

**LOCAL LAW #1 OF 2005 - UTILITY TAX LAW**  
**Adopted by Village of Horseheads**  
**Board of Trustees – 5/26/05**

Section 1. Short Title - Utility Tax.

Section 2. Imposition of the Tax. Pursuant to the authority granted by Article 5, Section 5-530 of the Village Law of the State of New York, from and after June 1, 2005, there is hereby imposed a tax such as was imposed by NYS Tax Law section 186-a in effect on January 1, 1959, accordingly there is imposed:

- A. A tax equal to one percentum of the gross income of every utility doing business in the Incorporated Village of Horseheads which is subject to the supervision of the New York State Department of Public Service and which has an annual gross income for the year ending December 31<sup>st</sup> in excess of five hundred dollars (\$500.00) except motor carriers or brokers subject to such supervision under Article 3-B of the Public Service Law.
- B. A tax equal to one percentum of the gross operating income of every other utility doing business in the Incorporated Village of Horseheads which has an annual gross operating income for the for the year ending December 31<sup>st</sup> in excess of five hundred dollars (\$500.00).

Section 3. Definitions. As used in this Law:

- A. The word 'Utility' includes 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 operating on the public highways of this state one or more omnibuses, having a seating capacity of more than seven persons, and persons 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 person (whether or not such person is subject to such supervision) who sells gas, electricity, steam, water or refrigeration, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water or refrigerator 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 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 and public districts (provided, however, that with respect to gas, electricity and gas or electric

service, including the sale of the transportation, transmission or distribution of gas or electricity, such municipalities, political and civil subdivisions and public districts shall be excluded from the definition of 'person' if they own and operate facilities which are used to generate or distribute electricity or distribute gas and they distribute and sell such gas or electricity solely at retail, solely within their respective jurisdiction; or provided, further, with respect to the sale of electricity or the transportation, transmission or distribution of electricity, a municipality shall be excluded from the definition of 'person' if it sells electricity at retail where all such electricity (excluding temporary substitution power during outages or period of reduced output) has been generated solely by and purchased solely from the state or a public authority of the state); corporations and associations which are 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, and which are described in paragraph four of subdivision (a) of section eleven hundred sixteen of the Tax Law where such organization resells such gas or electricity or gas or electric service as landlord to its tenants in buildings owned by such organization; and excepting a corporation organized and operated exclusively for the purpose of leasing from a city in this state a water-works system designed to supply water at cost to users thereof for discharge, either before or after industrial use, into a river within such city in order to improve the flow and condition of such river and thereby to provide a means to relieve such river from pollution.

- C. The words 'gross income' mean and include 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 this state, 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.
- 1) Provided, however, that all receipts from sales of the transportation, transmission or distribution of gas or electricity by means of conduits, mains, pipes, wires, lines, or the like, rendered or performed in this state, shall be included in gross income.
  - 2) Provided, further, receipts received from the sale of the transportation, transmission or distribution of gas or electricity shall mean the receipts received from customers representing the noncommodity charges for gas or electric service.
  - 3) Provided, further, gross income with respect to a provider of telecommunication services shall not include receipts from the sale of telecommunication services as such services are defined in section one hundred eighty-six of the Tax Law.

- 4) Provided, further, 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 subdivision 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, 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 Tax Law Section 186-a was imposed on the sale to such landlord, no additional tax under Tax Law Section 186-a shall be owing on the sale by such landlord to such tenant. If, however, the tax under Tax Law Section 186-a 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.
  
- 5) '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 profit 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 this state 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 this state whatsoever.

