

Citizen Advocacy Center: Home Rule and You

Special points of interest:

- Home Rule Powers
- What happens when a home rule unit repeals home rule
- Home Rule and Taxes
- Home Rule as it applies to taxes in specific municipalities and counties

Home Rule Powers

The Illinois Constitution allows a home rule unit to “exercise any power and perform any function pertaining to its government and affairs.” It further requires that home rule powers be construed liberally. The Constitutional, legislative and local constraints to home rule units are minimal.

Constitutionally, a home rule unit cannot incur debt payable from ad valorem property tax receipts maturing more than forty years from the time incurred. Furthermore, a home rule unit cannot define and provide for punishment of a felony.

Legislatively, the Illinois General Assembly may decide to reserve a power exclusively to the State or prohibit the use of a home rule power. If the General Assembly wants to reserve a power to the State, a majority vote in both houses is necessary. If the General Assembly wants to restrict the use of a home rule power to the State, a 3/5 majority of both houses must vote for the restriction. In addition, the General Assembly must expressly provide that a law applies to home rule units, otherwise home rule units are exempt.

Locally, a home rule unit may impose restrictions on its home rule powers. For example, home rule units are allowed to increase property taxes beyond the statutory “tax cap.” In response, Oak Terrace voters persuaded the local governing body to pass a self-imposed property tax cap.

To determine if a regulating power lies within a unit’s home rule authority, two questions need to be asked. 1. Is the regulation concerned solely with local matters or does it involve a broader issue? 2. Has the state chosen to regulate in this area? If it is a local issue that has not been pre-empted by the state, then it is likely that a home rule unit has the authority to impose a regulation.

Home rule units are able to regulate and impose taxes in creative ways in order to solve local issues. However, the few checks on potential misuse of power through excessive taxation or overbearing regulatory authority is a potentially contentious issue among voters.

Throughout DuPage County, municipalities use home rule in a number of ways. The

primary focus of this home rule brochure is on taxing powers, however, home rule can and is used in other ways, ranging from intergovernmental agreements to rental inspection regulations.

Home Rule and DuPage County

The Illinois Constitution allows both counties and municipalities to obtain home rule status. Municipalities may adopt home rule status through referendum or obtain automatic home rule status as a consequence of having a population greater than 25,000. A county has home rule status if it has a chief executive officer elected at large and passes a home rule referendum. Cook County is currently the only county in Illinois that has home rule status.

Although in 2003, DuPage County's Board restructured itself to include a chief executive officer elected at large, they have yet to pass a county-wide referendum. Some constitutional scholars argue that a chief executive officer is all that is necessary for a county to achieve home rule status, however in 1990 in the suit *Aldo E. Botti v. County of DuPage* the Circuit Court of DuPage County found that DuPage County also needed to present the issue of home rule before its electorate through a referendum.

In February of 2003, the Regional Planning Commission was asked by the DuPage County Development Committee to conduct public meetings on the subject of home rule for DuPage County. These public meetings culminated into a report on the pros and cons of DuPage County adopting home rule status. At the time of this printing, the Commission has yet to report its finding to the County Development Committee or the full County Board.

During the Regional Planning Commission's review of home rule, it argued that home rule would result in a more efficient county government that could immediately react to local concerns with local solutions. It also referenced unfunded needs that could be resolved. However, the Regional Planning Commission did not specify exactly what local concerns or unfunded mandates would be addressed by home rule.

Creating Consistency Between Municipal and County Ordinances

When a county becomes a home rule unit, the county legislature inevitably runs into jurisdictional conflicts with municipalities within the county. The Illinois Constitution requires that when a home rule county and municipal ordinance conflict, "the municipal ordinance will prevail within its jurisdiction." However, in the area of taxation, both a home rule county and a home rule municipality may impose a tax on the same item concurrently. In other words, a citizen could pay a municipal, county, and state sales tax all at the same time. Furthermore, if a home rule municipality enacts an ordinance that ensures its citizens a certain item will not be taxed, this municipal ordinance does not restrict the county from taxing that item. Conversely, a municipality cannot enact an ordinance exempting its citizens from a county tax relying on the language of the Illinois Constitution.

Home Rule and Taxes

Home rule has a number of uses, however, it is most commonly used to generate revenue through its broad taxation powers. Home rule units can constitutionally tax anything that is not income, occupations or earnings. With few exceptions, governing bodies of home rule units do not need to ask voter approval when instituting home rule taxes. The following list is not meant to be exhaustive, but rather reflects the most commonly used home rule taxes.

