

HB4256



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4256

by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-1

from Ch. 24, par. 8-11-1

Amends the Illinois Municipal Code. Provides that, for the purposes of the Home Rule Municipal Retailers' Occupation Tax Act, if a motor-fuel distributor makes a retail sale of motor fuel or any other petroleum product, then that sale is deemed to have occurred at the location at which the motor fuel or petroleum product is delivered to the consumer. Effective immediately.

LRB095 15049 BDD 41545 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 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 corporate authorities of a home rule municipality may
9 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 the sales of food for human consumption
17 that is to be consumed off the premises where it is sold (other
18 than alcoholic beverages, soft drinks and food that has been
19 prepared for immediate consumption) and prescription and
20 nonprescription medicines, drugs, medical appliances and
21 insulin, urine testing materials, syringes and needles used by
22 diabetics. The tax imposed by a home rule municipality under
23 this Section and all civil penalties that may be assessed as an

1 incident of the tax shall be collected and enforced by the
2 State Department of Revenue. The certificate of registration
3 that is issued by the Department to a retailer under the
4 Retailers' Occupation Tax Act shall permit the retailer to
5 engage in a business that is taxable under any ordinance or
6 resolution enacted pursuant to this Section without
7 registering separately with the Department under such
8 ordinance or resolution or under this Section. The Department
9 shall have full power to administer and enforce this Section;
10 to collect all taxes and penalties due hereunder; to dispose of
11 taxes and penalties so collected in the manner hereinafter
12 provided; and to determine all rights to credit memoranda
13 arising on account of the erroneous payment of tax or penalty
14 hereunder. In the administration of, and compliance with, this
15 Section the Department and persons who are subject to this
16 Section shall have the same rights, remedies, privileges,
17 immunities, powers and duties, and be subject to the same
18 conditions, restrictions, limitations, penalties and
19 definitions of terms, and employ the same modes of procedure,
20 as are prescribed in Sections 1, 1a, 1d, 1e, 1f, 1i, 1j, 1k,
21 1m, 1n, 2 through 2-65 (in respect to all provisions therein
22 other than the State rate of tax), 2c, 3 (except as to the
23 disposition of taxes and penalties collected), 4, 5, 5a, 5b,
24 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9,
25 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and
26 Section 3-7 of the Uniform Penalty and Interest Act, as fully

1 as if those provisions were set forth herein.

2 For the purposes of this Section, if a person who operates
3 as a motor-fuel distributor makes a retail sale of motor fuel
4 or any other petroleum product, then that sale is deemed to
5 have occurred at the location at which the motor fuel or
6 petroleum product is delivered to the consumer.

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

10 Persons subject to any tax imposed under the authority
11 granted in this Section may reimburse themselves for their
12 seller's tax liability hereunder by separately stating that tax
13 as an additional charge, which charge may be stated in
14 combination, in a single amount, with State tax which sellers
15 are required to collect under the Use Tax Act, pursuant to such
16 bracket schedules as the Department may prescribe.

17 Whenever the Department determines that a refund should be
18 made under this Section to a claimant instead of issuing a
19 credit memorandum, the Department shall notify the State
20 Comptroller, who shall cause the order to be drawn for the
21 amount specified and to the person named in the notification
22 from the Department. The refund shall be paid by the State
23 Treasurer out of the home rule municipal retailers' occupation
24 tax fund.

25 The Department shall immediately pay over to the State
26 Treasurer, ex officio, as trustee, all taxes and penalties

1 collected hereunder. On or before the 25th day of each calendar
2 month, the Department shall prepare and certify to the
3 Comptroller the disbursement of stated sums of money to named
4 municipalities, the municipalities to be those from which
5 retailers have paid taxes or penalties hereunder to the
6 Department during the second preceding calendar month. The
7 amount to be paid to each municipality shall be the amount (not
8 including credit memoranda) collected hereunder during the
9 second preceding calendar month by the Department plus an
10 amount the Department determines is necessary to offset any
11 amounts that were erroneously paid to a different taxing body,
12 and not including an amount equal to the amount of refunds made
13 during the second preceding calendar month by the Department on
14 behalf of such municipality, and not including any amount that
15 the Department determines is necessary to offset any amounts
16 that were payable to a different taxing body but were
17 erroneously paid to the municipality. Within 10 days after
18 receipt by the Comptroller of the disbursement certification to
19 the municipalities provided for in this Section to be given to
20 the Comptroller by the Department, the Comptroller shall cause
21 the orders to be drawn for the respective amounts in accordance
22 with the directions contained in the certification.

