

## CHAPTER 36

### TAXATION

#### ARTICLE I - GENERALLY

**36-1-1**        **CORPORATE RATE.** The maximum rate for general corporate purposes of the Village be and the same is hereby established at a rate of **.25%**. (See 65 ILCS Sec. 5/8-3-1)

**36-1-2**        **POLICE TAX.** The maximum rate for police protection purposes of the Village be and the same is hereby established at a rate of **.075%**. (See 65 ILCS Sec. 5/11-1-3)

**36-1-3**        **AUDIT TAX.** The Village Board may levy a "Municipal Auditing Tax" upon all taxable property in the Village which will produce an amount which will equal the cost of all auditing for the Village. (See 65 ILCS Sec. 5/8-8-8)

**36-1-4**        **F.I.C.A. TAX.** The Village Board may levy a tax upon all taxable property in the Village at whatever rate is necessary to participate in the federal Social Security System. (See 40 ILCS Sec. 5/21-101 et seq.)

**36-1-5**        **GENERAL LIABILITY.** The Village Board may levy a tax upon all taxable property in the Village at whatever rate is necessary to purchase general liability insurance for the Village.

**36-1-6**        **FIRE PROTECTION TAX.** The maximum tax for fire protection purposes of the Village, be and the same is hereby established at a rate of **.075%**. (See 65 ILCS Sec. 5/11-7-1)

**36-1-7**        **WORKMEN'S COMPENSATION.** The maximum tax for Worker's Compensation and Occupational Diseases Claims purposes, be and the same is hereby established at a rate to pay for legal services, purchase insurance, purchase claim services, pay for judgments and settlements. (See 745 ILCS Sec. 10/9-107)

**36-1-8**        **PUBLIC PARKS TAX.** The maximum tax for Public Park purposes, be and the same is hereby established at a rate of **.075%**. (See 65 ILCS Sec. 5/11-98-1)

**36-1-9**        **STREET AND BRIDGE.** The maximum tax for Street and Bridge purposes, be and the same is hereby established at a rate of **.06%**. (See 65 ILCS Sec. 5/11-81-1 and 5/11-81-2)

## ARTICLE II

### TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

**36-2-1**      **DEFINITIONS.** As used herein, the following terms shall have the following meanings:

(A)      **"Gross Charges"** means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the Village, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within the Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter-office channel provided within the Village. However, "gross charges" shall not include:

- (1) any amounts added to a purchaser's bill because of a charge made under:
  - (a) the fee imposed by this Section,
  - (b) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act,
  - (c) amounts collected under Section 8-11-17 of the Illinois Municipal Code,
  - (d) the tax imposed by the Telecommunications Excise Tax Act,
  - (e) 911 surcharges, or
  - (f) the tax imposed by Section 4251 of the Internal Revenue Code;
- (2) charges for a sent collect telecommunication received outside the Village;
- (3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
- (4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

- (5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Village;
- (6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;
- (7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
- (8) charges paid by inserting coins in coin-operated telecommunications devices; or
- (9) charges for telecommunications and all services and equipment provided to the Village.

(B) **"Public Right-of-Way"** means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the Village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public Right-of-Way" shall not include any real or personal Village property that is not specifically described in the previous sentence and shall not include Village buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(C) **"Retailer maintaining a place of business in this State"**, or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(D) **"Sale of telecommunications at retail"** means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

(E) **"Service address"** means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(F) **"Telecommunications"** includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value-added services in which computer-processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provisions and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable service through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Section 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

(G) **"Telecommunications provider"** means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

(H) **"Telecommunications retailer" or "retailer" or "carrier"** means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Village, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business in the Village.

(I) **"Wireless telecommunications"** includes cellular mobile services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §331(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

**36-2-2            REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.**

(A)            Every telecommunications provider as defined by this Article shall register with the Village within **thirty (30) days** after the effective date of this Article or becoming a telecommunications provider, whichever is later, on a form to be provided by the Village, provided, however, that any telecommunications retailer that has filed a return pursuant to **Section 36-2-4(C)** of this Article shall be deemed to have registered in accordance with this Section.

(B)            Every telecommunications provider who has registered with the Village pursuant to **Section 36-2-2(A)** has an affirmative duty to submit an amended registration form or current return as required by **Section 36-2-4(C)**, as the case may be, to the Village within **thirty (30) days** from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the Village.

