

## Local Law 4 of 2023

### Article VIII – Utility Tax

#### § 153-23 Imposition of tax.

Pursuant to the authority granted by § 5-530 of the Village Law of the State of New York, a tax equal to 1% of its gross income from and after the first day of May 2023, is hereby imposed upon every utility doing business in the Village of Menands, which is subject to the supervision of the State Department of Public Service and which has a gross income for the 12 months ending December 31 in excess of \$500, except motor carriers or brokers subject to such supervision under § 240 of the Transportation Law and a tax equal to 1% of its gross operating income from and after the first day of May 2023, is hereby imposed upon every utility doing business in the Village of Menands which has a gross operating income for the 12 months ending December 31 in excess of \$500, which taxes shall have application only within the territorial limits of the Village of Menands and shall be in addition to any and all other taxes and fees imposed by any other provision of law. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Menands, notwithstanding that some act is necessarily performed with respect to such transaction within such limits.

#### § 153.24 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 Menands, 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 service or other costs, interest or discount paid or any other expense whatsoever; provided, however, that "gross income" with respect to the sale of telephony or telegraphy or the furnishing of telephone or telegraph service shall include receipts received in or by reason of all sales made or service furnished in the Village of Menands (whether or not for ultimate consumption or use by the purchaser); but if telephony, including carrier access service, or telegraphy which is sold in the Village of Menands by a utility or telephone service, including carrier access service, or telegraph service which is furnished in the Village of Menands by a utility is then resold by the purchaser with respect to such a sale, there shall be allowed a deduction from the receipts of such purchaser from the resale of the amount paid to his seller or furnisher for such telephony or telegraphy or telephone or telegraph service. For the purpose of such deduction, the fact that an interexchange carrier that has purchased carrier access service for resale is not able to specifically identify and separate the portion of such service which was actually resold in a particular sale of telephone service to its customers shall not be grounds to disallow such deductions. "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 Menands 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 Menands 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 Menands, 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 material used, labor or services or other costs, interest or discount paid or any other expenses whatsoever; provided, however, that "gross operating income" with respect to the sale of telephony or telegraphy or the furnishing of telephone or telegraph service shall include receipts received in or by reason of all sales made or service furnished in the Village of Menands (whether or not for ultimate consumption or use by the purchaser); but, if telephony, including carrier access service, or telegraphy which is sold in the Village of Menands by a utility or telephone service, including carrier access service, or telegraph service which is furnished in the Village of Menands by a utility is then resold by the purchaser with respect to such a sale, there shall be allowed a deduction from the receipts of such purchaser from the resale of the amount paid to his seller or furnisher for such telephony or telegraphy or telephone or telegraph service. For the purpose of such deduction, the fact that an interexchange carrier which has purchased carrier access service for resale is not able to specifically identify and separate the portion of such service which was actually resold in a particular sale of telephone service to its customers shall not be grounds to disallow such deductions.

### **INTEREXCHANGE CARRIER**

Includes any seller of telephone service between two or more exchanges that qualifies as a common carrier within the meaning of Subsection H § 153 of Title 47 of the United States Code or, if performing intrastate telephone service only, that would otherwise qualify but for the fact that it was not engaged in providing interstate or foreign telephone service.

### **PERSON**

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 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 utility subject to the supervision of the State Department of Public Service, except utilities engaged in the business of operating on the public highways of the Village of Menands one or more omnibuses having a seating capacity of more than seven utilities and utilities 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 utility (whether or not such utility is subject to such supervision) who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy

delivered through mains, pipes or wires or who furnishes gas, electric, steam, water, refrigerator, telephone or telegraph service by means of mains, pipes or wires, regardless of whether such activities are the main business of such utility or are only incidental thereto or whether use is made of the public streets.

**§ 153.25 Maintenance of records.**

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

**§ 153.26 Filing of returns.**

Every utility subject to tax hereunder shall file, on or before March 15 of each year, a return for the year ended on the preceding December 31, including any period for which the tax imposed hereby or by any amendment hereof is effective. Every return shall state the gross income or gross operating income for the period covered thereby. Returns shall be filed with the Village Treasurer on a form to be furnished by him for such purpose and shall contain such other data, information, or matter as he may require to be included therein. The Village Treasurer, in order to ensure payment of the tax imposed, may require at any time a further or supplemental return, which shall contain any data that may be specified by him; and he may require any utility doing business in the Village of Menands to file an annual return, which shall contain any data specified by him, regardless of whether the utility is subject to tax under this Article. Every return shall have annexed thereto an affidavit of 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 is conducted by the corporation, to the effect that the statements contained therein are true.

**§ 153.27 Tax payable with return.**

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

**§ 153.28 Failure to submit an acceptable return.**

A. In case any return filed pursuant to this Article shall be insufficient or unsatisfactory to 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 Village Treasurer or if no return is made for any period, the Village 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 indexes or otherwise. The Village 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 Treasurer for a hearing or unless the Village Treasurer, of his own motion, shall reduce the same. After such hearing, the Village 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 Laws and Rules, if application therefor is made to the Supreme Court 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 hereon 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 is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

B. 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 after the 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 by this Article, the tax may be assessed at any time.

#### **§ 153.29 Available remedies.**

The same remedies shall be available for the recovery of any tax or penalty imposed by this Article as are available for the other taxes and penalties imposed by law.

#### **§ 153.30 Giving of notice.**

Any notice authorized or requested under the provisions of this Article may be given by mailing the same to the utility for whom it is intended, in a postpaid envelope, addressed to such utility at the address given by him in the last return filed by him 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 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.

#### **§ 153.31 Penalties for failure to pay tax.**

Any utility 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, except the first month, after such return was required to be filed or such tax became due; but the Village Treasurer, for cause shown, may extend the time for filing any return and, if satisfied that the delay was excusable, may remit all or any portion of the penalty fixed by the foregoing provisions of this section.

#### **§ 153.32 Refunds.**

If, within one year from the giving of notice of any determination or assessment of any tax or penalty, the utility liable for the tax shall make an 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 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 certiorari proceeding that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this Article, deposited to the credit of the Village Treasurer, with the approval of the Village Treasurer. 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 utility interested. Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers and such officer or

officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Laws and Rules; provided, however, that such proceeding is instituted 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 is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

**§ 153.33 Tax to be part of 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.

**§ 153.34 Action to enforce payment.**

Whenever any utility 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 utility liable to pay the same, in the same manner, and to the same extent that the tax and penalty imposed by § 186-a of the Tax Law is made a lien.

**§ 153.35 Administration.**

In the administration of this Article, the Village Treasurer shall have the 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, papers, and documents.

**§ 153.36 Disposition of moneys.**

All taxes and penalties received by the Village Treasurer under 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.

**§ 153.37 Remedy provisions to be exclusive.**

The remedy provided by this Article for review of a decision of the Village Treasurer shall be the exclusive remedy available to any taxpayer to judicially determine the liability of such taxpayer for taxes under this Article.