

# SB3133



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB3133

Introduced 2/8/2010, by Sen. Don Harmon

#### SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-1.3

from Ch. 24, par. 8-11-1.3

Amends the Non-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 20282 RLJ 35888 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 8-11-1.3 as follows:

6 (65 ILCS 5/8-11-1.3) (from Ch. 24, par. 8-11-1.3)

7 Sec. 8-11-1.3. Non-Home Rule Municipal Retailers'  
8 Occupation Tax Act. The ~~The~~ corporate authorities of a non-home  
9 rule municipality may impose a tax upon all persons engaged in  
10 the business of selling tangible personal property, other than  
11 on an item of tangible personal property which is titled and  
12 registered by an agency of this State's Government, at retail  
13 in the municipality for expenditure on public infrastructure or  
14 for property tax relief or both as defined in Section 8-11-1.2  
15 if approved by referendum as provided in Section 8-11-1.1, of  
16 the gross receipts from such sales made in the course of such  
17 business. The tax imposed may not be more than 1% and may be  
18 imposed only in 1/4% increments. The tax may not be imposed on  
19 the sale of food for human consumption that is to be consumed  
20 off the premises where it is sold (other than alcoholic  
21 beverages, soft drinks, and food that has been prepared for  
22 immediate consumption) and prescription and nonprescription  
23 medicines, drugs, medical appliances, and insulin, urine

1 testing materials, syringes, and needles used by diabetics. The  
2 tax imposed by a municipality pursuant to this Section and all  
3 civil penalties that may be assessed as an incident thereof  
4 shall be collected and enforced by the State Department of  
5 Revenue. The certificate of registration which is issued by the  
6 Department to a retailer under the Retailers' Occupation Tax  
7 Act shall permit such retailer to engage in a business which is  
8 taxable under any ordinance or resolution enacted pursuant to  
9 this Section without registering separately with the  
10 Department under such ordinance or resolution or under this  
11 Section. The Department shall have full power to administer and  
12 enforce this Section; to collect all taxes and penalties due  
13 hereunder; to dispose of taxes and penalties so collected in  
14 the manner hereinafter provided, and to determine all rights to  
15 credit memoranda, arising on account of the erroneous payment  
16 of tax or penalty hereunder. In the administration of, and  
17 compliance with, this Section, the Department and persons who  
18 are subject to this Section shall have the same rights,  
19 remedies, privileges, immunities, powers and duties, and be  
20 subject to the same conditions, restrictions, limitations,  
21 penalties and definitions of terms, and employ the same modes  
22 of procedure, as are prescribed in Sections 1, 1a, 1a-1, 1d,  
23 1e, 1f, 1i, 1j, 2 through 2-65 (in respect to all provisions  
24 therein other than the State rate of tax), 2c, 3 (except as to  
25 the disposition of taxes and penalties collected), 4, 5, 5a,  
26 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8,

1 9, 10, 11, 12 and 13 of the Retailers' Occupation Tax Act and  
2 Section 3-7 of the Uniform Penalty and Interest Act as fully as  
3 if those provisions were set forth herein.

4 No municipality may impose a tax under this Section unless  
5 the municipality also imposes a tax at the same rate under  
6 Section 8-11-1.4 of this Code.

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

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

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

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

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

1 to the purchaser at a point outside Illinois so that the sale  
2 is exempt under the Federal Constitution as a sale in  
3 interstate or foreign commerce.

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

8 When certifying the amount of a monthly disbursement to a  
9 municipality under this Section, the Department shall increase  
10 or decrease such amount by an amount necessary to offset any  
11 misallocation of previous disbursements. The offset amount  
12 shall be the amount erroneously disbursed within the previous 6  
13 months from the time a misallocation is discovered.

14 The Department of Revenue shall implement this amendatory  
15 Act of the 91st General Assembly so as to collect the tax on  
16 and after January 1, 2002.

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

20 This Section shall be known and may be cited as the  
21 "Non-Home Rule Municipal Retailers' Occupation Tax Act".

22 (Source: P.A. 94-679, eff. 1-1-06.)