

CHAPTER 60

TAX ON UTILITY SERVICES

To impose a tax on the gross income or gross operating income of corporations and persons furnishing utility services in the Village of Arcade, as authorized by section 6-650 of the Village Law of the State of New York.

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SECTION 60-1. TAX ON THE FURNISHING OF UTILITY SERVICES

Pursuant to the authority granted by section 6-640 of the Village Law of the State of New York, a tax equal to one per centum of its gross income from and after the first day of June, 1969, is hereby imposed upon every utility, except those owned and operated by the Village, doing business in the Village of Arcade which is subject to the supervision of the State Department of Public Service, which has a gross income for the twelve months ending May thirty-first in excess of five hundred dollars, except motor carriers or brokers subject to such supervision under article three-b of the Public Service Law, and a tax equal to one per centum of its gross operating income from and after the first day of May, nineteen hundred fifty, is hereby imposed upon every other utility doing business in the Village of Arcade which has a gross operating income for the twelve months ending May thirty-first in excess of five hundred dollars, which taxes shall have application only within the territorial limits of the Village of Arcade, and shall be in addition to any and all other taxes and fees imposed by any other provision of law. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Arcade, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

SECTION 60-2. DEFINITIONS

As used in this local law,

- A. The word “utility” includes every person subject to the supervision of the State Department of Public Service, except persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, and also includes every person (whether or not such person is subject to such supervision) who sells gas, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, or furnished gas, refrigerator, telephone or telegraph service, by means of mains, pipes, or wire, regardless of whether such activities are the main business of such person or are only incidental thereto, or of whether use is made of the public streets, but does not include the electric, steam, and water municipal utilities owned and operated by the Village of Arcade.
- B. The word “person” means persons, corporations, companies, associations, joint-stock associations, co-partnerships, estates, assignees of rents, any person acting in a fiduciary capacity, or any other entity, and person acting in a fiduciary capacity, or any other entity, and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or by any other means, except the state, municipalities, political and civil subdivisions of the state or municipality, and public districts.
- C. The word “Gross Income” mean and include receipts received in or by reason of sale, conditional or otherwise, (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in gross income) made or service rendered for ultimate consumption or use by the purchaser in the Village of Arcade, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever; also profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the cost of the period for which a return is made); also receipts from interest, dividends, and royalties, derived from sources within the Village of Arcade other than such as are received from a corporation a majority of whose voting stock is owned by the tax-paying utility, without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof, and also profits from any transaction (except sales for resale and rentals) within the Village of Arcade whatsoever; provided, however, that the words “gross income” shall include, in the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village of Arcade, and in the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village of Arcade.
- D. The words “gross operating income” mean and include receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, refrigeration, telephony or telegraphy, or in or by reason of

the furnishing for such consumption or use of gas, refrigerator, telephone or telegraph service in the Village of Arcade, including cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services of other costs, interest or discount paid, or any other expenses whatsoever.

SECTION 60-3. UTILITIES TO KEEP RECORDS

Every utility subject to tax under this local law shall keep such records of its business and in such form as the Village Clerk-Treasurer may require, and such records shall be preserved for a period of three years, except that the Village Clerk-Treasurer may consent to their destruction within that period or may require that they be kept longer.

SECTION 60-4. FILING OF RETURNS

Every utility subject to tax hereunder shall file annually, on or before the twenty-fifth day of March, a return for the twelve calendar months preceding such return date or any portion thereof for which the tax imposed hereby is effective; provided, however, that in lieu of the annual return required by the foregoing provisions, any utility may file quarterly, on or before September twenty-fifth, December twenty-fifth, March twenty-fifth and June twenty-fifth, a return for the three calendar months preceding each such return date, and in the case of the first such return, for all preceding calendar months during which the tax imposed hereby was effective. Every return shall state the gross income or gross operating income for the period covered thereby. Returns shall be filed with the Village Clerk-Treasurer on a form to be furnished by him for such purpose and shall contain such other data, information or matter as he may require to be included therein. The Village Clerk-Treasurer, in order to insure payment of the tax imposed, may require at any time a further or supplemental return, which shall contain any data that may be specified by him, and he may require any utility doing business in the Village of Arcade to file an annual return, which shall contain any data specified by him, regardless of whether the utility is subject to tax under this local law. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or of the owner or of a copartner thereof, or of a principal officer of the corporation, if such business is conducted by a corporation, to the effect that the statements contained therein are true.

SECTION 60-5. TAX PAYMENTS WITH RETURN

At the time of filing a return as required by this local law, each utility shall pay to the Village Clerk-Treasurer the tax imposed by this local law for the period covered by such return. Such tax shall be due and payable at the time of filing the return, or if a return is not filed when due, on the last day on which the return is required to be filed.

