

SB0230



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0230

Introduced 2/4/2009, by Sen. John O. Jones

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.5

Amends the Counties Code concerning the Special County Retailers' Occupation Tax For Public Safety or Transportation. Authorizes counties to share tax proceeds received for public safety purposes, including proceeds received before the effective date of this amendatory Act, with any fire protection district located in the county. Effective immediately.

LRB096 08382 RLJ 18494 b

FISCAL NOTE ACT
MAY APPLY

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 Counties Code is amended by changing Section
5 5-1006.5 as follows:

6 (55 ILCS 5/5-1006.5)

7 Sec. 5-1006.5. Special County Retailers' Occupation Tax
8 For Public Safety, Public Facilities, or Transportation.

9 (a) The county board of any county may impose a tax upon
10 all persons engaged in the business of selling tangible
11 personal property, other than personal property titled or
12 registered with an agency of this State's government, at retail
13 in the county on the gross receipts from the sales made in the
14 course of business to provide revenue to be used exclusively
15 for public safety, public facility, or transportation purposes
16 in that county, if a proposition for the tax has been submitted
17 to the electors of that county and approved by a majority of
18 those voting on the question. If imposed, this tax shall be
19 imposed only in one-quarter percent increments. By resolution,
20 the county board may order the proposition to be submitted at
21 any election. If the tax is imposed for transportation purposes
22 for expenditures for public highways or as authorized under the
23 Illinois Highway Code, the county board must publish notice of

1 the existence of its long-range highway transportation plan as
2 required or described in Section 5-301 of the Illinois Highway
3 Code and must make the plan publicly available prior to
4 approval of the ordinance or resolution imposing the tax. If
5 the tax is imposed for transportation purposes for expenditures
6 for passenger rail transportation, the county board must
7 publish notice of the existence of its long-range passenger
8 rail transportation plan and must make the plan publicly
9 available prior to approval of the ordinance or resolution
10 imposing the tax. The county clerk shall certify the question
11 to the proper election authority, who shall submit the
12 proposition at an election in accordance with the general
13 election law.

14 (1) The proposition for public safety purposes shall be
15 in substantially the following form:

16 "To pay for public safety purposes, shall (name of
17 county) be authorized to impose an increase on its share of
18 local sales taxes by (insert rate)?"

19 As additional information on the ballot below the
20 question shall appear the following:

21 "This would mean that a consumer would pay an
22 additional (insert amount) in sales tax for every \$100 of
23 tangible personal property bought at retail."

24 The county board may also opt to establish a sunset
25 provision at which time the additional sales tax would
26 cease being collected, if not terminated earlier by a vote

1 of the county board. If the county board votes to include a
2 sunset provision, the proposition for public safety
3 purposes shall be in substantially the following form:

4 "To pay for public safety purposes, shall (name of
5 county) be authorized to impose an increase on its share of
6 local sales taxes by (insert rate) for a period not to
7 exceed (insert number of years)?"

8 As additional information on the ballot below the
9 question shall appear the following:

10 "This would mean that a consumer would pay an
11 additional (insert amount) in sales tax for every \$100 of
12 tangible personal property bought at retail. If imposed,
13 the additional tax would cease being collected at the end
14 of (insert number of years), if not terminated earlier by a
15 vote of the county board."

16 For the purposes of the paragraph, "public safety
17 purposes" means crime prevention, detention, fire
18 fighting, police, medical, ambulance, or other emergency
19 services.

20 Votes shall be recorded as "Yes" or "No".

21 (2) The proposition for transportation purposes shall
22 be in substantially the following form:

23 "To pay for improvements to roads and other
24 transportation purposes, shall (name of county) be
25 authorized to impose an increase on its share of local
26 sales taxes by (insert rate)?"

1 As additional information on the ballot below the
2 question shall appear the following:

3 "This would mean that a consumer would pay an
4 additional (insert amount) in sales tax for every \$100 of
5 tangible personal property bought at retail."

6 The county board may also opt to establish a sunset
7 provision at which time the additional sales tax would
8 cease being collected, if not terminated earlier by a vote
9 of the county board. If the county board votes to include a
10 sunset provision, the proposition for transportation
11 purposes shall be in substantially the following form:

12 "To pay for road improvements and other transportation
13 purposes, shall (name of county) be authorized to impose an
14 increase on its share of local sales taxes by (insert rate)
15 for a period not to exceed (insert number of years)?"