**36-2-3            MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.**

(A)            A Village telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of **one percent (1%)** of all gross charges charged by the telecommunications retailers to service addresses within the Village for telecommunications originating or received in the Village.

(B)            Upon the effective date of the infrastructure maintenance fee authorized in this Article, the Village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the Village by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Article does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

(C)            The Village telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in **Section 36-2-4** of this Article.

**36-2-4            COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEES.**

(A)            A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the Village infrastructure maintenance fee attributable to that customer's service address.

(B)            Unless otherwise approved by the Village the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the Village not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed **two percent (2%)** of the Village infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

(C) Remittance of the municipal infrastructure fee to the Village shall be accompanied by a return, in a form to be prescribed by the Village, which shall contain such information as the Village may reasonably require.

(D) Any infrastructure maintenance fee required to be collected pursuant to this Article and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the Village. The charge imposed under **Section 36-2-4(A)** by the telecommunications retailer pursuant to this Article shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

(E) If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Article, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Article, from the telecommunications retailer who made the erroneous payment; provided, however, the Village may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than **three (3) years** after the date of the erroneous payment unless, (1) the credit is used only to offset a claim of underpayment made by the Village within the applicable statutory period of limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

(F) Amounts paid under this Article by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

- (1) **"gross charges"** for purposes of the Telecommunications Excise Tax Act;
- (2) **"gross receipts"** for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;
- (3) **"gross charges"** for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;
- (4) **"gross revenue"** for purposes of the tax on annual gross revenue of public utilities in Section 2-202 of the Public Utilities Act.

(G) The Village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Article to determine whether the telecommunications retailer has properly accounted to the Village for the Village infrastructure maintenance fee. Any underpayment of the amount of the Village infrastructure maintenance fee due to the Village by the telecommunications retailer shall be paid to the Village plus **five percent (5%)** of the total amount of the underpayment determined in an audit, plus any costs incurred by the Village in conducting the audit, in an amount not to exceed **five percent (5%)** of the total amount of the underpayment determined in an audit. Said sum shall be paid to the Village within **twenty-one (21) days** after the date of issuance of an invoice for same.

(H) The Village or his or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Article consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to **Section 36-2-2** of this Article of such regulations.

**36-2-5**        **COMPLIANCE WITH OTHER LAWS.** Nothing in this Article shall excuse any person or entity from obligations imposed under any law, including but not limited to:

- (A)            generally applicable taxes; and
- (B)            standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and
- (C)            Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and
- (D)            Compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way.

**36-2-6**        **EXISTING FRANCHISES AND LICENSES.** Any franchise, license, or similar agreements between telecommunications retailers and the Village entered into before the effective date of this Article regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

**36-2-7**        **PENALTIES.** Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Article shall be subject to fine in accordance with the general penalty provisions of the Village Municipal Code.

**36-2-8**        **WAIVER AND FEE IMPLEMENTATION.**

(A)            The Village hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the Village by a telecommunications retailer pursuant to any existing Village franchise, license, or similar agreement with a telecommunications retailer during the time the Village imposes the Telecommunications Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Article is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

(B)            The Village Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the Village has a franchise.

(C)            The Village infrastructure maintenance fee provided for in this Article shall become effective and imposed on the **first (1<sup>st</sup>) day** of the month not less than **ninety (90) days** after the Village provides written notice by certified mail to each telecommunications retailer with whom the Village has an existing franchise, license, or similar agreement that the Village waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the Village. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

## ARTICLE III

### MUNICIPAL UTILITY TAX

**36-3-1**      **TAX IMPOSED.** A tax is imposed on all persons engaged in the following occupations or privileges:

(A)            Persons engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the Village and not for resale, at the rate of **five percent (5%)** of the gross receipts therefrom.

(B)            Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the Village and not for resale, at the rate of **five percent (5%)** of the gross receipts therefrom.

**36-3-2**      **EXCEPTIONS.** None of the taxes authorized by this Article may be imposed 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 the subject of taxation by this State or any political subdivision thereof; nor shall any person engaged in the business of distributing, supplying, furnishing or selling gas, water, or engaged in the business of transmitting messages, 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 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 **Chapter 65, Sec. 5/8-11-1, Illinois Compiled Statutes**, nor shall any tax authorized by this Section be imposed upon any person engaged in the business unless such 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.

