

THE COUNCIL OF THE CITY OF WATERVLIET

LOCAL LAW NO. 3-I FOR THE YEAR 2017

**A LOCAL LAW TO AMEND CHAPTER 253. TAXATION
OF THE CODE OF THE CITY OF WATERVLIET
BY ADDING A NEW ARTICLE VIII ENTITLED
“TAX ON GROSS INCOME OR GROSS OPERATING
INCOME OF CORPORATIONS OR UTILITIES”**

WHEREAS, it is the purpose of this local law to amend Chapter 253. Taxation of the Code of the City of Watervliet by adding a new Article VIII entitled “Tax on Gross Income or Gross Operating Income of Corporations or Utilities”; and

WHEREAS, the Council of the City of Watervliet held a public hearing on March 16, 2017. Copies of the minutes of the public hearing are available for inspection at the office of the City Clerk of the City of Watervliet.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Watervliet as follows:

SECTION I

The Code of the City of Watervliet is hereby amended by adding a new Article VIII entitled “Tax on Gross Income or Gross Operating Income of Corporations or Utilities” and shall read as follows:

Article VIII. Tax on Gross Income or Gross Operating Income of Corporations or Utilities

§ 253-19. Imposition of tax.

Pursuant to the authority granted by § 20-b of the General City Law of the State of New York, a tax equal to 1% of its gross income from and after July 1, 1937, is hereby imposed upon every utility doing business in the City of Watervliet 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 3-b of the Public Service Law, and a tax equal to 1% of its gross operating income is hereby imposed from and after Jul 1, 1937, upon every other utility doing business in the City of Watervliet 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 City of Watervliet and shall be in addition to any and all other taxes and fees imposed by any other provisions of law for the same period. Such taxes shall not be imposed on any transactions originating or consummated outside of the territorial limits of the City of Watervliet, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

§ 253-20. Definitions.

As used in this article, the following terms shall have the meanings indicated:

GROSS INCOME

Includes 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 City of Watervliet, 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 the City of Watervliet 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, and also profits from any transaction (except sales for resale and rentals) within the City of Watervliet whatsoever.

GROSS OPERATING INCOME

Includes 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 City of Watervliet, 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.

PERSON

Persons, corporations, companies, associations, joint-stock associations, co-partnerships, estates, assignees 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.

UTILITY

Includes every person subject to the supervision of either Division of 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.

§253-21. Utilities subject to tax required to keep records.

Every utility subject to tax under this article shall keep such records of its business and in such form as the Director of Finance may require, and such records shall be preserved for a period of three years, except that the Director of Finance may consent to their destruction within that period or may require that they be kept longer.

§ 253-22. Date when returns are filed with Director of Finance.

Every utility subject to tax hereunder shall file, on or before September 25, December 25, March 25 and June 25, a return for the three calendar months preceding each such return date, including any period for which the tax imposed hereby or by any amendment hereof is effective, each of which returns shall state the gross income or gross operating income for the period covered by each such return. Returns shall be filed with the Comptroller on a form to be furnished by him for such purpose and shall contain such other data, information or matter as the Director of Finance may require to be included therein.

Notwithstanding the foregoing provisions of this section, any utility whose average gross income or average gross operating income, as the case may be, for the aforesaid three-month periods is less than \$1,500, may file a return annually on June 25, for the 12 preceding calendar months, and the Director of Finance may require any utility doing business in the City of Waterbury to file an annual return which shall contain any data specified by the Director of Finance regardless of whether the utility is subject to tax under this article. The Director of Finance, 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 the Director of Finance. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or of the copartner thereof, or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that statements contained therein are true.

§253-23. Taxpayable at time of filing return.

At the time of filing a return as required by this article, each utility shall pay to the Director of Finance the tax imposed by this article 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.

§253-24. Procedures when insufficient return is filed.

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Director of Finance, and if a corrected or sufficient return is not filed within 20 days after the same is required by notice from the Director of Finance, or if no return is made for any period, the Director of Finance 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. The Director of Finance 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 Director of Finance for a hearing or unless the Director of Finance of his own motion shall reduce the same. After such hearing, the Director of Finance shall give notice of his decision to the person liable for the tax. Any final determination by the Director of Finance 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 Act if application is made to the Supreme Court within 30 days after the giving of a notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Act 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 or regulation, 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.

§253-25. Mailing of notice.

- Any notice authorized or required under the provisions of this article 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 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 person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of mailing of such notice.

§ 253-26. Penalty for failing to file return; exceptions.

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 article 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, excepting the first month after such return was required to be filed or such tax became due; but the Director of Finance, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 253-27. Refunds.

If, within one year from the payment of any tax or penalty, the payer thereof shall make application for a refund thereof and the Director of Finance or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Director of Finance 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 Director of Finance. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Comptroller as hereinbefore provided unless the Director of Finance, 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 article. 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 Director of Finance may receive additional evidence with respect thereto. After making this determination, the Comptroller 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.

§ 253-28. Tax imposed constitutes part of operating costs.

The tax imposed by this article shall be charged 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.

§ 253-29. Failure to pay tax or penalty.

Whenever any person shall fail to pay any tax or penalty imposed by this article, the Corporation Counsel shall, upon the request of the Director of Finance, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Director of Finance. 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.

§ 253-30. Director of Finance; power to enforce rules and regulations.

In the administration of this article, the Director of Finance 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 article, and to subpoena and require the attendance of witnesses and the production of books; papers and documents.

§ 253-31. Unlawful for Director of Finance to divulge gross income or gross operating income.

- A. Except in accordance with the proper judicial order as otherwise provided by law, it shall be unlawful for the Director of Finance, or any agent, Clerk or employee of the City of Watervliet 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 article. 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 City of Watervliet in an action or proceeding under the provisions of this article, 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 article 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 article, together with any relevant information which in the opinion of the Comptroller may assist in the collection of such delinquent taxes; or the inspection by the Corporation Counsel or other legal representatives of the City of Watervliet 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 article.
- B. Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding six months, or both, and if the offender be an officer, agent, Clerk or employee of the City of Watervliet he shall be dismissed from office and shall be incapable of holding any office or employment in the City of Watervliet for a period of five years thereafter.
- C. Notwithstanding any provisions of this article, the Director of Finance may exchange with the chief fiscal officer of any other City in the State of New York information contained in returns filed under this article, provided that such other City grants similar privileges to the City of Watervliet, and provided that such information is to be used for tax purposes only, and the Comptroller shall, upon request, furnish the State Tax Commission with any information contained in such returns.

§ 253-32 General fund of City of Watervliet.

All taxes and penalties received by the Director of Finance under this article shall be credited to and deposited in the general fund of the City of Watervliet.

SECTION II

Severability

If any section of this local law or the application thereof to any person, circumstance or property shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person, circumstance or property, and to this end, the provisions of each section of this local law are declared severable.

SECTION III

Supersession and Repeal of other laws

All ordinance, local laws and parts thereof in conflict with the provisions of this local law are hereby repealed to the extent necessary to give this local law full force and effect.

SECTION IV

Effective Date

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

Approved as to form this 16th day of March, 2017.

Yorden C. Huban, Esq.
Corporation Counsel

Attested by the Clerk of the Council this 16th day of March, 2017.

Clerk

I hereby approve the foregoing Local Law of the Council of the City of Watervliet.

Date

Michael P. Manning
Mayor