- Home Rule Taxes
 - **Municipal Retailers and Service Occupation Taxes** are passed concurrently at .25% increments with no maximum limit. They are basically a sales tax that applies to qualifying food, drugs, and medical appliances. Neither applies to merchandise that requires title or registration.
 - The **Hotel/Motel Tax**, although not exclusive to home rule units, is allocated differently depending on a unit's home rule status. The revenue from a home rule hotel/motel tax may be applied to any public purpose while a non-home rule hotel/motel tax can only be used to promote over-night tourism and is limited by a 5% cap.
 - A home rule **Gasoline Tax** is in addition to the federal tax of \$18.4 cents/gallon and the State tax of \$.19/gallon plus the state 6.25% sales tax.
 - A **Use Tax** is a tax on all tangible property that is registered with the State. For example, new or used cars, boats or other vehicles.
 - **Cigarette Taxes** were recently pre-empted by the State but those home rule units that already had imposed Cigarette Taxes were grandfathered in.
 - **Property Taxes** are imposed by both home rule and non-home rule units. However, non-home rule units can only extend property taxes 5% or the rate of inflation, whichever is less. If a non-home rule units wants to go beyond the cap, it must be approved by referendum. Home rule units are not susceptible to the tax cap.
- Home Rule Taxes That Must Be Passed With Referendum
 - A **Real Estate Transfer Tax** is a tax on the privilege of transferring title to real estate or a beneficial interest in a land trust. The State rate is \$.50/\$500 of property value. Counties have a rate of \$.25/\$500 of property value. Home rule units may place an additional local real estate transfer tax, however, voters must pass a referendum prior to this tax being imposed.
- Grey Area
 - A **Food and Beverage Tax** is a tax above and beyond the sales tax. It is unclear whether this tax is only applicable to home rule units. For example, Lombard, a

municipality that repealed home rule in 1981, recently imposed a tax on eating establishments based on 65 ILCS 5/11-42-5 which authorized municipalities to “license, tax, and regulate all places for eating or amusement.” Lombard’s tax authority has not been questioned.

- An **Amusement Tax** has a very broad application pertaining to all places for “amusement”, for example, movie theatres. Like the Food and Beverage Tax, 65 ILCS 5/11-42-5 makes it unclear whether it applies strictly to home rule units. Villa Park and Cicero, both municipalities that do not have home rule, have amusement taxes.

Examples of Home Rule Use:

Cook County

Cook County is the only county in Illinois with home rule status. Listed below are the extensive ways Cook County has used its home rule taxing power to generate revenue for its general fund.

An Amusement Tax is imposed on the patrons of every amusement that takes place within the County. This includes exhibitions, presentations or shows for entertainment purposes. The tax is at the rate of 3% of the admission fee or other charges paid by patrons for the privilege to enter, to witness, or to view such amusement.

Cook County’s Cigarette Tax is at the rate of \$.05/cigarette to be paid by cigarette purchasers. The Liquor Tax is based on the percent of alcohol within a liquor. For example, if a beverage has less than fourteen percent alcohol, the tax is \$.16/gallon. If the beverage has more than twenty percent alcohol, the tax is \$2.00/gallon. Beer is taxed at a general rate of \$.06/gallon.

Cook County has a number of taxes associated with the privilege of motor vehicle use. The Gasoline and Diesel Fuel Tax imposes a \$.06/gallon tax to be paid by the purchaser of gasoline or diesel fuel in Cook County. The New Motor Vehicle Tax is based on a percentage of the purchase price and car owners must register their car with Cook County and pay a Vehicle Sticker fee or Wheel Tax. There is also a Parking Lot and Garage Operations Tax based on the rate charged by the parking lot operator.

Cook County’s Municipal Retailers and Service Occupation Taxes, otherwise known as a sales tax, is at the rate of one percent. Lastly, Cook County has a Use Tax of .25% of the selling price of tangible personal property or property which is titled or registered with an agency of the state to a person within Cook County. “Use” is defined as the exercise by any person of any right to or power over tangible personal property incident to the ownership of that property.

Elmhurst

Unlike other small municipalities, Elmhurst uses its home rule taxing authority extensively, imposing four home rule taxes to raise revenue for its general fund. In 1991, Elmhurst instituted Municipal Retailers and Service Occupation Taxes, otherwise known as a sales tax, at the rate of .25% of the gross receipts from sales.

In 1992, Elmhurst imposed a real estate transfer tax on the privilege of transferring title to real estate within the corporate limits of the City at the rate of \$3.00/\$1000 dollars of property value at the time of transfer.

In 2003, Elmhurst passed both a Food and Beverage Tax and a Municipal Gas Use Tax. The Food and Beverage Tax applies to the purchasing of prepared food items for immediate consumption and liquor at the rate of one percent of the purchase price. The Municipal Gas Use Tax applies to natural gas and is at the rate of 1.5 cents/therm.

Downers Grove

Downers Grove became home rule in 1970 by virtue of its population being over 25,000. Pursuant to its home rule authority Downers Grove has passed a number of tax ordinances.

