

## CHAPTER 17

# MUNICIPAL TELECOMMUNICATIONS TAX

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#### 3-17-1: TITLE:

This Chapter shall be known and cited as the *VILLAGE OF BENSENVILLE TELECOMMUNICATIONS TAX ORDINANCE* and is imposed in addition to all other taxes imposed by the Village, the State, or any other municipal corporation or political subdivision thereof. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

#### 3-17-2: DEFINITIONS:

For purposes of this Chapter:

**AMOUNT PAID:** The amount charged to the taxpayer's service address located in the Village, regardless of where such amount is billed or paid.

**GROSS CHARGE:** The amount paid for the act or privilege of originating or receiving telecommunications in the Village and for all services rendered in connection therewith, valued in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs, or any other expense whatsoever. If credit is extended, the amount thereof shall be included only as and when paid.

Gross charge shall not include:

- A. Any amounts added to the purchaser's bill because of a charge made pursuant to:
  - 1. The tax imposed by this Chapter;
  - 2. Additional charges added to a purchaser's bill pursuant to 220 Illinois Compiled Statutes 5/9-222 of the Public Utilities Act;
  - 3. The tax imposed by the Illinois Telecommunications Excise Tax Act; or
  - 4. The tax imposed by section 4251 of the United States Internal Revenue Code;
- B. Charges for a sent collect telecommunication received outside of the Village;

C. Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. This subsection applies, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;

D. Charges for customer equipment including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

E. Charges to business enterprises certified under 220 Illinois Compiled Statutes 5/9-222.1 to the extent of such exemption and during the period of time specified by the Illinois Department of Commerce and Community Affairs;

F. Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries when the tax imposed under this Chapter has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;

G. Bad debt ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable Federal Income Tax standards); provided, however, if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made; or

H. Charges paid by inserting coins in coin- operated telecommunications devices.

**INTERSTATE TELECOMMUNICATIONS:** All telecommunications that originate or terminate outside this State.

**INTRASTATE TELECOMMUNICATIONS:** All telecommunications that originate and terminate inside this State.

**PERSON:** Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, or a receiver, trustee, guardian or other representative appointed by order of any court, the Federal or State governments, including State universities created by statute, or any city, town or political subdivision of this State.

**PURCHASE AT RETAIL:** The acquisition, consumption or use of telecommunications through a sale at retail.

**RETAILER:** Every person engaged in the business of making sales at retail as defined in this Section.

**RETAILER MAINTAINING A PLACE OF BUSINESS IN THIS STATE (Or Any Like Term):** Any retailer having or maintaining within the State, directly or by a subsidiary, an office, distribution facility, transmission facility, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business, agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in the State.

**SALE AT RETAIL:** The transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for consideration:

A. To persons other than the Federal and State governments and State universities created by statute; and

B. Other than between a parent corporation and its wholly owned subsidiaries, or between wholly owned subsidiaries, when the tax has already been paid to a retailer and the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for resale.

**SERVICE ADDRESS:** The location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. If this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunication equipment as defined by telephone number, authorization code or location in Illinois where bills are sent.

**TAXPAYER:** A person who individually or through his agents, employees or permittees engages in the act or privilege of originating or receiving in the Village telecommunications and who incurs a tax liability under this Chapter.

#### **TELECOMMUNICATIONS:**

A. In addition to the usual and popular meaning, includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, cellular mobile telecommunications services, specialized mobile radio services, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points of wire, cable, fiberoptics, laser, microwave, radio, satellite or similar facilities;

B. "Telecommunications" shall not include:

1. Value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission; or

2. Purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end telecommunications. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

#### **3-17-3: TAX IMPOSED:**

A. A tax is hereby imposed upon:

1. The act or privilege of originating or receiving in the Village intrastate telecommunications by a person at a rate of five percent (5%) of the gross charge for such telecommunications purchased at retail from a retailer; and

2. The act or privilege of originating in or receiving in the Village interstate telecommunications by a person at a rate of five percent (5%) of the gross charge for such telecommunications purchased at retail from a retailer. Any taxpayer, upon proof that the taxpayer has paid a tax in another state on the same event, shall be allowed a credit against the tax authorized by this subsection A2 to the extent of the amount of such tax properly due and paid in another state which was not previously allowed as a credit against any other state or local tax in Illinois.

B. Carrier access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision used as a component of, or integrated into, end-to-end telecommunications service shall be nontaxable under this Chapter as sales for resale.

