

## Chapter 205: UTILITY SURCHARGE

### Utility Surcharge

#### § 205-1. Legislative intent.

The Board of Trustees of the Village of South Blooming Grove realizes that the real estate tax burden on its residents is ever-increasing due to the imposition of taxes by all levels of government in Orange County. Whereas all utilities that serve the Village and other locations within Orange County utilize the Village's right of ways, easements, roadways and highways without cost or charge to the utility and whereas other local municipalities have adopted surcharges within their municipal boundaries to off set the tax burden to their residents. The Village Board in an effort to relieve some of the tax burden believes that the tax base of the Village must be broadened and that the adoption of this article will broaden its tax base.

#### § 205-2. Imposition of tax.

Pursuant to the authority granted by § 5-530 of the Village Law of the State of New York, from and after the effective date of this article, there is hereby imposed:

- A. A tax equal to 1% of the gross income of every utility doing business in the territorial limits of the Village of South Blooming Grove which is subject to the supervision of the New York State Public Service Commission and which has an annual gross income in excess of \$500, except motor carriers or brokers subject to the provisions of Transportation Law § 240 et seq.
- B. A tax equal to 1% of the gross operating income of every other utility doing business in the territorial limits of the Village of South Blooming Grove which has an annual gross operating income in excess of \$500.

#### § 205-3. Definitions.

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

##### GROSS INCOME

- A. In the case of a utility engaged in selling telephony or telephone service (including data services, television broadcast, any and all services provided via fiber-optic lines), only receipts from local exchange service wholly consummated within the Village.
- B. In the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village.
- C. The words "gross income" in the case of any utility other than described in Subsections A and B hereinabove, 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 a purchaser in the Village, including cash, credits and property of any kind or nature (whether or not such sale is made or service is rendered for profit) without any deductions there from 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 receipts thereof.
- (6) Profits from any transaction (except sales for resale and rentals) within the Village whatsoever.

**GROSS OPERATING INCOME** — 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 (including data services, television broadcast, any and all services provided via fiber-optic lines), 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, including cash, credits and property of any kind or nature, without deductions 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.

**PERSON** — Includes persons, corporations, companies, associations, joint-stock associations, co partnerships, 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. The word "person" shall not include 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 inures to the benefit of any private shareholder or individual.

**UTILITY — Includes:**

- A. Every person subject to the supervision of the State Public Service Commission, except:
  - (1) Persons engaged in the business of operating or leasing sleeping and parlor railroad cars; and
  - (2) Persons engaged in the business of operating or leasing railroads other than street surface, rapid transit, subway and elevated railroads; and
  - (3) Omnibus corporations subject to the provisions of Article 5 of the Transportation Law.
- B. Every person who sells gas, electricity, steam, water, refrigeration, telephony (including data services, television broadcast, any and all services provided via fiber-optic lines), or telegraphy delivered through mains, pipes or wires, whether or not such person is subject to the supervision of the State Public Service Commission or any other regulatory agency.
- C. Every person who furnishes gas, electricity, steam, water, refrigeration, telephony (including data services, television broadcast, any and all services provided via fiber-optic lines), or telegraphy service, by means of mains, pipes or wires, regardless of whether such activities are the main business of such persons or are only incidental thereto or of whether use is made of the public streets.

**§ 205-4. Application of provisions.**

This article and the tax imposed thereby shall:

- A. Apply only within the territorial limits of the Village of South Blooming Grove.
- B. Not apply and the tax shall not be imposed on any transaction originating or consummated outside the territorial limits of the Village of South Blooming Grove, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.
- C. Be in addition to any and all other taxes.
- D. Apply to all subject income received on and after the effective date of this article.

**§ 205-5. Disposition of revenues.**

All revenues resulting from the imposition of the tax imposed by this article shall be paid into the treasury of the Village and shall be credited to and deposited in the general fund of the Village.

**§ 205-6. Collection and enforcement.**

The Village Clerk-Treasurer shall be the chief enforcement officer of this article and shall make and be responsible for all collections hereunder. She shall also have the power and authority to make any rules or regulations or directives, not inconsistent with law, which, in her discretion, are reasonably necessary to facilitate the administration of this article and the collection of the taxes imposed hereby. 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 article which register as such with the Village Clerk-Treasurer. All such rules, regulations and directives shall be deemed part of this article.

