

Sec. 7. Precept for payment of foreign fire insurance premium taxes.

Such corporation shall collect and there shall be paid to it all taxes imposed by Section five hundred fifty-three of the Insurance Law for fire department use and benefit, upon premiums for insurance against loss or damage by fire covering property situated within the territory protected by the Dolgeville Fire Department located in the Towns of Manheim, Herkimer County and Oppenheim, Fulton County, New York, or within any duly organized territory in which the Dolgeville Fire Department is or may be obligated to render fire protection. The officer of said corporation designated by its bylaws to collect and receive the aforesaid tax shall have all the powers and be subject to all the provisions of the Insurance Law, relating to treasurers of fire departments. Such corporation shall also be entitled to receive a share of the tax imposed by Section five hundred fifty-four of the Insurance Law, based upon the business written in the territory with respect to which it is entitled to collect and receive the tax under Section five hundred fifty-three of the Insurance Law. Such taxes shall only be used for the care and relief of disabled or indigent volunteer and exempt volunteer firemen. (Laws 1965, ch. 995, § 7)

Sec. 8. [Effective date.]

This act shall take effect immediately but the provisions of section seven shall apply to taxes due on premiums received after January first, nineteen hundred and sixty-five. (Laws 1965, ch. 995, § 7)

Sub-Part B. Tax on Income of Utilities***Sec. 1. Imposition of tax.**

Pursuant to the authority granted by Article 6, Section 6-640 of the Village Law of the State of New York, from and after April 1, 1968, there is hereby imposed:

*Editor's note—Local Law No. 1 of 1969 from which this sub-part is derived was enacted pursuant to authority granted by Section 6-640 of the Village Law.

- (a) A tax equal to one per centum (1%) of the gross income of every utility doing business in the incorporated Village of Dolgeville which is subject to the supervision of the State of New York Department of Public Service and which has an annual gross income in excess of five hundred dollars (\$500.00) except motor carriers or brokers subject to such supervision under Article Three-B of the Public Service Law.
- (b) A tax equal to one per centum (1%) of the gross operating income of every other utility doing business in the incorporated Village of Dolgeville which has an annual gross operating income in excess of five hundred dollars (\$500.00). (L.L. No. 1-1969, § 1)

Sec. 2. Definitions.

As used in this local law :

- (a) The word "utility" includes.
 - (1) Every person subject to the supervision of the state department of public service except:
 - (a) Persons engaged in the business of operating or leasing sleeping and parlor railroad cars, and
 - (b) Persons engaged in the business of operating or leasing railroads other than street surface, rapid transit, subway and elevated railroads;
 - (c) Omnibus corporations subject to supervision under Article Three-A of the Public Service Law.
 - (2) Every person who sells gas, electricity, steam, water, refrigerators [refrigeration], telephony or telegraphy delivered through mains, pipes or wires, whether or not such person is subject to the supervision of the state department of public service;
 - (3) Every person who furnishes gas, electric, steam, water, refrigerators [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.

(b) 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, public districts, and corporations and associations organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(c) The words "gross income" shall include:

- (1) In the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the village.
- (2) In the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the village.

(d) The words "gross income" in the case of any utility other than described in section 2(c) hereof shall include:

- (1) 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, 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 deductions 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;
- (2) Profits from the sale of securities;

- (3) Profits from the sale of real property growing out of the ownership or use of or interest in such property;
 - (4) Profits from the sale of personal property (other than property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of the period for which a return is made);
 - (5) Receipts from interest, dividends and royalties, derived from sources within the village (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;
 - (6) Profits from any transaction (except sales for resale and rentals) with the village whatsoever.
- (e) The words "gross operating income" mean and include:
- (1) 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, telephone or telegraphy, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water, refrigeration, telephone, telegraph service in the village, including cash, credits and property of any kind or nature, without 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. (L.L. No. 1-1969, § 2)

Sec. 3. Application [of local law.]

This [local] law and the tax imposed thereby shall:

- (a) Apply only within the territorial limits of the Village of Dolgeville;
- (b) Not apply and the tax shall not be imposed on any transaction originating or consummated outside of the

territorial limits of the Village of Dolgeville, notwithstanding that some act be necessarily performed with respect to such transaction within such limits, and

- (c) Be in addition to any and all other taxes and fees imposed by any other provision of law;
- (d) Apply to all subject income received on and after June 1st, 1969. (L.L. No. 1-1969, § 3)

Sec. 4. Disposition of revenues.

All revenues resulting from the imposition of the tax imposed by this [local] law shall be paid into the treasury of the village and shall be credited to and deposited in the general fund of the village. (L.L. No. 1-1969, § 4)

Sec. 5. Collection and enforcement [official designated]; [promulgation of] rules and regulations.

The village treasurer shall be the chief enforcement officer of this [local] law and shall make and be responsible for all collections hereunder. He shall also have the power and authority to make any rules and regulations or directives, not inconsistent with law, which, in his discretion, are reasonably necessary to facilitate the administration of this law and the collection of the taxes imposed thereby. Copies of all such rules and regulations and directives as may from time to time be promulgated, shall be sent by registered mail to all utilities subject to this law which register as such with the village treasurer. All such rules, regulations and directives shall be deemed a portion of this law. (L.L. No. 1-1969, § 5)

Sec. 6. Returns; filing, contents.

