



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB6680

by Rep. Paul D. Froehlich

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006
55 ILCS 5/5-1007

from Ch. 34, par. 5-1006
from Ch. 34, par. 5-1007

Amends the Counties Code. Provides that the voters of a county that imposes a home rule county retailers' occupation tax and a home rule county service occupation tax may file a petition with the county board not more than 180 days after the effective date of the amendatory Act requesting that the question of whether the rate of those taxes should be reduced to 0.75% be submitted to the voters at the next general election. Provides that any increase in the rate of those taxes is subject to a back-door referendum. Preempts home rule powers. Effective immediately.

LRB095 21867 HLH 52121 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning revenue.

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
5 Sections 5-1006 and 5-1007 as follows:

6 (55 ILCS 5/5-1006) (from Ch. 34, par. 5-1006)

7 Sec. 5-1006. Home Rule County Retailers' Occupation Tax
8 Law. Any county that is a home rule unit may impose a tax upon
9 all persons engaged in the business of selling tangible
10 personal property, other than an item of tangible personal
11 property titled or registered with an agency of this State's
12 government, at retail in the county on the gross receipts from
13 such sales made in the course of their business. If imposed,
14 this tax shall only be imposed in 1/4% increments. On and after
15 September 1, 1991, this additional tax may not be imposed on
16 the sales of food for human consumption which is to be consumed
17 off the premises where it is sold (other than alcoholic
18 beverages, soft drinks and food which has been prepared for
19 immediate consumption) and prescription and nonprescription
20 medicines, drugs, medical appliances and insulin, urine
21 testing materials, syringes and needles used by diabetics. The
22 tax imposed by a home rule county pursuant to this Section and
23 all civil penalties that may be assessed as an incident thereof

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

26 If the rate of a retailers' occupation tax imposed under

1 this Section exceeds 0.75% on the effective date of this
2 amendatory Act of the 95th General Assembly, then the voters of
3 the county may file a petition with the county board not more
4 than 180 days after the effective date of this amendatory Act
5 of the 95th General Assembly requesting that the question of
6 whether to reduce the rate of the tax to 0.75% be submitted to
7 the voters of the county at the next general election. The
8 petition must be signed by a number of voters equal to at least
9 8% of the votes cast in the county during the last
10 gubernatorial election. If such a petition is presented to the
11 county board not more than 180 days after the effective date of
12 this amendatory Act of the 95th General Assembly, then the
13 board must certify the question to the proper election
14 officials, who must submit the question at the next general
15 election in accordance with the Election Code. The question
16 must be in substantially the following form:

17 "Shall the rate of a retailers' occupation tax imposed
18 by (county) be reduced to 0.75%?"

19 Votes shall be recorded as "Yes" or "No". If a majority of
20 votes cast on the proposition are in favor of the reduction,
21 then the tax rate shall be reduced to 0.75% beginning on the
22 first day of the first month to occur not less than 30 calendar
23 days after the question is submitted to the voters.

24 Any subsequent increase in the rate of a tax imposed under
25 this Section shall take effect unless a petition is filed with
26 the county board not more than 180 days after the ordinance or

1 resolution increasing the tax is adopted. The petition must be
2 signed by a number of voters equal to at least 8% of the votes
3 cast in the county during the last gubernatorial election. If a
4 petition is not presented to the county board within 180 days
5 after the ordinance or resolution is adopted, then the increase
6 shall take effect on the first day of the first month to occur
7 not less than 30 calendar days after the 180-day time period
8 has expired or at a later date if a later date is provided in
9 the ordinance or resolution imposing the tax. If a petition is
10 presented to the county board within 180 days after the
11 effective date of this amendatory Act of the 95th General
12 Assembly, then the board must certify the question to the
13 proper election officials, who must submit the question at the
14 next general election in accordance with the Election Code. The
15 question must be in substantially the following form:

16 "Shall the rate of a retailers' occupation tax imposed
17 by (county) be increased to (percent)?"

18 Votes shall be recorded as "Yes" or "No". If a majority of
19 votes cast on the proposition are in favor of the increase,
20 then the increase shall take effect on the first day of the
21 first month to occur not less than 30 calendar days after the
22 question is submitted to the voters.

