



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0663

Introduced 02/06/09, by Rep. Paul D. Froehlich - Fred Crespo -  
Keith Farnham - Mark L. Walker

#### 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 Home Rule County Retailers' Occupation Tax Law and the Home Rule County Service Occupation Tax Law in the Counties Code. Provides that, if the tax exceeds 0.75% on the effective date of this amendatory Act, then 60 calendar days after that effective date, the rate reverts to 0.75% by operation of law. Requires referendum approval for a home rule county board to increase the tax rate above 0.75%. Specifies the referendum requirements. Preempts home rule powers. Effective immediately.

LRB096 07903 RCE 18006 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

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  
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. If the tax  
15 exceeds 0.75% on the effective date of this amendatory Act of  
16 the 96th General Assembly, then 60 calendar days after that  
17 effective date, the rate reverts to 0.75% by operation of law.  
18 If the county board proposes an increase that would cause this  
19 tax to be imposed at any rate above 0.75%, then the tax may not  
20 be levied until the question of levying the tax has been  
21 submitted to the electors of the county at a regular election  
22 and approved by a majority of the electors voting on the  
23 question. After the adoption of a resolution by the county

1 board for the submission of the question to the electors of the  
2 county, the board must certify the question to the proper  
3 election authorities. The election authorities must submit the  
4 question at an election in accordance with the Election Code.

5 An election authority must submit the question in  
6 substantially the following form:

7 Shall the county board of (name of the county) be  
8 authorized to levy a retailers' occupation tax and a  
9 service occupation tax at the rate of (rate)? The current  
10 tax rate is (current rate).

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

12 If a majority of the electors voting on the question vote  
13 in the affirmative, the county board may thereafter levy the  
14 tax up to the rate approved by referendum.

15 On and after September 1, 1991, this additional tax may not  
16 be imposed on the sales of food for human consumption which is  
17 to be consumed off the premises where it is sold (other than  
18 alcoholic beverages, soft drinks and food which 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 county pursuant to  
23 this Section and all civil penalties that may be assessed as an  
24 incident thereof shall be collected and enforced by the State  
25 Department of Revenue. The certificate of registration that is  
26 issued by the Department to a retailer under the Retailers'

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

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

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

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

16           The Department shall forthwith pay over to the State  
17 Treasurer, ex officio, as trustee, all taxes and penalties  
18 collected hereunder. On or before the 25th day of each calendar  
19 month, the Department shall prepare and certify to the  
20 Comptroller the disbursement of stated sums of money to named  
21 counties, the counties to be those from which retailers have  
22 paid taxes or penalties hereunder to the Department during the  
23 second preceding calendar month. The amount to be paid to each  
24 county shall be the amount (not including credit memoranda)  
25 collected hereunder during the second preceding calendar month  
26 by the Department plus an amount the Department determines is

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

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

1 Comptroller for disbursement the allocations made in  
2 accordance with this paragraph.

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

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

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

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

20 When certifying the amount of a monthly disbursement to a  
21 county under this Section, the Department shall increase or  
22 decrease such amount by an amount necessary to offset any  
23 misallocation of previous disbursements. The offset amount  
24 shall be the amount erroneously disbursed within the previous 6  
25 months from the time a misallocation is discovered.

26 This Section shall be known and may be cited as the Home



1 Rule County Retailers' Occupation Tax Law.

2 This Section is a denial and limitation of home rule powers  
3 to tax and other powers and functions under subsection (g) of  
4 Section 6 of Article VII of the Illinois Constitution.

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

6 (55 ILCS 5/5-1007) (from Ch. 34, par. 5-1007)

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

8 The corporate authorities of a home rule county may impose a  
9 tax upon all persons engaged, in such county, in the business  
10 of making sales of service at the same rate of tax imposed  
11 pursuant to Section 5-1006 of the selling price of all tangible  
12 personal property transferred by such servicemen either in the  
13 form of tangible personal property or in the form of real  
14 estate as an incident to a sale of service. If imposed, such  
15 tax shall only be imposed in 1/4% increments. If the tax  
16 exceeds 0.75% on the effective date of this amendatory Act of  
17 the 96th General Assembly, then 60 calendar days after that  
18 effective date, the rate reverts to 0.75% by operation of law.  
19 If the county board proposes an increase that would cause this  
20 tax to be imposed at any rate above 0.75%, then the tax may not  
21 be levied until the question of levying the tax has been  
22 submitted to the electors of the county at a regular election  
23 and approved by a majority of the electors voting on the  
24 question. After the adoption of a resolution by the county  
25 board for the submission of the question to the electors of the

1 county, the board must certify the question to the proper  
2 election authorities. The election authorities must submit the  
3 question at an election in accordance with the Election Code.

