

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 Section
5 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 and
9 McHenry may, by an ordinance or resolution adopted by an
10 affirmative vote of a majority of the members elected or
11 appointed to the county board, impose a tax upon all persons
12 engaged in the county in the business of selling motor fuel, as
13 now or hereafter defined in the Motor Fuel Tax Law, at retail
14 for the operation of motor vehicles upon public highways or for
15 the operation of recreational watercraft upon waterways. Kane
16 County may exempt diesel fuel from the tax imposed pursuant to
17 this Section. The tax may be imposed, in half-cent increments,
18 at a rate not exceeding 4 cents per gallon of motor fuel sold
19 at retail within the county for the purpose of use or
20 consumption and not for the purpose of resale.

21 (b) The county boards of the counties of Will, Kendall,
22 Boone, Lake, DeKalb, and Grundy may impose a tax upon all
23 persons engaged in the county in the business of selling motor

1 fuel, as defined in subsection (a), at retail for the operation
2 of motor vehicles upon public highways or for the operation of
3 recreational watercraft upon waterways. A county imposing the
4 tax under this subsection (b) may exempt diesel fuel from the
5 tax. The tax may be imposed, in half-cent increments, at a rate
6 not exceeding 4 cents per gallon of motor fuel sold at retail
7 within the county for the purpose of use or consumption and not
8 for the purpose of resale.

9 The tax under this subsection (b) may not be imposed until
10 the question of imposing the tax has been submitted to the
11 electors of the county at a regular election and approved by a
12 majority of the electors voting on the question. The county
13 board must certify the question to the proper election
14 authority, which must submit the question at an election in
15 accordance with the Election Code.

16 The election authority must submit the question in
17 substantially the following form:

18 Shall the county board of (name of county) be
19 authorized to impose a tax upon all persons engaged in the
20 county in the business of selling motor fuel at retail for
21 the operation of motor vehicles upon public highways or for
22 the operation of recreational watercraft upon waterways at
23 a rate of (number of cents) cents per gallon of motor fuel
24 sold?

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

26 If a majority of the electors voting on the question vote

1 in the affirmative, then the county may, thereafter, impose the
2 tax by an ordinance or resolution adopted by an affirmative
3 vote of a majority of the members elected or appointed to the
4 county board.

5 (c) The proceeds from the tax imposed under this Section
6 shall be used by the county solely for the purpose of
7 operating, constructing, and improving public highways and
8 waterways, and acquiring real property and rights-of-way
9 ~~right of ways~~ for public highways and waterways within the
10 county imposing the tax.

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

24 Whenever the Department determines that a refund shall be
25 made under this Section to a claimant instead of issuing a
26 credit memorandum, the Department shall notify the State

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

5 The Department shall forthwith pay over to the State
6 Treasurer, ex-officio, as trustee, all taxes and penalties
7 collected hereunder, which shall be deposited into the County
8 Option Motor Fuel Tax Fund, a special fund in the State
9 Treasury which is hereby created. On or before the 25th day of
10 each calendar month, the Department shall prepare and certify
11 to the State Comptroller the disbursement of stated sums of
12 money to named counties for which taxpayers have paid taxes or
13 penalties hereunder to the Department during the second
14 preceding calendar month. The amount to be paid to each county
15 shall be the amount (not including credit memoranda) collected
16 hereunder from retailers within the county during the second
17 preceding calendar month by the Department, but not including
18 an amount equal to the amount of refunds made during the second
19 preceding calendar month by the Department on behalf of the
20 county; less the amount expended during the second preceding
21 month by the Department pursuant to appropriation from the
22 County Option Motor Fuel Tax Fund for the administration and
23 enforcement of this Section, which appropriation shall not
24 exceed \$200,000 for fiscal year 1990 and, for each year
25 thereafter, shall not exceed 2% of the amount deposited into
26 the County Option Motor Fuel Tax Fund during the preceding

1 fiscal year.

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

6 (f) An ordinance or resolution imposing a tax hereunder or
7 effecting a change in the rate thereof shall be effective on
8 the first day of the second calendar month next following the
9 month in which the ordinance or resolution is adopted and a
10 certified copy thereof is filed with the Department of Revenue,
11 whereupon the Department of Revenue shall proceed to administer
12 and enforce this Section on behalf of the county as of the
13 effective date of the ordinance or resolution. Upon a change in
14 rate of a tax levied hereunder, or upon the discontinuance of
15 the tax, the county board of the county shall, on or not later
16 than 5 days after the effective date of the ordinance or
17 resolution discontinuing the tax or effecting a change in rate,
18 transmit to the Department of Revenue a certified copy of the
19 ordinance or resolution effecting the change or
20 discontinuance.

21 (g) Notwithstanding any other rulemaking authority that
22 may exist, neither the Governor nor any agency or agency head
23 under the jurisdiction of the Governor has any authority to
24 make or promulgate rules to implement or enforce the provisions
25 of this amendatory Act of the 95th General Assembly. If,
26 however, the Governor believes that rules are necessary to

1 implement or enforce the provisions of this amendatory Act of
2 the 95th General Assembly, the Governor may suggest rules to
3 the General Assembly by filing them with the Clerk of the House
4 and the Secretary of the Senate and by requesting that the
5 General Assembly authorize such rulemaking by law, enact those
6 suggested rules into law, or take any other appropriate action
7 in the General Assembly's discretion. Nothing contained in this
8 amendatory Act of the 95th General Assembly shall be
9 interpreted to grant rulemaking authority under any other
10 Illinois statute where such authority is not otherwise
11 explicitly given. For the purposes of this subsection, "rules"
12 is given the meaning contained in Section 1-70 of the Illinois
13 Administrative Procedure Act, and "agency" and "agency head"
14 are given the meanings contained in Sections 1-20 and 1-25 of
15 the Illinois Administrative Procedure Act to the extent that
16 such definitions apply to agencies or agency heads under the
17 jurisdiction of the Governor.

18 (h) This Section shall be known and may be cited as the
19 County Motor Fuel Tax Law.

20 (Source: P.A. 86-1028; 87-289.)