

**SB3097**



**97TH GENERAL ASSEMBLY**

**State of Illinois**

**2011 and 2012**

**SB3097**

Introduced 2/1/2012, by Sen. Christine Radogno

**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.

LRB097 16603 KMW 61775 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.)