4 An election authority must submit the question in  
5 substantially the following form:

6 Shall the county board of (name of the county) be  
7 authorized to levy a retailers' occupation tax and a  
8 service occupation tax at the rate of (rate)? The current  
9 tax rate is (current rate).

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

11 If a majority of the electors voting on the question vote  
12 in the affirmative, the county board may thereafter levy the  
13 tax up to the rate approved by referendum.

14 On and after September 1, 1991, this additional tax may not  
15 be imposed on the sales of food for human consumption which is  
16 to be consumed off the premises where it is sold (other than  
17 alcoholic beverages, soft drinks and food which has been  
18 prepared for immediate consumption) and prescription and  
19 nonprescription medicines, drugs, medical appliances and  
20 insulin, urine testing materials, syringes and needles used by  
21 diabetics. The tax imposed by a home rule county pursuant to  
22 this Section and all civil penalties that may be assessed as an  
23 incident thereof shall be collected and enforced by the State  
24 Department of Revenue. The certificate of registration which is  
25 issued by the Department to a retailer under the Retailers'  
26 Occupation Tax Act or under the Service Occupation Tax Act

1 shall permit such registrant to engage in a business which is  
2 taxable under any ordinance or resolution enacted pursuant to  
3 this Section without registering separately with the  
4 Department under such ordinance or resolution or under this  
5 Section. The Department shall have full power to administer and  
6 enforce this Section; to collect all taxes and penalties due  
7 hereunder; to dispose of taxes and penalties so collected in  
8 the manner hereinafter provided; and to determine all rights to  
9 credit memoranda arising on account of the erroneous payment of  
10 tax or penalty hereunder. In the administration of, and  
11 compliance with, this Section the Department and persons who  
12 are subject to this Section shall have the same rights,  
13 remedies, privileges, immunities, powers and duties, and be  
14 subject to the same conditions, restrictions, limitations,  
15 penalties and definitions of terms, and employ the same modes  
16 of procedure, as are prescribed in Sections 1a-1, 2, 2a, 3  
17 through 3-50 (in respect to all provisions therein other than  
18 the State rate of tax), 4 (except that the reference to the  
19 State shall be to the taxing county), 5, 7, 8 (except that the  
20 jurisdiction to which the tax shall be a debt to the extent  
21 indicated in that Section 8 shall be the taxing county), 9  
22 (except as to the disposition of taxes and penalties collected,  
23 and except that the returned merchandise credit for this county  
24 tax may not be taken against any State tax), 10, 11, 12 (except  
25 the reference therein to Section 2b of the Retailers'  
26 Occupation Tax Act), 13 (except that any reference to the State

1 shall mean the taxing county), the first paragraph of Section  
2 15, 16, 17, 18, 19 and 20 of the Service Occupation Tax Act and  
3 Section 3-7 of the Uniform Penalty and Interest Act, as fully  
4 as if those provisions were set forth herein.

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

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

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

23 The Department shall forthwith pay over to the State  
24 Treasurer, ex-officio, as trustee, all taxes and penalties  
25 collected hereunder. On or before the 25th day of each calendar  
26 month, the Department shall prepare and certify to the

1 Comptroller the disbursement of stated sums of money to named  
2 counties, the counties to be those from which suppliers and  
3 servicemen have paid taxes or penalties hereunder to the  
4 Department during the second preceding calendar month. The  
5 amount to be paid to each county shall be the amount (not  
6 including credit memoranda) collected hereunder during the  
7 second preceding calendar month by the Department, and not  
8 including an amount equal to the amount of refunds made during  
9 the second preceding calendar month by the Department on behalf  
10 of such county. Within 10 days after receipt, by the  
11 Comptroller, of the disbursement certification to the counties  
12 provided for in this Section to be given to the Comptroller by  
13 the Department, the Comptroller shall cause the orders to be  
14 drawn for the respective amounts in accordance with the  
15 directions contained in such certification.

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

1 this paragraph in the preceding calendar year. The Department  
2 shall prepare and certify to the Comptroller for disbursement  
3 the allocations made in accordance with this paragraph.

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

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

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

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

14 This Section is a denial and limitation of home rule powers  
15 to tax and other powers and functions under subsection (g) of  
16 Section 6 of Article VII of the Illinois Constitution.

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

18 Section 99. Effective date. This Act takes effect upon  
19 becoming law.