Notwithstanding the above, the words 'gross income' shall include a) in the case of a utility in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village; and b) 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 operating income' mean and include receipts received in or by reason of any sale, conditional or otherwise, made for the 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, electricity, steam, water or refrigeration service in this state, 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 the materials used, labor or services or other costs,

interest or discount paid, or any other expenses whatsoever. Provided, however, there shall be excluded from gross operating income receipts representing the amount received from the resale of the transportation, transmission or distribution of gas or electricity in this state where such transportation, transmission or distribution being resold is provided by a utility subject to tax under Tax Law Section 186-a1(b); the receipts representing the amount received from resale of such transportation, transmission or distribution shall be the amount received for such transportation, transmission or distribution by such utility which initially provided such transportation, transmission or distributions. Provided, further, 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 law 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 hereunder even though such sales are not for ultimate consumption by such landlord. Provided, further, receipts derived by a landlord from the resale of such gas, electricity, steam, water or refrigeration or furnishing as, 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 hereunder was imposed on the sale to such landlord, no additional tax hereunder shall be owing on the sale by such landlord to such tenant. If the tax hereunder 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 refrigeration or gas, electric, steam, water or refrigerator service.

- E. The term 'telecommunication services' shall have the same meaning as such term is defined in Section 186-e of the Tax Law.
- F. The word 'premises' means and includes any real property or part thereof, and any structure thereon or space therein; and
- G. The word 'tenant' means and includes a person paying, or required to pay, rent for premises as a lessee, sublessee, licensee or concessionaire.
- H. The term 'Village' shall mean the Village of Horseheads.

Section 4. Application. This Law and the tax imposed thereby shall:

- A. Apply only within the territorial limits of the Village of Horseheads.
- 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 Horseheads notwithstanding that some acts be necessarily performed with respect to such transaction within such limits;

- C. Be in addition to any and all other taxes and fees imposed by any other provisions of law, and
- D. Apply to all subject income received on and after June 1, 2005.

Section 5. Disposition of Revenues. All revenues resulting from the imposition of the tax imposed by this Law shall be paid into the treasury of the Village and shall be credited to and deposited in the general fund of the Village.

Section 6. Collection and Enforcement: Rules and Regulations. The Village Treasurer shall be the chief enforcement officer of this Law 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 Law 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 Law which register as such with the Village Treasurer. All such rules, regulations and directives shall be deemed a portion of this Law.

For the purpose of proper administration of this Law and to prevent evasion of the tax hereby imposed, it shall be presumed that all amounts received by a utility are gross income or gross operating income and are subject to tax until the contrary is established, and the burden of proving that any such amount is not taxable hereunder shall be upon the utility.

Section 7. Returns, Filing, Contents; Utilities to Keep Records

- A. Time of Filing - Every utility subject to a tax hereunder shall file, on or before August 1st a return for the 3 calendar months ending on the preceding June 30th, on or before November 1<sup>st</sup> a return for the 3 calendar months ending on the preceding September 30<sup>th</sup>, on or before February 1st a return for the 3 calendar months ending on the preceding December 31st, and on or before May 1<sup>st</sup> a return for the 3 calendar months ending on the preceding March 31<sup>st</sup> 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 three (3) month periods is less than three thousand dollars (\$3,000.00) may file a return annually on or before February 1<sup>st</sup> for the preceding twelve (12) calendar months ending December 31<sup>st</sup>, 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.
- 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 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. The Village Treasurer may require any utility doing business in the Village to file at any time a further or supplemental return, containing any data that the Village Treasurer may specify, and the Village Treasurer may require any such utility to file an annual return, containing any data so specified, regardless of whether the utility is subject to tax under this Law. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner of a co-partner thereof, or of a principal corporate officer to the effect that the statements contained therein are true.

- C. Every utility subject to this Law 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 three (3) years, except that the Village Treasurer may consent to their destruction within that period or may require that they be kept longer. Such records shall be available for inspection and examination at any time upon demand of the Village Treasurer or designated agent.

Section 8. Payment. At the time of filing a return as required by this 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 1st day when the return is required to be filed.

Section 9. Penalties and Interest.

