ST 99-0194-GIL 06/11/1999 LOCAL TAXES

The Home Rule Municipal Retailers' Occupation Tax provides authority to home rule municipalities to impose only one Home Rule Municipal Retailers' Occupation Tax upon all persons engaged in the business of selling tangible personal property at retail in the municipality. The Act makes no provision for creating special service districts within the home rule municipality wherein different tax rates could be imposed.

June 11, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated May 20, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

> As a municipal attorney, I am writing to inquire whether a home rule municipality has the authority to increase the Home Rule Municipal Retailers' Occupation Tax by 1/4% ONLY in a special service district, where the retailers in that district are amendable to the increase. I am aware that the Act (65 ILCS 5/8-11-1) states that 'a home rule municipality may impose a tax upon all persons engaged in the business of selling tangible personal property;' however, it does not necessarily state that it must impose the same tax upon all persons. If, in fact, two separate sales tax rates are permitted, would there be any special procedure for implementing the higher rate in the special service district other than the passage of an ordinance or resolution adopting a change in rate?
>
> Your assistance in answering this question is most appreciated.

The Home Rule Municipal Retailers' Occupation Tax Act (Act) is set forth at 65 ILCS 5/8-11-1. It is the Department's opinion that the Act provides authority to home rule municipalities to impose only one Home Rule Municipal Retailers' Occupation Tax upon all persons engaged in the business of selling tangible personal property at retail in the municipality. This is because the Act makes no provision for creating special service districts within the home rule municipality wherein different tax rates could be imposed.

Article 7, Section 6(e) of the Illinois Constitution provides that "[a] home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations." Since the Act does not authorize home rule municipalities to

create special service districts, nor does it provide any other authority for imposing a Home Rule Municipal Retailers' Occupation Tax at different rates within the municipality, the Department does not consider this to be an option available to home rule municipalities.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.