**§ 205-7. Records.**

Every utility subject to tax pursuant to this article shall keep such records of its business in such form as the Village Clerk-Treasurer may require and such records shall be preserved for a period of three years unless the Village Clerk-Treasurer otherwise directs.

**§ 205-8. Returns; filings; contents.**

- A. Time of filing. Every utility subject to a tax hereunder shall file on or before December 25 and June 25 of each year a return for the six calendar months preceding each return date, including any period for which a tax imposed hereby or any amendment hereof is effective. However, any utility whose average gross income or gross operating income for the aforesaid six-month period is less than \$3,000 may file a return annually on December 25 for the 12 calendar months preceding such return date, including any period for which the tax imposed hereby or any amendment hereof is effective. Any utility, whether subject to tax under this article or not, may be required by the Village Clerk-Treasurer to file an annual return.
- B. Contents. Returns shall be filed with the Village Clerk-Treasurer on a form to be furnished by her 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

Clerk-Treasurer may require to be included therein. Every return shall have annexed thereto a certification by the Chief Executive Officer of the utility making the same or of the owner or a copartner thereof, or of a principal corporate officer, to the effect that the statements contained therein are true.

**§ 205-9. Payment.**

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

**§ 205-10. Penalties and interest.**

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 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; however, the Village Clerk-Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

**§ 205-11. Tax as operating cost.**

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 a part of the operating costs of such utility.

**§ 205-12. Failure to file returns or incorrect returns.**

In the event a return filed pursuant to this article shall be insufficient or unsatisfactory to the Village Clerk-Treasurer, she may require a new or supplemental return, which shall contain any data that may be specified by her and, if a corrected or new return is not filed within 20 days after the same is required by notice from her, or if no return is made for a period, the Village Clerk-Treasurer shall determine the amount due from such information as is available to her and may estimate the tax on the basis of external indices or otherwise. She shall give notification 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 her for a hearing or unless the Village Clerk-Treasurer, of her own motion, shall reduce same. After such hearing, she shall give notice of her decision to the utility liable for such tax.

**§ 205-13. 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 commenced within 90 days after the giving of notice of such final determination; provided, however, that any such proceeding shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided, 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 proceedings.

**§ 205-14. Notice.**

Any notice authorized or required pursuant to this article 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 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 same by the utility to which it is addressed. Any period of time given for compliance with such notice shall commence to run from the date of the mailing of such notice.

**§ 205-15. 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 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. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Clerk-Treasurer unless the Village Clerk-Treasurer, after a hearing or of her 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 that such determination was erroneous or illegal. An application for a refund shall be deemed an application for revision of any tax or penalty and the Village Clerk-Treasurer may receive additional evidence with respect thereto.

**§ 205-16. Limitation of additional tax.**

Except in the case of a willfully false or fraudulent return no assessment of additional tax shall be made with respect to taxes imposed pursuant to this article after the expiration of three years from the date of filing of a return; provided, however, that if no return has been filed, the tax may be assessed at any time.

**§ 205-17. Powers of Village Clerk-Treasurer.**

In addition to any other powers herein given to the Village Clerk-Treasurer and in order to further insure payment of the tax imposed hereby, the Clerk-Treasurer 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 enumerated in this article;
- C. Subpoena and require the attendance of witnesses and the production of books, papers, records and documents.

**§ 205-18. Enforcement; action to enforce payment; lien created.**

Whenever any person shall fail to pay any tax or penalty imposed by this article, the Village Attorney shall, upon request of the Board of Trustees, 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. 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 as the tax imposed on real property by the Real Property Tax Law.

**§ 205-19. Application.**

No statement in this article shall be construed to interfere with any additional requirements that may be imposed by any federal, state or local authority having jurisdiction. All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

**§ 205-20. Authority.**

This chapter is enacted by authority of § 20, Subdivision 5, of the Municipal Home Rule Law and any other law referenced herein as authority herefor.

**§ 205-21. Effective Date.**

This local law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.