23 A home rule unit may not impose retailers' occupation taxes
24 in a manner that is inconsistent with this Section. This
25 Section is a limitation of home rule powers and functions under
26 subsection (g) of Section 6 of Article VII of the Illinois

1 Constitution.

2 No tax may be imposed by a home rule county pursuant to
3 this Section unless the county also imposes a tax at the same
4 rate pursuant to Section 5-1007.

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

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

20 The Department shall forthwith pay over to the State
21 Treasurer, ex officio, as trustee, all taxes and penalties
22 collected hereunder. On or before the 25th day of each calendar
23 month, the Department shall prepare and certify to the
24 Comptroller the disbursement of stated sums of money to named
25 counties, the counties to be those from which retailers have
26 paid taxes or penalties hereunder to the Department during the

1 second preceding calendar month. The amount to be paid to each
2 county shall be the amount (not including credit memoranda)
3 collected hereunder during the second preceding calendar month
4 by the Department plus an amount the Department determines is
5 necessary to offset any amounts that were erroneously paid to a
6 different taxing body, and not including an amount equal to the
7 amount of refunds made during the second preceding calendar
8 month by the Department on behalf of such county, and not
9 including any amount which the Department determines is
10 necessary to offset any amounts which were payable to a
11 different taxing body but were erroneously paid to the county.
12 Within 10 days after receipt, by the Comptroller, of the
13 disbursement certification to the counties provided for in this
14 Section to be given to the Comptroller by the Department, the
15 Comptroller shall cause the orders to be drawn for the
16 respective amounts in accordance with the directions contained
17 in the certification.

18 In addition to the disbursement required by the preceding
19 paragraph, an allocation shall be made in March of each year to
20 each county that received more than \$500,000 in disbursements
21 under the preceding paragraph in the preceding calendar year.
22 The allocation shall be in an amount equal to the average
23 monthly distribution made to each such county under the
24 preceding paragraph during the preceding calendar year
25 (excluding the 2 months of highest receipts). The distribution
26 made in March of each year subsequent to the year in which an

1 allocation was made pursuant to this paragraph and the
2 preceding paragraph shall be reduced by the amount allocated
3 and disbursed under this paragraph in the preceding calendar
4 year. The Department shall prepare and certify to the
5 Comptroller for disbursement the allocations made in
6 accordance with this paragraph.

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

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

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

1 or discontinuing the tax hereunder or effecting a change in the
2 rate thereof shall be adopted and a certified copy thereof
3 filed with the Department on or before the first day of July,
4 whereupon the Department shall proceed to administer and
5 enforce this Section as of the first day of October next
6 following such adoption and filing. Beginning January 1, 1993,
7 an ordinance or resolution imposing or discontinuing the tax
8 hereunder or effecting a change in the rate thereof shall be
9 adopted and a certified copy thereof filed with the Department
10 on or before the first day of October, whereupon the Department
11 shall proceed to administer and enforce this Section as of the
12 first day of January next following such adoption and filing.
13 Beginning April 1, 1998, an ordinance or resolution imposing or
14 discontinuing the tax hereunder or effecting a change in the
15 rate thereof shall either (i) be adopted and a certified copy
16 thereof filed with the Department on or before the first day of
17 April, whereupon the Department shall proceed to administer and
18 enforce this Section as of the first day of July next following
19 the adoption and filing; or (ii) be adopted and a certified
20 copy thereof filed with the Department on or before the first
21 day of October, whereupon the Department shall proceed to
22 administer and enforce this Section as of the first day of
23 January next following the adoption and filing.

24 When certifying the amount of a monthly disbursement to a
25 county under this Section, the Department shall increase or
26 decrease such amount by an amount necessary to offset any

1 misallocation of previous disbursements. The offset amount
2 shall be the amount erroneously disbursed within the previous 6
3 months from the time a misallocation is discovered.

4 This Section shall be known and may be cited as the Home
5 Rule County Retailers' Occupation Tax Law.

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

7 (55 ILCS 5/5-1007) (from Ch. 34, par. 5-1007)

8 Sec. 5-1007. Home Rule County Service Occupation Tax Law.

9 The corporate authorities of a home rule county may impose a
10 tax upon all persons engaged, in such county, in the business
11 of making sales of service at the same rate of tax imposed
12 pursuant to Section 5-1006 of the selling price of all tangible
13 personal property transferred by such servicemen either in the
14 form of tangible personal property or in the form of real
15 estate as an incident to a sale of service. If imposed, such
16 tax shall only be imposed in 1/4% increments. On and after
17 September 1, 1991, this additional tax may not be imposed on
18 the sales of food for human consumption which is to be consumed
19 off the premises where it is sold (other than alcoholic
20 beverages, soft drinks and food which has been prepared for
21 immediate consumption) and prescription and nonprescription
22 medicines, drugs, medical appliances and insulin, urine
23 testing materials, syringes and needles used by diabetics. The
24 tax imposed by a home rule county pursuant to this Section and
25 all civil penalties that may be assessed as an incident thereof

