

Chapter 30
MUNICIPAL UTILITY and ELECTRIC TAXES

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30.01 DEFINITIONS FOR CHAPTER 30

In addition to the definitions found in Appendix A of this Code, the following terms used in this Chapter 30, whether or not capitalized, shall have the following meanings:

Amount paid: The amount charged to the taxpayer's service address regardless of where such amount is billed or paid.

Gross receipts: The consideration received for the transmission of messages, or distributing, supplying, furnishing or selling gas or 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. Gross Receipts shall not include receipts received from the Village for the sale to said Village of any of the utility products or services mentioned above.

Person: Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, 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 the 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 the 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 the State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in the State.

Public Utility: As defined in Section 3-105 of the Public Utilities Act (220 ILCS 5/3-105).

Purchase at retail: Pursuant to Section 30.03 herein, the acquisition, consumption or use of telecommunications through a sale at retail.

Purchaser: Any person who uses or consumes, within the corporate limits of the Village, electricity acquired in a purchase at retail (other than an exempt purchaser).

Retailer: Includes every person engaged in the business of making sales at retail as defined in this Section 30.01.

Retailer maintaining a place of business in this Village (or any like term): Includes any retailer having or maintaining within the State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within the State under the authority of the retailer or its subsidiary, irrespective of whether

such place of business or agent or other representative is located here permanently or temporarily, other whether such retailer or subsidiary is licensed to do business in this State.

Tax collector: The person delivering electricity to the purchaser.

30.02 MUNICIPAL UTILITY TAX *Amended, Ord. 1997-36*

A. Imposition of Tax: A tax is imposed on all persons engaged in the following occupations or privileges: Persons engaged in the business of distributing, supplying, furnishing or selling gas for use of consumption within the corporate limits of the Village and not for resale, at the rate of five percent of the gross receipts therefrom. *Amended, Ord. 1998-24*

B. Exemptions: No tax is imposed by this Section 30.02 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 transmitting messages be subject to taxation under the provisions of this Ordinance for such transactions as are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by 65 ILCS 5/8-11-1, as amended.

C. Application: 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.

D. Statement: On or before the last day of each month thereafter, each taxpayer shall make a return to the Village for the preceding month stating:

1. His name;
2. His principal place of business;
3. His gross receipts during that month upon the basis of which tax is imposed;
4. Amount of tax;
5. Such other reasonable and related information as the corporate authorities may require.

The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Village the amount of tax herein imposed; provided that in connection with any return, the taxpayer may, if he so elects, report and pay an amount based upon his total billings of business 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 difference between such billings and the taxable gross receipts.

E. Errors: If it shall appear that an amount of tax has been paid which was not due under the provisions of this Section 30.02, 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 30.02 from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three years prior to the filing of a claim therefor shall be so credited.

F. Recovery Deadline: No action to recover any amount of tax due under the provisions of this Section 30.02 shall be commenced more than three years after the due date of such amount.

G. Penalty: Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Section 30.02 is guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100.00 nor more than \$1,000.00, and in addition shall be liable in a civil action for the amount of tax due. *Amended, Ord. 1998-39*

30.03 ELECTRIC TAX *Ord. 1998-24*

A. Tax Imposed Upon End Users of Electricity. Pursuant to the Illinois Municipal Code (65 ILCS 5/8-11-2) and any other applicable authority, a tax is hereby imposed upon the privilege of using or consuming electricity purchased at retail and used or consumed within the corporate limits of the Village at the following rates, as calculated on a monthly basis for each purchaser, except for electricity used or consumed by the Village:

For the first 2,000 Kilowatt-hours ("Kwh") used or consumed in a month, .542 cents per Kwh;

1. For the next 48,000 Kwh used or consumed in a month, .355 cents per Kwh;
2. For the next 50,000 Kwh used or consumed in a month, .320 cents per Kwh;
3. For the next 400,000 Kwh used or consumed in a month, .311 cents per Kwh;
4. For the next 500,000 Kwh used or consumed in a month, .302 cents per Kwh;
5. For the next 2,000,000 Kwh used or consumed in a month, .284 cents per Kwh;
6. For the next 2,000,000 Kwh used or consumed in a month, .280 cents per Kwh;
7. For the next 5,000,000 Kwh used or consumed in a month, .275 cents per Kwh;
8. For the next 10,000,000 Kwh used or consumed in a month, .271 cents per Kwh; and
9. For all electricity consumed or used in excess of 20,000,000 kwh in a month, .267 cents per kwh.

The tax rates set forth hereinabove will be used at least through December 31, 2008, are proportional to the rates enumerated in 65 ILCS 5/8-11-2 (as modified by Public Act 90-561), and do not exceed the revenue that could have been collected during 1997 using the rates enumerated in 65 ILCS 5/8-11-2 (as modified by Public Act 90-561).

B. Effective Date. The tax rates as set forth in Section 30.03-A herein shall become effective as follows:

1. For all residential customers within the corporate limits of the Village, August 1, 1998.

2. For non-residential customers, upon the earlier of the date of the first bill issued to each non-residential customer pursuant to 220 ILCS 5/16-104 or the first bill issued prior to January 1, 2001. *Amended, Ord. 1998-40*

C. Utility Tax. Pursuant to 65 ILCS 5/8-11-2, the tax provided in Section 30.01-B herein shall remain in full force and effect as follows:

1. For gross receipts (as defined in Section 30.01 of this Code) attributable to residential customers, until August 1, 1998; and
2. For gross receipts attributable to nonresidential customers until the earlier of the first bill issued on or after January 1, 2001, or the date of the first bill issued to each nonresidential customer pursuant to 220 ILCS 5/16-104. *Amended, Ord. 1998-40*

D. Exceptions. None of the taxes authorized by this Ordinance may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, or selling or transmitting gas, water, or electricity, or engaged in the business of transmitting messages, or using or consuming electricity acquired in a purchase at retail, be subject to taxation under the provisions of this Ordinance for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by 65 ILCS 5/8-11-1; nor shall any tax authorized by this Ordinance be imposed upon any persons engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the municipality, whether privately or municipally owned or operated, or exercising the same privilege within the municipality.