**36-3-3**      **ADDITIONAL TAXES.** Such tax shall be in addition to the payment of money, or value of products or services furnished to this municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayers' business.

**36-3-4**      **DEFINITIONS.** For the purposes of this Article, the following definitions shall apply:

**"GROSS RECEIPTS"** means the consideration received for the transmission of messages, the consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale, and the consideration received for distributing, supplying, furnishing, and the consideration received for distributing, supplying, furnishing or selling



water for use or consumption and not for resale, except for that consideration received from the Village; 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 such messages without any deduction on account of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expenses whatsoever. **(Ord. No. 86-1; 01-28-86)**

**"TRANSMITTING MESSAGES"**, in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons for the transmission of messages.

**"PERSON"** means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator, or other representative appointed by order of any court.

**36-3-5      REPORTS TO MUNICIPALITY.** On or before the last day of **October, 1956**, each taxpayer shall make a return to the Village Clerk for the months of **June, July and August, 1956**, stating:

- (A)            His name.
- (B)            His principal place of business.
- (C)            His gross receipts during those months upon the basis of which the tax is imposed.
- (D)            Amount of tax.
- (E)            Such other reasonable and related information as the corporate authorities may require.

On or before the last day of every third month thereafter, each taxpayer shall make a like return to the Village Treasurer for a corresponding **three (3) month** period.

The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Village Treasurer, the amount of tax herein imposed; provided that in connection with any return, the taxpayer may, if he so elects, report and 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 differences between such billings, and the taxable gross receipts.

**36-3-6**      **CREDIT FOR OVER-PAYMENT.** If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this Article from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than **three (3) years** prior to the filing of a claim therefor shall be so credited.

No action to recover any amount of tax due under the provisions of this Article shall be commenced more than **three (3) years** after the due date of such amount.

**36-3-7**      **PENALTY.** Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Article shall, upon conviction, be fined as provided in Section 1-1-20 of the Village Code and in addition, shall be liable in a civil action for the amount of tax due.

**(See 65 ILCS Sec. 5/8-11-2)**  
**(Ord. No. 98; 04-09-56)**

## ARTICLE IV

### ELECTRIC UTILITY TAX

**36-4-1**      **DEFINITIONS.** As used in this Article, unless the context otherwise requires:

(A)            **Village** means the Village of Energy, Illinois.

(B)            **Person** as used in this Section means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivision, any State university created by statute, or a receiver, trustee, guardian or other representative appointed by order of any court.

(C)            **Person maintaining a place of business in this State** shall mean any person having or maintaining within this 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 this 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 this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

(D)            **Public utility** shall have the meaning ascribed to it in Section 3-105 of the Public Utilities Act and shall include telecommunications carriers as defined in Section 13-202 of that Act and alternative retail electric suppliers as defined in Section 16-102 of that Act.

(E)            **Purchase at retail** shall mean any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but shall include the use of electricity by a public utility directly in the generation, production, transmission, delivery or sale of electricity.

(F)            **Purchaser** shall mean any person who uses or consumes, within the corporate limits of the Village, electricity acquired in a purchase at retail.

(G)            **Tax collector** means the person delivering electricity to the purchaser.

**36-4-2**      **TAX IMPOSED.**

(A)            Pursuant to Section 8-11-2 of the Illinois Municipal Code (**65 ILCS Sec. 5/8-11-2**) and any and all other applicable authority, a tax is imposed upon the privilege of using or consuming electricity acquired in a purchase 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:

(1)	First 2,000 KWH	.377 cents per KWH
(2)	Next 48,000 KWH	.247 cents per KWH
(3)	Next 50,000 KWH	.222 cents per KWH
(4)	Next 400,000 KWH	.216 cents per KWH
(5)	Next 500,000 KWH	.210 cents per KWH

(6)	Next 2,000,000 KWH	.198 cents per KWH
(7)	Next 2,000,000 KWH	.195 cents per KWH
(8)	Next 5,000,000 KWH	.192 cents per KWH
(9)	Next 10,000,000 KWH	.188 cents per KWH
(10)	Over 20,000,000 KWH	.185 cents per KWH

(B) The tax is in addition to all taxes, fees and other revenue measures imposed by the Village, the State of Illinois or any other political subdivision of the State.

