

authorized to file a certified copy of this article in the office of the County Clerk of the Counties of Broome and Delaware.

§ 117-10. Applicability.

Upon the adoption of this article, the provisions of Title 3 of the Real Property Tax Law shall become applicable to the Village of Deposit and in addition thereto the provisions of Titles 1 and 4 of Article 11 shall by operation of law become applicable to the Village of Deposit.

ARTICLE IV

Utility Tax

[Adopted 8-12-1997 by L.L. No. 1-1997]

§ 117-11. Tax imposed.

A tax equal to 1% of its gross income or of gross operating income, as the case may be, from and after January 1, 1998, is hereby imposed upon every utility doing business in the Village of Deposit. This tax shall have application only within the territorial limits of the Village of Deposit and shall be in addition to any other taxes. Such tax shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Deposit notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

§ 117-12. Definitions.

As used in this article, the following terms shall have the meanings indicated:

GROSS INCOME — Includes 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 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 Deposit, 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 close of the period for which a return is made); also receipts from interest, dividends and royalties derived from sources within the Village of Deposit 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; also profits from any transaction (except sales for resale and rentals) within the Village of Deposit whatsoever.

GROSS OPERATING INCOME — Includes 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 Deposit, including cash, credits and property of any kind or nature, without any deduction therefrom on account to the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expenses whatsoever.

PERSON — Persons, corporations, companies, associations, joint-stock associations, copartnerships, estates, assignees 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, political and civil subdivisions of the state or municipality, 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.

UTILITY — Includes every person subject to the supervision of the State Department of Public Service, except persons engaged in the business of operating on the public highways of this state one or more omnibuses having a seating capacity of more than seven persons, and 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, electricity, steam, water, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, or furnishes gas, electric, 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.

§ 117-13. Gross income.

Notwithstanding any other provisions of this article or of § 186-a of the Tax Law of the State of New York, the words “gross income” shall include:

- A. 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 Deposit.
- B. In the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village of Deposit.

§ 117-14. Records to be preserved.

Every utility subject to tax under this article 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.

§ 117-15. Filing of tax return.

Every utility subject to tax hereunder shall file, on or before March 25, June 25, September 25 and December 25, a return for the three calendar months preceding each such return date or any portion thereof for which the tax imposed hereby is effective, each of which returns shall state the gross income or gross operating income for the period covered by each such return. Returns shall be filed with the Village Clerk/Treasurer on a form to be furnished by them for such purpose and shall contain such other data, information or matter as the Village Clerk/Treasurer may require to be included therein. Notwithstanding the foregoing provisions of this section, any utility whose average gross income or average gross operating income, as the case may be, for the aforesaid three-month periods is less than \$1,500 may file a return annually on June 25 for the 12 preceding calendar months, and the Village Clerk/Treasurer may require any utility to file an annual return which shall contain any data specified by them, regardless of whether the utility is subject to tax under this article. Every return shall have annexed thereto a certification by 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 shall be conducted by a corporation, to the effect that the statements contained therein are true.

§ 117-16. Tax payable upon filing return.

At the time of filing a return as required by this article, each utility shall pay to the Village Clerk/Treasurer the tax imposed by this article 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.

§ 117-17. Village Clerk/Treasurer to determine amount of tax; hearing.

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Village Clerk/Treasurer, and if a corrected or sufficient return is not filed within 20 days after the same is required by notice from the Village Clerk/Treasurer, 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. The Village Clerk/Treasurer 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 one year after the giving of notice of such determination, apply to the Village Clerk/Treasurer for a hearing, or unless 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. Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality, or any other reason whatsoever, by a proceeding under Article 78 of the Civil Practice Law and Rules if the proceeding is commenced within 90 days after the giving of the notice of such final determination; provided, however, that any such proceeding under said Article 78 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.

§ 117-18. Petitioner to pay costs of proceeding.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Village Clerk/Treasurer, and such officer shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that such proceeding is commenced within 90 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 proper fiscal officer or officers 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.

§ 117-19. Time limitation for taxes imposed.

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 with respect to taxes imposed under this section after the expiration of more than three years from the date of the filing of a return, provided that where no return has been filed as provided herein, the tax may be assessed at any time.

§ 117-20. Mailing of notice.

Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended, in a postpaid envelope, addressed to such person at the address given by them in the last return filed by them under this article, 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 article by the giving of notice, shall commence to run from the date of mailing of such notice.

§ 117-21. Penalty for failing to file return.

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 article shall be subject to a penalty of 5% of the amount of tax due, plus 1% 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, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 117-22. Application for refund.²

If, within one year from the giving of notice of any determination or assessment of any tax or penalty, the person liable for the tax 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 78 of the Civil Practice Law and Rules and § 5-530 of the Village Law of the State of New York that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this article. 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 may receive additional evidence with respect thereto. After making his determination, the Village Clerk/Treasurer shall give notice thereof to the person interested, and they shall be entitled to commence a proceeding to review such determination subject to the provisions of Article 78 of the Civil Practice Law and Rules and § 5-530 of the Village Law of the State of New York.

§ 117-23. Tax to be charged against utility.

The tax imposed by this article 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 part of the operating costs such utility.

§ 117-24. Enforcement of payment.

Whenever any person shall fail to pay any tax or penalty imposed under the provisions of this article, 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.

§ 117-25. Powers of Village Clerk/Treasurer.

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

² Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 117-26

DEPOSIT CODE

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§ 117-26. Effective date.

This article shall take effect on the first day of January 1998.