16 As additional information on the ballot below the
17 question shall appear the following:

18 "This would mean that a consumer would pay an
19 additional (insert amount) in sales tax for every \$100 of
20 tangible personal property bought at retail. If imposed,
21 the additional tax would cease being collected at the end
22 of (insert number of years), if not terminated earlier by a
23 vote of the county board."

24 For the purposes of this paragraph, transportation
25 purposes means construction, maintenance, operation, and
26 improvement of public highways, any other purpose for which

1 a county may expend funds under the Illinois Highway Code,
2 and passenger rail transportation.

3 The votes shall be recorded as "Yes" or "No".

4 (3) The proposition for public facility purposes shall
5 be in substantially the following form:

6 "To pay for public facility purposes, shall (name of
7 county) be authorized to impose an increase on its share of
8 local sales taxes by (insert rate)?"

9 As additional information on the ballot below the
10 question shall appear the following:

11 "This would mean that a consumer would pay an
12 additional (insert amount) in sales tax for every \$100 of
13 tangible personal property bought at retail."

14 The county board may also opt to establish a sunset
15 provision at which time the additional sales tax would
16 cease being collected, if not terminated earlier by a vote
17 of the county board. If the county board votes to include a
18 sunset provision, the proposition for public facility
19 purposes shall be in substantially the following form:

20 "To pay for public facility purposes, shall (name of
21 county) be authorized to impose an increase on its share of
22 local sales taxes by (insert rate) for a period not to
23 exceed (insert number of years)?"

24 As additional information on the ballot below the
25 question shall appear the following:

26 "This would mean that a consumer would pay an

1 additional (insert amount) in sales tax for every \$100 of
2 tangible personal property bought at retail. If imposed,
3 the additional tax would cease being collected at the end
4 of (insert number of years), if not terminated earlier by a
5 vote of the county board."

6 For purposes of this Section, "public facilities
7 purposes" means the acquisition, development,
8 construction, reconstruction, rehabilitation, improvement,
9 financing, architectural planning, and installation of
10 capital facilities consisting of buildings, structures,
11 and durable equipment and for the acquisition and
12 improvement of real property and interest in real property
13 required, or expected to be required, in connection with
14 the public facilities, for use by the county for the
15 furnishing of governmental services to its citizens,
16 including but not limited to museums and nursing homes.

17 The votes shall be recorded as "Yes" or "No".

18 If a majority of the electors voting on the proposition
19 vote in favor of it, the county may impose the tax. A county
20 may not submit more than one proposition authorized by this
21 Section to the electors at any one time.

22 This additional tax may not be imposed on the sales of food
23 for human consumption that is to be consumed off the premises
24 where it is sold (other than alcoholic beverages, soft drinks,
25 and food which has been prepared for immediate consumption) and
26 prescription and non-prescription medicines, drugs, medical

1 appliances and insulin, urine testing materials, syringes, and
2 needles used by diabetics. The tax imposed by a county under
3 this Section and all civil penalties that may be assessed as an
4 incident of the tax shall be collected and enforced by the
5 Illinois Department of Revenue and deposited into a special
6 fund created for that purpose. The certificate of registration
7 that is issued by the Department to a retailer under the
8 Retailers' Occupation Tax Act shall permit the retailer to
9 engage in a business that is taxable without registering
10 separately with the Department under an ordinance or resolution
11 under this Section. The Department has full power to administer
12 and enforce this Section, to collect all taxes and penalties
13 due under this Section, to dispose of taxes and penalties so
14 collected in the manner provided in this Section, and to
15 determine all rights to credit memoranda arising on account of
16 the erroneous payment of a tax or penalty under this Section.
17 In the administration of and compliance with this Section, the
18 Department and persons who are subject to this Section shall
19 (i) have the same rights, remedies, privileges, immunities,
20 powers, and duties, (ii) be subject to the same conditions,
21 restrictions, limitations, penalties, and definitions of
22 terms, and (iii) employ the same modes of procedure as are
23 prescribed in Sections 1, 1a, 1a-1, 1d, 1e, 1f, 1i, 1j, 1k, 1m,
24 1n, 2 through 2-70 (in respect to all provisions contained in
25 those Sections other than the State rate of tax), 2a, 2b, 2c, 3
26 (except provisions relating to transaction returns and quarter

1 monthly payments), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i,
2 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12, and 13 of
3 the Retailers' Occupation Tax Act and Section 3-7 of the
4 Uniform Penalty and Interest Act as if those provisions were
5 set forth in this Section.