In 1998, Downers Grove passed a Municipal Motor Fuel Tax, imposing a \$.01/gallon tax upon the retail purchase of motor fuel. Revenue collected pursuant to the Municipal Motor Fuel tax is allocated toward capital improvements, including street construction and rehabilitation, curb and gutter work, storm sewer, sidewalk and other street-related improvements.

In 2003, Downers Grove passed both a Home Rule Municipal Service Occupation Tax and a Home Rule Municipal Retailers Occupation Tax. Both were passed in reaction to a budget shortfall, exemplifying home rule's ability to raise revenue through avenues other than property taxes. The Home Rule Municipal Service Occupation Tax applies to any person engaged in the business of making sales of service. It is at the rate of one-half of one percent of the selling price of all tangible personal property transferred by such servicemen. The Home Rule Municipal Retailers Occupation Tax applies to all persons engaged in the business of selling tangible personal property. It is at the rate of one-half of one percent of the gross receipts from such sales made in the course of such business. Downers Grove also has a hotel tax although it claims it is not a home rule tax. A portion of the hotel tax goes towards the Community Grant Commission's budget. The Community Grant Commission funds local art and culture events.

When Downers Grove obtained its home rule status, the Village Council instituted a "Home Rule Policy" to address citizen concern regarding the potential abuse of power. The Policy reads that prior to the adoption of any ordinance imposing a home rule tax on any person or property in the Village (not including property tax extensions), the Council must publish for general circulation a statement about the proposed tax, as well as, an explanation of how the revenue will be used. Seven to ten days later, the Council is to conduct a public meeting regarding the proposed ordinance. The Council will not vote on the ordinance for at least two

Village Council meetings, allowing citizens enough time to submit a petition opposing the ordinance (the petition must contain 10% of the voters from the last Mayoral election). If an opposing petition is submitted, the Village Council will hold an advisory referendum and if a majority of voters oppose the tax ordinance, the Council will not adopt such ordinance.

Wheaton

In July, 2004 Wheaton will use one of its many home rule powers to institute a Home Rule Sales Tax, otherwise known as a Home Rule Retailers' Occupation Tax and Service Occupation Tax. The tax is imposed on persons engaged in the business of selling tangible personal property at retail in the City of Wheaton. This additional sales tax will raise the total sales tax from 6.75% to 7.25%. The City Council passed a home rule sales tax in reaction to a \$1.9 million budget deficit for fiscal year 2004-2005. The Council wanted to respond to the deficit with a sales tax rather than raising property taxes. Without home rule, the Council would not have had to ask permission from the State to raise revenue elsewhere.

In addition to a city sales tax, Wheaton has used its home rule authority with other tax ordinances. In 1998, it repealed its municipal utility tax on gas and created a municipal gas use tax in its place. The tax was passed at a rate of \$.02/therm. Wheaton also implemented a real estate transfer tax on the privilege of transferring title to real estate within the corporate limits of Wheaton at the rate of \$2.50/\$1000 of property.

In addition to the broad taxing power that Wheaton enjoys pursuant to its home rule authority, Wheaton can also secure bonds without voter approval. The only limitation is that the bonds must mature before forty years. With this authority, in May, 2004, Wheaton sold \$20.8 million in bonds to finance the expansion and renovation of the city-owned Wheaton Public Library. The bonds will be paid through real estate tax levies on properties in the city. In effect, 78 cents, as opposed to 72 cents, per \$100 of equalized assessed valuation will go towards the city's tax levy.

Harwood Heights

In 1995, Harwood Heights imposed a Home Rule Retailers' and Service Occupation Tax, otherwise known as a sales tax. The Village Board determined that it was in the best interests of the Village to impose this tax to avoid the need to adopt other taxes which would have a more regressive effect on the citizens of Harwood Heights. The tax is actually two separate taxes. The Home Rule Retailers' Tax is applicable to all persons engaged in the business of selling tangible personal property at retail in Harwood Heights at the rate of one percent of the gross receipts from such sales. The Home Rule Service Occupation Tax is applicable to all persons engaged in the business of making sales of service at the rate of one percent of the selling price of all tangible personal property transferred by such servicemen. These taxes are not applicable on the sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate

consumption) and prescription and non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics.

In addition, Harwood Heights has a Real Estate Transfer Tax of \$10.00/\$1000 dollars of property value transferred. The revenue goes toward the general fund for the Village.

Repeal Home Rule

The Illinois Constitution allows for a home rule unit to repeal its status via referendum. The Constitution does not indicate what happens to those ordinances passed pursuant to home rule authority once a unit repeals its home rule status. The general assumption is that a home rule unit will repeal regulations implemented with home rule power, however, that is not always that case. If a tax levy was passed in order to secure bonds, the tax levy is still valid even if home rule is repealed. Courts argue that to invalidate the tax would prevent home rule units from securing bonds with tax revenue because there would be a constant threat of the revenue disappearing with a referendum repealing home rule. *See Royal Liquor Mart v. The City of Rockford* 133 Ill. App. 3d 868, 479 N.E.2d 485 (Ill. App. Ct., 2d Dist. 1985). Therefore, if a home rule ordinance establishes an on-going valid obligation specifically based on revenue generated from home rule powers, that particular tax may not be repealed with a general repeal of home rule.

