

CHAPTER 29

LOCAL LAW NO. 20 OF 2016

A LOCAL LAW ENTITLED
UTILITY TAX

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF SHOREHAM, AS FOLLOWS:

SECTION 1. PURPOSE.

The purpose of this local law is to implement New York Village Law§ 5-530 enabling the Village to collect utility gross receipts tax.

SECTION 2. ENACTMENT.

A **Chapter 29 of the Village Code** entitled Utility Tax is enacted, as follows:

§ 29-1. Legislative Intent.

The purpose of this Chapter 29, entitled a Utility Tax Law, is to enable the Village to collect utility gross receipt taxes.

§ 29-2. Definitions.

As used in this Chapter 29, each of the following defined terms shall have the meaning indicated:

(1) **gross income** - 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; also 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 whatsoever within this state, except sales for resale and rentals.

(2) **gross operating income** - receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser 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, refrigeration, telephone or telegraph 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 materials used, labor or services or other costs, interest or discount paid, or any other expenses whatsoever.

(3) **person** - 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, municipalities, 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 inure to the benefit of any private shareholder or individual.

(4) **Treasurer** - the treasurer of the Village.

(5) **utility** - every person 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, and also includes every person, whether or not such person is subject to such supervision, who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water, refrigeration, telephone or telegraph 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.

(6) **Village** - the Incorporated Village of Shoreham, Suffolk County, New York.

§ 29-3. Tax Established.

Pursuant to the authority granted by § 5-530 of the Village Law of the State of New York, a tax equal to 1% of its gross income from and after the first day of June 1969 is hereby imposed upon every utility doing business in the Village which is subject to the supervision of the State Department of Public Service, which has a gross income for the 12 months ending May 31, in excess of \$500, except motor carriers or brokers subject to such supervision under Article §§ 240 et seq. of the Transportation Law and a tax equal to 1% of its gross operating income from and after the first day of June 1969 is hereby imposed upon every other utility doing business in the Village which has a gross operating income for the 12 months ending May 31, in excess of \$500, which taxes shall have application only within the territorial limits of the Village, and shall be in addition to any and all other taxes and fees imposed by any other provisions of law. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

§ 29-4. Records.

Every utility subject to tax under this Chapter 29 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, except that the Treasurer may consent to their destruction within that period or may require that they be kept longer.

§ 29-5. Returns to be Annual or Semiannual.

Every utility subject to a tax hereunder shall file semiannually, on or before September 25 and March 25, a return for the six calendar months preceding each such return date, and in the case of the first such return, for all preceding calendar months during which the tax imposed hereby was effective. Every return shall state the gross income or gross operating income for the period covered thereby. Returns shall be filed with the Treasurer on a form to be furnished by him for such purpose and shall contain such other data, information or matter as he may

require to be included therein. The Treasurer, in order to ensure payment of the tax imposed, may require at any time a further or supplemental return, which shall contain any data that may be specified by him, and he may require any utility doing business in the Village to file an annual return, which shall contain any data specified by him, regardless of whether the utility is subject to tax under Chapter 29. Every return shall have annexed thereto an affidavit of the head or a responsible official of the utility making the same, or of the owner, or of a copartner thereof, or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that the statements contained therein are true.

§ 29-6. Payment.

At the time of filing a return as required by this Chapter 29, each utility shall pay to the Treasurer the tax imposed by this Chapter 29 for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

§ 29-7. Inadequate Return/Estimates/Hearings/Review.

In case any return filed pursuant to this Chapter 29 shall be insufficient or unsatisfactory to the Treasurer 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 of tax 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 notice of such determination to the person liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the person 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 own motion shall reduce the same. After such hearing, the Treasurer shall give notice of his decision to the person liable for the tax. Such decision may be reviewed by a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York if application therefor is made within 90 days after the giving of notice of such decision. An order to review such decision shall not be granted unless the amount of any tax sought to be reviewed, with interest and penalties thereof, if any, shall be first deposited with the Treasurer and an undertaking filed with him, 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 applicant will

pay all costs and charges which may accrue in the prosecution of such proceeding, or at the option of the applicant, such undertaking may be in a sum sufficient to cover the tax, interest, penalties, costs and charges aforesaid, in which event the applicant shall not be required to pay such tax, interest and penalties as a condition precedent to the granting of such order. Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as required by this Chapter 29, the tax may be assessed at any time.

