

# HB0410



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB0410**

Introduced 01/26/07, by Rep. Patrick J Verschoore

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.7 new

Amends the Counties Code. Authorizes counties to impose, after referendum approval, a retailers' occupation tax and service occupation tax to be used exclusively for grants to school districts in the county for building or improving school facilities. Sets forth procedures for imposing and collecting the tax and for the distribution of the proceeds by the Department of Revenue. Effective immediately.

LRB095 06518 BDD 26620 b

FISCAL NOTE ACT  
MAY APPLY

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 adding Section  
5 5-1006.7 as follows:

6 (55 ILCS 5/5-1006.7 new)

7 Sec. 5-1006.7. Occupation tax for school grants.

8 (a) The county board of any county may impose a tax upon  
9 all persons engaged in the business of selling tangible  
10 personal property, other than personal property titled or  
11 registered with an agency of this State's government, at retail  
12 in the county on the gross receipts from the sales made in the  
13 course of business to provide revenue to be used exclusively  
14 for grants to school districts in the county for the  
15 acquisition, development, construction, reconstruction,  
16 rehabilitation, improvement, financing, architectural planning  
17 and installation of capital facilities consisting of  
18 buildings, structures, and durable equipment, and for the  
19 acquisition and improvement of real property and interests in  
20 real property required, or expected to be required, in  
21 connection therewith. This tax may be imposed only in  
22 one-quarter percent increments.

23 The tax may not be imposed until the question of imposing

1 the tax has been submitted to the electors of the county at a  
2 regular election and approved by a majority of the electors  
3 voting on the question. The county board must certify the  
4 question to the proper election authority, which must submit  
5 the question at an election in accordance with the election  
6 Code.

7 The election authority must submit the question in  
8 substantially the following form:

9 Shall (name of county) be authorized to impose a tax at  
10 the rate of (insert rate) upon all persons engaged in the  
11 business of selling tangible personal property at retail in  
12 the county on gross receipts from the sales made in the  
13 course of their business to be used exclusively for grants  
14 to school districts in the county for building or improving  
15 school facilities?

16 The election authority must record the votes as "Yes" or "No".

17 If a majority of the electors voting on the question vote  
18 in the affirmative, then the county may, thereafter, impose the  
19 tax.

20 This additional tax may not be imposed on the sales of food  
21 for human consumption that is to be consumed off the premises  
22 where it is sold (other than alcoholic beverages, soft drinks,  
23 and food which has been prepared for immediate consumption) and  
24 prescription and non-prescription medicines, drugs, medical  
25 appliances and insulin, urine testing materials, syringes, and  
26 needles used by diabetics. The tax imposed by a county under

1 this Section and all civil penalties that may be assessed as an  
2 incident of the tax shall be collected and enforced by the  
3 Illinois Department of Revenue and deposited into a special  
4 fund created for that purpose. The certificate of registration  
5 that is issued by the Department to a retailer under the  
6 Retailers' Occupation Tax Act shall permit the retailer to  
7 engage in a business that is taxable without registering  
8 separately with the Department under an ordinance or resolution  
9 under this Section. The Department has full power to administer  
10 and enforce this Section, to collect all taxes and penalties  
11 due under this Section, to dispose of taxes and penalties so  
12 collected in the manner provided in this Section, and to  
13 determine all rights to credit memoranda arising on account of  
14 the erroneous payment of a tax or penalty under this Section.  
15 In the administration of and compliance with this Section, the  
16 Department and persons who are subject to this Section shall  
17 (i) have the same rights, remedies, privileges, immunities,  
18 powers, and duties, (ii) be subject to the same conditions,  
19 restrictions, limitations, penalties, and definitions of  
20 terms, and (iii) employ the same modes of procedure as are  
21 prescribed in Sections 1, 1a, 1a-1, 1d, 1e, 1f, 1i, 1j, 1k, 1m,  
22 1n, 2 through 2-70 (in respect to all provisions contained in  
23 those Sections other than the State rate of tax), 2a, 2b, 2c, 3  
24 (except provisions relating to transaction returns and quarter  
25 monthly payments), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i,  
26 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12, and 13 of

