

PART I – ADMINISTRATIVE LEGISLATION

**Chapter 28 – Tax on Gross Income or Gross Operating Income of Persons Furnishing
Utility Services**

[Adopted as Local Law #2 of 1968, Amended and Adopted, December 27, 2012, as Chapter 28 of the Code]

Article I – Tax on Utilities

Sections 28-1 – 28-15

Article I – Tax on Utilities

Section 28-1 – Imposition of tax on the furnishing of utility services – Pursuant to the authority granted by Section 5-530 of the Village Law of the State of New York, a tax equal to one per centum [1%] of its gross income is hereby imposed upon every utility doing business in the Village of Marcellus which is subject to the supervision of the State Public Service Commission, which taxes shall have application only within the territorial limits of the Village of Marcellus, and shall be in addition to any and all other taxes and fees imposed by any other provision of law. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Marcellus, notwithstanding that some act be necessarily performed with respect to such transaction within such limits

Section 28-2 – Definitions – As used in this chapter and in compliance with Section 186-a.2 of the Tax Law:

(a) The word "utility" includes 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 or of operating railroads other than street surface, rapid transit, subway and elevated 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, refrigerator, 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 of the Village of Marcellus;

(b) The word "person" means persons, corporations, companies, associations, joint-stock associations, co-partnerships, 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, and public districts;

(c) The words "gross income" mean and include 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 of Marcellus, 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; 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 cost of the period for which a return is made); also receipts from interest, dividends, and royalties, derived from sources within the Village of Marcellus other than such as are received from a corporation a majority of whose voting stock is owned by the tax-paying utility, without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof, and also profits from any transaction (except sales for resale and rentals) within the Village of Marcellus whatsoever; provided, however, that the words "gross income" shall include, in the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village of Marcellus, and in the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village of Marcellus; and

(d) The words "gross operating- income" mean and in include 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, telegraph service in the Village of Marcellus, 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.

Section 28-3 – Records – Every utility subject to tax under this chapter 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, except that the Village Treasurer may consent to their destruction within that period or may require that they be kept longer.

Section 28-4 – Filing, contents of returns – Every utility subject to tax hereunder shall file annually, on or before the twenty-fifth day of March, a return for the twelve [12] calendar months preceding such return date or any portion thereof for which the tax imposed hereby is effective; 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 come or gross operating income for the period covered thereby. Returns shall be filed with the Village Treasurer on a form to be furnished by him for such purpose and shall maintain such other data, information or matter as he may require to be included therein. The Village Treasurer, in order to insure payment of the tax imposed, may require at any time a further or supplemental return, which shall contain in any data that may be specified by him, and he may require any utility doing business in the Village of Marcellus to file an annual return, which shall contain any data specified by him, regardless of whether the utility is subject to tax under this chapter. Every

return shall have annexed thereto an affidavit of the head 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 is conducted by a corporation, to the effect that the statements contained therein are true.

Section 28-5 – Payment – At the time of filing a return, as required by this chapter, each utility shall pay to the Village Treasurer the tax imposed by this chapter 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.

Section 28-6 – Failure to file, incorrect returns

(a) Determination of tax by Treasurer; hearing. In case any return filed pursuant to this chapter shall be insufficient or unsatisfactory to the Village Treasurer, 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 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 thirty [30] days after the giving of notice of such determination, apply to the Village Treasurer for a hearing, or unless the Village Treasurer, of his own motion shall reduce the same. After such hearing, the Village Treasurer shall give notice of his decision to the person liable for the tax.

(b) Review of final determination. 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 therefore is made within ninety [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 thereon, if any, shall be first deposited with the Village 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 application, 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.

(c) Limitation of additional tax. Except in the case of willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three [3] years from the date of the filing of a return, provided, however, that where no return has been filed as required by this chapter, the tax may be assessed at any time.

Section 28-7 – Notice – Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the persons 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, 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 person to whom addressed. Any period of time, which is determined according to the provisions of this chapter by the giving of notice, shall commence to run from the date of mailing of such notice.

Section 28-8 – Penalties and interest – 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 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, 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.

Section 28-9 – Refunds – If, within one [1] year from the payment of any tax or penalty, the payer thereof 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 time period, a refund may be so made on the initiative of the Village Treasurer. However, no refund shall be made or tax or penalty paid pursuant to a determination of the Village Treasurer, as hereinbefore provided, unless the Village Treasurer, 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 proceeding under Article 78 of the Civil Practice Act 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. 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 an order to review such determination under said Article 78, subject to the provision hereinbefore contained relating to the granting of such an order.

Section 28-10 – Tax to constitute part of operating costs – The tax imposed by this chapter 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.

Section 28-11 – Enforcement – Whenever any person shall fail to pay any tax or penalty imposed by this chapter, 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 Section 186 of the Tax Law is made a lien.

Section 28-12 – Powers of Village Treasurer – In the administration of this chapter, the Village Treasurer shall have the 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, and subpoena and require the attendance of witnesses and the production of books, papers and documents.

Section 28-13 – Divulgence of information contained in returns

(a) *Prohibited; exceptions.* Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Village Treasurer, or any agent, clerk or employee of the Village of Marcellus 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. 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 of Marcellus in an action or proceeding under the provisions of this chapter, 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 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 of 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 statistics so classified as to prevent the identification of particular returns and the items thereof, or 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, together with any relevant information which in the opinion of the Village 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 Marcellus 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.

(b) *Exchange of Information.* Notwithstanding any provisions of this chapter, the Village Treasurer may exchange with the chief fiscal officer of any other municipality in the State of New York, information contained in returns filed under this chapter, provided such other municipality grants similar privileges to the Village of Marcellus, and provided such information is to be used for tax purposes only, and the Village Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

Section 28-14 – Disposition of taxes, penalties – All taxes and penalties received by the Village Treasurer under this chapter shall be paid into the treasury of the village, and shall be credited to and deposited in the genera fund of the village.

Section 28-15 – Reserved