§ 29-8. Notice.

Any notice authorized or acquired under the provisions of this Chapter 29 may be given by mailing the same to the person for whom it is intended, in a postpaid envelope, addressed to such person at the address given by him in the last return filed by him under this Chapter 29, or if no return has been filed, then to the address given in the last report of the utility filed with the Public Service Commission, or if no such report has been filed, to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time, which is determined according to the provisions of this Chapter 29 by the giving of notice, shall commence to run from the date of mailing of such notice.

§ 29-9. Penalties for Failure to File.

Any person failing to file a return or corrected return, or to pay any tax or any portion thereof, within the time required by this Chapter 29 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, for cause shown, may extend the time for filing any return, and if satisfied that the delay was excusable, may remit all or any portion of the penalty fixed by the foregoing provisions of this section.

§ 29-10. Refunds.

If, within one year from the payment of any tax or penalty, the payor thereof 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, or of his own motion, which shall have reduced the tax or penalty or it shall have been established in a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this Chapter 29. 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, and he shall be entitled to an order to review such determination under said Article 78, subject to the provisions hereinbefore contained relating to the granting of such an order.

§ 29-11. Charging Tax to Customers Prohibited.

The tax imposed by this Chapter 29 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.

§ 29-12. Action to Enforce Payment.

Whenever any person shall fail to pay any tax or penalty imposed by this Chapter 29, 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 § 32 and/or Article 9-A of the Tax Law is made a lien.

§ 29-13. Rules and Regulations.

In the administration of this Chapter 29, the Treasurer shall have power to make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of his powers and the performance of his duties, and to prescribe the form of blanks, reports and other records relating to the administration and enforcement of the tax, to take testimony and proofs, under oath, with reference to any matter within the line of his official duty under this Chapter 29, and to subpoena and

require the attendance of witnesses and the production of books, papers and documents.

§ 29-14. Returns to be Confidential/Exceptions.

A. Confidentiality. Except in accordance with proper judicial order or as otherwise provided by law, or in connection with regular audits of the records of the Village by the State Department of Audit and Control, it shall be unlawful for the 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 Chapter 29. 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 Chapter 29, or on behalf of the State Tax Commission in an 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 Chapter 29 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 the facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return filed by him, nor to prohibit 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 Chapter 29, together with any relevant information which in the opinion of the 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 Chapter 29.

B. Disciplinary Proceedings. Any offense against the foregoing provisions shall subject the offender to disciplinary proceedings pursuant to the Civil Service Law if an employee of the Village and to an action pursuant to the provisions of § 51 of the General Municipal Law if an officer of the Village.

C. Exceptions. Notwithstanding any provisions of this Chapter 29 to the contrary, the 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 Chapter 29, provided such city or other village grants similar privileges to the Village, and provided such information is to be used for tax purposes only, and the Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such return.

§ 29-15. Disposition of Monies.

All taxes and penalties received by the Treasurer of the Village under this Chapter 29 shall be paid into the treasury of the Village and shall be credited to and deposited in the general fund of the Village.

§ 29-16. Severability.

If any provision of this Chapter 29 is ruled unconstitutional or invalid, such ruling shall not affect the validity of any other provision of said chapter or said chapter as a whole.

SECTION 3. EFFECTIVE DATE.

This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

Dated: June 8, 2016

BY ORDER OF THE BOARD OF TRUSTEES OF
THE VILLAGE OF SHOREHAM

BY: Cathy Donahue-Spier,
Village Clerk

Effective Date: June 28, 2016