1 the Retailers' Occupation Tax Act and Section 3-7 of the  
2 Uniform Penalty and Interest Act as if those provisions were  
3 set forth in this Section. Persons subject to any tax imposed  
4 under the authority granted in this Section may reimburse  
5 themselves for their sellers' tax liability by separately  
6 stating the tax as an additional charge, which charge may be  
7 stated in combination, in a single amount, with State tax which  
8 sellers are required to collect under the Use Tax Act, pursuant  
9 to such bracketed schedules as the Department may prescribe.  
10 Whenever the Department determines that a refund should be made  
11 under this Section to a claimant instead of issuing a credit  
12 memorandum, the Department shall notify the State Comptroller,  
13 who shall cause the order to be drawn for the amount specified  
14 and to the person named in the notification from the  
15 Department. The refund shall be paid by the State Treasurer out  
16 of the County Public Safety or Transportation Retailers'  
17 Occupation Tax Fund.

18 (b) If a tax has been imposed under subsection (a), then a  
19 service occupation tax must also be imposed at the same rate  
20 upon all persons engaged, in the county, in the business of  
21 making sales of service, who, as an incident to making those  
22 sales of service, transfer tangible personal property within  
23 the county as an incident to a sale of service. The proceeds of  
24 the tax under this subsection (b) must be used only for the  
25 same purposes as the tax under subsection (a).

26 This tax may not be imposed on sales of food for human

1 consumption that is to be consumed off the premises where it is  
2 sold (other than alcoholic beverages, soft drinks, and food  
3 prepared for immediate consumption) and prescription and  
4 non-prescription medicines, drugs, medical appliances and  
5 insulin, urine testing materials, syringes, and needles used by  
6 diabetics. The tax imposed under this subsection and all civil  
7 penalties that may be assessed as an incident thereof shall be  
8 collected and enforced by the Department of Revenue. The  
9 Department has full power to administer and enforce this  
10 subsection; to collect all taxes and penalties due hereunder;  
11 to dispose of taxes and penalties so collected in the manner  
12 hereinafter provided; and to determine all rights to credit  
13 memoranda arising on account of the erroneous payment of tax or  
14 penalty hereunder. In the administration of, and compliance  
15 with this subsection, the Department and persons who are  
16 subject to this paragraph shall (i) have the same rights,  
17 remedies, privileges, immunities, powers, and duties, (ii) be  
18 subject to the same conditions, restrictions, limitations,  
19 penalties, exclusions, exemptions, and definitions of terms,  
20 and (iii) employ the same modes of procedure as are prescribed  
21 in Sections 2 (except that the reference to State in the  
22 definition of supplier maintaining a place of business in this  
23 State shall mean the county), 2a, 2b, 2c, 3 through 3-50 (in  
24 respect to all provisions therein other than the State rate of  
25 tax), 4 (except that the reference to the State shall be to the  
26 county), 5, 7, 8 (except that the jurisdiction to which the tax

1 shall be a debt to the extent indicated in that Section 8 shall  
2 be the county), 9 (except as to the disposition of taxes and  
3 penalties collected), 10, 11, 12 (except the reference therein  
4 to Section 2b of the Retailers' Occupation Tax Act), 13 (except  
5 that any reference to the State shall mean the county), Section  
6 15, 16, 17, 18, 19 and 20 of the Service Occupation Tax Act and  
7 Section 3-7 of the Uniform Penalty and Interest Act, as fully  
8 as if those provisions were set forth herein. Persons subject  
9 to any tax imposed under the authority granted in this  
10 subsection may reimburse themselves for their serviceman's tax  
11 liability by separately stating the tax as an additional  
12 charge, which charge may be stated in combination, in a single  
13 amount, with State tax that servicemen are authorized to  
14 collect under the Service Use Tax Act, in accordance with such  
15 bracket schedules as the Department may prescribe. Whenever the  
16 Department determines that a refund should be made under this  
17 subsection to a claimant instead of issuing a credit  
18 memorandum, the Department shall notify the State Comptroller,  
19 who shall cause the warrant to be drawn for the amount  
20 specified, and to the person named, in the notification from  
21 the Department. The refund shall be paid by the State Treasurer  
22 out of the County Public Safety or Transportation Retailers'  
23 Occupation Fund. Nothing in this subsection shall be construed  
24 to authorize the county to impose a tax upon the privilege of  
25 engaging in any business which under the Constitution of the  
26 United States may not be made the subject of taxation by the