(C) Notwithstanding any other provisions of the Article, the tax shall not be imposed if and to the extent that imposition or collection of the tax would violate the Constitution of the United States or the Constitution of the State of Illinois.

(D) The tax shall be imposed with respect to the use or consumption of electricity by residential customers beginning with the first bill issued on or after **October 1, 1998**; and with respect to the use or consumption of nonresidential customers beginning with the first bill issued to such customers for delivery services in accordance with Section 16-104 of the Public Utilities Act (**220 ILCS Sec. 5/16-104**), or the first bill issued to such customers on or after **January 1, 2001**, whichever issuance occurs sooner.

**36-4-3      COLLECTION.**

(A) Subject to the provisions of this Article regarding the delivery of electricity to resellers, the tax imposed under this Article shall be collected from purchasers by the person maintaining a place of business in this State who delivers the electricity to such purchasers. This tax shall constitute a debt of the purchasers to the person who delivers the electricity to the purchaser and is recoverable at the same time and in the same manner as the original charge for delivering the electricity.

(B) Any tax required to be collected by this Article and any tax in fact collected, shall constitute a debt owed to the Village 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.

(C) 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 also be authorized to add to such gross charge an amount equal to **three percent (3%)** of the tax they collect to reimburse them for their expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the Village upon request. For the purposes of this Article, any partial payment of a billed amount not specifically identified by the purchaser shall be deemed to be for the delivery of electricity.

**36-4-4      TAX REMITTANCE AND RETURN.**

(A)            Every tax collector shall on a monthly basis file a return in a form prescribed by the Village. The return and accompanying remittance shall be due 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 this Article.

(B)            If the person delivering electricity fails to collect the tax from the purchaser or is excused from collecting the tax under this Article, then the purchaser shall file a return and pay the tax directly to the Village on or before the last day of the month following the month during which the electricity is used or consumed. This return shall include the following taxpayer information:

- (1)    Taxpayer name;
- (2)    Principal place of business;
- (3)    Gross receipts and/or kilowatt-hour usage during the month upon the basis of which the tax is imposed;
- (4)    Amount of tax; and
- (5)    Such other reasonable and related information as the Village authorities may require.

**36-4-5      RESALES.**

(A)            Electricity that is delivered to a person in the Village shall be considered to be for the use and consumption by that person unless the person receiving the electricity has an active resale number issued by the Village and furnishes that number to the person who delivers the electricity, and certifies to that person that the sale is entirely or partially nontaxable as a sale for resale.

(B)            If a person who receives electricity in the Village claims to be an authorized reseller of electricity, that person shall apply to the Village for a resale number. The applicant shall state facts showing why it is not liable for the tax imposed by this Article on any purchases of electricity and shall furnish such additional information as the Village may reasonably require.

(C)            Upon approval of the application, the Village shall assign a resale number to the applicant and shall certify the number to the applicant.

(D)            The Village may cancel the resale number of any person if the person fails to pay any tax payable under this Article for electricity used or consumed by the person, or if the number:

- (1)    was obtained through misrepresentation; or
- (2)    is no longer necessary because the person has discontinued making resales.

(E)            (1)    If a reseller has acquired electricity partly for use or consumption and partly for resale, the reseller shall pay the tax imposed by this Article directly to the Village pursuant to this Article on the amount of electricity that the reseller uses or consumes, and shall

collect the tax pursuant to this Section 36-4-3 and remit the tax pursuant to the **Section 36-4-2(A)** on the amount of electricity delivered by the reseller to a purchaser.

- (2) Any person who delivers electricity to a reseller having an active resale number and complying with all other conditions of the Section shall be excused from collecting and remitting the tax on any portion of the electricity delivered to the reseller, provided that the person reports to the Village the total amount of electricity delivered to the reseller, and such other information that the Village may reasonably require.

**36-4-6**      **BOOKS AND RECORDS.** Every tax collector, and every taxpayer required to pay the tax imposed by this Article, shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transaction that gave rise, or may have given rise, to any tax liability under this Article. The books and records shall be subject to and available for inspection at all times during business hours of the day.

