by this Section

1 8-11-6b is repealed by the General Assembly or has its maximum
2 rate reduced by the General Assembly, or is declared unlawful
3 or unconstitutional on its face by any court of competent
4 jurisdiction after all appeals have been exhausted or the time
5 to appeal has expired, then this Section 8-11-6b is
6 automatically repealed and no longer effective without further
7 action by the General Assembly.

8 (e) Notwithstanding the preemption of taxes on the sale,
9 purchase or use of soft drinks, taxes on the sale, purchase, or
10 use of soft drinks which had been imposed by a municipality
11 prior to the effective date of this amendatory Act of 1993 are
12 specifically authorized under this Section for sales made on or
13 after the effective date of this amendatory Act of 1993 through
14 March 31, 1994.

15 (Source: P.A. 88-507.)".