1 State.

2 (c) The Department shall immediately pay over to the State  
3 Treasurer, ex officio, as trustee, all taxes and penalties  
4 collected under this Section to be deposited into the County  
5 School Facility Retailers' Occupation Tax Fund, which shall be  
6 an unappropriated trust fund held outside of the State  
7 treasury.

8 On or before the 25th day of each calendar month, the  
9 Department shall prepare and certify to the Comptroller the  
10 disbursement of stated sums of money to the counties from which  
11 retailers have paid taxes or penalties to the Department during  
12 the second preceding calendar month. The amount to be paid to  
13 each county, and deposited by the county into its special fund  
14 created for the purposes of this Section, must be the amount  
15 (not including credit memoranda) collected under this Section  
16 during the second preceding calendar month by the Department  
17 plus an amount that the Department determines is necessary to  
18 offset any amounts that were erroneously paid to a different  
19 taxing body and not including (i) an amount equal to the amount  
20 of refunds made during the second preceding calendar month by  
21 the Department on behalf of the county and (ii) any amount that  
22 the Department determines is necessary to offset any amounts  
23 that were payable to a different taxing body but were  
24 erroneously paid to the county. Within 10 days after receipt by  
25 the Comptroller of the disbursement certification to the  
26 counties provided for in this Section to be given to the



1 Comptroller by the Department, the Comptroller shall cause the  
2 orders to be drawn for the respective amounts in accordance  
3 with directions contained in the certification.

4 In addition to the disbursement required by the preceding  
5 paragraph, an allocation must be made in March of each year to  
6 each county that received more than \$500,000 in disbursements  
7 under the preceding paragraph in the preceding calendar year.  
8 The allocation must be in an amount equal to the average  
9 monthly distribution made to each such county under the  
10 preceding paragraph during the preceding calendar year  
11 (excluding the 2 months of highest receipts). The distribution  
12 made in March of each year subsequent to the year in which an  
13 allocation was made pursuant to this paragraph and the  
14 preceding paragraph must be reduced by the amount allocated and  
15 disbursed under this paragraph in the preceding calendar year.  
16 The Department shall prepare and certify to the Comptroller for  
17 disbursement the allocations made in accordance with this  
18 paragraph.

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

1 in interstate or foreign commerce.

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

6 (f) If a county imposes a tax under this Section, then the  
7 county board may, by ordinance, discontinue or lower the rate  
8 of the tax. If the county board lowers the tax rate or  
9 discontinues the tax, a referendum must be held in accordance  
10 with subsection (a) of this Section in order to increase the  
11 rate of the tax or to reimpose the discontinued tax.

12 (g) The results of any election that authorizes a  
13 proposition to impose a tax under this Section or to change the  
14 rate of the tax, or any ordinance that lowers the rate or  
15 discontinues the tax, must be certified by the county clerk and  
16 filed with the Illinois Department of Revenue either (i) on or  
17 before the first day of April, whereupon the Department shall  
18 proceed to administer and enforce the tax as of the first day  
19 of July next following the filing; or (ii) on or before the  
20 first day of October, whereupon the Department shall proceed to  
21 administer and enforce the tax as of the first day of January  
22 next following the filing.

23 (g) When certifying the amount of a monthly disbursement to  
24 a county under this Section, the Department shall increase or  
25 decrease the amounts by an amount necessary to offset any  
26 miscalculation of previous disbursements. The offset amount is

1 the amount erroneously disbursed within the previous 6 months  
2 from the time a miscalculation is discovered.

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.