- A. 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 Law, shall be subject to a penalty of five percentum (5%) of the amount of tax due, plus one percentum (1%) of such tax for each month of delay or fraction thereof, excepting the 1st month after such return was required to be filed or such tax became due; but the Village Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.
- B. Any utility or person who, with intent to evade the tax imposed by this Law, fails to pay the tax when due, shall pay a penalty equal to the amount of tax due plus interest at the rate of 1% of such tax for each full month from the due date of the tax to the date of payment.
- C. Any utility willfully failing to file a return required by this Law, or filing or causing to be filed or making or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this Law, which is willfully false, and any utility failing to keep records required by this Law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment.

- D. The certificate of the Village Treasurer to the effect that a tax has not been paid or that information has not been supplied pursuant to the provisions of this Law shall be presumptive evidence thereof.

Section 10. Failure to File or Incorrect Returns. In case any return filed pursuant to this Law shall be insufficient or unsatisfactory to the Village Treasurer, he or she may require at any time a further or supplemental return, which shall contain any data that may be specified by him or her and, if a corrected or sufficient return is not filed within twenty (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 he or she is able to obtain and if necessary, may estimate the tax on the basis of external indices or otherwise. He or she 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 whom it is assessed shall, within 30 days after the giving of notice of such determination, apply to the Treasurer for a hearing, or unless the Treasurer of his or her own motion shall reduce the same. After such hearing, the Treasurer shall give notice of her or her determination to the utility liable for the tax.

Section 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 such notice of such final determination, provided, however, that any such proceeding under this 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 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.

Section 12. Notice. Any notice authorized or required under the provisions of this 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 Law by giving of notice, shall commence to run from the date of mailing of such notice.

Section 13. Refunds. If within one (1) 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. 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.

Section 14. Review 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 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.

Section 15. Limitation of Additional Tax. Except in the case of a willfully 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 Law after 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.

Section 16. Powers 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.

Section 17. Compatibility. All of the provisions of Tax Law Section 186-a, so far as same are or can be made applicable, with such limitations as are set forth in Village Law Section 5-530 and this Law, and such modifications as may be necessary in order to adapt such taxes allowed by

Tax Law Section 186-a to local conditions shall apply to the taxes authorized by this Law.

Section 18. Confidentiality; penalty for violation.

- A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Village Treasurer, or any agent, clerk or employee of the Village 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 Law. 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 in an action or proceeding under the provisions of this Law or on behalf of the State Tax Commission in any 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 Law 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 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 Law, together with any relevant information which in the opinion of the Village 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 the return of any person who shall bring 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 Law.
- B. Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding, one thousand dollars (\$1,000) or by imprisonment not exceeding one (1) year, or both, and if the offender be an officer, agent, clerk or employee of the Village, he or she may be dismissed from office and shall be incapable of holding any office or employment in the Village for a period of five (5) years thereafter.
- C. Notwithstanding any provisions of this Law, the Village Treasurer may exchange with the chief fiscal officer of any city or any other village in the State of New York information contained in returns filed under this Law, provided that such city or other village grants similar privileges to the Village, and provided that such information is to be used for tax purposes only, and the Village Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

Section 19. Enforcement. Whenever any person shall fail to pay any tax, or penalty imposed

by this Law, 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 Section 186-a of the Tax Law is made a lien.

Section 20. Repealer. Any local law, ordinance or resolution of the Village in conflict herewith is hereby repealed to the extent of such conflict or inconsistency, except that this repeal shall not effect or prevent the prosecution or punishment of any person for any act done or committed in violation of any local law, ordinance, or regulation hereby repealed prior to the effective date of this local law.

Section 21. Severability. In the event any clause, sentence, section or other part of this local law is declared to be invalid, such invalidity shall not effect the remainder of this law.

Section 22. Effective Date. This local law shall take effect immediately.

Section 23. Sunset Provision. This law shall remain in effect until June 1, 2010. Unless continued in existence as provided herein, this law shall cease, terminate and become of no further legal force or effect. This law may be extended beyond June 1, 2010. This law may be amended, added to, or extended, as deemed necessary by the Village of Horseheads Board of Trustees by local law, resolution or motion adopted in accordance with law.

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