

IML Model Ordinance: Implementing a Non-Home Rule Municipal Retailers' Occupation Tax
and a Non-Home Rule Municipal Service Occupation Tax

ORDINANCE NO. _____

**AN ORDINANCE IMPLEMENTING A NON-HOME RULE MUNICIPAL RETAILERS'
OCCUPATION TAX AND A NON-HOME RULE MUNICIPAL SERVICE
OCCUPATION TAX**

FOR THE CITY/VILLAGE/TOWN OF _____

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/1-2-1, provides that the corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper; and,

WHEREAS, the **City/Village/Town of _____ (City/Village/Town)** is a non-home rule Illinois municipality pursuant to the Constitution of the State of Illinois of 1970, as amended; and,

WHEREAS, Section 8-11-1.1 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1) empowers non-home rule Illinois municipalities to impose certain Municipal Retailers' Occupation Taxes as outlined at Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) (the "Non-Home Rule Municipal Retailers' Occupation Tax"); and,

WHEREAS, Section 8-11-1.1 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1) empowers non-home rule Illinois municipalities to impose certain Municipal Service Occupation Taxes as outlined at Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) (the "Non-Home Rule Municipal Service Occupation Tax"); and,

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) empowers a non-home rule municipality to "impose a tax upon all persons engaged in the business of selling tangible personal property, other than on an item of tangible personal property which is titled and registered by an agency of this State's Government, at retail in the municipality" based upon the "gross receipts from such sales made in the course of such business" for "expenditure on public infrastructure or for property tax relief or both" as defined in Section 8-11-1.2 (65 ILCS 5/8-11-1.2); and,

WHEREAS, Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) empowers a non-home rule municipality to "impose a tax upon all persons engaged, in such municipality, in the business of making sales of service . . . of the selling price of all tangible personal property transferred by such servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service;" and,

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) and Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) empower the **City/Village/Town**

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to impose the Non-Home Rule Municipal Retailers' Occupation Tax and the Non-Home Rule Municipal Service Occupation Tax in 1/4% increments up to 1%; and,

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) requires any municipality imposing a Non-Home Rule Municipal Retailers' Occupation Tax under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) to impose a Non-Home Rule Municipal Service Occupation Tax under Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) at "the same rate" as the rate imposed as the Non-Home Rule Municipal Retailers' Occupation Tax being imposed; and,

WHEREAS, any Non-Home Rule Municipal Retailers' Occupation Tax imposed by the **City/Village/Town** under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) shall be administered, collected and enforced by the Illinois Department of Revenue; and,

WHEREAS, any Non-Home Rule Municipal Service Occupation Tax imposed by the **City/Village/Town** under Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) shall be administered, collected and enforced by the Illinois Department of Revenue; and,

WHEREAS, proceeds generated from the imposition of any Non-Home Rule Municipal Retailers' Occupation Tax or Non-Home Rule Municipal Service Occupation Tax by the **City/Village/Town** must be used for "public infrastructure" or "property tax relief," as those terms are defined at Section 8-11-1.2 of the Illinois Municipal Code (65 ILCS 5/8-11-1.2); and,

WHEREAS, the **City Council/President and Board of Trustees of the Village/President and Board of Trustees of the Town** believe that it is appropriate, necessary, and in the best interests of the **City/Village/Town** and its residents, that the **City/Village/Town** levy a Non-Home Rule Municipal Retailers' Occupation Tax pursuant to Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) and a Non-Home Rule Municipal Service Occupation Tax pursuant to Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) so that the **City/Village/Town** can provide property tax relief and invest in public infrastructure, as those terms are defined at Section 8-11-1.2 of the Illinois Municipal Code (65 ILCS 5/8-11-1.2).

