

HB0785



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB0785

by Rep. Michael J. Madigan

SYNOPSIS AS INTRODUCED:

65 ILCS 5/8-11-2

from Ch. 24, par. 8-11-2

Amends the Illinois Municipal Code. Makes a technical change in a Section concerning municipal occupation and privilege taxes.

LRB099 04598 AWJ 24626 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 8-11-2 as follows:

6 (65 ILCS 5/8-11-2) (from Ch. 24, par. 8-11-2)

7 Sec. 8-11-2. The ~~The~~ corporate authorities of any
8 municipality may tax any or all of the following occupations or
9 privileges:

10 1. (Blank).

11 2. Persons engaged in the business of distributing,
12 supplying, furnishing, or selling gas for use or
13 consumption within the corporate limits of a municipality
14 of 500,000 or fewer population, and not for resale, at a
15 rate not to exceed 5% of the gross receipts therefrom.

16 2a. Persons engaged in the business of distributing,
17 supplying, furnishing, or selling gas for use or
18 consumption within the corporate limits of a municipality
19 of over 500,000 population, and not for resale, at a rate
20 not to exceed 8% of the gross receipts therefrom. If
21 imposed, this tax shall be paid in monthly payments.

22 3. The privilege of using or consuming electricity
23 acquired in a purchase at retail and used or consumed

1 within the corporate limits of the municipality at rates
2 not to exceed the following maximum rates, calculated on a
3 monthly basis for each purchaser:

4 (i) For the first 2,000 kilowatt-hours used or
5 consumed in a month; 0.61 cents per kilowatt-hour;

6 (ii) For the next 48,000 kilowatt-hours used or
7 consumed in a month; 0.40 cents per kilowatt-hour;

8 (iii) For the next 50,000 kilowatt-hours used or
9 consumed in a month; 0.36 cents per kilowatt-hour;

10 (iv) For the next 400,000 kilowatt-hours used or
11 consumed in a month; 0.35 cents per kilowatt-hour;

12 (v) For the next 500,000 kilowatt-hours used or
13 consumed in a month; 0.34 cents per kilowatt-hour;

14 (vi) For the next 2,000,000 kilowatt-hours used or
15 consumed in a month; 0.32 cents per kilowatt-hour;

16 (vii) For the next 2,000,000 kilowatt-hours used
17 or consumed in a month; 0.315 cents per kilowatt-hour;

18 (viii) For the next 5,000,000 kilowatt-hours used
19 or consumed in a month; 0.31 cents per kilowatt-hour;

20 (ix) For the next 10,000,000 kilowatt-hours used
21 or consumed in a month; 0.305 cents per kilowatt-hour;

22 and

23 (x) For all electricity used or consumed in excess
24 of 20,000,000 kilowatt-hours in a month, 0.30 cents per
25 kilowatt-hour.

26 If a municipality imposes a tax at rates lower than

1 either the maximum rates specified in this Section or the
2 alternative maximum rates promulgated by the Illinois
3 Commerce Commission, as provided below, the tax rates shall
4 be imposed upon the kilowatt hour categories set forth
5 above with the same proportional relationship as that which
6 exists among such maximum rates. Notwithstanding the
7 foregoing, until December 31, 2008, no municipality shall
8 establish rates that are in excess of rates reasonably
9 calculated to produce revenues that equal the maximum total
10 revenues such municipality could have received under the
11 tax authorized by this subparagraph in the last full
12 calendar year prior to the effective date of Section 65 of
13 this amendatory Act of 1997; provided that this shall not
14 be a limitation on the amount of tax revenues actually
15 collected by such municipality.

16 Upon the request of the corporate authorities of a
17 municipality, the Illinois Commerce Commission shall,
18 within 90 days after receipt of such request, promulgate
19 alternative rates for each of these kilowatt-hour
20 categories that will reflect, as closely as reasonably
21 practical for that municipality, the distribution of the
22 tax among classes of purchasers as if the tax were based on
23 a uniform percentage of the purchase price of electricity.
24 A municipality that has adopted an ordinance imposing a tax
25 pursuant to subparagraph 3 as it existed prior to the
26 effective date of Section 65 of this amendatory Act of 1997

1 may, rather than imposing the tax permitted by this
2 amendatory Act of 1997, continue to impose the tax pursuant
3 to that ordinance with respect to gross receipts received
4 from residential customers through July 31, 1999, and with
5 respect to gross receipts from any non-residential
6 customer until the first bill issued to such customer for
7 delivery services in accordance with Section 16-104 of the
8 Public Utilities Act but in no case later than the last
9 bill issued to such customer before December 31, 2000. No
10 ordinance imposing the tax permitted by this amendatory Act
11 of 1997 shall be applicable to any non-residential customer
12 until the first bill issued to such customer for delivery
13 services in accordance with Section 16-104 of the Public
14 Utilities Act but in no case later than the last bill
15 issued to such non-residential customer before December
16 31, 2000.

