

Town/Village of Harrison, NY

Westchester County

Chapter 35 Taxation

└ Article IV Utility Tax

§ 35-11 Imposition of tax.

Pursuant to the authority granted by Article 5, § 5-530, of the Village Law of the State of New York, there is hereby imposed, effective February 11, 2000, a tax equal to 1% of:

A.

The gross income of every utility doing business in the Village of Harrison that is subject to the supervision of the New York State Department of Public Service and that has an annual gross income in excess of \$500, except motor carriers or brokers subject to such supervision under Transportation Law § 240 et seq.; and

B.

The gross operating income of every other utility doing business in the Village of Harrison which has an annual gross operating income in excess of \$500.

§ 35-12 Definitions.

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

GROSS INCOME

Includes:

A.

For utilities engaged in selling telephony or telephone service, receipts from local exchange service wholly consummated within the Village of Harrison;

B.

For utilities engaged in selling telegraphy and telegraph service, receipts from transactions wholly consummated within the Village of Harrison; and

C.

For all other utilities, 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 Harrison, 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; provided, further, that sales of gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service to a landlord that is a person as defined in this section for resale by such landlord to a tenant, for consumption by such tenant as an incident to such landlord's activity of renting premises to such tenant, shall be subject to the tax imposed under this section even though such sales are not for ultimate consumption by such landlord; provided, further, that receipts derived by a landlord from the resale for such gas, electricity, steam, water or refrigeration or furnishing gas, electric, steam, water or refrigerator service to such tenant shall be conclusively presumed to be equal to such landlord's cost of the same, and, if the tax under this section was imposed on the sale to such landlord, no additional tax under this section shall be owing on the sale by such landlord to such tenant. If, however, the tax under this section was not imposed on such sale to the landlord, then such landlord, on the sale to its tenant, shall file a return hereunder based on such landlord's cost (including any associated transportation cost) of such gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service.

D.

"Gross Income" also includes 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 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 Harrison 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 Harrison 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 or refrigeration, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water or refrigerator service in the Village of Harrison 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 materials used, labor or services or other costs, interest or discount paid or any other expenses whatsoever; provided, further, that sales of gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service to a landlord that is a person as defined in this section for resale by such landlord to a tenant, for consumption by such tenant as an incident to such landlord's activity of renting premises to such tenant, shall be subject to the tax imposed under this section even though such sales are not for ultimate consumption by such landlord; provided, further, that receipts derived by a landlord from the resale of such gas, electricity, steam, water or refrigeration or furnishing gas, electric, steam, water or refrigerator service to such tenant shall be conclusively presumed to be equal to such landlord's cost of the same, and, if the tax under this section was imposed on the sale to such landlord, no additional tax under this section shall be owing on the sale by such landlord to such tenant. If the tax under this section was not imposed on such sale to the landlord, then such landlord on the sale to its tenant shall file a return hereunder based on such

landlord's cost (including any associated transportation cost) of such gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigerator service.

PERSON

Persons, corporations, companies, associations, joint-stock companies or associations, partnerships and limited liability companies, 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, 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.

PREMISES

Includes any real property or part thereof and any structure thereon or space therein.

TELECOMMUNICATION SERVICES

Shall have the same meaning as such term is defined in § 186-e of the Tax Law.

TENANT

Includes a person paying, or required to pay, rent for premises as a lessee, sublessee, licensee or concessionaire.

UTILITY

Includes:

A.

Every person (including every provider of telecommunication services) subject to the supervision of the State Department of Public Service, except persons engaged in the business of:

(1)

Operating on the public highways of this state one or more omnibuses having a seating capacity of more than seven persons; or

(2)

Leasing sleeping and parlor railroad cars; or

(3)

Operating railroads other than street surface, rapid transit, subway and elevated railroads; and

B.

Omnibus corporations subject to supervision under Article 3-A of the Public Service Law.

C.

Every person (whether or not such person is subject to such supervision) who sells 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 persons or are only incidental thereto, or of whether use is made of the public streets.

§ 35-13**Applicability.**

This article and the tax imposed thereby shall:

A.

Apply only within the territorial limits of the Village of Harrison.

B.

Not apply to, and the tax shall not be imposed on, any transaction originating or consummated outside of the territorial limits of the Village of Harrison notwithstanding that some acts 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 provisions of law.

D.

Apply to all subject income or receipts received on and after February 11, 2000.

§ 35-14**Disposition of revenues.**

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

§ 35-15**Collection and enforcement; rules and regulations.**

The Village Treasurer shall be the chief enforcement officer of this article and shall make and be responsible for all collections hereunder. He or she shall also have the power and authority to make any rules or regulations or directives, not inconsistent with law, which, in his or 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 Treasurer. All such rules, regulations and directives shall be deemed a portion of this article.

