

3-2-7: MUNICIPAL UTILITY TAX:

A. A tax is imposed on all persons engaged in the following occupations or privileges:

1. Persons engaged in the business of transmitting messages by means of electricity, at the rate of five percent (5%) of the gross receipts from such business originating within the corporate limits of Bensenville.

2. Persons engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the corporate limits of Bensenville, and not for resale, at the rate of five percent (5%) of the gross receipts therefrom. (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986)

3. Persons engaged in the business of distributing, supplying, furnishing or selling electricity for use or consumption within the corporate limits of Bensenville, and not for resale, at the rate of five percent (5%) of the gross receipts therefrom; provided, however, that said tax shall not be imposed with respect to distributing, supplying, furnishing or selling electricity where the privilege of using or consuming said electricity is subject to the tax imposed under subsection A4 of this Section. (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986; amd. Ord. 62-98, 9-8-1998)

4. The tax under this subsection A4 shall be imposed with respect to the use or consumption of electricity by residential customers beginning with the first bill issued after October 1, 1998, and with respect to the use or consumption of electricity by nonresidential customers beginning with the first bill issued to such customers for delivery services in accordance with 220 Illinois Compiled Statutes 5/16-104 of the Public Utilities Act, or the first bill issued to such customers on or after January 1, 2001, whichever issuance occurs sooner.

5. a. Persons engaged in the privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the Village at the following rates, calculated on a monthly basis for each purchaser:

(1) For the first 2,000 kilowatt-hours used or consumed in a month: 0.566 cents per kilowatt-hour;

(2) For the next 48,000 kilowatt-hours used or consumed in a month: 0.371 cents per kilowatt-hour;

(3) For the next 50,000 kilowatt-hours used or consumed in a month: 0.334 cents per kilowatt-hour;

(4) For the next 400,000 kilowatt-hours used or consumed in a month: 0.325 cents per kilowatt-hour;

(5) For the next 500,000 kilowatt-hours used or consumed in a month: 0.315 cents per kilowatt-hour;

(6) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.297 cents per kilowatt-hour;

(7) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.292 cents per kilowatt-hour;

(8) For the next 5,000,000 kilowatt-hours used or consumed in a month: 0.288 cents per kilowatt-hour;

(9) For the next 10,000,000 kilowatt-hours used or consumed in a month: 0.283 cents per kilowatt-hour; and

(10) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month: 0.278 cents per kilowatt-hour. (Ord. 70-98, 10-20-1998)

b. Subject to the provisions of subsection A5e of this Section, regarding the delivery of electricity to resellers, the tax imposed under subsection A4 of this Section shall be collected from purchasers by the person maintaining a place of business in this State who delivers electricity to such purchasers. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and is recoverable at the same time and in the same manner as the original charge for delivering the electricity.

c. Any such tax required to be collected, and any such tax in fact collected, shall constitute a debt owed to the Village by the person delivering the electricity, provided, that the person delivering electricity shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax.

d. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to three percent (3%) of the tax they collect to reimburse them for their expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the Village upon request. For purposes of this subsection, any partial payment of a billed amount not specifically identified by the purchaser shall be deemed to be for the delivery of electricity.

e. Electricity that is delivered to a person in this Village shall be considered to be for use and consumption by that person unless the person receiving the electricity has an active resale number issued by the Illinois Commerce Commission, or such other appropriate governmental body or agency having jurisdiction, and furnishes that number to the person who delivers the electricity, and certifies to that person that the sale is either entirely or partially nontaxable as a sale for resale.

(1) If a person who receives electricity in the Village claims to be an authorized reseller of electricity, that person shall apply to the appropriate governmental body or agency for a resale number. Such person shall provide the Village with a copy of said resale number and shall furnish such additional information as the Village may reasonably require to demonstrate that such person is not liable for the tax imposed by this Chapter on any purchases of electricity. Upon receipt of such information, the Village shall issue confirmation of such person's status as a reseller under this Chapter.

(2) The Village may revoke such person's status as a reseller under this Chapter if the person fails to pay any tax payable under this Chapter for electricity used or consumed by the person; if the number was obtained through misrepresentation; and/or if the number is no longer necessary because the person has discontinued making resales.

(3) If a reseller has acquired electricity partly for use or consumption and partly for resale, the reseller shall pay the tax imposed pursuant to this Chapter directly to the Village as to the amount of electricity that the reseller uses or consumes, and shall collect and remit said tax as to the amount of electricity delivered by the reseller to a purchaser.