17 4. Persons engaged in the business of distributing,
18 supplying, furnishing, or selling water for use or
19 consumption within the corporate limits of the
20 municipality, and not for resale, at a rate not to exceed
21 5% of the gross receipts therefrom.

22 None of the taxes authorized by this Section may be imposed
23 with respect to any transaction in interstate commerce or
24 otherwise to the extent to which the business or privilege may
25 not, under the constitution and statutes of the United States,
26 be made the subject of taxation by this State or any political

1 sub-division thereof; nor shall any persons engaged in the
2 business of distributing, supplying, furnishing, selling or
3 transmitting gas, water, or electricity, or using or consuming
4 electricity acquired in a purchase at retail, be subject to
5 taxation under the provisions of this Section for those
6 transactions that are or may become subject to taxation under
7 the provisions of the "Municipal Retailers' Occupation Tax Act"
8 authorized by Section 8-11-1; nor shall any tax authorized by
9 this Section be imposed upon any person engaged in a business
10 or on any privilege unless the tax is imposed in like manner
11 and at the same rate upon all persons engaged in businesses of
12 the same class in the municipality, whether privately or
13 municipally owned or operated, or exercising the same privilege
14 within the municipality.

15 Any of the taxes enumerated in this Section may be in
16 addition to the payment of money, or value of products or
17 services furnished to the municipality by the taxpayer as
18 compensation for the use of its streets, alleys, or other
19 public places, or installation and maintenance therein,
20 thereon or thereunder of poles, wires, pipes or other equipment
21 used in the operation of the taxpayer's business.

22 (a) If the corporate authorities of any home rule
23 municipality have adopted an ordinance that imposed a tax on
24 public utility customers, between July 1, 1971, and October 1,
25 1981, on the good faith belief that they were exercising
26 authority pursuant to Section 6 of Article VII of the 1970

1 Illinois Constitution, that action of the corporate
2 authorities shall be declared legal and valid, notwithstanding
3 a later decision of a judicial tribunal declaring the ordinance
4 invalid. No municipality shall be required to rebate, refund,
5 or issue credits for any taxes described in this paragraph, and
6 those taxes shall be deemed to have been levied and collected
7 in accordance with the Constitution and laws of this State.

8 (b) In any case in which (i) prior to October 19, 1979, the
9 corporate authorities of any municipality have adopted an
10 ordinance imposing a tax authorized by this Section (or by the
11 predecessor provision of the "Revised Cities and Villages Act")
12 and have explicitly or in practice interpreted gross receipts
13 to include either charges added to customers' bills pursuant to
14 the provision of paragraph (a) of Section 36 of the Public
15 Utilities Act or charges added to customers' bills by taxpayers
16 who are not subject to rate regulation by the Illinois Commerce
17 Commission for the purpose of recovering any of the tax
18 liabilities or other amounts specified in such paragraph (a) of
19 Section 36 of that Act, and (ii) on or after October 19, 1979,
20 a judicial tribunal has construed gross receipts to exclude all
21 or part of those charges, then neither those municipality nor
22 any taxpayer who paid the tax shall be required to rebate,
23 refund, or issue credits for any tax imposed or charge
24 collected from customers pursuant to the municipality's
25 interpretation prior to October 19, 1979. This paragraph
26 reflects a legislative finding that it would be contrary to the

1 public interest to require a municipality or its taxpayers to
2 refund taxes or charges attributable to the municipality's more
3 inclusive interpretation of gross receipts prior to October 19,
4 1979, and is not intended to prescribe or limit judicial
5 construction of this Section. The legislative finding set forth
6 in this subsection does not apply to taxes imposed after the
7 effective date of this amendatory Act of 1995.

