

TAXATION

Chapter 137

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[HISTORY: Adopted by the Board of Trustees of the Village of Kensington: Art. I, 4-10-68 as L.L. No. 1-1968; Art. II, 10-20-76 as L.L. No. 1-1976; Art. III, 6-10-85 as L.L. No. 4-1985. Section 137-7A amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

ARTICLE I

Tax on Utility Services

[Adopted 4-10-68 as L.L. No. 1-1968]

§ 137-1. Imposition of tax.

Pursuant to the authority granted by § 5-530 of Article 5 of the Village Law of the State of New York, from, on and after May 1, 1968, there is hereby imposed:

- A. A tax equal to one per centum (1%) of the gross income of every utility doing business in the Incorporated Village of Kensington 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.), except motor carriers or brokers subject to such supervision under Article 3-B of the Public Service Law.¹

¹ Editor's Note: See now Transportation Law, Art. 8, § 170 et seq.

- B. A tax equal to one per centum (1%) of the gross operating income of every other utility doing business in the Incorporated Village of Kensington which has an annual gross operating income in excess of five hundred dollars (\$500.).

§ 137-2. 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 as described above in this definition:
- (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 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.
 - (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.

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, 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 — 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.

UTILITY:

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

§ 137-3. Applicability.

This Article and the tax imposed thereby shall:

- A. Apply only within the territorial limits of the Village of Kensington.
- B. Not apply to and the tax shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Kensington notwithstanding that some act be necessarily performed with respect to such transaction within such limits.
- C. Be in addition to any and all other taxes.
- D. Apply to all subject income received on and after May 1, 1968.

² Editor's Note: See now Transportation Law, Art. 7, Carriers of Passengers by Motor Vehicles, § 150 et seq.

§ 137-4. 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.

§ 137-5. Collection and enforcement.

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 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.

§ 137-6. Keeping of 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 (3) years unless the Village Treasurer directs otherwise.

§ 137-7. Filing of returns; contents.

- A. Tax returns are to be filed every six (6) months, (on or before November 25 and May 25) except that any utility whose average gross income or gross operating income for the aforesaid six (6) months' period is less than three thousand dollars (\$3,000.) may file a return annually on May 25 for the twelve (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.³

- B. 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 copartner thereof, or of a principal corporate officer, to the effect that the statements contained therein are true.

§ 137-8. Payment of tax.

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.

§ 137-9. Penalties and interest.

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 five per centum (5%) of the amount of tax due, plus one per centum (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.

§ 137-10. Tax 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.

³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. 1.

§ 137-11. Failure to file; incorrect returns.

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 twenty (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 (1) 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.

§ 137-12. 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 78 of the Civil Practice Law and Rules if the proceeding is commenced within ninety (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 be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 137-13. 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.

§ 137-14. Refunds.

If, within one (1) 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 or of 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 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.

§ 137-15. 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 78 of the Civil Practice Law and Rules; provided, however, that such proceeding is instituted within ninety (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.

§ 137-16. Limitation of additional tax.

Except in the case of a willfully false or fraudulent return with the intent to evade the tax, no assessment of additional tax shall be made with respect to taxes imposed under this Article after the expiration of more than three (3) years from the date of filing a return; provided, however, that where no return has been filed as required hereby, the tax may be assessed at any time.

§ 137-17. Powers of Village Treasurer.

In addition to any other powers herein given 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 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.

§ 137-18. 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 tax and penalty imposed by § 186-a of the Tax Law is made a lien.

ARTICLE II**Disallowance of Business Improvement Exemption
[Adopted 10-20-76 as L.L. No. 1-1976]****§ 137-19. Exemption disallowed.**

No exemption from taxation, special ad valorem levies or service charges shall be granted pursuant to Real Property Tax Law § 485-b for business improvements within the Village of Kensington.

ARTICLE III**Veterans' Alternative Exemption
[Adopted 6-19-85 as L.L. No. 4-1985]****§ 137-20. Exemption stated.**

The exemptions authorized by Real Property Tax Law § 458-a, as in effect on the effective date hereof, shall be applicable in the Village of Kensington with respect to assessments made by the Village of Kensington and property taxes levied by the Village of Kensington; provided, however, that the maximum exemption allowed in § 458-a, Subdivision 2(a), (b) and (c), of the Real Property Tax Law shall be six thousand dollars (\$6,000.), four thousand dollars (\$4,000.) and twenty thousand dollars (\$20,000.), respectively.