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

13 Whenever the Department determines that a refund should be
14 made under this Section to a claimant instead of issuing a
15 credit memorandum, the Department shall notify the State
16 Comptroller, who shall cause the order to be drawn for the
17 amount specified and to the person named in the notification
18 from the Department. The refund shall be paid by the State
19 Treasurer out of the County Public Safety or Transportation
20 Retailers' Occupation Tax Fund.

21 (b) If a tax has been imposed under subsection (a), a
22 service occupation tax shall also be imposed at the same rate
23 upon all persons engaged, in the county, in the business of
24 making sales of service, who, as an incident to making those
25 sales of service, transfer tangible personal property within
26 the county as an incident to a sale of service. This tax may

1 not be imposed on sales of food for human consumption that is
2 to be consumed off the premises where it is sold (other than
3 alcoholic beverages, soft drinks, and food prepared for
4 immediate consumption) and prescription and non-prescription
5 medicines, drugs, medical appliances and insulin, urine
6 testing materials, syringes, and needles used by diabetics. The
7 tax imposed under this subsection and all civil penalties that
8 may be assessed as an incident thereof shall be collected and
9 enforced by the Department of Revenue. The Department has full
10 power to administer and enforce this subsection; to collect all
11 taxes and penalties due hereunder; to dispose of taxes and
12 penalties so collected in the manner hereinafter provided; and
13 to determine all rights to credit memoranda arising on account
14 of the erroneous payment of tax or penalty hereunder. In the
15 administration of, and compliance with this subsection, the
16 Department and persons who are subject to this paragraph shall
17 (i) have the same rights, remedies, privileges, immunities,
18 powers, and duties, (ii) be subject to the same conditions,
19 restrictions, limitations, penalties, exclusions, exemptions,
20 and definitions of terms, and (iii) employ the same modes of
21 procedure as are prescribed in Sections 2 (except that the
22 reference to State in the definition of supplier maintaining a
23 place of business in this State shall mean the county), 2a, 2b,
24 2c, 3 through 3-50 (in respect to all provisions therein other
25 than the State rate of tax), 4 (except that the reference to
26 the State shall be to the county), 5, 7, 8 (except that the

1 jurisdiction to which the tax shall be a debt to the extent
2 indicated in that Section 8 shall be the county), 9 (except as
3 to the disposition of taxes and penalties collected), 10, 11,
4 12 (except the reference therein to Section 2b of the
5 Retailers' Occupation Tax Act), 13 (except that any reference
6 to the State shall mean the county), Section 15, 16, 17, 18, 19
7 and 20 of the Service Occupation Tax Act and Section 3-7 of the
8 Uniform Penalty and Interest Act, as fully as if those
9 provisions were set forth herein.

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

18 Whenever the Department determines that a refund should be
19 made under this subsection to a claimant instead of issuing a
20 credit memorandum, the Department shall notify the State
21 Comptroller, who shall cause the warrant to be drawn for the
22 amount specified, and to the person named, in the notification
23 from the Department. The refund shall be paid by the State
24 Treasurer out of the County Public Safety or Transportation
25 Retailers' Occupation Fund.

26 Nothing in this subsection shall be construed to authorize

1 the county to impose a tax upon the privilege of engaging in
2 any business which under the Constitution of the United States
3 may not be made the subject of taxation by the State.

4 (c) The Department shall immediately pay over to the State
5 Treasurer, ex officio, as trustee, all taxes and penalties
6 collected under this Section to be deposited into the County
7 Public Safety or Transportation Retailers' Occupation Tax
8 Fund, which shall be an unappropriated trust fund held outside
9 of the State treasury. On or before the 25th day of each
10 calendar month, the Department shall prepare and certify to the
11 Comptroller the disbursement of stated sums of money to the
12 counties from which retailers have paid taxes or penalties to
13 the Department during the second preceding calendar month. The
14 amount to be paid to each county, and deposited by the county
15 into its special fund created for the purposes of this Section,
16 shall be the amount (not including credit memoranda) collected
17 under this Section during the second preceding calendar month
18 by the Department plus an amount the Department determines is
19 necessary to offset any amounts that were erroneously paid to a
20 different taxing body, and not including (i) an amount equal to
21 the amount of refunds made during the second preceding calendar
22 month by the Department on behalf of the county and (ii) any
23 amount that the Department determines is necessary to offset
24 any amounts that were payable to a different taxing body but
25 were erroneously paid to the county. Within 10 days after
26 receipt by the Comptroller of the disbursement certification to

1 the counties provided for in this Section to be given to the
2 Comptroller by the Department, the Comptroller shall cause the
3 orders to be drawn for the respective amounts in accordance
4 with directions contained in the certification.