**36-4-7**      **CREDITS AND REFUND.** Notwithstanding any other provisions of this Article, in order to permit sound fiscal planning and budgeting by the Village, no person shall be entitled to a refund of, or a credit for, a tax imposed under this Article unless the person files a claim for refund or credit within **one (1) year** after the date on which the tax was paid or remitted to the Village.

**(Ord. No. 98-12; 09-22-98)**

## ARTICLE V

### FOREIGN FIRE INSURANCE COMPANIES

**36-5-1**        **CONFORMANCE.** It shall be unlawful for any corporation or association, not incorporated under the laws of the State of Illinois to engage in the City in effecting fire insurance or to transact any business of fire insurance in this Village, while in default by not fully complying with any of the requirements of this Section, and until such requirements shall have been fully complied with; but this provision shall not relieve any company, corporation or association from the payment of any risk that may be undertaken in violation of this Section.

**36-5-2**        **FEES.** Any such corporation, company or association not incorporated under the laws of the State of Illinois, which is engaged in the Village in effecting fire insurance, shall pay the Village Treasurer for the maintenance, use, and benefit of the Fire Department of the Village, a sum of money equal in amount to **two percent (2%)** per annum of the gross receipts received as premiums upon fire insurance policies by any and all agents of such corporation, company, association during the year ending on the first day of July in each year, for any insurance effected or agreed to be effected on property located in the Village by or with such corporation, company, or association during such year.

**36-5-3**        **REQUIRED REPORTS.** Every person acting in the Village as agent for or on behalf of any such corporation, company, or association shall, on or before the **fifteenth (15<sup>th</sup>) day** of July of each and every year, render the Village Clerk a full, true, and just account verified by oath of all premiums upon fire insurance policies which, during the year ending the first day of July preceding such report, shall have been received by him, or by some other person for him, in his behalf of any such corporation, company or association on property located in the Village. Such agent shall also, at the time of rendering the aforesaid report, pay to the Village Treasurer the sum of money for which company, corporation, or association represented by him is chargeable, by virtue of the provisions of this Section.

**36-5-4**        **RECOVERY OF MONIES.** The sum of money for which such company, corporation, or association is so chargeable may be recovered of it, or its agents or agent, by an action in the name of and for the use of the Village as for money had and received. Nothing in this Section shall be held to exempt any person, corporation, company, association from indictment and conviction under the provisions of an act entitled "An Act to enable cities, towns, and villages, organized under any general or special law, to levy and collect a tax or license fee from foreign insurance companies for the benefit of organized fire department," in force **July 1, 1895.**

**36-5-5**        **UNLAWFUL OPERATION.** No insurance agent in the Village shall have any insurance business or dealings with any company, association, or corporation not incorporated under the laws of this state, which shall be in default for not reporting or making payments as hereinbefore provided, until it shall have complied with all the requirements of this Section.

**(Ord. No. 82-1; 06-08-91)**

## ARTICLE VI

### TAXPAYERS' RIGHTS CODE

**36-6-1** **TITLE.** This Article shall be known as, and may be cited as, the "Locally Imposed and Administered Tax Rights and Responsibility Code".

**36-6-2** **SCOPE.** The provisions of this Code shall apply to the Village's procedures in connection with all of the Village's locally imposed and administered taxes.

**36-6-3** **DEFINITIONS.** Certain words or terms herein shall have the meaning ascribed to them as follows:

(A) **Act.** "Act" means the "Local Government Taxpayers' Bill of Rights Act".

(B) **Corporate Authorities.** "Corporate Authorities" means the Village's President and Board of Trustees.

(C) **Locally Imposed and Administered Tax or "Tax".** "Locally Imposed and Administered Tax" or "Tax" means each tax imposed by the Village that is collected or administered by the Village not an agency or department of the State. It does not include any taxes imposed upon real property under the Property Tax Code or fees collected by the Village other than infrastructure maintenance fees.

(D) **Local Tax Administrator.** "Local Tax Administrator", the Village's Treasurer, is charged with the administration and collection of the locally imposed and administered taxes, including staff, employees or agents to the extent they are authorized by the local tax administrator to act in the local tax administrator's stead. The local tax administrator shall have the authority to implement the terms of this Code to give full effect to this Code. The exercise of such authority by the local tax administrator shall not be inconsistent with this Code and the Act.