1 shall be collected and enforced by the State Department of
2 Revenue. The certificate of registration which is issued by the
3 Department to a retailer under the Retailers' Occupation Tax
4 Act or under the Service Occupation Tax Act shall permit such
5 registrant to engage in a business which is taxable under any
6 ordinance or resolution enacted pursuant to this Section
7 without 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 1a-1, 2, 2a, 3 through 3-50 (in
21 respect to all provisions therein other than the State rate of
22 tax), 4 (except that the reference to the State shall be to the
23 taxing county), 5, 7, 8 (except that the jurisdiction to which
24 the tax shall be a debt to the extent indicated in that Section
25 8 shall be the taxing county), 9 (except as to the disposition
26 of taxes and penalties collected, and except that the returned

1 merchandise credit for this county tax may not be taken against
2 any State tax), 10, 11, 12 (except the reference therein to
3 Section 2b of the Retailers' Occupation Tax Act), 13 (except
4 that any reference to the State shall mean the taxing county),
5 the first paragraph of Section 15, 16, 17, 18, 19 and 20 of the
6 Service Occupation Tax Act and Section 3-7 of the Uniform
7 Penalty and Interest Act, as fully as if those provisions were
8 set forth herein.

9 If the rate of a service occupation tax imposed under this
10 Section exceeds 0.75% on the effective date of this amendatory
11 Act of the 95th General Assembly, then the voters of the county
12 may file a petition with the county board not more than 180
13 days after the effective date of this amendatory Act of the
14 95th General Assembly requesting that the question of whether
15 to reduce the rate of the tax to 0.75% be submitted to the
16 voters of the county at the next general election. The petition
17 must be signed by a number of voters equal to at least 8% of the
18 votes cast in the county during the last gubernatorial
19 election. If such a petition is presented to the county board
20 not more than 180 days after the effective date of this
21 amendatory Act of the 95th General Assembly, then the board
22 must certify the question to the proper election officials, who
23 must submit the question at the next general election in
24 accordance with the Election Code. The question must be in
25 substantially the following form:

26 "Shall the rate of a service occupation tax imposed by

1 (county) be reduced to 0.75%?"

2 Votes shall be recorded as "Yes" or "No". If a majority of
3 votes cast on the proposition are in favor of the reduction,
4 then the tax rate shall be reduced to 0.75% on the first day of
5 the first month to occur not less than 30 calendar days after
6 the question is submitted to the voters.

7 Any subsequent increase in the rate of a tax imposed under
8 this Section shall take effect unless a petition is filed with
9 the county board not more than 180 days after the ordinance or
10 resolution increasing the tax is adopted. The petition must be
11 signed by a number of voters equal to at least 8% of the votes
12 cast in the county during the last gubernatorial election. If a
13 petition is not presented to the county board within 180 days
14 after the ordinance or resolution is adopted, then the increase
15 shall take effect on the first day of the first month to occur
16 not less than 30 calendar days after the 180-day time period
17 has expired or at a later date if a later date is provided in
18 the ordinance or resolution imposing the tax. If a petition is
19 presented to the county board within 180 days after the
20 effective date of this amendatory Act of the 95th General
21 Assembly, then the board must certify the question to the
22 proper election officials, who must submit the question at the
23 next general election in accordance with the Election Code. The
24 question must be in substantially the following form:

25 "Shall the rate of a service occupation tax imposed by
26 (county) be increased to (percent)?"

1 Votes shall be recorded as "Yes" or "No". If a majority of
2 votes cast on the proposition are in favor of the increase,
3 then the increase shall take effect on the first day of the
4 first month to occur not less than 30 calendar days after the
5 question is submitted to the voters.

6 A home rule unit may not impose service occupation taxes in
7 a manner that is inconsistent with this Section. This Section
8 is a limitation of home rule powers and functions under
9 subsection (g) of Section 6 of Article VII of the Illinois
10 Constitution.

