

Chapter 226, TAXATION

[HISTORY: Adopted by the Board of Trustees of the Village of Horseheads as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Assessments -- See Ch. 7.

ARTICLE I, Business Investment Exemption [Adopted 4-28-1977 by L.L. No. 6-1977 ; amended in its entirety 11-16-1995 by L.L. No. 4-1995]

§ 226-1. Authority to grant exemption.

The village shall carry out the intent and purpose of Article 4-A of the Commerce Law and § 485 of the Real Property Tax Law^{EN(1)} to grant to qualified business facility owners or operators exemption from real estate taxes and special ad valorem taxes to the extent provided in the aforementioned New York State laws.

§ 226-2. Filing of application.

- A. This tax exemption shall be granted to such qualified business facility owners or operators who, prior to the status date, file with the village an application therefor on a form prescribed by the village, together with a certificate of eligibility issued by the New York State Job Incentive Board created by § 116 of the Commerce Law.^{EN(2)}
- B. Upon submission of the aforesaid application and the certificates, the village shall consider the application for exemption or tax credit and, if found to be in order, determine the assessed value of said property in accordance with the certificate of eligibility and enter such value on the exempt portion of the assessment roll.

§ 226-3. Amount; duration.

The village shall grant a one-hundred-percent tax credit or exemption, and said exemption shall continue from year to year for a maximum of ten (10) years for each eligible facility, unless eligibility is revoked or modified by the New York State Job Incentive Board.

ARTICLE II, Senior Citizens Exemption [Adopted 2-11-1988; amended in its entirety 11-16-1995 by L.L. No. 4-1995]

§ 226-4. Exemption schedule.

Upon proper application, persons sixty-five (65) years of age or older who live in the Village of Horseheads with an income per the schedule below are hereby granted a real property tax exemption from Village of Horseheads real property taxes of a percentage which is noted below:

Annual Income	Percentage of Assessed Valuation Exempt from Tax
Less than \$12,500	50%
\$12,501 to \$13,200	45%
\$13,201 to \$13,700	40%
\$13,701 to \$14,300	35%
\$14,301 to \$14,900	30%
\$14,901 to \$15,500	25%
\$15,501 to \$16,100	20%

ARTICLE III, Alternative Veterans Exemption [Adopted 9-9-1993 by L.L. No. 4-1993]

§ 226-5. Purpose.

The purpose of this Article is to repeal Village of Horseheads Local Law No. 3-1984 and in so doing to provide that an exemption from real property taxes shall be granted pursuant to § 458-a

of the Real Property Tax Law of New York State.

§ 226-6. Implementation.

Real Property Tax Law § 458-a, Subdivision 4, permitted the Village of Horseheads to adopt a local law providing that no exemption shall be granted pursuant to Real Property Tax Law § 458-a. Said law further provides that such a local law may be repealed. The purpose of this Article and the adoption hereof by the Village of Horseheads Board of Trustees does hereby repeal Local Law No. 3-1984 so as to grant to persons entitled thereto the benefit of the exemption from real property taxation provided for in Real Property Tax Law § 458-a. The benefit of this Article shall apply solely to the levy of taxes for village purposes.

§ 226-7. When effective.

This Article shall take effect immediately upon its filing with the Secretary of State and as provided in Real Property Tax Law § 458-a.

ARTICLE IV, Utility Tax [Adopted 5-12-2005 by L.L. No. 1-2005]

§ 226-8. Short title.

The short title of this article is "Utility Tax."

§ 226-9. Imposition of tax.

Pursuant to the authority granted by Article 5, § 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 New York State Tax Law § 186-a in effect on January 1, 1959. Accordingly there is imposed:

- A. A tax equal to 1% 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 in excess of \$500 except motor carriers or brokers subject to such supervision under Article 3-B of the Public Service Law.
- B. A tax equal to 1% 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 year

ending December 31 in excess of \$500.

§ 226-10. Definitions.

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

GROSS INCOME

- A. 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 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 telecommunications services shall not include receipts from the sale of telecommunications services as such services are defined in § 186-e 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 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, 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 § 186-a was imposed on the sale to such landlord, no additional tax under Tax Law § 186-a shall be owing on the sale by such landlord to such tenant. If, however, the tax under Tax Law § 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.

- B. Notwithstanding the above, the words "gross income" shall include, in the case of a utility selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village, and, in the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village.

GROSS OPERATING INCOME -- Includes 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 § 186-a, Subdivision (1)(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 article 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; and 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 refrigerator service.

PERSON -- Persons, corporations, companies, associations, joint-stock companies or associations, partnerships and limited-liability companies, 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 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 (4) of Subdivision (a) of § 1116 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 waterworks 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.

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

TELECOMMUNICATIONS SERVICES -- 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 every person (including every provider of telecommunications 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.

VILLAGE -- The Village of Horseheads.

§ 226-11. Applicability; effective date.

This article 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.

§ 226-12. 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.

§ 226-13. Collection and enforcement; rules and regulations.

- A. 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.

- B. For the purpose of proper administration of this article 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.

§ 226-14. Returns; filing; contents; utilities to keep records.

- A. Time of filing. Every utility subject to a tax hereunder shall file, on or before August 1 a return for the three calendar months ending on the preceding June 30, on or before November 1 a return for the three calendar months ending on the preceding September 30, on or before February 1 a return for the three calendar months ending on the preceding December 31, and on or before May 1 a return for the three calendar months ending on the preceding March 31, 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-month periods is less than \$3,000 may file a return annually on or before February 1 for the preceding 12 calendar months ending December 31, including any period for which the tax imposed hereby or any amendment thereof is effective. Any utility, whether subject to tax under this article 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 article. 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 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 three 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.

§ 226-15. Payment.

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.

§ 226-16. 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 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; 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 article, 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 article, 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 article which is willfully false, and any utility failing to keep records required by this article 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 article shall be presumptive evidence thereof.

§ 226-17. Failure to file or incorrect returns.

In case any return filed pursuant to this article 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 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, on his or her own motion, shall reduce the same. After such hearing, the Treasurer shall give notice of his or her determination to the utility liable for the tax.

§ 226-18. 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 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.

§ 226-19. Notice.

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 addressed. Any period of time which is determined according to the provisions of this article by giving of notice shall commence to run from the date of mailing of such notice.

§ 226-20. 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 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.

§ 226-21. 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 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.

§ 226-22. 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 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.

§ 226-23. Powers of 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.

§ 226-24. Compatibility with statute.

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

§ 226-25. Confidentiality; penalties for offenses.

- 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 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 in an action or proceeding under the provisions of this article 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 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 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 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 article.
- B. Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding one 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 years thereafter.
- C. Notwithstanding any provisions of this article, 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 article, 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.

§ 226-26. Enforcement.

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.

§ 226-27. Sunset provision.

This article shall remain in effect until June 1, 2010. Unless continued in existence as provided herein, this article shall cease, terminate and become of no further legal force or effect. This article may be extended beyond June 1, 2010. This article 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.

Endnotes

1 (Popup - Popup)

Editor's Note: Article 4-A of the Commerce Law was repealed by L. 1983, c. 15, § 57, effective April 1, 1983. Section 485 of the Real Property Tax Law was repealed by L. 1988, c. 165, § 5, effective June 27, 1988; for current provisions see Real Property Tax Law § 485-b.

2 (Popup - Popup)

Editor's Note: Section 116 of the Commerce Law was repealed by L. 1983, c. 15, § 57, effective April 1, 1983.