23 In addition to the disbursement required by the preceding
24 paragraph and in order to mitigate delays caused by
25 distribution procedures, an allocation shall, if requested, be
26 made within 10 days after January 14, 1991, and in November of

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

1 paragraph and the preceding paragraph shall be reduced by the
2 amount allocated and disbursed under this paragraph in the
3 preceding period of July 1 through June 30. The Department
4 shall prepare and certify to the Comptroller for disbursement
5 the allocations made in accordance with this paragraph.

6 For the purpose of determining the local governmental unit
7 whose tax is applicable, a retail sale by a producer of coal or
8 other mineral mined in Illinois is a sale at retail at the
9 place where the coal or other mineral mined in Illinois is
10 extracted from the earth. This paragraph does not apply to coal
11 or other mineral when it is delivered or shipped by the seller
12 to the purchaser at a point outside Illinois so that the sale
13 is exempt under the United States Constitution as a sale in
14 interstate or foreign commerce.

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

19 An ordinance or resolution imposing or discontinuing a tax
20 hereunder or effecting a change in the rate thereof shall be
21 adopted and a certified copy thereof filed with the Department
22 on or before the first day of June, whereupon the Department
23 shall proceed to administer and enforce this Section as of the
24 first day of September next following the adoption and filing.
25 Beginning January 1, 1992, an ordinance or resolution imposing
26 or discontinuing the tax hereunder or effecting a change in the

1 rate thereof shall be adopted and a certified copy thereof
2 filed with the Department on or before the first day of July,
3 whereupon the Department shall proceed to administer and
4 enforce this Section as of the first day of October next
5 following such adoption and filing. Beginning January 1, 1993,
6 an ordinance or resolution imposing or discontinuing the tax
7 hereunder or effecting a change in the rate thereof shall be
8 adopted and a certified copy thereof filed with the Department
9 on or before the first day of October, whereupon the Department
10 shall proceed to administer and enforce this Section as of the
11 first day of January next following the adoption and filing.
12 However, a municipality located in a county with a population
13 in excess of 3,000,000 that elected to become a home rule unit
14 at the general primary election in 1994 may adopt an ordinance
15 or resolution imposing the tax under this Section and file a
16 certified copy of the ordinance or resolution with the
17 Department on or before July 1, 1994. The Department shall then
18 proceed to administer and enforce this Section as of October 1,
19 1994. Beginning April 1, 1998, an ordinance or resolution
20 imposing or discontinuing the tax hereunder or effecting a
21 change in the rate thereof shall either (i) be adopted and a
22 certified copy thereof filed with the Department on or before
23 the first day of April, whereupon the Department shall proceed
24 to administer and enforce this Section as of the first day of
25 July next following the adoption and filing; or (ii) be adopted
26 and a certified copy thereof filed with the Department on or

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

4 When certifying the amount of a monthly disbursement to a
5 municipality under this Section, the Department shall increase
6 or decrease the amount by an amount necessary to offset any
7 misallocation of previous disbursements. The offset amount
8 shall be the amount erroneously disbursed within the previous 6
9 months from the time a misallocation is discovered.

10 Any unobligated balance remaining in the Municipal
11 Retailers' Occupation Tax Fund on December 31, 1989, which fund
12 was abolished by Public Act 85-1135, and all receipts of
13 municipal tax as a result of audits of liability periods prior
14 to January 1, 1990, shall be paid into the Local Government Tax
15 Fund for distribution as provided by this Section prior to the
16 enactment of Public Act 85-1135. All receipts of municipal tax
17 as a result of an assessment not arising from an audit, for
18 liability periods prior to January 1, 1990, shall be paid into
19 the Local Government Tax Fund for distribution before July 1,
20 1990, as provided by this Section prior to the enactment of
21 Public Act 85-1135; and on and after July 1, 1990, all such
22 receipts shall be distributed as provided in Section 6z-18 of
23 the State Finance Act.

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

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

3 (Source: P.A. 90-689, eff. 7-31-98; 91-51, eff. 6-30-99.)

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