

VILLAGE OF ALLEGANY

LOCAL LAW NO. 1 OF THE YEAR 1971

A local law imposing a tax on gross income or gross operating income of utilities arising from transactions originating and consummated within the territorial limits of the Incorporated Village of Allegany as authorized by Article 6, Section 6-640 of the Village Law of the State of New York.

BE IT ENACTED by the Board of Trustees of the Village of Allegany as follows:

Section 1. Imposition of Tax. Pursuant to the authority granted by Article 6, Section 6-640 of the Village Law of the State of New York, from on and after October 18, 1971 there is hereby imposed:

- (a) A tax equal to one per centum of the gross income of every utility doing business in the Incorporated Village of Allegany which is subject to the supervision of the New York State Department of Public Service and which has an annual gross income in excess of Five Hundred Dollars (\$500.00) except Motor Carriers or brokers subject to such supervision under Article Three-B of the Public Service Law.
- (b) A tax equal to one per centum of the gross operating income of every other utility doing business in the Incorporated Village of Allegany which has an annual gross operating income in excess of Five Hundred Dollars (\$500.00) .

Section 2. Definitions. As used in this local law.

- (a) The word "Utility" includes

I. Every person subject to the supervision of the State Department of Public Service, except

a. Persons engaged in the business of operating or leasing sleeping and parlor railroad cars, and

b. Persons engaged in the business of operating or leasing railroads other than street surface, rapid transit, subway and elevated railroads;

c. Omnibus corporations subject to supervision under Article Three-A of the Public Service Law.

II. Every person who sells gas, electricity, steam, water, refrigerator, telephone or telegraph delivered through mains, pipes, or wires, whether or not such person is subject to the supervision of the State Department of Public Service;

III. Every person who furnishes gas, electric, steam, water, refrigerator, telephone or telegraph service, by means of mains, pipes, or wires, regardless of whether such activities are the main business of such person or are only incidental there to, or of whether use is made of the public streets.

- (b) The word "person" means: persons, corporations, companies, associations, joint-stock associations, co-partnership, estates, assignee of rents, any 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, public districts and corporations and associations organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(c) The words “Gross Income” shall include:

- I. In the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village.
- II. In the case of a utility engaged in selling telegraph or telegraph service, only receipts from transactions wholly consummated with the Village.

(d) The Word “Gross Income” in the case of any utility other than described in Section 2(c) hereof shall include:

- I. Receipts received in or by the reason of any 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 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 deductions therefrom on account of the cost of the property sold, the cost of the materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever;
- II. Profits from the sale of securities;
- III. Profits from the sale or real property growing out of the ownership or use of or interest in such property;
- IV. Profits from the sale of personal property (other than property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of the period for which a return is made);
- V. Receipts from interest, dividends and royalties, derived from sources within the Village (other than such as are received from a corporation, a majority of whose voting stock is owned by the taxpaying utility), without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof;
- VI. Profits from any transaction (except sales for resale and rentals) within the Village whatsoever.

(e) The words “Gross Operating Income” mean and include:

- I. Receipts received in or by the reason of any sale, conditional or otherwise, made from ultimate consumption or use by the purchaser of gas, electricity, steam, water, refrigeration, telephone or telegraphy, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water, refrigerator, telephone, telegraph service in the Village, including cash credits and property of any kind of nature, without deduction therefrom on account of the cost if the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever.

Section3. Application. This law and the tax imposed thereby shall

- (a) Apply only within the territorial limits of the Village of Allegany.
- (b) Not apply and the tax shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Allegany not with standing that some act be necessarily performed with respect to such transaction within such limits; and
- (c) Be in addition to any and all other taxes and fees imposed by any other provisions of law;
- (d) Apply to all subject income received on and after October 18th, 1971.

Section 4. Disposition of Revenues. All revenues resulting from the imposition of the tax imposed by this 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 5. Collection and Enforcement. Rules and Regulations. The Village Treasurer shall be the chief enforcement officer of this law and shall make and be responsible for all collections hereunder. He or she shall also have the power and authority to make any rules or regulations or directives, not inconsistent with law, which, in his or her discretion, are reasonably necessary to facilitate the administration of this law and the collection of the taxes imposed hereby. Copies of all such rules and regulations and directives, as may from time to time be promulgated, shall be sent by registered mail to all utilities subject to this law which register as such with Village Treasurer. All such rules, regulations and directives shall be deemed a portion of this law.

Section 6. Returns, Filing, Contents.