§ 35-16**Returns; filing; contents.**

A.

Time of filing. Every utility subject to a tax hereunder shall file on or before March 20 and September 20, a return for the six calendar months preceding each return date, including any period for which the tax imposed hereby or amendment thereof is effective. However, any utility whose average gross income or gross average operating income for the aforesaid six-month period is less than \$3,000 may file a return annually on March 20 for the 12 calendar months preceding each return date, including any period for which the tax imposed hereby or any amendment thereof is effective. Any utility, whether subject to tax under this law or not, may be required by the Village Treasurer to file an annual return.

[Amended 6-6-2001 by L.L. No. 1-2001]

B.

Contents. Returns shall be filed with the Village Treasurer on a form to be furnished by the Treasurer for such purpose and shall show gross income or gross operating income for a period 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 by the owner or a co-partner thereof, or by a principal corporate officer, to the effect that the statements contained therein are true.

§ 35-17Payment.

At the time of filing a return as required by this article, 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 first day when the return is required to be filed.

§ 35-18Penalties 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.

§ 35-19Failure to file; incorrect returns.

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Village Treasurer, the Village Treasurer may require at any time a further or supplemental return that shall contain any data that may be specified by the Village Treasurer and, if a corrected or sufficient return is not filed within 20 days after the same is required by notice from the Treasurer, or if no return is made for any period, the Village Treasurer shall determine the amount due from such information as the Village Treasurer is able to obtain and, if necessary, may estimate the tax on the basis of external indices or otherwise. The Village Treasurer shall give notice of such determination to the utility liable for such tax. Such determination shall finally and irrevocably fix the tax.

§ 35-20Review 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 30 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 that may accrue in the prosecution of such proceeding.

§ 35-21Notice.

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

§ 35-22Refunds.

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 or the court shall determine that such tax or penalty or any portion thereof was erroneously charged, 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 and upon consent of the Village Board. However, no refund shall be made of a tax or penalty paid pursuant to a determination if the Village Treasurer, as hereinbefore provided, on his or her 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 any additional evidence with respect thereto. After making his or her determination, the Village Treasurer shall give notice thereof to the person interested, and he or she shall be entitled to commence a proceeding to review such determination in accordance with the provisions of the following section hereof.

§ 35-23Review of proceedings for refunds.

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 or she 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 30 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.

§ 35-24Limitation of additional tax.

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 article after expiration of more than three 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.

§ 35-25Powers of the Village Treasurer.

In addition to any other powers herein given, and in order to further payment of the tax imposed hereby, the Village 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 hereby entrusted to him or her.

C.

Subpoena and require the attendance of witnesses and the production of books, papers, records and documents.

§ 35-26Records.

Every utility subject to tax under this article shall keep records of its business and in such form as the Village Treasurer may require, and such records shall be preserved for a period of at least three years, except that the Village Treasurer may consent to their destruction within any three-year period or may require that they be kept longer.

§ 35-27Enforcement.

Whenever any person shall fail to pay any tax or penalty imposed by this article, the Village Attorney shall, upon the request of the Village 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 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 law and penalty imposed by § 186-a of the Tax Law is made a lien.

§ 35-28Confidentiality of returns.

A.

Except in accordance with the proper judicial order or as otherwise provided by law, it shall be unlawful for the Treasurer, or any agent, clerk or employee of the Village of Harrison, to divulge or make known in any manner the amount of gross income or gross operating income or any particulars set forth or disclosed in any return under this article. The officer charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Village of Harrison in an action or proceeding under the provisions of this article or on behalf of the State Tax Commission in an action or proceeding under the provisions of the Tax Law of the State of New York or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a person, or his or her duly authorized representative, of a copy of any return filed by him; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof; or the publication of delinquent lists showing the names of persons who have failed to pay their taxes at the time and in the manner provided for by this article, together with any relevant information that, in the opinion of the Treasurer, may assist in the collection of such delinquent taxes; or the inspection by the Village Attorney or other legal representatives of the Village of Harrison of the return of any person who shall bring an action to set aside or review the tax

based thereon, or against whom an action has been instituted in accordance with the provisions of this article.

B.

Any offense against the foregoing secrecy provisions shall be punishable by a fine not to exceed \$1,000 or by imprisonment not exceeding six months, or both, and if the offender be an officer, agent, clerk or employee of the Town of Harrison or Village of Harrison, he or she shall be dismissed from office and shall be incapable of holding any office or employment in the Town of Harrison or Village of Harrison for a period of five years thereafter.

C.

Notwithstanding any provisions of this article, the Treasurer may exchange, with the chief fiscal officer of any other city or first class village in the State of New York, information contained in returns filed under this article, provided that such other city or village grants similar privileges to the Village of Harrison, and provided that such information is to be used for tax purposes only, and the Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.