5 In addition to the disbursement required by the preceding
6 paragraph, an allocation shall be made in March of each year to
7 each county that received more than \$500,000 in disbursements
8 under the preceding paragraph in the preceding calendar year.
9 The allocation shall be in an amount equal to the average
10 monthly distribution made to each such county under the
11 preceding paragraph during the preceding calendar year
12 (excluding the 2 months of highest receipts). The distribution
13 made in March of each year subsequent to the year in which an
14 allocation was made pursuant to this paragraph and the
15 preceding paragraph shall be reduced by the amount allocated
16 and disbursed under this paragraph in the preceding calendar
17 year. The Department shall prepare and certify to the
18 Comptroller for disbursement the allocations made in
19 accordance with this paragraph.

20 (d) For the purpose of determining the local governmental
21 unit whose tax is applicable, a retail sale by a producer of
22 coal or another mineral mined in Illinois is a sale at retail
23 at the place where the coal or other mineral mined in Illinois
24 is extracted from the earth. This paragraph does not apply to
25 coal or another mineral when it is delivered or shipped by the
26 seller to the purchaser at a point outside Illinois so that the

1 sale is exempt under the United States Constitution as a sale
2 in interstate or foreign commerce.

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

7 (e-5) If a county imposes a tax under this Section, the
8 county board may, by ordinance, discontinue or lower the rate
9 of the tax. If the county board lowers the tax rate or
10 discontinues the tax, a referendum must be held in accordance
11 with subsection (a) of this Section in order to increase the
12 rate of the tax or to reimpose the discontinued tax.

13 (f) Beginning April 1, 1998, the results of any election
14 authorizing a proposition to impose a tax under this Section or
15 effecting a change in the rate of tax, or any ordinance
16 lowering the rate or discontinuing the tax, shall be certified
17 by the county clerk and filed with the Illinois Department of
18 Revenue either (i) on or before the first day of April,
19 whereupon the Department shall proceed to administer and
20 enforce the tax as of the first day of July next following the
21 filing; or (ii) on or before the first day of October,
22 whereupon the Department shall proceed to administer and
23 enforce the tax as of the first day of January next following
24 the filing.

25 (g) When certifying the amount of a monthly disbursement to
26 a county under this Section, the Department shall increase or

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

5 (h) This Section may be cited as the "Special County
6 Occupation Tax For Public Safety, Public Facilities, or
7 Transportation Law".

8 (i) For purposes of this Section, "public safety" includes,
9 but is not limited to, crime prevention, detention, fire
10 fighting, police, medical, ambulance, or other emergency
11 services. The county may share tax proceeds received under this
12 Section for public safety purposes, including proceeds
13 received before the effective date of this amendatory Act of
14 the 96th General Assembly, with any fire protection district
15 located in the county. For the purposes of this Section,
16 "transportation" includes, but is not limited to, the
17 construction, maintenance, operation, and improvement of
18 public highways, any other purpose for which a county may
19 expend funds under the Illinois Highway Code, and passenger
20 rail transportation. For the purposes of this Section, "public
21 facilities purposes" includes, but is not limited to, the
22 acquisition, development, construction, reconstruction,
23 rehabilitation, improvement, financing, architectural
24 planning, and installation of capital facilities consisting of
25 buildings, structures, and durable equipment and for the
26 acquisition and improvement of real property and interest in

1 real property required, or expected to be required, in
2 connection with the public facilities, for use by the county
3 for the furnishing of governmental services to its citizens,
4 including but not limited to museums and nursing homes.

5 (j) The Department may promulgate rules to implement this
6 amendatory Act of the 95th General Assembly only to the extent
7 necessary to apply the existing rules for the Special County
8 Retailers' Occupation Tax for Public Safety to this new purpose
9 for public facilities.

10 (Source: P.A. 94-781, eff. 5-19-06; 95-474, eff. 1-1-08;
11 95-1002, eff. 11-20-08.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.