

CHAPTER 10 ELECTRIC TAX

- 3-10-1 Definitions
- 3-10-2 Tax Imposed Upon End Users of Electricity
- 3-10-3 Effective Date
- 3-10-4 Utility Tax
- 3-10-5 Exceptions
- 3-10-6 Additional Taxes
- 3-10-7 Retail Sale
- 3-10-8 Collection
- 3-10-9 Books and Records
- 3-10-10 Tax Remittance and Return
- 3-10-11 Credit Over Payment
- 3-10-12 Fines, Penalties
- 3-10-13 Reinstatement of Utility Tax on Electricity

3-10-1 DEFINITIONS

Terms used in this Chapter 10 of Title 3, whether capitalized or not, shall have the following meanings.

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.

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 electricity 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, electricity acquired in a purchase at retail (other than an exempt purchaser).

Tax collector: the person delivering electricity to the purchaser.

3-10-2 TAX IMPOSED UPON END USERS OF ELECTRICITY

Pursuant to the Illinois Municipal Code (65 ILCS 5/8-11-2) and any other applicable authority, a tax is hereby 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, as calculated on a monthly basis for each purchaser, except for electricity used or consumed by the Village:

1. For the first 2,000 Kilowatt-hours ("Kwh") used or consumed in a month, .535 cents per Kwh;
2. For the next 48,000 Kwh used or consumed in a month, .351 cents per Kwh;
3. For the next 50,000 Kwh used or consumed in a month, .316 cents per Kwh;
4. For the next 400,000 Kwh used or consumed in a month, .307 cents per Kwh;
5. For the next 500,000 Kwh used or consumed in a month, .298 cents per Kwh;
6. For the next 2,000,000 Kwh used or consumed in a month, .280 cents per Kwh;
7. For the next 2,000,000 Kwh used or consumed in a month, .276 cents per Kwh;
8. For the next 5,000,000 Kwh used or consumed in a month, .272 cents per Kwh;
9. For the next 10,000,000 Kwh used or consumed in a month, .267 cents per Kwh; and
10. For all electricity consumed or used in excess of 20,000,000 kwh in a month, .263 cents per kwh.

The tax rates set forth hereinabove will be used at least through December 31, 2008, are proportional to the rates enumerated in 65 ILCS 5/8-11-2 (as modified by Public Act 90-561), and do not exceed the revenue that could have been collected during 1997 using the rates enumerated in 65 ILCS 5/8-11-2 (as modified by Public Act 90-561).

3-10-3 EFFECTIVE DATE

The tax rates as set forth in Section 3-10-2 herein shall become effective as follows:

1. For all residential customers within the corporate limits of the Village, August 1, 1998.
2. For non-residential customers, upon the earlier of the date of the first bill issued to each non-residential customer pursuant to 220 ILCS 5/16-104 or the last bill issued prior to December 31, 2000.

3-10-4 UTILITY TAX

Pursuant to 65 ILCS 5/8-11-2, the tax provided in Section 3-8-1-C herein shall remain in full force and effect as follows:

1. For gross receipts (as defined in Section 3-8-4 of this Code) attributable to residential customers, until August 1, 1998; and
2. For gross receipts attributable to nonresidential customers until the earlier of the last bill issued prior to December 31, 2000, or the date of the first bill issued to each nonresidential customer pursuant to 220 ILCS 5/16-104.

3-10-5 EXCEPTIONS

None of the taxes authorized by this Chapter 10 of Title 3 may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, or selling or transmitting gas, water, or electricity, or engaged in the business of transmitting messages, or using or consuming electricity acquired in a purchase at retail, be subject to taxation under the provisions of this Chapter 10 of Title 3 for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by 65 ILCS 5/8-11-1; nor shall any tax authorized by this Chapter 10 of Title 3 be imposed upon any persons engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the municipality, whether privately or municipally owned or operated, or exercising the same privilege within the municipality.

3-10-6 ADDITIONAL TAXES

The tax set forth in Section 3-10-2 herein shall be in addition to other taxes levied upon the taxpayer or its business.

3-10-7 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.

3-10-8 COLLECTION

The tax imposed by this Chapter 10 of Title 3 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 10 of Title 3 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 to 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 Chapter 10 of Title 3 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 Chapter 10 of Title 3 shall, at the time of filing such return, pay the Village the amount of the tax collected pursuant to this Chapter 10 of Title 3.

3-10-9 BOOKS AND RECORDS

Every person delivering electricity who is required to collect a tax pursuant to Section 3-10-8 herein shall keep accurate books and records of all transactions which may affect the tax provided for in Section 3-10-2, including, but not limited to, records of the number of Kilowatt-hours (Kwh) 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 Chapter 10 of Title 3 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 this Chapter 10 of Title 3, and the total gross receipts received by the electricity deliverer for each month, not including the tax imposed by this Chapter 10 of Title 3. The books and records shall be subject to and available for inspection at all times during business hours of the day.

3-10-10 TAX REMITTANCE AND RETURN

A. Every person collecting a tax pursuant to this Chapter 10 of Title 3 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 3-10-8.

B. Each person who is required to pay a tax pursuant to this Chapter 10 of Title 3 and who has not paid said tax to the electricity deliverer as provided for herein and who is not otherwise exempt from paying such tax shall 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 and shall file a return with the Village for the preceding month stating:

1. The name of the owner of the property where the electricity is consumed or the name of the taxpayer if different.

2. The taxpayer's principle place of business or residence.
3. The number of kilowatt-hours (Kwh) of electricity used during the month.
4. The amount of the tax.
5. Such other reasonable and related information as the Village may require.

3-10-11 CREDIT FOR OVERPAYMENT

If an amount of tax is paid which is not due under the provisions of this Chapter 10 of Title 3, 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 Chapter 10 of Title 3 from the person who made the erroneous payment; provided that no amounts erroneously paid more than one year prior to the filing of a claim therefor shall be so credited.

No person shall be entitled to a credit for a tax imposed under this Chapter 10 of Title 3 unless the person files a claim for credit within one year after the date on which the tax was paid or remitted. All such claims shall first be filed with the Village.

3-10-12 FINES, PENALTIES

Any taxpayer who fails to make a return, or who makes a fraudulent return, or who violates any other provision of this Chapter 10 of Title 3 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$200.00, plus all costs of prosecution including, but not limited to, filing fees, witness fees, attorney fees and court costs. For purposes of this Section 3-10-12, each day upon which a violation occurs or continues to occur shall be deemed a separate and distinct violation. This penalty is in addition to any civil action which may be available to the Village or electric deliverer to collect upon the amount of tax due.

3-10-13 REINSTATEMENT OF UTILITY TAX ON ELECTRICITY

In the event Public Act 90-561 is declared unconstitutional, or if this Chapter 10 of Title 3 is found unconstitutional or voided by any court of competent jurisdiction, the provisions of Section 3-8-1-C 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 Chapter 10 of Title 3 shall be deemed to have been paid pursuant to Section 3-8-1-C as it existed prior to the passage of this Chapter 10 of Title 3.