- (a) Time of filing. Every utility subject to tax hereunder shall file on or before December 1st and June 1st, a return for the six calendar months preceding each return date including any period for which the tax imposed hereby or any amendment hereof if effective. However, any utility whose average gross income or gross operating income for the aforesaid six-month period is less than Three Thousand Dollars (\$3,000.00) may file a return annually on May 1st for the twelve calendar months preceding each return date including any period for which the tax imposed hereby or any amendment hereof is effective. Any utility whether subject to tax under this law or not may be required by the Village Treasurer to file annual return.
- (b) Contents. Returns shall be filed with the Village Treasurer on a form to be furnished by the treasurer for such purpose and shall show thereon the gross income or gross operating income for the period covered by the return and such other information, data or matters as the Village Treasurer may require to be included therein. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner or of a co-partner thereof, or of a principal corporate officer to the effect that the statements contained therein are true.

Section 7. Payment. At the time of filing a return as required by this law, each utility shall pay to the Village Treasurer the tax imposed hereby for the period covered by such return. Such tax shall be due and payable at the time of the filing of the return or if a return is not filed when due, on the last day of which the return is required to be filed.

Section 8. Penalties and Interest. Any utility failing to file a return or a corrected return, or to pay any tax or any portion thereof within the time required by this 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 Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

Section 9. Tax as Operating Cost. The tax imposed by this law shall be charged against and be paid by the utility and shall not be added as a separate item on bills rendered by the utility to customers or others but shall constitute a part of operating costs of such utility.

Section 10. Failure to File or Incorrect Returns, In case any return filed pursuant to this law shall be insufficient or unsatisfactory to the Village Treasurer, he or she may require at any time a further or supplemental return, which shall contain any data that may be specified by him or her, and, if a corrected or sufficient return is not filed within twenty days after the same is required by notice from the treasurer, or, if no return is made for any period, the Village Treasurer shall determine the amount due from such information as he or she 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 utility liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the utility against which it is assessed shall, within one year after the giving of notice of such determination, apply to the treasurer for a hearing or unless the Treasurer, of his own motion, shall reduce the same. After such hearing he shall give notice of his decision to the utility liable for such tax.

Section 11. Review of Final Determination. Any final determination of the amount of any tax payable hereunder shall be review able for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article Seventy-eight of the Civil Practice Law and Rules if the proceeding is commenced within ninety days after the giving of notice of such final determination, provided, however that any such proceeding under Article Seventy-eight shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, ordinance or resolution, shall be first deposited and an undertaking filed, 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 petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Section 12. Notice. Any notice authorized or required under the provisions of this law may be given by mailing the same to the utility for which it is intended, in a postpaid envelope, addressed to such utility at the address given by it in the last return filed by it under this 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 receipt of the same by the utility to which addressed. Any period of time, which is determined according to the provisions of this section by the giving of notice, shall commence to run from the date of mailing of such notice.

Section 13. Refunds. If, within one year from the giving of notice of any determination or assessment of any or penalty, the person liable for the tax shall make application for a refund thereof and the Village Treasurer of the Court shall determine that such tax or penalty or any portion thereof was erroneously charged. The Village 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 Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to the determination of the Village Treasurer as hereinbefore provided, on his own motion, shall have reduced the tax or penalty or it shall have been established in a proceeding in the manner provided in the Civil Practice Law and Rules that such determination was erroneous or illegal. 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 Treasurer may receive additional

evidence with notice thereof to the person interested, and shall be entitled to commence a proceeding to review such determination, in accordance with the provisions of the following section hereof.

Section 14. Review of Proceedings for Refunds. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Village Treasurer, and he shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article Seventy-eight of the Civil Practice Law and Rules, provided, however, that such proceeding is instituted within ninety days after the giving of the notice of such denial, that a final determination of tax due was not previously made and that an undertaking is filed with the Village Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that is such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Section 15. Limitation of Additional Tax. Except in the case of a willfully false or fraudulent return with the intent to evade the tax, no assessment or additional tax shall be made with respect to taxes imposed under this law after expiration of more than three years from the date filing of a return, provided, however, that where no return has been filed as required hereby, the tax may be assessed at any time.

Section 16. Powers of Village Treasurer. In addition to any other powers herein given the Village Treasurer and in order to further insure payment of the tax imposed hereby, he shall have the power to

- (a) Prescribe the form of all reports and returns required to be made hereunder;
- (b) Take testimony and proofs; under oath, with reference to any matter hereby entrusted to him;
- (c) Subpoena and require the attendance of witnesses and the production of books, papers, records, and documents.

Section 17. Enforcement. Whenever any person shall fail to pay tax or penalty imposed by this local law, the Village Attorney shall, upon request of the Village 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 Treasurer. Each such tax and penalty shall be a lien upon the property of a 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 18. Validity. The invalidity, illegality or unconstitutionality of any section, subsection or provision of this Local Law or any rules or regulations adopted pursuant hereto shall not effect the validity, legality or constitutionality of any section, subsection or provision of this Local Law or any rule or regulation adopted pursuant hereto, but shall be confined to such section, subsection or provision of this Local Law or rule, or regulation adopted pursuant hereto which may be so condemned.

Section 19. Effective Date. This Local Law shall take effect immediately.