

**INCORPORATED VILLAGE OF PLANDOME MANOR  
BOARD OF TRUSTEES**

**PROPOSED LOCAL LAW NO. 4 OF 2014  
CREATING A NEW ARTICLE WITHIN CHAPTER  
200 OF THE CODE OF THE INCORPORATED  
VILLAGE OF PLANDOME MANOR RELATING  
TO UTILITY TAX**

Be it hereby enacted by the Board of Trustees of the Incorporated Village of Plandome Manor as follows:

**Section 1. Amendments.**

Chapter 200 of the Code of the Incorporated Village of Plandome Manor, "Taxation," is hereby amended to create a new Article within Chapter 200, entitled "Utility Tax," which shall read as follows:

§ 1. Definitions.

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

**GROSS INCOME**

Includes:

- A. In the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village.
- B. In the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village.
- C. In the case of any utility other than described in Subsections A and B hereof, includes:

(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

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 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 receipts thereof.

(6) Profits from any transaction, except sales for resale and rentals, within the Village 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 purchase 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, refrigerator, telephone or telegraph 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.

### **PERSON**

Includes 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, 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.

## **TREASURER**

The Village Treasurer of the Incorporated Village of Plandome Manor.

## **UTILITY**

Includes:

- A. Every person subject to the supervision of the State Department of Public Service, except:
  - (1) Persons engaged in the business of operating or leasing sleeping and parlor railroad cars.
  - (2) Persons engaged in the business of operating railroads other than street-surface, rapid-transit, subway and elevated railroads.
  - (3) Omnibus corporations subject to supervision under Article 3-A of the Public Service Law.
- B. Every person, whether or not such person is subject to the supervision of the State Department of Public Service, who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy delivered through mains, pipes or wires or furnishes gas, electric, steam, water, refrigerator, telephone or telegraphic 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 Incorporated Village of Plandome Manor.

### §2. Imposition of tax.

Pursuant to the authority granted by § 5-530 of the Village Law of the State of New York, from on and after June 1, 2014, there is hereby imposed:

- A. A tax equal to 1% of the gross income of every utility doing business in the Village 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 \$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 Village which has an annual gross operating income in excess of \$500.

### § 3. 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 that some act is necessarily performed with respect to such transactions within such limits.
- C. Be in addition to any and all other taxes.
- D. Apply to all subject income received on and after June 1, 2014.

### § 4. Disposition of revenues.

All revenues resulting from the imposition of the tax imposed by this article shall be paid to the Treasurer of the Village and shall be credited to and deposited in the general fund of the Village.

### § 5. Designation of enforcement officer; promulgation of rules and regulations.

The 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 and 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 registered mail to all utilities subject to this article which register as such with the Treasurer. All such rules, regulations and directives shall be deemed a part of this article.

§ 6. Records required to be kept by utility.

Every utility subject to tax under this article shall keep such records of its business and in such form as the Treasurer may require, and such records shall be preserved for a period of three years unless the Treasurer directs otherwise.

§ 7. Time of filing; contents.

- 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. Any utility, whether subject to tax under this article or not, may be required by the Treasurer to file an annual return.
- B. Filing and contents. Returns shall be filed with the Treasurer on a form to be furnished by him or her for such purpose and shall show thereon the gross income or gross operating income, as the case may be, for the period covered by the return and such other information, data or matter as the 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 copartner thereof or of a principal corporate officer to the effect that the statements contained therein are true.

§ 8. Payment due with filing.

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

§ 9. Penalty for nonpayment.

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 the first month after such return was required to be filed or such tax became due; but the Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 10. Tax to be treated as 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.

§ 11. Failure to file or incorrect returns.

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Treasurer, he or she may require at any time a corrected 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 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 giving the notice of such determination, apply to him for a hearing or unless the 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.

§ 12. Review of final determination of amount.

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 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 thereon 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.

§ 13. Form of 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 section by the giving of notice, shall commence to run from the date of mailing of such notice.

#### § 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 Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the 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 Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Treasurer as hereinbefore provided, unless the Treasurer, after a hearing as hereinabove provided or on his 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 Treasurer may receive additional evidence with respect thereto. After making his determination, the Treasurer shall give notice thereof to the person interested, who shall be entitled to commence a proceeding to review such determination, in accordance with the provision of the following section hereof.

#### § 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 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 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.

§ 16. Limitation on 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 the expiration of more than three years from the date of filing of a return, provided that, where no return has been filed as required hereby, the tax may be assessed at any time.

§ 17. Powers of Village Treasurer.

In addition to any other powers herein given to the 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 oath, 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.

§ 18. Enforcement proceedings.

Whenever any person shall fail to pay any tax or penalty imposed by this article, the Village Attorney shall, upon the request of the 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 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 2. Severability.**

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which judgment should have been rendered.

**Section 3. Effective date.**



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

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