8 (c) The tax authorized by subparagraph 3 shall be collected
9 from the purchaser by the person maintaining a place of
10 business in this State who delivers the electricity to the
11 purchaser. This tax shall constitute a debt of the purchaser to
12 the person who delivers the electricity to the purchaser and if
13 unpaid, is recoverable in the same manner as the original
14 charge for delivering the electricity. Any tax required to be
15 collected pursuant to an ordinance authorized by subparagraph 3
16 and any such tax collected by a person delivering electricity
17 shall constitute a debt owed to the municipality by such person
18 delivering the electricity, provided, that the person
19 delivering electricity shall be allowed credit for such tax
20 related to deliveries of electricity the charges for which are
21 written off as uncollectible, and provided further, that if
22 such charges are thereafter collected, the delivering supplier
23 shall be obligated to remit such tax. For purposes of this
24 subsection (c), any partial payment not specifically
25 identified by the purchaser shall be deemed to be for the
26 delivery of electricity. Persons delivering electricity shall

1 collect the tax from the purchaser by adding such tax to the
2 gross charge for delivering the electricity, in the manner
3 prescribed by the municipality. Persons delivering electricity
4 shall also be authorized to add to such gross charge an amount
5 equal to 3% of the tax to reimburse the person delivering
6 electricity for the expenses incurred in keeping records,
7 billing customers, preparing and filing returns, remitting the
8 tax and supplying data to the municipality upon request. If the
9 person delivering electricity fails to collect the tax from the
10 purchaser, then the purchaser shall be required to pay the tax
11 directly to the municipality in the manner prescribed by the
12 municipality. Persons delivering electricity who file returns
13 pursuant to this paragraph (c) shall, at the time of filing
14 such return, pay the municipality the amount of the tax
15 collected pursuant to subparagraph 3.

16 (d) For the purpose of the taxes enumerated in this
17 Section:

18 "Gross receipts" means the consideration received for
19 distributing, supplying, furnishing or selling gas for use or
20 consumption and not for resale, and the consideration received
21 for distributing, supplying, furnishing or selling water for
22 use or consumption and not for resale, and for all services
23 rendered in connection therewith valued in money, whether
24 received in money or otherwise, including cash, credit,
25 services and property of every kind and material and for all
26 services rendered therewith, and shall be determined without

1 any deduction on account of the cost of the service, product or
2 commodity supplied, the cost of materials used, labor or
3 service cost, or any other expenses whatsoever. "Gross
4 receipts" shall not include that portion of the consideration
5 received for distributing, supplying, furnishing, or selling
6 gas or water to business enterprises described in paragraph (e)
7 of this Section to the extent and during the period in which
8 the exemption authorized by paragraph (e) is in effect or for
9 school districts or units of local government described in
10 paragraph (f) during the period in which the exemption
11 authorized in paragraph (f) is in effect.

12 For utility bills issued on or after May 1, 1996, but
13 before May 1, 1997, and for receipts from those utility bills,
14 "gross receipts" does not include one-third of (i) amounts
15 added to customers' bills under Section 9-222 of the Public
16 Utilities Act, or (ii) amounts added to customers' bills by
17 taxpayers who are not subject to rate regulation by the
18 Illinois Commerce Commission for the purpose of recovering any
19 of the tax liabilities described in Section 9-222 of the Public
20 Utilities Act. For utility bills issued on or after May 1,
21 1997, but before May 1, 1998, and for receipts from those
22 utility bills, "gross receipts" does not include two-thirds of
23 (i) amounts added to customers' bills under Section 9-222 of
24 the Public Utilities Act, or (ii) amount added to customers'
25 bills by taxpayers who are not subject to rate regulation by
26 the Illinois Commerce Commission for the purpose of recovering

1 any of the tax liabilities described in Section 9-222 of the
2 Public Utilities Act. For utility bills issued on or after May
3 1, 1998, and for receipts from those utility bills, "gross
4 receipts" does not include (i) amounts added to customers'
5 bills under Section 9-222 of the Public Utilities Act, or (ii)
6 amounts added to customers' bills by taxpayers who are not
7 subject to rate regulation by the Illinois Commerce Commission
8 for the purpose of recovering any of the tax liabilities
9 described in Section 9-222 of the Public Utilities Act.

10 For purposes of this Section "gross receipts" shall not
11 include amounts added to customers' bills under Section 9-221
12 of the Public Utilities Act. This paragraph is not intended to
13 nor does it make any change in the meaning of "gross receipts"
14 for the purposes of this Section, but is intended to remove
15 possible ambiguities, thereby confirming the existing meaning
16 of "gross receipts" prior to the effective date of this
17 amendatory Act of 1995.

18 "Person" as used in this Section means any natural
19 individual, firm, trust, estate, partnership, association,
20 joint stock company, joint adventure, corporation, limited
21 liability company, municipal corporation, the State or any of
22 its political subdivisions, any State university created by
23 statute, or a receiver, trustee, guardian or other
24 representative appointed by order of any court.