E. Additional Taxes. The tax set forth in Section 30.03-A herein shall be in addition to other taxes levied upon the taxpayer or its business.

F. Sold at Retail. It shall be presumed that any electricity delivered to a person within the Village is sold at retail, for its use or consumption within the Village. This presumption is refutable only by clear and convincing evidence.

G. Collection. The tax imposed by this Section 30.03 shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. The tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser. If the tax is unpaid it is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to this Section 30.03 and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality by such 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 to the Village. 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 be authorized to add to such gross charge an amount equal to three percent of the tax assessed pursuant to this Section 30.03 to reimburse the person delivering electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting tax and supplying data to the Village. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the Village in the manner prescribed herein. Persons delivering electricity who file returns pursuant to this Section 30.03 shall, at the time of filing such return, pay the Village the amount of the tax collected pursuant to this Section 30.03.

H. Books and Records. Every person delivering electricity who is required to collect a tax pursuant to Section 30.03-E herein shall keep accurate books and records of all transactions which may affect the tax provided for in Section 30.03-A, including, but not limited to, records of the number of Kilowatt-hours (Kwh) used by each consumer within the Village for each month, the charge imposed upon each consumer for the sale of the electricity and any related services, the amount of tax imposed by this Section 30.03 billed to each consumer of electricity and the amount of tax actually collected, the amount of the charge imposed and collected by the electric distributor as compensation for collecting the tax provided for in this Section 30.03, and the total gross receipts received by the electricity deliverer for each month, not including the tax imposed by this Section 30.03. The books and records shall be subject to and available for inspection at all times during regular business hours.

I. Tax Remittance and Return.

1. Every person collecting a tax pursuant to this Section 30.03 shall, on a monthly basis, file a return with the Village in a form prescribed by the Village along with remittance of the total revenues collected. The return and accompanying remittance shall be delivered to the Village on or before the last day of the month following the month during which the tax is collected or is required to be collected under Section 30.03-G.
2. Each person who is required to pay a tax pursuant to this Section 30.03 and who has not paid said tax to the electricity deliverer as provided for herein, and who is not otherwise exempt from paying such tax shall pay directly to the Village the tax on or before the last day of the month following the month during which the electricity was used or consumed and shall file a return with the Village for the preceding month stating:
 - a. The name of the owner of the property where the electricity is consumed or the name of the taxpayer if different.
 - b. The taxpayer's principal place of business or residence.
 - c. The number of kilowatt-hours (Kwh) of electricity used during the month.
 - d. The amount of the tax.
 - e. Such other reasonable and related information as the Village may require.

J. Credit for Overpayment. If an amount of tax is paid which is not due under the provisions of this Section 30.03, whether as the result of a mistake of fact or law, then such amount shall be credited against any tax due, or to become due, under this Section 30.03 from the person who made the erroneous payment; provided that no amounts erroneously paid more than one year prior to the filing of a claim therefor shall be so credited.

No person shall be entitled to a credit for a tax imposed under this Section 30.03 unless the person files a claim for credit within one year after the date on which the tax was paid or remitted. All such claims shall first be filed with the Village.

K. Resales.

1. Electricity that is delivered to a person in the 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 Village 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.
2. If a person who receives electricity in the Village claims to be an authorized reseller of electricity, 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 Section 30.03 on any purchases of electricity and shall furnish such additional information as the Village may reasonably require.
3. Upon approval of the application, the Village shall assign a resale number to the applicant and shall certify the number to the applicant.
4. The Village may cancel the resale number of any person if the person fails to pay any tax payable under this Section 30.03 for electricity used or consumed by the person, or if the number (a) was obtained through misrepresentation, or (b) is no longer necessary because the person has discontinued making resales.
5. If a reseller has acquired electricity partly for use or consumption and partly for resale, the reseller shall pay the tax imposed by this Section 30.03 directly to the Village pursuant to Section 30.03-I on the amount of electricity that the reseller uses or consumes, and shall collect the tax pursuant to Section 30.03-G and remit the tax pursuant to Section 30.03-I on the amount of electricity delivered by the reseller to a purchaser.

Any person who delivered electricity to a reseller having an active resale number and complying with all other conditions of this Section 30.03-K shall be excused from collecting and remitting the tax on any portion of the electricity delivered to the reseller, provided 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.

L. Fines, Penalties. Any taxpayer who fails to make a return, or who makes a fraudulent return, or who violates any other provision of this Section 30.03 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$1,000.00, plus all costs of prosecution including, but not limited to, filing fees, witness fees, attorneys' fees and court costs. For purposes of this Section 30.03-L, each day upon which a violation occurs or continues to occur shall be deemed a separate and distinct violation. This penalty is in addition to any civil action which may be available to the Village or electric deliverer to collect upon the amount of tax due. *Amended, Ord. 1998-39, 1998-32*

M. Reinstatement of Utility Tax on Electricity. In the event Public Act 90-561 is declared unconstitutional, or if this Section 30.03 is found unconstitutional or voided by any court of competent jurisdiction, the provisions of the former Section 30.01-B-2 shall remain in effect in all respects as if it had never been repealed, and any amounts paid to the Village by any person delivering electricity pursuant to this Section 30.03 shall be deemed to have been paid pursuant to the former Section 30.01-B-2 as it existed prior to the passage of this Section 30.03.