(E) **Village.** "Village" means the Village of Energy, Illinois.

(F) **Notice.** "Notice" means each audit notice, collection notice or other similar notice or communication in connection with each of the Village's locally imposed and administered taxes.

(G) **Tax Ordinance.** "Tax Ordinance" means each ordinance adopted by the Village that imposes any locally imposed and administered tax.

(H) **Taxpayer.** "Taxpayer" means any person required to pay any locally imposed and administered tax and generally includes the person upon whom the legal incidence of such tax is placed and with respect to consumer taxes includes the business or entity required to collect and pay the locally imposed and administered tax to the Village.



**36-6-4**      **NOTICES.** Unless otherwise provided, whenever notice is required to be given, the notice is to be in writing mailed not less than **seven (7) calendar days** prior to the day fixed for any applicable hearing, audit or other scheduled act of the local tax administrator. The notice shall be sent by the local tax administrator as follows:

- (A)              First class or express mail, or overnight mail, addressed to the persons concerned at the persons' last known address, or
- (B)              Personal service or delivery.

**36-6-5**      **LATE PAYMENT.** Any notice, payment, remittance or other filing required to be made to the Village pursuant to any tax ordinance shall be considered late unless it is:

- (A)              physically received by the Village on or before the due date, or
- (B)              received in an envelope or other container displaying a valid, readable U.S. postmark dated on or before the due date, properly addressed to the Village, with adequate postage prepaid.

**36-6-6**      **PAYMENT.** Any payment or remittance received for a tax period shall be applied in the following order:

- (A)              first to the tax due for the applicable period;
- (B)              second to the interest due for the applicable period; and
- (C)              third to the penalty for the applicable period.

**36-6-7**      **CERTAIN CREDITS AND REFUNDS.**

(A)              The Village shall not refund or credit any taxes voluntarily paid without written protest at the time of payment in the event that a locally imposed and administered tax is declared invalidly enacted or unconstitutional by a court of competent jurisdiction. However, a taxpayer shall not be deemed to have paid the tax voluntarily if the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time of payment or if the taxpayer paid the taxes under duress.

(B)              The statute of limitations on a claim for credit or refund shall be **four (4)** or less years after the end of the calendar year in which payment in error was made. The Village shall not grant a credit or refund of locally imposed and administered taxes, interest, or penalties to a person who has not paid the amounts directly to the Village.

(C)              The procedure for claiming a credit or refund of locally imposed and administered taxes, interest or penalties paid in error shall be as follows:

- (1)              The taxpayer shall submit to the local tax administrator in writing a claim for credit or refund together with a statement specifying:
  - (a)              the name of the locally imposed and administered tax subject to the claim;
  - (b)              the tax period for the locally imposed and administered tax subject to the claim;

- (c) the date of the tax payment subject to the claim and the cancelled check or receipt for the payment;
  - (d) the taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and
  - (e) a request for either a refund or a credit in connection with the claim to be applied to the amount of tax, interest and penalties overpaid, and, as applicable, related interest on the amount overpaid; provided, however, that there shall be no refund and only a credit given in the event the taxpayer owes any monies to the Village.
- (2) Within **ten (10) days** of the receipt by the local tax administrator of any claim for a refund or credit, the local tax administrator shall either:
- (a) grant the claim; or
  - (b) deny the claim, in whole or in part, together with a statement as to the reason for the denial or the partial grant and denial.
- (3) In the event the local tax administrator grants, in whole or in part, a claim for refund or credit, the amount of the grant for refund or credit shall bear interest at the rate of **five percent (5%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed, from the date of the overpayment to the date of mailing of a refund check or the grant of a credit.

**36-6-8**      **AUDIT PROCEDURE.** Any request for proposed audit pursuant to any local administered tax shall comply with the notice requirements of this Code.

(A) Each notice of audit shall contain the following information:

- (1) the tax;
- (2) the time period of the audit; and
- (3) a brief description of the books and records to be made available for the auditor.

(B) Any audit shall be conducted during normal business hours and if the date and time selected by the local tax administrator is not agreeable to the taxpayer, another date and time may be requested by the taxpayer within **thirty (30) days** after the originally designated audit and during normal business hours.

