

CHAPTER 30
UTILITY TAXES

30.01 DEFINITIONS Terms used in this Chapter, whether capitalized or not, mean as follows:

Gross receipts: The consideration received for furnishing or selling water, the transmission of messages, or distributing, supplying, furnishing or selling gas, or electricity for use or consumption and not for resale, as the case may be; and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith; and shall be determined without any deduction on account of the cost of transmitting said messages without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever. Gross receipts shall not include receipts received from the Village for the sale to the Village of any of the utility products or services mentioned above. "Gross receipts" shall not include any amounts specifically excluded from the definition of gross receipts in 65 ILCS 5/8-11-2(d).

Person: Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator or other representative appointed by order of any court, including but not limited to a guardian, and any State university created by statute.

Person maintaining a place of business in this State: Any person having or maintaining within the State, directly or by a subsidiary or other affiliate, an office, generation, facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent or other representative operating within the State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in the State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in the State.

Purchase at retail: Any acquisition of a utility product by a purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a public utility, as defined in 65 ILCS 5/8-11-2, directly in the generation, production, transmission, delivery or sale of electricity.

Purchaser: Any person who uses or consumes, within the corporate limits of the Village, a utility product acquired in a purchase at retail (other than an exempt purchaser).

Tax collector or Taxpayer: The person delivering a utility product to the purchaser.

30.02 TAXES IMPOSED

A. A tax is imposed on all persons engaged in the following occupations or privileges:

1. Persons engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the corporate limits of the Village and not for resale, at the rate of five percent of the gross receipts therefrom.

Subject, however, to all the provisions, conditions and limitations of 65 ILCS 5/8-11-2, authoring these taxes, and to all the provisions, conditions and limitations in this Section, consistent with the powers conferred upon the Village by Section 5/8-11-2 and other relevant law.

B. **LIMITATIONS:** No tax is imposed by this Section with respect to any transaction in interstate commerce or otherwise to the extent to which such business may not, under the constitution and statutes of the United States, be made subject to taxation by this state or any political subdivision thereof; nor shall any person engaged in the business of distributing, supplying, furnishing or selling gas or electricity, or engaged in the business of distributing, supplying, furnishing or selling gas be subject to taxation under the provisions of this Section for such transactions as are or may become subject to taxation under the provisions of the “Municipal Retailers’ Occupation Tax Act” authorized by Section 8-11-1 of the Illinois Municipal Code.

C. **APPLICATION:** Such tax shall be in addition to the payment or money, or value of products or services furnished to this Village by the taxpayer as compensation for the use of its streets, alleys or other public places, or installation and maintenance therein, thereon or there under of poles, wire, pipes or other equipment used in the operation of the taxpayer’s business.

D. **STATEMENT:** On or before the last day of each month each taxpayer shall make a return to the Treasurer for the proceeding month stating:

1. His or her name;
2. His or her principal place of business;
3. His or her gross receipts during those months upon the basis of which the tax is imposed;
4. Amount of tax; and
5. Such other reasonable and related information as the corporate authorities may require.

On or before the last day of every third month, each taxpayer shall make a like return to the

Treasurer for a corresponding one-month period.

The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Treasurer the amount of tax imposed herein; provided that in connection with any return the taxpayer may, if he so elects, report any pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed), with prompt adjustments of later payments based upon any difference between such billings and the taxable gross receipts.

- E. CREDIT FOR OVERPAYMENT: If it appears that an amount of tax has been paid which was not due under the provisions of this Section, whether as the result of a mistake of fact or law, then such amount shall be credited against any tax due, or to become due, under this Section from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three years prior to the filing of a claim therefore shall be so credited.
- F. RECOVERY DEADLINE: No action to recover any amount of tax due under the provisions of this Section shall be commenced more than three years after the due date of such amount.
- G. PENALTY: Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Section is guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$100 nor more than \$200 and, in addition, shall be liable in a civil action for the amount of tax due.
- H. EFFECTIVE DATE: The tax provided for in this Section shall be based on the gross receipts, as herein defined, actually paid to the taxpayer for services billed on or after the first day of August, 2010. The Village Board shall review the utility tax annually along with all other taxes and revenues sources during the annual budget review.