(a) *Time of filing.* Every utility subject to a tax hereunder shall file on or before the twenty-fifth day of July a return for the period from the first day of January to the thirtieth day of June preceding the return date and on or before January twenty-fifth for the period from July first to December thirty-first preceding the return date including any period for which tax imposed hereby or any amendment hereof is effective. However,

any utility whose average gross income or gross operating income for the aforesaid six (6) months is less than three thousand dollars (\$3,000.00) may file a return annually on the twenty-fifth day of June for the twelve (12) calendar months preceding each return date including any period for which the tax imposed hereby or any amendment hereof is effective. Any utility whether subject to any tax under this [local] law or not may be required by the village treasurer to file an annual return.

(b) *Contents.* Returns shall be filed with the village treasurer on a form to be furnished by him for such purpose and shall show thereon the gross income or gross operating income for the period covered by the return and such other information, data or matter as the village treasurer may require to be included therein. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner or of a co-partner thereof, or of a principal corporate officer to the effect that the statements contained therein are true. (L.L. No. 1-1969, § 6; L.L. No. 3-1969)

Sec. 7. Payment [of tax.]

At the time of filing a return as required by this [local] law, each utility shall pay to the village treasurer the tax imposed hereby for the period covered by such return. Such tax shall be due and payable at the time of the filing of the return or if a return is not filed when due, on the last day on which the return is required to be filed. (L.L. No. 1-1969, § 7)

Sec. 8. Penalties and interest [for failure to file return, pay tax.]

Any utility failing to file a return or a corrected return, or to pay any tax or any portion thereof within the time required by this [local] law, shall be subject to a penalty of five per centum (5%) of the amount of tax due, plus one per centum (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 becomes due; but the village treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty. (L.L. No. 1-1969, § 8)

Sec. 9. Tax as operating cost.

The tax imposed by this [local] law 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. (L.L. No. 1-1969, § 9)

Sec. 10. [Determination of tax by village treasurer.]

In case any return is filed pursuant to this [local] law and shall be insufficient or unsatisfactory to the village treasurer, he may require at any time a further or supplemental return, which shall contain any data that may be specified by him, 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 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 utility liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the utility against which it is assessed shall, within one year after the giving of notice of such determination, apply to him for a hearing or unless the village treasurer, of his own motion, shall reduce the same. After such hearing he shall give notice of his decision to the utility liable for such tax. (L.L. No. 1-1969, § 10)

Sec. 11. Review of final determination.

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 ninety (90) days after the giving of notice of such final determination provided, how-

ever, 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. (L.L. No. 1-1969, § 11)

Sec. 12. Notices.

Any notice authorized or required under the provisions of this [local] law may be given by mailing the same to the utility for which it is intended, in a postpaid envelope, addressed to such utility at the address given by it in the last return filed by it under this law, 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 utility to which addressed. Any period of time, which is determined according to the provisions of this section by the giving of notice, shall commence to run from the date of mailing of such notice. (L.L. No. 1-1969, § 12)

Sec. 13. Refunds.

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 treasurer of [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 it shall have

been established in a proceeding in the manner provided in the Civil Practice Law and Rules that such determination was erroneous or illegal. 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 may receive additional evidence with respect thereto. After making his determination the village treasurer shall give notice thereof to the person interested, and he shall be entitled to commence a proceeding to review such determination, in accordance with the provisions of the following section hereof. (L.L. No. 1-1969, § 13)

Sec. 14. Review of proceedings for refund.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the village treasurer, and he 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 instituted within ninety (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 village treasurer 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. (L.L. No. 1-1969, § 14)

Sec. 15. Limitation of additional tax.

Except in the case of a wilfully false or fraudulent return with the intent to evade the tax, no assessment or additional tax shall be made with respect to taxes imposed under this [local] law, after the expiration of more than three (3) years from the date of filing of a return, provided, however, that where no return has been filed as required hereby, the tax may be assessed at any time. (L.L. No. 1-1969, § 15)

Sec. 16. [Additional] powers of village treasurer.

In addition to any other powers herein given the village treasurer and in order to further insure payment of the tax imposed hereby, he shall have the power to:

- (a) Prescribe the form of all reports and returns required to be made hereunder;
- (b) Take testimony and proofs, under oath, with reference to any matter hereby entrusted to him;
- (c) Subpoena and require the attendance of witnesses and the production of books, papers, records and documents. (L.L. No. 1-1969, § 16)

Sec. 17. [Action for collection of unpaid taxes.]

Whenever any person shall fail to pay any tax or penalty imposed by this local law, the village attorney shall, upon the request of the village treasurer being [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 [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 Section 186(a) of the Tax Law is made a lien. (L.L. No. 1-1969, § 17)

Sec. 18. Validity.

The invalidity, illegality or unconstitutionality of any section, subsection or provision of this local law or any rules or regulations adopted pursuant hereto shall not affect the validity, legality or constitutionality of any section, subsection or provision of this local law or any rule or regulation adopted pursuant hereto, but shall be confined to such section, subsection or provision of this local law or rule or regulation adopted pursuant hereto which may be so condemned. (L.L. No. 1-1969, § 18)

Sec. 19. Effective date.

This local law shall take effect immediately. (L.L. No. 1-1969, § 19)