

HB5632



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5632

Introduced 2/9/2010, by Rep. Tom Cross - Michael G. Connelly

SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-6b

Amends the Illinois Municipal Code. Makes a technical change in a Section concerning taxes on soft drinks imposed by home rule municipalities.

LRB096 18686 RLJ 34070 b

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 8-11-6b as follows:

6 (65 ILCS 5/8-11-6b)

7 Sec. 8-11-6b. Home rule soft drink taxes.

8 (a) Except as provided in Sections 8-11-1, 8-11-5 and ~~and~~
9 8-11-6, or as provided in this Section, no home rule
10 municipality has the authority to impose, pursuant to its home
11 rule authority, a tax on the sale, purchase, or use of soft
12 drinks regardless of whether the measure of the tax is selling
13 price, purchase price, gross receipts, unit of volumetric
14 measure, or any other measure. For purposes of this subsection,
15 the term "soft drink" has the meaning set forth in Section 2-10
16 of the Retailers' Occupation Tax Act, as may be amended from
17 time to time, except that the term shall not be limited to
18 drinks contained in a closed or sealed bottle, can, carton, or
19 container. This Section is a denial and limitation, under
20 subsection (g) of Section 6 of Article VII of the Illinois
21 Constitution, on the power of home rule units to tax.

22 (b) The corporate authorities of a home rule municipality
23 with a population in excess of 1,000,000 may impose a tax,

1 which shall not take effect prior to April 1, 1994, upon all
2 persons engaged in the business of selling soft drinks (other
3 than fountain soft drinks) at retail in the municipality based
4 on the gross receipts from those sales made in the course of
5 such business. If imposed, the tax shall only be in 1/4%
6 increments and shall not exceed 3%. For purposes of this
7 subsection, the term "soft drink" has the meaning set forth in
8 Section 2-10 of the Retailers' Occupation Tax Act, as may be
9 amended from time to time, except that the term shall not be
10 limited to drinks contained in a closed or sealed bottle, can,
11 carton or container; the term "fountain soft drinks" means soft
12 drinks which are prepared by the retail seller of the soft
13 drinks by mixing syrup or concentrate with water, by hand or
14 through a soft drink dispensing machine, at or near the point
15 and time of sale to the retail purchaser; and the term "soft
16 drink dispensing machine" means a device which mixes soft drink
17 syrup or concentrate with water and dispenses the mixture into
18 an open container as a ready to drink soft drink.

19 The tax imposed under this subsection and all civil
20 penalties that may be assessed as an incident to that tax shall
21 be collected and enforced by the Illinois Department of
22 Revenue. The Department shall have full power to administer and
23 enforce this subsection, to collect all taxes and penalties so
24 collected in the manner provided in this subsection, and to
25 determine all rights to credit memoranda arising on account of
26 the erroneous payment of tax or penalty under this subsection.

1 In the administration of and compliance with this subsection,
2 the Department and persons who are subject to this subsection
3 shall have the same rights, remedies, privileges, immunities,
4 powers and duties, shall be subject to the same conditions,
5 restrictions, limitations, penalties, exclusions, exemptions,
6 and definitions of terms, and shall employ the same modes of
7 procedure applicable to the Retailers' Occupation Tax as are
8 prescribed in Sections 1, 2 through 2-65 (in respect to all
9 provisions of those Sections other than the State rate of
10 taxes), 2c, 2h, 2i, 3 (except as to the disposition of taxes
11 and penalties collected), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i,
12 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13 and, until January 1,
13 1994, 13.5 of the Retailers' Occupation Tax Act, and on and
14 after January 1, 1994, all applicable provisions of the Uniform
15 Penalty and Interest Act that are not inconsistent with this
16 subsection, as fully as if provisions contained in those
17 Sections of the Retailers' Occupation Tax Act were set forth in
18 this subsection.

19 Persons subject to any tax imposed under the authority
20 granted by this subsection may reimburse themselves for their
21 seller's tax liability under this subsection by separately
22 stating that tax as an additional charge, which charge may be
23 stated in combination, in a single amount, with State taxes
24 that sellers are required to collect under the Use Tax Act
25 pursuant to bracket schedules as the Department may prescribe.
26 The retailer filing the return shall, at the time of filing the

1 return, pay to the Department the amount of tax imposed under
2 this subsection, less the discount of 1.75%, which is allowed
3 to reimburse the retailer for the expenses incurred in keeping
4 records, preparing the filing returns, remitting the tax, and
5 supplying data to the Department on request.

6 Whenever the Department determines that a refund should be
7 made under this subsection to a claimant instead of issuing a
8 credit memoranda, the Department shall notify the State
9 Comptroller, who shall cause a warrant to be drawn for the
10 amount specified and to the person named in the notification
11 from the Department. The refund shall be paid by the State
12 Treasurer out of the Home Rule Municipal Soft Drink Retailers'
13 Occupation Tax Fund.