(4) Any person who delivers electricity to a reseller having an active resale number and complying with all other conditions of this Section shall be excused from collecting and remitting the tax on any portion of the electricity delivered to the reseller, provided that the person reports to the Village the total amount of electricity delivered to the reseller, and such other information that the Village may reasonably require. (Ord. 62-98, 9-8-1998)

B. No tax is imposed by this Section with respect to any transaction in interstate commerce or otherwise to the extent to which such business may not, under the Constitution and statutes of the United States, be made subject to taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing or selling gas or electricity, or engaged in the business of transmitting messages be subject to taxation under the provisions of this Section for such transactions as are or may become subject to taxation under the provisions of the

Municipal Retailers' Occupation Tax Act authorized by section 8-11-1 of the Illinois Municipal Code, approved May 29, 1961, as amended ¹ . (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986)

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions hereof. (Ord. 62-98, 9-8-1998)

C. Such tax shall be in addition to the payment of money, or value of products or services furnished to this municipality by the taxpayer as compensation for the use of its streets, alleys or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business. (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986)

D. For the purpose of this Section, the following definitions shall apply:

GROSS RECEIPTS: The consideration received for the transmission of messages, or for distributing, supplying, furnishing or selling gas and electricity for use or consumption and not for resale, as the case may be; and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith; and shall be determined without any deduction on account of the cost of transmitting said messages without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever.

The term "gross receipts" shall not include any charges added to customers' bills pursuant to the provisions of section 9-221 or 9-222 of the Illinois Public Utilities Act or any other separately stated charge added to customers' bills in respect of any tax or other governmental imposition ² .

PERSON: Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator or other representative appointed by order of any court.

PERSON MAINTAINING A PLACE OF BUSINESS IN THIS STATE: Any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

PURCHASE AT RETAIL: Any acquisition of electricity by a purchaser for purpose of use or consumption, and not for resale, but shall not include the use of electricity by a public utility, as defined in section 8-11-2 of the Illinois Municipal Code ¹ , directly in the generation, production, transmission, delivery or sale of electricity.

PURCHASER: Any person who uses or consumes, within the corporate limits of the Village, electricity acquired in a purchase at retail.

TAX COLLECTOR: The person delivering electricity to the purchaser.

TRANSMITTING MESSAGES: In addition to the usual and popular meaning of person-to-person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but shall include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such

persons to other persons, for the transmission of messages. (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986; amd. Ord. 62-98, 9-8-1998)

E. This Section shall take effect after publication and the tax provided for herein shall be based on the "gross receipts", as herein defined, if actually paid to the taxpayer for services billed on or after October 1, 1986. (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986)

F. Tax return:

1. On or before the last day of each and every month, each taxpayer and/or tax collector, shall make a return to the director of management services for the calendar month preceding the month in which the return is to be made, stating:

- a. The name of the taxpayer or tax collector;
- b. The principal place of business of the taxpayer or tax collector;
- c. The gross receipts of the taxpayer; except with respect to the tax imposed under subsection A4 of this section, in which case the return shall state the number of kilowatt hours, within each of the categories set forth therein, sold by the tax collector to the purchasers, and in the event that the purchaser is required to pay said tax directly to the village, the number of kilowatt hours within each of said categories used or consumed by the taxpayer;
- d. The amount of tax; and
- e. Such other reasonable information as the director of management services may require.

2. At the time of filing said return, the taxpayer or the tax collector, as the case may be, shall pay to the village the amount of the tax imposed pursuant to this section; provided, however, that a taxpayer being taxed on the basis of gross receipts may elect to report and pay an amount of tax based upon the total billings subject to the tax during the period for which the return is made, exclusive of any amounts previously billed, with prompt adjustments of later payments based upon any differences between such billings and the taxable gross receipts.

3. Every taxpayer and/or tax collector required to pay the tax imposed by this section shall keep accurate books and records of its business or activities, including contemporaneous books and records denoting the transactions that gave rise, or may have given rise, to any tax liability under this section. Said books and records shall be subject to and available for inspection by the village and/or its designated agents at all times during the business hours of the taxpayer and/or tax collector. (Ord. 62-98, 9-8-1998)

G. If it shall appear that an amount of tax has been paid which was not due under the provisions of this section, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this section from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefor shall be so credited. (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986)

H. No action to recover any amount of tax due under the provisions of this section shall be commenced more than three (3) years after the due date of such amount. Nothing in this section shall be construed as limiting any additional or further remedies that the village may have relating to the enforcement of this section, or the collection of the amount of any tax due hereunder. (Ord. 07-87, 2-19-1987, eff. retroactive to 10-1-1986; amd. Ord. 62-98, 9-8-1998)

Notes

1. See also Section 3-2-1 of this Chapter.