Additional concerns involve borrowing. Home rule units have no restrictions on the amount or manner of borrowing. For example, when Villa Park repealed home rule in 1980 it had to restructure its debt to meet statutory requirements. This restructuring raised the community's debt costs and forced an increased tax rate.

When Rockford repealed home rule in 1983, its property tax rate was cut back to non-home rule level. To make up for lost revenue, the city went to referendum to raise the tax rate back up to the "home rule" level. In this case, tax levels were not decreased but voters were allowed more citizen input.

To Find Out More About Home Rule In Your Area

- Generally
 - Illinois Const., Art. 7, Section 7 (2004).
 - Illinois Const., Art. 7, Section 6 (2004).
 - James A. Banovetz, Illinois Home Rule: A Thirty Year Assessment, Policy Profiles: Center for Government Studies, Northern Illinois University (February 2001).
 - James A. Banovetz, Illinois Home Rule: A Case Study in Fiscal Responsibility, JRAP 32:31 (2002).
 - James A. Banovetz, The Uses of Home Rule With Special Emphasis on Taxation, Policy Profiles: Center for Government Studies, Northern Illinois University Vol. 2, No. 3(August 2002).
 - James A. Banovetz & Thomas Kelty, Illinois Home Rule and Taxation, 8 N. I. Univ.

L.R. 709 (1988).

- James A. Banovetz & Thomas Kelty, *Home Rule in Illinois: Image and Reality*, Illinois Issues: Sangamon State University (1985).
- Citizen Advocacy Center, *To Home Rule, or Not to Home Rule*, Fall 2003.
- Citizen Advocacy Center, *Home Rule and Local Government in Illinois: A Citizen's Guide*, Issued 1/96.
- Elizabeth A. Fegan, *Home Rule Hits the Road in Illinois*, 25 Loy. U. Chi. L.J. 577 (Summer, 1994).
- DuPage County Regional Planning Commission, *Findings Regarding Home Rule and Non Home Rule forms of Government*, July 9, 2003.
- Marc Zarlengo, *County home Rule: Burden or Blessing for Municipalities?*, 22 DCBA Brief June 2004.
- Wally Hass, *Small cities will pack big power*, Rockford Register Star, March 19, 2004 *available at* www.rrstar.com/opinion/columnists/haas/200440319-17870.shtml
- DuPage County
 - The Leader-Chicago Bureau, *DuPage County denies considering home rule — again Part 1 of 2-part series*, The Illinois Leader, December 22, 2003 *available at* www.illinoisleader.com/news/newsview.asp?c=10351.
 - The Leader-Chicago Bureau, *DuPage County denies considering home rule— again Part 2 of 2-part series*, The Illinois Leader, December 26, 2003 *available at* www.illinoisleader.com/news/newsview.asp?c=10845.
 - *Aldo E. Botti v. County of DuPage*, No. 90 MR 0134 (Circuit Court of DuPage County, 18th Judicial Circuit of IL Aug, 30, 1990).
 - DuPage County Regional Planning Commission, *Home Rule Presentation* (August 13, 2003).
 - Tona Kunz, *Group says County trying for home rule*, Daily Herald Page 4: October 16, 2003.
- Various Municipalities
 - City of Warrenville, *Home Rule Referendum*, Hometown Happenings: Winter 2003 *available at* www.warrenville.il.us.
 - Home Rule Committee City of Galena, *Home Rule: A Report for the City of Galena* (February 2, 2004).
 - Colt Foutz, *Council to tweak restaurant tax, culture fund*, The Naperville Sun (June 7, 2004 *available at* www.suburbanchicagonews.com/sunpub/naper/top/n0607bevtax.htm
 - Colt Foutz, *Council crafts culture fund*, The Naperville Sun (June 8, 2004) *available at* www.suburbanchicagonews.com/sunpub/naper/top/n0608bevtax.htm.
 - Morton Chamber of Commerce, *Government Affairs Issue Update, Questions and Answers Regarding Home Rule*.

To find the specific tax ordinances passed in your municipality using home rule authority, simply fill out a Freedom of Information Act request and submit it to your city clerk

The Citizen Advocacy Center, a nonpartisan, 501(c)(3), non-profit organization is dedicated to

building democracy for the 21st Century by strengthening the public's capabilities, resources, and institutions for better self-governance. If you are interested in more information about the Center, becoming a volunteer, or making a tax-deductible contribution to the Center, please feel free to contact us at:

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