(C) The taxpayer may request an extension of time to have an audit conducted. The audit shall be conducted not less than **seven (7) days** nor more than **thirty (30) days** from the date the notice is given, unless the taxpayer and the local tax administrator agreed to some other convenient time. In the event taxpayer is unable to comply with the audit on the date in question, the taxpayer may request another date within the **thirty (30) days**, approved in writing, that is convenient to the taxpayer and the local tax administrator.

(D) Every taxpayer shall keep accurate books and records of the taxpayer's business or activities, including original source documents and books of entry denoting the transactions which had given rise or may have given rise to any tax liability, exemption or deduction. All books shall be kept in the English Language and shall be subject to and available for inspection by the Village.

(E) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the Village. If the taxpayer or tax collector fails to provide the documents necessary for audit within the time provided, the local tax administrator may issue a tax determination and assessment based on the tax administrator's determination of the best estimate of the taxpayer's tax liability.

(F) If an audit determines there has been an overpayment of a locally imposed and administered tax as a result of the audit, written notice of the amount of overpayment shall be given to the taxpayer within **thirty (30) days** of the Village's determination of the amount of overpayment.

(G) In the event a tax payment was submitted to the incorrect local governmental entity, the local tax administrator shall notify the local governmental entity imposing such tax.

### **36-6-9**      **APPEAL.**

(A) The local tax administrator shall send written notice to a taxpayer upon the local tax administrator's issuance of a protestable notice of tax due, a bill, a claim denial, or a notice of claim reduction regarding any tax. The notice shall include the following information:

- (1) the reason for the assessment;
- (2) the amount of the tax liability proposed;
- (3) the procedure for appealing the assessment; and
- (4) the obligations of the Village during the audit, appeal, refund and collection process.

(B) A taxpayer who receives written notice from the local tax administrator of a determination of tax due or assessment may file with the local tax administrator a written protest and petition for hearing, setting forth the basis of the taxpayer's request for a hearing. The written protest and petition for hearing must be filed with the local tax administrator within **forty-five (45) days** of receipt of the written notice of the tax determination and assessment.

(C) If a timely written notice and petition for hearing is filed, the local tax administrator shall fix the time and place for hearing and shall give written notice to the taxpayer. The hearing shall be scheduled for a date within **fourteen (14) days** of receipt of the written protest and petition for hearing, unless the taxpayer requests a later date convenient to all parties.

(D) If a written protest and petition for hearing is not filed within the **forty-five (45) day** period, the tax determination, audit or assessment shall become a final bill due and owing without further notice.

(E) Upon the showing of reasonable cause by the taxpayer and the full payment of the contested tax liability along with interest accrued as of the due date of the tax, the local tax administrator may reopen or extend the time for filing a written protest and petition for hearing. In no event shall the time for filing a written protest and petition for hearing be reopened or extended for more than **ninety (90) days** after the expiration of the **forty-five (45) day** period.

**36-6-10**      **HEARING.**

(A) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under **Section 36-6-9**, above, the local tax administrator shall conduct a hearing regarding any appeal.

(B) No continuances shall be granted except in cases where a continuance is absolutely necessary to protect the rights of the taxpayer. Lack of preparation shall not be grounds for a continuance. Any continuance granted shall not exceed **fourteen (14) days**.

(C) At the hearing the local tax administrator shall preside and shall hear testimony and accept any evidence relevant to the tax determination, audit or assessment. The strict rules of evidence applicable to judicial proceedings shall not apply.

(D) At the conclusion of the hearing, the local tax administrator shall make a written determination on the basis of the evidence presented at the hearing. The taxpayer or tax collector shall be provided with a copy of the written decision.

**36-6-11**      **INTEREST AND PENALTIES.** In the event a determination has been made that a tax is due and owing, through audit, assessment or other bill sent, the tax must be paid within the time frame otherwise indicated.

(A)      **Interest.** The Village hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax to be **five percent (5%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed.

(B)      **Late Filing and Payment Penalties.** If a tax return is not filed within the time and manner provided by the controlling tax ordinance, a late filing penalty, of **five percent (5%)** of the amount of tax required to be shown as due on a return shall be imposed; and a late payment penalty of **five percent (5%)** of the tax due shall be imposed. If no return is filed within the time or manner provided by the controlling tax ordinance and prior to the Village issuing a notice of tax delinquency or notice of tax liability, then a failure to file penalty shall be assessed equal to **twenty-five percent (25%)** of the total tax due for the applicable reporting period for which the return was required to be filed. A late filing or payment penalty shall not apply if a failure to file penalty is imposed by the controlling ordinance.

