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**COUNTIES:**

Authority of a County to  
Impose Different Tax Rates on  
Select Motor Fuels

Honorable Richard Luft  
Illinois State Senator  
Assistant Majority Leader  
323 State House  
Springfield, Illinois 62706

Dear Senator Luft:

I have your letter wherein you inquire whether a county, in adopting a tax ordinance pursuant to the provisions of the County Motor Fuel Tax Law (Ill. Rev. Stat. 1989, ch. 34, par. 5-1035.1), must provide for the tax to apply to all persons selling motor fuel at retail in a county, or may provide that the tax will apply only to sellers of specific types of motor fuel which are designated by the county board. You also inquire whether the county may provide for different

tax rates to be imposed upon sales of various types of motor fuel. For the reasons hereinafter stated, it is my opinion that a county motor fuel tax ordinance must be applicable to all motor fuel retailers in a county, but that the county may provide for different rates of tax to be imposed upon different classes of fuels if there is a reasonable basis for the classification.

The County Motor Fuel Tax Law permits certain counties to impose a tax upon the sale of motor fuel for the purpose of funding the construction and maintenance of public highways in the county. The Act provides, in pertinent part:

"The county board of the counties of DuPage, Kane and McHenry may, by an ordinance or resolution adopted by an affirmative vote of a majority of the members elected or appointed to the county board, impose a tax upon all persons engaged in the county in the business of selling motor fuel, as now or hereafter defined in the Motor Fuel Tax Law, at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. The tax may be imposed, in half-cent increments, at a rate not exceeding 4 cents per gallon of motor fuel sold at retail within the county for the purpose of use or consumption and not for the purpose of resale. \* \* \*

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(Emphasis added.)

While the use of the term "may" in the Act indicates that the decision to impose a tax lies in the discretion of the county board, nothing in the language of the Act authorizes the

board to impose the tax only upon some, rather than all, retailers. To the contrary, the statute expressly provides that if the tax is imposed, then it is to be levied on all persons in the business of selling motor fuel at retail in the county. Because a legislative grant of power to tax must be strictly construed (Haggard v. Fay (1912), 255 Ill. 85; Peterson v. City of Granite City (1979), 78 Ill. App. 3d 821), it is my opinion that the county board lacks the authority under the Act to provide for a tax which is applicable only to certain retailers.

I do not believe, however, that the tax rate imposed upon each gallon of motor fuel in the county must necessarily be the same for each type of motor fuel involved. Article IX, section 2 of the Illinois Constitution of 1970, provides:

"In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." (Emphasis added.)

The Illinois courts have traditionally held that legislative bodies have very broad powers in classifying the objects of taxation. (Illinois Gasoline Dealers Association v. City of Chicago (1988), 119 Ill. 2d 391.) Thus, a county might determine to classify the sales of different types of motor fuel differently, and impose the tax at varying rates for each classification, if there is a reasonable basis upon which to create the classifications and all members of each class are

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treated uniformly. (See, Walter Peckat Co. v. Regional Transportation Authority (1980), 81 Ill. 2d 221, 228; Rozner v. Korshak (1973), 55 Ill. 2d 430, 436.) Such classifications are presumed to be valid, and will be upheld if any set of facts can reasonably be conceived of to sustain them. See generally Illinois Gasoline Dealers Association v. City of Chicago (1988), 119 Ill. 2d 391; Illinois Gasoline Dealers Association v. City of Chicago (1st Dist. 1986), 141 Ill. App. 3d 976.

I have not been provided with information concerning the basis upon which a particular county may rely in creating classifications for different types of motor fuels and imposing varying rates of tax dependent upon those classifications. Therefore, I cannot address the issue of whether a specific classification scheme is permissible. It is my opinion, however, that if a reasonable basis for the distinction can be enunciated, the imposition of different tax rates upon different classifications under the County Motor Fuel Tax Law is not improper, as long as all persons within each classification are taxed uniformly. Illinois Gasoline Dealers Association v. City of Chicago (1st Dist., 1986), 141 Ill. App. 3d 976, 980-1.

Respectfully yours,



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