14 The Department shall forthwith pay over to the State
15 Treasurer, ex officio, as trustee, all taxes and penalties
16 collected hereunder. On or before the 25th day of each calendar
17 month, the Department shall prepare and certify to the
18 Comptroller the amount to be paid to named municipalities, the
19 municipalities to be those from which retailers have paid taxes
20 or penalties hereunder to the Department during the second
21 preceding calendar month. The amount to be paid to each
22 municipality shall be the amount collected hereunder during the
23 second preceding calendar month by the Department, less any
24 amounts determined by the Department to be necessary for the
25 payment of refunds, and less 4% for the first year the tax is
26 in effect and 2% thereafter of such balance, which sum shall be

1 deposited by the State Treasurer into the Tax Compliance and
2 Administration Fund in the State treasury from which it shall
3 be appropriated to the Department to cover the costs of the
4 Department in administering and enforcing the provisions of
5 this subsection. Within 10 days after receipt by the
6 Comptroller of the certification, the Comptroller shall cause
7 the orders to be drawn for the respective amount in accordance
8 with the directions contained in such certification.

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

13 A certificate of registration issued by the Illinois
14 Department of Revenue to a retailer under the Retailers'
15 Occupation Tax Act shall permit the registrant to engage in a
16 business that is taxed under the tax imposed under this
17 subsection and no additional registration shall be required
18 under the ordinance imposing a tax or under this subsection.

19 A certified copy of any ordinance imposing or discontinuing
20 any tax under this subsection or effecting a change in the rate
21 of that tax shall be filed with the Department, whereupon the
22 Department shall proceed to administer and enforce this
23 subsection on behalf of such municipality as of the first day
24 of February following the date of filing. This tax shall be
25 known and cited as the Home Rule Municipal Soft Drink
26 Retailers' Occupation Tax.

1 (c) The corporate authorities of a home rule municipality
2 with a population in excess of 1,000,000 may impose a tax,
3 which shall not take effect prior to April 1, 1994, on persons
4 engaged in the business of selling fountain soft drinks at
5 retail at a rate not to exceed 9% of the cost price of the
6 fountain soft drinks at retail in such municipality. For
7 purposes of this subsection, the term "soft drink" has the
8 meaning set forth in Section 2-10 of the Retailers' Occupation
9 Tax Act, as may be amended from time to time, except that the
10 term shall not be limited to drinks contained in a closed or
11 sealed bottle, can, carton, or container; the term "fountain
12 soft drinks" means soft drinks which are prepared by the retail
13 seller of the soft drinks by mixing soft drink syrup or
14 concentrate with water, by hand or through a soft drink
15 dispensing machine at or near the point and time of sale to the
16 retail purchaser; the term "soft drink dispensing machine"
17 means a device which mixes soft drink syrup or concentrate with
18 water and dispenses such mixture into an open container as a
19 ready to drink soft drink; the term "sold at retail" shall mean
20 any transfer of the ownership or title to tangible personal
21 property to a purchaser, for the purpose of use or consumption,
22 and not for the purpose of resale, for valuable consideration;
23 the term "cost price of the fountain soft drinks" means the
24 consideration paid by the retail seller of the fountain soft
25 drink, valued in money, whether paid in money or otherwise,
26 including cash, credits and services, and shall be determined

1 without any deduction on account of the supplier's cost of the
2 property sold or on account or any other expenses incurred by
3 the supplier, for the purchase of soft drink syrup or
4 concentrate which is designed to be further mixed with water
5 before it is consumed as a soft drink; and the term "supplier"
6 means any person who makes sales of soft drink syrup or
7 concentrate to a retail seller of fountain soft drinks for
8 purposes of resale as fountain soft drinks. The tax authorized
9 by this subsection shall be collected, enforced, and
10 administered by the municipality imposing the tax. Persons
11 subject to the tax may reimburse themselves for their tax
12 liability hereunder by separately stating an amount equal to
13 the tax as an additional charge to their retail purchasers or
14 may include such amount as part of the selling price of the
15 soft drink. The municipality imposing the tax shall provide for
16 its collection from the person subject to the tax by requiring
17 that the supplier to the person subject to the tax collect and
18 remit the tax to the municipality. If the supplier fails to
19 collect the tax or if the person subject to the tax fails to
20 pay the tax to its supplier, the person subject to the tax
21 shall make the tax payment directly to the municipality.
22 Payment of the tax by the retailer to the supplier shall
23 relieve the retailer of any further liability for the tax.

24 (d) If either tax imposed or authorized by this Section
25 8-11-6b is repealed by the General Assembly or has its maximum
26 rate reduced by the General Assembly, or is declared unlawful

1 or unconstitutional on its face by any court of competent
2 jurisdiction after all appeals have been exhausted or the time
3 to appeal has expired, then this Section 8-11-6b is
4 automatically repealed and no longer effective without further
5 action by the General Assembly.

6 (e) Notwithstanding the preemption of taxes on the sale,
7 purchase or use of soft drinks, taxes on the sale, purchase, or
8 use of soft drinks which had been imposed by a municipality
9 prior to the effective date of this amendatory Act of 1993 are
10 specifically authorized under this Section for sales made on or
11 after the effective date of this amendatory Act of 1993 through
12 March 31, 1994.

13 (Source: P.A. 88-507.)