

**VILLAGE OF BUCHANAN
LOCAL LAW NO. 1 OF THE YEAR 2018**

**A LOCAL LAW AMENDING CHAPTER 181 OF THE CODE OF
THE VILLAGE OF BUCHANAN AND ADDING ARTICLE IV ESTABLISHING
A TAX ON UTILITY SERVICES BY THE VILLAGE OF BUCHANAN**

**BE IT ENACTED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF
BUCHANAN AS FOLLOWS:**

ARTICLE IV

Utility Tax

Section 181-13. Legislative Authority and Imposition of Tax.

Pursuant to the authority established by §5-530 of the Village Law of the State of New York, the Village Board of the Village of Buchanan is authorized to impose a tax of 1% of the gross income or gross operating income of the following:

A. Every utility doing business in the Village 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 Articles 5 and 6 of the Transportation Law.

B. Every other utility doing business in the Village which has a gross operating income for the 12 months ending December 31 in excess of \$500.

Section 181-14. Definitions

As used in this article, "gross income," "gross operating income," "person," "premises," "telecommunication services," "tenant" and "utility" shall have the meanings as defined in § 186-a of the Tax Law.

Section 181-15. Applicability

This article and the tax imposed thereby shall:

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

B. Not apply and the tax shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village, notwithstanding some act necessarily performed with respect to such transaction within such limits.

C. Be in addition to any and all other taxes.

Section 181-16. 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.

Section 181-17. Enforcement Officer; Promulgation of Rules and Regulations

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

Section 181-18. 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 unless the Village Treasurer directs otherwise.

Section 181-19. Filing and Contents of Return

A. Time of filing. Every utility subject to a tax hereunder shall file on or before January 25 and July 25 a return for the six 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 for the aforesaid six-month period is less than \$3,000 may file a return annually on July 25 for the 12 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 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 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 by the owner or by a copartner thereof or by a principal corporate officer to the effect that the statements contained therein are true.

Section 181-20. 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 last day on which the return is required to be filed.

Section 181- 21. Penalty for Late Payment

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, except for 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 181-22. Tax Added as a Separate Item to Customers

The tax imposed by this article shall be charged against and be paid by the utility and may be added as a separate item to bills rendered by the utility to customers as authorized by § 186-a(6) of the Tax Law.

Section 181-23. Procedure Upon Filing Unsatisfactory Return:

In case any return filed pursuant to this article 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 20 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 indexes 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 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 181-24. 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 application therefore 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 Act shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as are herein provided for

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.

Section 181-25. 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 it is 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 181-26. 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 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 Treasurer as hereinbefore provided unless he, 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. An application for refund, made as hereinbefore provided, shall be deemed an application for the revision of any tax or penalty complained of and the Treasurer may receive additional evidence with respect thereto. After making his determination, he shall give notice thereof to the utility interested, and said utility shall be entitled to a certiorari order to review in accordance with the provisions of § 181-27 hereof.

Section 181-27. Review of Determination Denying Refund

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 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 is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Section 181-28. Limitation on Assessment of Additional Assessments or Taxes

Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment or additional tax shall be made with respect to taxes imposed under this article 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 181-29. Power of Treasurer

In addition to any other powers herein given to the Village Treasurer, and in order to further ensure 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 oaths, with reference to any matter hereby entrusted to him.
- C. Subpoena and require the attendance of witnesses and the production of books, papers, records and documents.

Section 181-30. Failure to Pay Tax or Penalty

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 tax and penalty imposed by § 186-a of the Tax Law is made a lien.

Section 181-31. Invalidity

If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

Section 181-32. Effective Date

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.