11 No tax may be imposed by a home rule county pursuant to
12 this Section unless such county also imposes a tax at the same
13 rate pursuant to Section 5-1006.

14 Persons subject to any tax imposed pursuant to the
15 authority granted in this Section may reimburse themselves for
16 their serviceman's tax liability hereunder by separately
17 stating such tax as an additional charge, which charge may be
18 stated in combination, in a single amount, with State tax which
19 servicemen are authorized to collect under the Service Use Tax
20 Act, pursuant to such bracket schedules as the Department may
21 prescribe.

22 Whenever the Department determines that a refund should be
23 made under this Section to a claimant instead of issuing credit
24 memorandum, the Department shall notify the State Comptroller,
25 who shall cause the order to be drawn for the amount specified,
26 and to the person named, in such notification from the

1 Department. Such refund shall be paid by the State Treasurer
2 out of the home rule county retailers' occupation tax fund.

3 The Department shall forthwith pay over to the State
4 Treasurer, ex-officio, as trustee, all taxes and penalties
5 collected hereunder. On or before the 25th day of each calendar
6 month, the Department shall prepare and certify to the
7 Comptroller the disbursement of stated sums of money to named
8 counties, the counties to be those from which suppliers and
9 servicemen have paid taxes or penalties hereunder to the
10 Department during the second preceding calendar month. The
11 amount to be paid to each county shall be the amount (not
12 including credit memoranda) collected hereunder during the
13 second preceding calendar month by the Department, and not
14 including an amount equal to the amount of refunds made during
15 the second preceding calendar month by the Department on behalf
16 of such county. Within 10 days after receipt, by the
17 Comptroller, of the disbursement certification to the counties
18 provided for in this Section to be given to the Comptroller by
19 the Department, the Comptroller shall cause the orders to be
20 drawn for the respective amounts in accordance with the
21 directions contained in such certification.

22 In addition to the disbursement required by the preceding
23 paragraph, an allocation shall be made in each year to each
24 county which received more than \$500,000 in disbursements under
25 the preceding paragraph in the preceding calendar year. The
26 allocation shall be in an amount equal to the average monthly

1 distribution made to each such county under the preceding
2 paragraph during the preceding calendar year (excluding the 2
3 months of highest receipts). The distribution made in March of
4 each year subsequent to the year in which an allocation was
5 made pursuant to this paragraph and the preceding paragraph
6 shall be reduced by the amount allocated and disbursed under
7 this paragraph in the preceding calendar year. The Department
8 shall prepare and certify to the Comptroller for disbursement
9 the allocations made in accordance with this paragraph.

10 Nothing in this Section shall be construed to authorize a
11 county to impose a tax upon the privilege of engaging in any
12 business which under the Constitution of the United States may
13 not be made the subject of taxation by this State.

14 An ordinance or resolution imposing or discontinuing a tax
15 hereunder or effecting a change in the rate thereof shall be
16 adopted and a certified copy thereof filed with the Department
17 on or before the first day of June, whereupon the Department
18 shall proceed to administer and enforce this Section as of the
19 first day of September next following such adoption and filing.
20 Beginning January 1, 1992, an ordinance or resolution imposing
21 or discontinuing the tax hereunder or effecting a change in the
22 rate thereof shall be adopted and a certified copy thereof
23 filed with the Department on or before the first day of July,
24 whereupon the Department shall proceed to administer and
25 enforce this Section as of the first day of October next
26 following such adoption and filing. Beginning January 1, 1993,

1 an ordinance or resolution imposing or discontinuing the tax
2 hereunder or effecting a change in the rate thereof shall be
3 adopted and a certified copy thereof filed with the Department
4 on or before the first day of October, whereupon the Department
5 shall proceed to administer and enforce this Section as of the
6 first day of January next following such adoption and filing.
7 Beginning April 1, 1998, an ordinance or resolution imposing or
8 discontinuing the tax hereunder or effecting a change in the
9 rate thereof shall either (i) be adopted and a certified copy
10 thereof filed with the Department on or before the first day of
11 April, whereupon the Department shall proceed to administer and
12 enforce this Section as of the first day of July next following
13 the adoption and filing; or (ii) be adopted and a certified
14 copy thereof filed with the Department on or before the first
15 day of October, whereupon the Department shall proceed to
16 administer and enforce this Section as of the first day of
17 January next following the adoption and filing.

18 This Section shall be known and may be cited as the Home
19 Rule County Service Occupation Tax Law.

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

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