NOW, THEREFORE, be it ordained, by the **City Council/President and Board of Trustees of the Village/President and Board of Trustees of the Town** of _____ as follows:

Section 1. Incorporation of Recitals. The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

Section 2. Non-Home Rule Municipal Retailers' Occupation Tax Imposed. A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with an agency of this state's government, at retail in this municipality at the rate of (choose one: [0.25%] or [0.50%] or [0.75%] or [1.00%]) of the gross receipts from such sales made in the course of such business

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while this Ordinance is in effect. The imposition of this tax is in accordance with and subject to the provisions of Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3).

Section 3. Non-Home Rule Municipal Service Occupation Tax Imposed. A tax is hereby imposed upon all persons engaged in this municipality in the business of making sales of service, of the selling price of all tangible personal property transferred by such serviceman as an incident to a sale of service. The rate of this tax shall be the same rate identified in Section 2, above. The imposition of this tax is in accordance with and subject to the provisions of Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4).

Section 4. Illinois Department of Revenue to Administer Both Taxes. The taxes hereby imposed, and all civil penalties that may be assessed as an incident thereto, shall be collected and enforced by the Department of Revenue of the State of Illinois. The Department of Revenue shall have full power to administer and enforce the provisions of this Ordinance.

Section 5. Clerk to file Ordinance with Illinois Department of Revenue. As required under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3), the Clerk is hereby directed to file a certified copy of this Ordinance with the Illinois Department of Revenue on or before (choose one: [April 1, 20__] or [October 1, 20__]).

Section 6. Effective Date. This Ordinance shall take effect on: (i) the first day of July next following the adoption and filing of this Ordinance with the Department of Revenue, if filed on or before the preceding April 1st; or, (ii) the first day of January next following the adoption and filing of this Ordinance with the Department of Revenue, if filed on or before the preceding October 1st.

Section 7. Limitation on Use of Proceeds. The **City/Village/Town** shall only expend the proceeds generated from any tax imposed by virtue of this Ordinance on: (a) expenditures related to “municipal roads and streets, access roads, bridges, and sidewalks; waste disposal systems; and water and sewer line extensions, water distribution and purification facilities, storm water drainage and retention facilities, and sewage treatment facilities[;]” (b) efforts to “reduce the levy for real estate taxes or avoid an increase in the levy for real estate taxes that would otherwise have been required” by the **City/Village/Town**; or (c) any other or further permitted uses under Section 8-11-1 of the Illinois Municipal Code (65 ILCS 5/8-11-1) as may now or hereafter be authorized therein.

Section 8. Qualified Exemption of Aviation Fuel from Both Taxes. No provision of this Ordinance shall be interpreted to impose any tax on aviation fuel, as defined in Section 3 of the Retailers' Occupation Tax Act (35 ILCS 120/3), unless the proceeds of said tax are expended for airport-related purposes, as that term is defined in Section 6z-20.2 of the State Finance Act (30 ILCS 105/6z-20.2), and said expenditures are made in compliance with the certification requirements for airport-related purposes under Section 2-22 of the Retailers' Occupation Tax Act (35 ILCS 120/2-22).

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Section 9. Repeal of Conflicting Provisions. All ordinances, resolutions and policies or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

Section 10. Severability. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 11. Headings/Captions. The headings/captions identifying the various sections and subsections of this Ordinance are for reference only and do not define, modify, expand or limit any of the terms or provisions of the Ordinance.

Section 12. Publication. The Clerk is directed by the corporate authorities to publish this Ordinance in pamphlet form. This Ordinance shall be in full force and effect after its passage and publication in accordance with 65 ILCS 5/1-2-4.

PASSED THIS _____ day of _____, 20_____.

AYES: _____

NAYS: _____

ABSTENTIONS: _____

ABSENT: _____

APPROVED THIS _____ day of _____, 20_____.

Mayor/Village President/Town President

ATTEST:

Clerk

BEFORE ADOPTING ANY ORDINANCE, MUNICIPAL OFFICIALS SHOULD CONSULT WITH THEIR RETAINED LEGAL COUNSEL OR OTHER QUALIFIED ATTORNEY.