

## CHAPTER 25

### UTILITY TAX

#### §25.1 Tax on the furnishing of utility services

Pursuant to the authority granted by §6-640 of the Village Law of the State of New York, a tax equal to one (1) per centum of its gross income on and after the first day of July 1972 is hereby imposed upon every utility doing business in the Village of Avon, New York, which is subject to the supervision of the State Department of Public Service, which has a gross income for twelve (12) months ending May 31st in excess of Five Hundred Dollars (\$500.00), except motor carriers of property subject to such supervision under Article three-b of the Public Service Law, and a tax equal to one (1) per centum of its gross operating income from and after the first day of July 1972 is hereby imposed upon every other utility doing business in the Village of Avon, New York, which has a gross operating income for twelve (12) months ending May 31st in excess of Five Hundred Dollars (\$500.00), which taxes shall have application only within the territorial limits of the Village of Avon and shall be in addition to any 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 Avon notwithstanding that some acts be necessarily performed with respect to such transaction within such limits.

#### §25.2 Definitions

As used in this chapter:

1. 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 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, electricity, steam, water, refrigeration, 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 thereto, or of whether use is made of the public streets.

2. The word "person" means persons, corporations, companies, associations, joint stock associations, copartnerships, 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, municipality and public districts.

3. The words "gross income" mean and include receipts received in or by reason of any sale, conditional or otherwise, (except sales hereinafter referred to with respect to which it is provided that the 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 Avon, New York, 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 the materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profits 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 close of the period for which a return is made); also receipts from interest, dividends and royalties, derived from sources within the Village of Avon, New York, 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, and also profits from any transaction (except sales for resale and rentals) within the Village of Avon, New York, 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 Avon, New York, and in the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village of Avon, New York.

4. 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, electricity, steam, water, refrigeration, telephony or telegraphy, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water, refrigeration, telephone or telegraph service in the Village of Avon, New York, 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 the materials used, labor, or services or other costs, interest or discount paid, or any other expenses whatsoever.

### §25.3 Records of utility

Every utility subject to tax under this chapter shall keep such records of its business and in such form as the Village Treasurer may require, or as the Village Board may require, and such records shall be preserved for a period of three (3) years, except that the Village Treasurer or the Village Board may consent to their destruction within that period or may require that they be kept longer.

**§25.4      Filing by utility**

Every utility subject to tax hereunder, shall file, on or before September 25th, December 25th, March 25th and June 25th, a return for the three (3) calendar months preceding each such return date including any period for which the tax imposed hereby or by an amendment hereof is effective. Every return shall state the gross income or gross operating income for the period covered thereby. Returns shall be filed with the Village 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 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 Avon, New York to file an annual return, which shall contain any data specified by him, regardless of whether the utility is subject to tax under this chapter. 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.

**§25.5      Payment of tax**

At the time of the filing of a return as required by this chapter, each utility shall pay to the Village of Avon the tax imposed by this chapter 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.

**§25.6      Sufficiency of return**

In case any return filed pursuant to this chapter shall be insufficient or unsatisfactory to the Village Treasurer, and if a corrected or sufficient return is not filed within twenty (20) days after the same is required by notice from him, or if no return is made for any period, the Village 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 Treasurer for a hearing, or unless the Village Treasurer, of his own motion shall reduce the same. After such hearing, the Village 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 Civil Practice Law and Rules of the State of New York if application therefor is made within ninety (90) 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 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 and penalties as a condition precedent to the granting of such order. Except in the case of wilfully 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 (3) years from the date of the filing of a return, provided, however, that where no return has been filed as required by this chapter the tax may be assessed at any time.

§25.7        Notice

Any notice authorized or required under the provisions of this chapter 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 chapter, 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 person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice, shall commence to run from the date of mailing of such notice.

§25.8        Failure to file

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 chapter shall be subject to a penalty of five (5) per centum of the amount of tax due, plus one (1) per centum of such tax for each month of delay or fraction thereof, excepting the first month, but the Village Treasurer, for cause shown, may extend the time for filing any return, and if satisfied that the delay was excusable, may remit all of any portion of the penalty fixed by the foregoing provisions of this section.

§25.9        Refund

If, within one (1) year from the payment of any tax or penalty, the payer thereof shall make application for a refund thereof and the Village Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, 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 a determination of the Village Treasurer as hereinbefore provided unless the Village Treasurer, after a hearing as hereinbefore provided, or of his own motion, shall have reduced the tax or penalty or if it shall have been established in a proceeding under Article seventy-eight of the Civil Practice Law and Rules of the State of New York that such determination was erroneous or illegal. All refunds shall be made out of monies

collected under this chapter. 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 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 of the Civil Practice Law and Rules of the State of New York, subject to the provision hereinbefore contained relating to the granting of such an order.

**§25.10 Tax not to be added to bill**

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

**§25.11 Failure to pay tax**

Whenever any person shall fail to pay any tax or penalty imposed by this chapter, the Village Attorney shall, upon the request of the Village Board, 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 the person liable to pay the same, in the same manner and to the same extent that the tax and penalty imposed by §186-a of the Tax Law is made a lien.

**§25.12 Rules and regulations of Treasurer**

In the administration of this chapter, the Village 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 chapter, and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

**§25.14 Disposition of taxes and penalties**

All taxes and penalties received by the Village Treasurer under this chapter shall be paid into the treasury of the Village of Avon, New York and shall be credited to and deposited in the general fund of the Village.