

VILLAGE OF WATKINS GLEN
LOCAL LAW IMPOSING TAX
ON INCOME OF UTILITIES
LOCAL LAW NO. 1 OF 1969

October 6, 1969

A local law to impose a tax on gross income or gross operating income of utilities arising from transactions originating and consummated within the territorial limits of the incorporated Village of Watkins Glen, as authorized by Section Six-Six Hundred Forty of the Village Law of the State of New York.

Be it enacted by the Board of Trustees of the Village of Watkins Glen as follows:

Section 1. TAX ON THE *FURNISHING OF UTILITY SERVICES*. Pursuant to the authority granted by Section Six-Six Hundred Forty of the Village Law of the State of New York, from on and after November 1, 1969 there is hereby imposed:

(a) A tax equal to one percentum of the gross income of every utility doing business in the Incorporated Village of Watkins Glen which is subject to the Supervision of the New York State Department of Public Service and which has an annual gross income in excess of Five Hundred Dollars (\$500.00) except motor carriers or brokers subject to such supervision under Article Three-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 Watkins Glen, which has an annual gross operating income in excess of Five Hundred dollars (\$500.00).

Section 2. DEFINITIONS. As used in this local law:

(a) The word "utility" includes:

1. Every person subject to the supervision of the State Department of Public Service, except

a. Persons engaged in the business of operating or leasing sleeping and parlor railroad cars; and

b. persons engaged in the business of operating or leasing railroads other than street surface, rapid transit, subway and elevated railroads:

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

2. Every person who sells gas, electricity, steam, water, refrigeration, telephony, telegraphy or television transmission or relay delivered through mains, pipes, wires

or cables whether or not such person is subject to the supervision of the State Department of Public Service;

3. Every person who furnishes gas, electric, steam, water, refrigerator, telephone, telegraph service or television transmission or relay, by means of mains, pipes, wires or cables; 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 associations, copartnerships, 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, 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.

(c) The words "gross income" shall include:

1. In the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village.

2. 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 income" in the case of any utility other than described in Section 2 (c) hereof shall include:

1. Receipts received in or by reason of any sale, conditional or otherwise (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in gross income} , made or service rendered for ultimate consumption or use by the purchaser in the Village, 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 deductions therefrom on account of the property sold, the cost of the materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever;

2. Profits from the sale of securities;

3. Profits from the sale of real property growing out of the ownership or use of or interest in such property;

4. Profits from the sale of personal property (other than property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of the period for which a return is made) ;

5. Receipts from interest, dividends, and royalties, derived from sources within **the** Village (other than such as are received from a corporation, a majority of whose voting stock is owned by the taxpaying utility), without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof:

6. Profits from any transaction (except sales for resale and rentals) within the Village whatsoever.

(e) The words "(gross operating income" mean and include;

1. Receipts received in or by reason of any sales, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, electricity, steam, water, refrigeration,, telephony, telegraphy, or television transmission or relay, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water, refrigerator, telephone, telegraph or television transmission or relay service **in the Village, including** cash, credits and property of any kind or nature, without **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.

Section 3. APPLICATION. This law and the tax imposed thereby shall:

(a) apply only within the territorial limits of the Village of Watkins Glen.

(b) shall be in addition to any and all other taxes;

(c) shall apply to all subject income received on and after October 1, 1969.

Section 4. 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 5. COLLECTION AND ENFORCEMENT; Rules and Regulations. The Village Treasurer shall be the chief enforcement officer of this law and shall make any rules or regulations or directives, not inconsistent with law, which, in his 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.

SECTION 6. RECORDS. Every utility subject to tax under this law 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 unless the Village Treasurer directs otherwise.

SECTION 7. RETURNS, FILING CONTENTS.

(a) Time of filing. Every utility subject to a tax hereunder shall file on or before July 25, October 25, January 25 and April 25 a return for the three calendar months preceding each return date including any period for which the tax imposed hereby or any amendment hereof is effective. However, any utility whose average gross income or gross operating income aforesaid three month period is less than Fifteen Hundred Dollars (\$1500.00) may file a return annually on April 25 for the twelve calendar months preceding each return date including any period for which the tax imposed hereby or any amendment hereof is effective. Any utility whether subject to tax under this law or not shall 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 him 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. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner or of a co-partner thereof, or of a principal corporate officer to the effect that the statements contained therein are true.

Section 3. 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 will be due and payable at the time of the filing of the return or if a return is not filed when due, on the last day on which the return is required to be filed.

Section 9. PENALTIES AND INTREST. 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 of the amount of tax due,

plus one percentum 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, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

Section 10. TAX AS OPERATING COST. The tax imposed by this law 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.

Section 11. FAILURE TO FILE OR INCORRECT RETURNS. In case of any return filed pursuant to this law shall be insufficient or unsatisfactory to the Village Treasurer, he may require at any time a further or supplemental return, which shall contain any data that may be specified by him, and, if a corrected or sufficient return is not filed within twenty days after the same is required by notice from him, or, if no return is made for any, period, the Village Treasurer shall determine the amount due from such information as he is able to obtain and, if necessary, may estimate the tax on the basis of external indices or otherwise. He shall give notification of such determination to the utility liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the utility against which it is assessed shall, within one year after the giving of such notice of such determination, apply to him for a hearing or unless the Village Treasurer, of his own motion, shall reduce the same. After such hearing he shall give notice of his decision to the utility liable for such tax.

Section 12. 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 Seventy eight of the Civil Practice Law and Rules if the proceeding is commenced within ninety days after the giving of such notice of such final determination, provided, however, that any such proceeding under said Article Seventy-eight 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 of resolution, shall be first deposited and an under taking 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 13. 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 section by the giving of notice, shall commence to run from the date of mailing of such notice.

Section 14. 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 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 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 additional evidence with respect thereto. After making his determination the Village Treasurer shall give notice thereof to the person interested, and he shall be entitled to commence a proceeding to review such determination, in accordance with the provisions of the following section hereof.

Section 15. 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 shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article Seventy-eight of the Civil Practice Law and Rules, provided, however, that such proceeding is instituted within ninety 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 16. LIMITATION OF ADDITIONAL TAX. Except in the case of a wilfully 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 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 hereby, the tax may be assessed at any time.

Section 17. POWERS OF VILLAGE TREASURER. In addition to any other powers herein given the Village Treasurer and in order to further insure payment of the tax imposed hereby, he 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;

(b) subpoena and require the attendance of witnesses and the production of books, papers, records and documents.

Section 12. ENFORCEMENT. Whenever any person shall fail to pay any tax or penalty imposed by this local 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 tax and penalty imposed by Section One Hundred Eighty-six of the Tax Law is made a lien.

Section 19. VALIDITY. The invalidity, illegality or unconstitutionality of any section, subsection or provision of this Local Law or any rules or regulations adopted pursuant hereto shall not affect the validity, legality or constitutionality of any section, subsection or provision of this Local Law or any rule or regulation adopted pursuant hereto, but shall be confined to such section, subsection or provision of this Local Law or rule or regulation adopted pursuant hereto which may be so condemned.

Section 20. THIS LOCAL LAW SHALL TAKE EFFECT NOVEMBER
1, 1969.