25 "Person maintaining a place of business in this State"
26 shall mean any person having or maintaining within this State,

1 directly or by a subsidiary or other affiliate, an office,
2 generation facility, distribution facility, transmission
3 facility, sales office or other place of business, or any
4 employee, agent, or other representative operating within this
5 State under the authority of the person or its subsidiary or
6 other affiliate, irrespective of whether such place of business
7 or agent or other representative is located in this State
8 permanently or temporarily, or whether such person, subsidiary
9 or other affiliate is licensed or qualified to do business in
10 this State.

11 "Public utility" shall have the meaning ascribed to it in
12 Section 3-105 of the Public Utilities Act and shall include
13 alternative retail electric suppliers as defined in Section
14 16-102 of that Act.

15 "Purchase at retail" shall mean any acquisition of
16 electricity by a purchaser for purposes of use or consumption,
17 and not for resale, but shall not include the use of
18 electricity by a public utility directly in the generation,
19 production, transmission, delivery or sale of electricity.

20 "Purchaser" shall mean any person who uses or consumes,
21 within the corporate limits of the municipality, electricity
22 acquired in a purchase at retail.

23 (e) Any municipality that imposes taxes upon public
24 utilities or upon the privilege of using or consuming
25 electricity pursuant to this Section whose territory includes
26 any part of an enterprise zone or federally designated Foreign

1 Trade Zone or Sub-Zone may, by a majority vote of its corporate
2 authorities, exempt from those taxes for a period not exceeding
3 20 years any specified percentage of gross receipts of public
4 utilities received from, or electricity used or consumed by,
5 business enterprises that:

6 (1) either (i) make investments that cause the creation
7 of a minimum of 200 full-time equivalent jobs in Illinois,
8 (ii) make investments of at least \$175,000,000 that cause
9 the creation of a minimum of 150 full-time equivalent jobs
10 in Illinois, or (iii) make investments that cause the
11 retention of a minimum of 1,000 full-time jobs in Illinois;
12 and

13 (2) are either (i) located in an Enterprise Zone
14 established pursuant to the Illinois Enterprise Zone Act or
15 (ii) Department of Commerce and Economic Opportunity
16 designated High Impact Businesses located in a federally
17 designated Foreign Trade Zone or Sub-Zone; and

18 (3) are certified by the Department of Commerce and
19 Economic Opportunity as complying with the requirements
20 specified in clauses (1) and (2) of this paragraph (e).

21 Upon adoption of the ordinance authorizing the exemption,
22 the municipal clerk shall transmit a copy of that ordinance to
23 the Department of Commerce and Economic Opportunity. The
24 Department of Commerce and Economic Opportunity shall
25 determine whether the business enterprises located in the
26 municipality meet the criteria prescribed in this paragraph. If

1 the Department of Commerce and Economic Opportunity determines
2 that the business enterprises meet the criteria, it shall grant
3 certification. The Department of Commerce and Economic
4 Opportunity shall act upon certification requests within 30
5 days after receipt of the ordinance.

6 Upon certification of the business enterprise by the
7 Department of Commerce and Economic Opportunity, the
8 Department of Commerce and Economic Opportunity shall notify
9 the Department of Revenue of the certification. The Department
10 of Revenue shall notify the public utilities of the exemption
11 status of the gross receipts received from, and the electricity
12 used or consumed by, the certified business enterprises. Such
13 exemption status shall be effective within 3 months after
14 certification.

15 (f) A municipality that imposes taxes upon public utilities
16 or upon the privilege of using or consuming electricity under
17 this Section and whose territory includes part of another unit
18 of local government or a school district may by ordinance
19 exempt the other unit of local government or school district
20 from those taxes.

21 (g) The amendment of this Section by Public Act 84-127
22 shall take precedence over any other amendment of this Section
23 by any other amendatory Act passed by the 84th General Assembly
24 before the effective date of Public Act 84-127.

25 (h) In any case in which, before July 1, 1992, a person
26 engaged in the business of transmitting messages through the

1 use of mobile equipment, such as cellular phones and paging
2 systems, has determined the municipality within which the gross
3 receipts from the business originated by reference to the
4 location of its transmitting or switching equipment, then (i)
5 neither the municipality to which tax was paid on that basis
6 nor the taxpayer that paid tax on that basis shall be required
7 to rebate, refund, or issue credits for any such tax or charge
8 collected from customers to reimburse the taxpayer for the tax
9 and (ii) no municipality to which tax would have been paid with
10 respect to those gross receipts if the provisions of this
11 amendatory Act of 1991 had been in effect before July 1, 1992,
12 shall have any claim against the taxpayer for any amount of the
13 tax.

14 (Source: P.A. 94-793, eff. 5-19-06.)