



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB1636

Introduced 2/18/2009, by Rep. Michael J. Madigan - Barbara Flynn Currie - Paul D. Froehlich

#### SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-1

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

Amends the Home Rule Municipal Retailers' Occupation Tax Act in the Illinois Municipal Code. Makes a technical change in a Section authorizing the imposition of the tax.

LRB096 05205 RLJ 15271 b

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

5 Persons subject to any tax imposed under the authority  
6 granted in this Section may reimburse themselves for their  
7 seller's tax liability hereunder by separately stating that tax  
8 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 municipal retailers' occupation  
19 tax fund.

20 The Department shall immediately 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 municipalities, the municipalities to be those from which  
26 retailers have paid taxes or penalties hereunder to the

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

18 In addition to the disbursement required by the preceding  
19 paragraph and in order to mitigate delays caused by  
20 distribution procedures, an allocation shall, if requested, be  
21 made within 10 days after January 14, 1991, and in November of  
22 1991 and each year thereafter, to each municipality that  
23 received more than \$500,000 during the preceding fiscal year,  
24 (July 1 through June 30) whether collected by the municipality  
25 or disbursed by the Department as required by this Section.  
26 Within 10 days after January 14, 1991, participating

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

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

10           Nothing in this Section shall be construed to authorize a  
11 municipality to impose a tax upon the privilege of engaging in  
12 any business which under the Constitution of the United States  
13 may 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 the 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 the adoption and filing.  
7 However, a municipality located in a county with a population  
8 in excess of 3,000,000 that elected to become a home rule unit  
9 at the general primary election in 1994 may adopt an ordinance  
10 or resolution imposing the tax under this Section and file a  
11 certified copy of the ordinance or resolution with the  
12 Department on or before July 1, 1994. The Department shall then  
13 proceed to administer and enforce this Section as of October 1,  
14 1994. Beginning April 1, 1998, an ordinance or resolution  
15 imposing or discontinuing the tax hereunder or effecting a  
16 change in the rate thereof shall either (i) be adopted and a  
17 certified copy thereof filed with the Department on or before  
18 the first day of April, whereupon the Department shall proceed  
19 to administer and enforce this Section as of the first day of  
20 July next following the adoption and filing; or (ii) be adopted  
21 and a certified copy thereof filed with the Department on or  
22 before the first day of October, whereupon the Department shall  
23 proceed to administer and enforce this Section as of the first  
24 day of January next following the adoption and filing.

25 When certifying the amount of a monthly disbursement to a  
26 municipality under this Section, the Department shall increase



1 or decrease the amount by an amount necessary to offset any  
2 misallocation of previous disbursements. The offset amount  
3 shall be the amount erroneously disbursed within the previous 6  
4 months from the time a misallocation is discovered.

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

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

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

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