

CHAPTER 70

TAXATION: TAX ON UTILITY SERVICES

§ 70-1. Tax on The Furnishings of Utility Services.....7001
 § 70-2. Definitions.....7002
 § 70-3. Records To Be Kept.....7004
 § 70-4. Quarterly or Annual Returns To Be Filed; Supplemental Returns.....7004
 § 70-5. Payment of Tax.....7005
 § 70-6. Insufficient Returns; Determination of Tax Due; Hearing and Review7005
 § 70-7. Service of Notice; Presumption of Delivery; Commencement Of Running Of Time7006
 § 70-8. Penalty For Failure To File Return or Pay Tax on Time; Remission of Penalty7006
 § 70-9. Refunds.....7006
 § 70-10. Tax To Be Paid by Utility.....7007
 § 70-11. Actions to Enforce Payment of Tax; Tax and Penalty as Lien7007
 § 70-12. Authority of City Treasurer in Administration of Tax7007
 § 70-13. Confidential Nature of Returns; Penalty For Disclosure; Exchange of Information With Other Fiscal Officers7007
 § 70-14. Disposition of Taxes and Penalties7008
 § 70-15. When Effective.....7009

[HISTORY: Adopted by the Common Council of the City of Dunkirk as L.L. #2-1937, which became a law on 7-1-1937. Amendments noted where applicable.]

GENERAL REFERENCES

Sale of Real Estate Acquired by Tax Foreclosure - See Ch. 60.
 Tax Exemption for Senior Citizens - See Ch. 69.

§ 70-1. Tax On The Furnishing of Utility Services. [Amended by L.L. #1-1950, which became a law 6-27-1950] [Editor’s Note: This title of § 70-1 was amended by Local Law #2-1941, which became a law 6-24-1941]

Pursuant to the authority granted by Section 20-b of the General City Law of the State of New York, a tax equal to one percentum (1%) of its gross income for an indefinite period from July 1, 1937 is hereby imposed upon every utility doing business in the City of Dunkirk which is subject to the supervision of the State Department of Public Service, which has a gross income for the twelve (12) months

ending May 31 of each year in excess of five hundred dollars (\$500.), except motor carriers or brokers subject to such supervision under Article 3-b of the Public Service Law, and a tax equal to one percentum (1%) of its gross operating income is hereby imposed for the same period upon every other utility doing business in the City of Dunkirk which has a gross operating income for the twelve (12) months ending May 31 of each year in excess of five hundred dollars (\$500.), which taxes shall have application only within the territorial limits of the City of Dunkirk, 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 transaction originating or consummated outside of the territorial limits of the City of Dunkirk, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

§ 70-2. Definitions. [Amended by L.L. #2-1941, which became a law 6-24-1941. Editor's Note: A declaration of legislative intent, which appeared as Section 1 of Local Law No. 2, 1941, stated in substance that it was the intent of Local Law No. 2, 1937, to impose a tax on utility services, whether rendered by utilities in the strict sense or not, and to include as subject to the tax persons and corporations directly in competition with ordinary utilities, such as landlords and submeterers; that these landlords and submeterers had considered themselves subject to the tax and had based their charges to their customers in consideration of the tax; and that the amendatory local law, making it clear that they were required to include in gross operating income receipts from sales of services similar to those rendered by ordinary utilities, was made retroactive to the original enactment of the tax.]

Sections 3 and 4 of Local Law No. 2, 1941, stated in substance that the amendments to § 70-2 should be deemed to have the same force and effect as if enacted on June 28, 1937, but that if the amendments should be declared by a court of competent jurisdiction to be invalid to the extent that they were made retroactive, then the tax should be applicable to recent transactions since January 1, 1940.]

As used in this local law:

- A. The word "utility" includes every person subject to the supervision of either division 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.

- B. The word “person” means persons, corporations, companies, associations, joint-stock associations, copartnerships, 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” means and including 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 Dunkirk, 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 close of the period for which a return is made); also receipts from interest, dividends and royalties, derived from sources within the City of Dunkirk, 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 Dunkirk whatsoever.
- D. The words “gross operating income” mean and 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 or telegraph service in the City of Dunkirk, 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.

§ 70-3. Records To Be Kept.

Every utility subject to tax under this local law shall keep such records of its business and in such form as the City Treasurer may require, and such records shall be preserved for a period of three (3) years, except that the City Treasurer may consent to their destruction within that period or may require that they be kept longer.