**36-6-12**     **ABATEMENT.**   The local tax administrator shall have the authority to waive or abate any late filing penalty, late payment penalty or failure to file penalty if the local tax administrator shall determine reasonable cause exists for delay or failure to make a filing.

**36-6-13**     **INSTALLMENT CONTRACTS.**   The Village may enter into an installment contract with the taxpayer for the payment of taxes under the controlling tax ordinance. The local tax administrator may not cancel any installment contract so entered unless the taxpayer fails to pay any amount due and owing. Upon written notice by the local tax administrator that the payment is **thirty (30) days** delinquent, the taxpayer shall have **fourteen (14) working days** to cure any delinquency. If the taxpayer fails to cure the delinquency within the **fourteen (14) day** period or fails to demonstrate good faith in restructuring the installment contract with the local administrator, the installment contract shall be canceled without further notice to the taxpayer.

**36-6-14**     **STATUTE OF LIMITATIONS.**   The Village, through the local tax administrator, shall review all tax returns in a prompt and timely manner and inform taxpayers of any amounts due and owing. The taxpayer shall have **forty-five (45) days** after receiving notice of the reviewed tax returns to make any request for refund or provide any tax still due and owing.

(A)           No determination of tax due and owing may be issued more than **four (4) years** maximum after the end of the calendar year for which the return for the applicable period was filed or for the calendar year in which the return for the applicable period was due, whichever occurs later.

(B)           If any tax return is not filed or if during any **four (4) year** period for which a notice of tax determination or assessment may be issued by the Village, the tax paid was less than **seventy-five percent (75%)** of the tax due, the statute of limitations shall be **six (6) years** maximum after the end of the calendar year in which return for the applicable period was due or end of the calendar year in which the return for the applicable period was filed.

(C)           No statute of limitations shall not apply if a fraudulent tax return was filed by the taxpayer.

**36-6-15**     **VOLUNTARY DISCLOSURE.**   For any locally imposed and administered tax for which a taxpayer has not received a written notice of an audit, investigation, or assessment from the local tax administrator, a taxpayer is entitled to file an application with the local tax administrator for a voluntary disclosure of the tax due. A taxpayer filing a voluntary disclosure application must agree to pay the amount of tax due, along with interest of **one percent (1)** per month, for all periods prior to the filing of the application but not more than **four (4) years** before the date of filing the application. A taxpayer filing a valid voluntary disclosure application may not be liable for any additional tax, interest, or penalty for any period before the date the application was filed. However, if the taxpayer incorrectly determined and underpaid the amount of tax due, the taxpayer is liable for

the underpaid tax along with applicable interest on the underpaid tax, unless the underpayment was the result of fraud on the part of the taxpayer, in which case the application shall be deemed invalid and void. The payment of tax and interest must be made by no later than **ninety (90) days** after the filing of the voluntary disclosure application or the date agreed to by the local tax administrator. However, any additional amounts owed as a result of an underpayment of tax and interest previously paid under this Section must be paid within **ninety (90) days** after a final determination and the exhaustion of all appeals of the additional amount owed or the date agreed to by the local tax administrator, whichever is longer.

**36-6-16**     **PUBLICATION OF TAX ORDINANCES.** Any locally administered tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the Internet shall satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the Village Clerk's office.

**36-6-17**     **INTERNAL REVIEW PROCEDURE.** The local tax administrator shall establish an internal review procedure regarding any liens filed against any taxpayers for unpaid taxes. Upon a determination by the local tax administrator that the lien is valid, the lien shall remain in full force and effect. If the lien is determined to be improper, the local tax administrator shall:

- (A)           timely remove the lien at the Village's expense;
- (B)           correct the taxpayer's credit record; and
- (C)           correct any public disclosure of the improperly imposed lien.

**36-6-18**     **APPLICATION.** This Ordinance shall be liberally construed and administered to supplement all of the Village's tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

**(Ord. No. 2001-01; 01-09-01)**