C. The tax imposed by this Section is not imposed on any act or privilege to the extent that such act or privilege may not, under the Constitution or statutes of the United States, be made the subject of taxation by the Village. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

#### **3-17-4: COLLECTION OF TAX BY RETAILERS:**

A. 1. The tax authorized by this Chapter shall be collected from the taxpayer by a retailer maintaining a place of business in Illinois and making or effectuating a sale at retail and shall be remitted by the retailer to the Village.

2. Any tax required to be collected pursuant to this Chapter and any tax collected by the retailer shall constitute a debt owed by the retailer to the Village.

3. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use in the manner prescribed by this Chapter.

4. The tax authorized by this Chapter shall constitute a debt of the purchaser to the retailer that provides taxable services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for taxable services.

5. If the retailer fails to collect the tax from a taxpayer, the taxpayer shall pay the tax directly to the Village as provided in Section 3-17-7 of this Chapter.

B. The Village shall, upon application, authorize the collection of this tax by any retailer not maintaining a place of business in this State who, to the satisfaction of the Village Treasurer, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect the tax imposed by this Chapter. When so authorized, it shall be the duty of the retailer to collect the tax upon all of the gross charges for telecommunications originated or received in the Village in the same manner, and subject to the same requirements, as a retailer maintaining a place of business in Illinois.

C. The tax authorized by this Chapter shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

### **3-17-5: REGISTRATION:**

A. Every retailer maintaining a place of business in this State on the effective date of this Chapter shall register with the Village within thirty (30) days after that date.

B. Every person becoming a retailer maintaining a place of business in this State after the effective date of this Chapter shall register with the Village within thirty (30) days after commencing such business. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

### **3-17-6: FILING RETURNS AND REMITTANCE BY RETAILERS:**

On or before the last day of each calendar month, every retailer maintaining a place of business in this State and every retailer authorized by the Village Treasurer to collect the tax imposed by this Chapter shall file with the Village a remittance return and remit all applicable tax for the preceding calendar month. The return shall be filed on a form prescribed by the Village Treasurer, containing such information as he or she may reasonably require. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

### **3-17-7: FILING RETURNS/PAYMENTS BY TAXPAYERS:**

A. When a taxpayer does not pay the tax imposed by this Chapter to a retailer, the taxpayer shall file with the Village a tax return and pay the tax upon that portion of gross charges paid to the retailer during the preceding calendar month on or before the last day of the month following that month. The return shall be filed on a form prescribed by the Village.

B. When a taxpayer pays the tax imposed by this Chapter directly to the Village, the Village, at the request of the taxpayer, shall issue an appropriate receipt to the taxpayer showing the amount of tax paid. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

### **3-17-8: RESALE NUMBERS:**

A. If a person who originates or receives telecommunications in the Village claims to be a reseller of telecommunications, that person shall apply to the Village for a resale number. The applicant shall

state facts showing why it is not liable for the tax imposed by this Chapter on any purchases of telecommunications and shall furnish such additional information as the Village reasonably requires.

B. Upon approval of the application, the Village shall assign a resale number to the applicant and shall certify the number to the applicant.

C. The Village may cancel the resale number of any person if the number:

1. Was obtained through misrepresentation;
2. Is used to originate or receive telecommunications tax- free when such telecommunications are not for resale; or
3. Is no longer necessary because the person has discontinued making resales.

D. The act or privilege of originating or receiving telecommunications in the Village shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number issued by the Village Treasurer and furnishes that number to the retailer in connection with certifying to the retailer that a sale is nontaxable as the sale for resale. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

### **3-17-9: MAINTAINING BOOKS AND RECORDS:**

Every retailer maintaining a place of business in this State, every retailer authorized by the Village to collect the tax imposed by this Chapter, and every taxpayer shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transactions that gave rise, or may have given rise, to any tax liability or exemption. All such books and records shall be kept in the English language and, at all times during business hours of the day, shall be subject to and available for inspection by the Village. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)

### **3-17-10: SEVERABILITY:**

If any provision of this Chapter or the application thereof is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Chapter, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable. In particular, if subsection 3-17-3A2 of this Chapter is declared unconstitutional or otherwise invalid, the tax imposed under subsection 3-17-3A1 of this Chapter shall remain in full force and effect. (Ord. 1-94, 1-18-1994, eff. 2-1-1994)