SECTION 60-6. FAILURE TO SUBMIT ACCEPTABLE RETURN

In case any return filed pursuant to this local law shall be insufficient or unsatisfactory to the Village Clerk-Treasurer, and if a corrected or sufficient return is not filed within twenty days after the same is required by notice from him, or if no return is made for any period, the Village Clerk-Treasurer shall determine the amount of tax due from such information as he is able to obtain, and if necessary, may estimate the tax on the basis

of external indices or otherwise. He shall give notice of such determination to the person liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the Village Clerk-Treasurer, of his own motion shall reduce the same. After such hearing, the Village Clerk-Treasurer shall give notice of his decision to the person liable for the tax. Such decision may be reviewed by a proceeding under article seventy-eight of the CPLR if application therefore is made within ninety days after the giving of notice of such decision. An order to review such decision shall not be granted unless the amount of any tax sought to be reviewed, with interest and penalties thereon, if any, shall be first deposited with the Village Clerk-Treasurer and an undertaking filed with him, in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that, if such proceeding be dismissed or the tax confirmed, the applicant will pay all costs and charges which may accrue in the prosecution of such proceeding, or at the option of the application, such undertaking may be in a sum sufficient to cover the tax, interest, penalties, costs and charges aforesaid, in which event the applicant shall not be re-required to pay such tax, interest and penalties as a condition precedent to the granting of such order.

Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as required by this local law the tax may be assessed at any time.

SECTION 60-7. GIVING OF NOTICE

Any notice authorized or required under the provisions of this local law may be given by mailing the same to the persons for whom it is intended, in a postpaid envelope, addressed to such person at the address given by him in the last return filed by him under this local law, or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipts of the same by the person to whom addressed. Any period of time, which is determined according to the provisions of this local law by the giving of notice, shall commence to run from the date of mailing of such notice.

SECTION 60-8. PENALTIES

Any person failing to file a return or corrected return, or to pay any tax or any portion thereof, within the time required by this local law shall be subject to a penalty of five per centum of the amount of tax due, plus one per centum of such tax for each month of delay or fraction thereof, excepting the first month, after such return was required to be filed or such tax became due; but the Village Clerk-Treasurer, for cause shown, may extend the time for filing any return, and if satisfied that the delay was excusable, may remit all or any portion of the penalty fixed by the foregoing provisions of this section.

SECTION 60-9. REFUNDS

If, within one year from the payment of any tax or penalty, the payer thereof shall make application for a refund thereof and the Village Clerk-Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Village Clerk-Treasurer shall refund the amount so determined. For like

cause and within the same period, a refund may be so made on the initiative of the Village Clerk-Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Clerk-Treasurer as hereinbefore provided unless the Village Clerk-Treasurer, after a hearing as hereinbefore provided, or of his own motion, shall have reduced the tax or penalty or it shall have been established in a proceeding under article seventy-eight of the CPLR that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this local law. An application for a refund, made as hereinbefore provided, shall be deemed an application for the revision of any tax or penalty complained of and the Village Clerk-Treasurer shall give notice thereof to the person interested, and he shall be entitled to an order to review such determination under said article seventy-eight, subject to the provision hereinbefore contained relating to the granting of such an order.

SECTION 60-10. TAX TO BE PART OF OPERATING COST

The tax imposed by this local law shall be charges against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers of other but shall constitute a part of the operating costs of such utility.

SECTION 60-11. ACTION TO ENFORCE PAYMENT

Whenever any person shall fail to pay any tax or penalty imposed by this local law, the village attorney shall, upon the request of the Village Clerk-Treasurer, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Village Clerk-Treasurer. Each such tax and penalty shall be a lien upon the property of the person liable to pay the same, in the same manner and to the same extent that the tax and penalty imposed by section one hundred eighty-six-a of the tax law is made a lien.

SECTION 60-12. RULES

In the administration of this local law the Village Clerk-Treasurer shall have power to make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of his powers and the performance of his duties, and to prescribe the form of blanks, reports and other records relating to the administration and enforcement of the tax, to take testimony and proofs, under oath with reference to any matter within the line of his official duty under this local law, and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

SECTION 60-13. SECRECY PROVISIONS

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Village Clerk-Treasurer or any agent, clerk or employee of the Village of Arcade to divulge or make known in any manner the amount of gross income or gross operating income, or any particulars set forth or disclosed in any return under this local law. The officer charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Village of Arcade in an action or proceeding under the provisions of this local law, or on behalf of the State Tax Commission in an action or proceeding under the provisions of the tax law of the State of

New York, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the publication of delinquent lists showing the names of persons who have failed to pay their taxes at the and in the manner provided for by this local law together with any relevant information which in the opinion of the Village Clerk-Treasurer may assist in the collection of such delinquent taxes; or the inspection by the Village attorney or other legal representatives of the Village of Arcade of the return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action has been instituted in accordance with the provisions of this local law.

Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year or both, and if the offender be an officer, agent, clerk or employee of the Village of Arcade he shall be dismissed from office, and shall be incapable of holding any office or employment in the Village of Arcade for a period of five years thereafter.

Notwithstanding any provisions of this local law the Village Clerk-Treasurer may exchange with the Chief Fiscal Officer of any city or any other village in the State of New York information contained in returns filed under this local law, provided such city or other village grants similar privileges to the Village of Arcade, and provided such information is to be used for tax purposes only, and the Village Clerk-Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

SECTION 60-14. DISPOSITION OF MONIES

All taxes and penalties received by the Village Clerk-Treasurer under this local law shall be paid into the treasury of the village and shall be credited to and deposited in the general fund of the village.

SECTION 60-15. EFFECTIVE DATE

This local law shall take effect immediately.

Local Law No. 1-1969
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