30.03 MUNICIPAL UTILITY TAX ON ELECTRIC CONSUMPTION

- A. TAX IMPOSED: Pursuant to the Illinois Municipal Code (65 ILCS 5/8-11-2) and any other applicable authority, a tax is imposed upon the privilege of using or consuming electricity purchased at retail and used or consumed within the corporate limits of the Village at the following rates, calculated on a monthly basis for each purchaser, except the Village:
 - 1. For the first 2,000 Kilowatt-hours (“Kwh”) used or consumed in a month, 0.61 cents per Kwh;
 - 2. For the next 48,000 Kwh used or consumed in a month, 0.40 cents per Kwh;
 - 3. For the next 50,000 Kwh used or consumed in a month, 0.36 cents per Kwh;
 - 4. For the next 400,000 Kwh used or consumed in a month, 0.35 cents per Kwh;

5. For the next 500,000 Kwh used or consumed in a month, 0.34 cents per Kwh;
 6. For the next 2,000,000 Kwh used or consumed in a month, 0.32 cents per Kwh;
 7. For the next 2,000,000 Kwh used or consumed in a month, 0.315 cents per Kwh;
 8. For the next 5,000,000 Kwh used or consumed in a month, 0.31 cents per Kwh;
 9. For the next 10,000,000 Kwh used or consumed in a month, 0.305 cents per Kwh;
and
 10. For all electricity consumed or used in excess of 20,000,000 Kwh in a month, 0.30 cents per Kwh.
- B. **EFFECTIVE DATE:** The tax provided for in this Section shall be based on the gross receipts, as herein defined, actually paid to the taxpayer for services billed on or after the first day of August, 2010. The Village Board shall review the utility tax annually along with all other taxes and revenues sources during the annual budget review.
- C. **RETAIL SALE:** It shall be presumed that any electricity delivered to a person within the Village is sold at retail, for its use or consumption within the Village. This presumption is refutable only by clear and convincing evidence.
- D. **COLLECTION:** The tax imposed by this Section shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. The tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser. If the tax is unpaid it is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to this Section and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality by such person delivering the electricity, provided that the person delivering electricity shall be allowed credit for such tax related deliveries of electricity, the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax to the Village. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering electricity shall be authorized to add to such gross charge an amount equal to three percent of the tax assessed pursuant to this Section to reimburse the person delivering electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting tax and supplying data to the Village. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the Village in the manner prescribed herein. Persons delivering electricity who file returns pursuant to this Section shall, at the time of filing such return, pay the Village the amount of the tax collected pursuant to this Section.

E. BOOKS AND RECORDS:

1. Every person delivering electricity who is required to collect a tax pursuant to Section 30.03-D shall keep accurate books and records of all transactions which may affect the tax provided for herein including, but not limited to, records of the number of Kilowatt-hours used by each consumer within the Village for each month, the charge imposed upon each consumer for the sale of the electricity and any related services, the amount of tax imposed by this Section billed to each consumer of electricity and the amount of tax actually collected, the amount of the charge imposed and collected by the electric distributor as compensation for collecting the tax provided for in Section 30.03-A.
2. Every person delivering electricity that is required to collect a tax as set forth herein shall provide to the Village, within seven days of written request, copies of all records, or any part thereof, which the Village requests, which the electricity deliverer is required to keep pursuant to this Section.

F. TAX REMITTANCE AND RETURN:

1. Every person collecting a tax pursuant to Section 30.03-D shall, on a monthly basis, file a return with the Village in a form prescribed by the Village along with the total revenues collected. The return and accompanying remittance shall be delivered to the Village on or before the last day of the month following the month during which the tax is collected or is required to be collected under Section 30.03-D.
2. Each person who is required to pay a tax and has not paid said tax to the electricity deliverer as provided for herein, shall file a return with the Village as provided in Section 30.03-D and pay directly to the Village the tax on or before the last day of the month following the month during which the electricity was used or consumed.

G. REINSTATEMENT OF UTILITY TAX ON ELECTRICITY: In the event Public Act 90-561 is declared unconstitutional, or if this Section is found unconstitutional or voided by any court of competent jurisdiction, the provisions of Section 30.02-A-3 shall remain in effect in all respects as if it had never been repealed, and any amounts paid to the Village by any person delivering electricity pursuant to this Section shall be deemed to have been paid pursuant to Section 30.01

CERTIFICATION

I, CLAUDETT E. PETERS, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Johnsburg, McHenry County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Johnsburg.

I do further certify that at a regular meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 29th day of April, 2010, the foregoing Ordinance entitled *An Ordinance Amending the Johnsburg Municipal Code to Add Chapter 30, Utility Tax*, was duly passed by the President and Board of Trustees of the Village of Johnsburg.

The pamphlet form of Ordinance No. 2009-10-33, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was available in the Village Hall, commencing on the 29th day of April, 2010, and will continue for at least 10 days thereafter. Copies of such Ordinance are also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and seal of the Village of Johnsburg, this 29th day of April, 2010.

Claudett E. Peters, Village Clerk
Village of Johnsburg,
McHenry County, Illinois

(SEAL)