§ 70-4. Quarterly or Annual Returns To Be Filed; Supplemental Returns. [Amended by L.L. #1-1950, which became a law 6-27-1950]

Every utility subject to tax hereunder shall file, on or before September 25, December 25, March 25 and June 25 of each year, a return for the three (3) 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 City Treasurer on a form to be furnished by him for such purpose and shall contain such other data, information or matter as the City Treasurer 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 (3) months' period, is less than one thousand five hundred dollars (\$1,500.), may file its returns for such periods on June 25, 1939, June 25, 1940, June 25, 1941, June 25, 1942, June 25, 1943, June 25, 1944, June 25, 1945, June 25, 1946, June 25, 1947, June 25, 1948, June 25, 1949, and June 25, 1950, respectively, and June 25 of each and every year hereafter. The City Treasurer, in order to insure 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 City Treasurer. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or of the owner 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 the statements contained therein are true.

§ 70-5. Payment of Tax.

At the time of filing a return as required by this local law, each utility shall pay to the City Treasurer the tax imposed by this local law, 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.

§ 70-6. Insufficient Returns; Determination of Tax Due; Hearing and Review. [Amended by L.L. #6-1939, which became a law 7-25-1939]

In case any return filed pursuant to this local law shall be insufficient or unsatisfactory to the City Treasurer, and if a corrected or sufficient return is not filed within twenty (20) days after the same is required by notice from the City Treasurer, or if no return is made for any period, the City 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. The City Treasurer 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 City Treasurer for a hearing, or unless the City Treasurer, of his own motion, shall reduce the same. After such hearing, the City Treasurer shall give notice of his decision to the person liable for the tax. The decision of the City Treasurer may be reviewed by a proceeding under Article 78 of the Civil Practice Act of the State of New York, if application therefor is made within thirty (30) 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 City 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 applicant, 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.

§ 70-7. Service of Notice; Presumption of Delivery; Commencement of Running of Time.

Any notice authorized or required under the provisions of this local law 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 local law, 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 local law by the giving of notice, shall commence to run from the date of mailing of such notice.

§ 70-8. Penalty For Failure to File Return or Pay Tax on Time; Remission of Penalty.

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 local law, shall be subject to a penalty of five percentum (5%) of the amount of tax due, plus one percentum (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 City Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 70-9. Refunds. [Amended by L.L. #8-1939, which became a law 7-25-1939]

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 City Treasurer or the Court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the City Treasurer 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 City Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the City Treasurer as hereinbefore provided unless the City 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 local law. 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 City Treasurer may receive additional evidence with respect thereto. After making this determination, the City 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 provisions hereinbefore contained relating to the granting of such an order.

§ 70-10. Tax To Be Paid By Utility.

The tax imposed by this local law 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.

§ 70-11. Actions To Enforce Payment of Tax; Tax and Penalty as Lien.

Whenever any person shall fail to pay any tax or penalty imposed by this local law, the Corporation Counsel shall, upon the request of the City 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 City 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-a of the Tax Law is made a lien.

§ 70-12. Authority of City Treasurer in Administration of Tax.

In the administration of this local law the City Treasurer 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 local law, and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

§ 70-13. Confidential Nature of Returns; Penalty for Disclosure; Exchange of Information With Other Fiscal Officers.

- A. Except in accordance with the proper judicial order or as otherwise provided by law, it shall be unlawful for the City Treasurer, or any agent, clerk or employee of the City of Dunkirk 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 local law. 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 Dunkirk in an action or proceeding under the provisions of this local law, 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 local law 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 local law together with any relevant information which in the opinion of the City Treasurer may assist in the collection of such delinquent taxes; or the inspection by the Corporation Counsel or other legal representatives of the City of Dunkirk 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 local law.
- B. Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding one thousand dollars (\$1,000.) or by imprisonment not exceeding six (6) months, or both, and if the offender be an officer, agent, clerk or employee of the City of Dunkirk

he shall be dismissed from office, and shall be incapable of holding any office or employment in the City of Dunkirk for a period of five (5) years thereafter.

- C. Notwithstanding any provisions of this local law the City Treasurer may exchange with the chief fiscal officer of any other city in the State of New York information contained in returns filed under this local law, provided such other city grants similar privileges to the City of Dunkirk, and provided such information is to be used for tax purposes only, and the City Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

§ 70-14. Disposition of Taxes and Penalties. [Amended by L.L. #3-1944, which became a law 9-26-1944]

All taxes and penalties received by the City Treasurer for taxes heretofore or hereafter imposed under this local law shall be credited and deposited by him in the general fund of the City.

§ 70-15. When Effective.

This local law shall take effect immediately.