

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Chester

Local Law No. 2 of the year 2011

A local law entitled "Gross Utilities Tax Law of the Village of Chester"
(insert Title)

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Chester

as follows:

Section 1. The Code of the Village of Chester is hereby amended by adding Chapter 89, Gross Utilities Tax Law of the Village of Chester, as follows:

CHAPTER 89 GROSS UTILITIES TAX OF THE VILLAGE OF CHESTER

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|------------------------------------|---|
| § 89-1 Short title | § 89-12 Supplemental returns |
| § 89-2 Legislative Intent; purpose | § 89-13 Review of final determination |
| § 89-3 Imposition of tax | § 89-14 Notice |
| § 89-4 Definitions | § 89-15 Refunds |
| § 89-5 Application | § 89-16 Review of proceedings for refunds |
| § 89-6 Disposition of revenues | § 89-17 Limitation of additional tax |

(If additional space is needed, attach pages the same size as this sheet, and number each.)

§ 89-7 Collection and enforcement; rules and regulations	§ 89-18 Powers of Village Treasurer
§ 89-8 Records	§ 89-19 Enforcement
§ 89-9 Returns; filing and contents	§ 89-20 Severability
§ 89-10 Payment	§ 89-21 When effective
§ 89-11 Penalties and interest	

§ 89-1 Short title.

This article shall be known as "Gross Utilities Tax Law of the Village of Chester"

§ 89-2 Legislative Intent; Purpose.

The Board of Trustees of the Village of Chester realizes that the real estate tax burden on its residents is ever-increasing due to the imposition of taxes by all levels of government in Orange County. In an effort to relieve some of that burden, the Board believes that the tax base of the Village must be broadened and that the adoption of this article will broaden its tax base.

§ 89-3 Imposition of tax.

Pursuant to the authority granted by Article 5, § 5-530, of the Village Law of the State of New York, from and after the effective date of this article, there is hereby imposed:

- A. A tax equal to one per centum (1%) of the gross income of every utility doing business in the Incorporated Village of Chester which is subject to the supervision of the New York State Department of Public Service and which has an annual gross income in excess of \$500 except motor carriers or brokers subject to the provisions of the Transportation Law.
- B. A tax equal to one per centum (1%) of the gross operating income of every other utility doing business in the incorporated Village of Chester which has an annual gross operating income in excess of \$500.

§ 89-4 Definitions.

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

GROSS INCOME

Includes:

- A. In the case of a utility engaged in selling telephone or telephone service, only receipts from local exchange service wholly consummated within the Village.
- B. In the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village.
- C. In the case of any utility other than described in Subsections A and B hereof, includes:
 - (1) 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 for use by the purchaser in the Village, 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 material used, labor or services or other costs, interest or discount paid, or any other expenses whatsoever.
 - (2) Profits from the sale of securities.
 - (3) Profits from the sale of real property growing out of the ownership or use of or interest in such property.
 - (4) Profits from the sale of personal property (other than property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of a period for which a return is made).
 - (5) Receipts from interest, dividends and royalties derived from sources within the Village (other than such as are received from a corporation, a majority of whose voting stock is owned by the taxpaying utilities), without any deduction therefrom from any expenses whatsoever incurred in connection with the receipt thereof.
 - (6) Profits from any transaction (except sales for resale and rentals) with the Village 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, telephone or telegraphy, or in or by reason of the furnishing of such consumption or use of gas, electric, steam water, refrigerator, telephone, telegraph service in the Village, including cash, credit and property of any kind or nature, without 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.

PERSON

Persons, corporations, companies, associations, joint-stock associations, co-partnerships, estates, assignee, or 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, municipality, public districts, and corporations and associations organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures or benefits any private shareholder or individual.

UTILITY

Includes:

- A. Every person subject to the supervision of the State Department of Public Service, except:
 - (1) Persons engaged in the business of operating or leasing sleeping and parlor railroad cars.
 - (2) Persons engaged in the business of operating or leasing railroads other than street surface, rapid transit, subway and elevated railroads.
- B. Every person who 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 persons or are only incidental thereto, or of whether use is made of the public streets.

§ 89-5 Application.

This article and the tax imposed thereby shall:

- A. Apply only within the territorial limits of the Village of Chester.

- B. Not apply and the tax shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Chester, notwithstanding that some acts be necessarily performed with respect to such transaction within such limits.
- C. Be in addition to any and all other taxes and fees imposed by any other provisions of law.
- D. Apply to all subject income received on and after the effective date of this article.

§ 89-6 Disposition of revenues.

All revenues resulting from the imposition of the tax imposed by this article shall be paid into the treasury of the Village and shall be credited to and deposited in the general fund of the Village.

§ 89-7 Collection and enforcement; rules and regulations.

The Village Treasurer shall be chief enforcement officer of this article and shall make and be responsible for all collections hereunder. He or she shall also have the power and authority to make any rules or regulations or directives, not inconsistent with law, which in his or her discretion are reasonably necessary to facilitate the administration of this article and the collection of the taxes imposed hereby. Copies of all such rules and regulations and directives, as may from time to time be promulgated, shall be sent by registered mail to all utilities subject to this article which register as such with the Village Treasurer. All such rules, regulations and directives shall be deemed a portion of this article.

§ 89.8 Records.

Every utility subject to the tax pursuant to this article shall keep such records of its business in such form as the Village Treasurer may require such records shall be preserved for a period of three years unless the Village Treasurer otherwise directs.

§ 89-9 Returns; filing and contents.

- A. Time of filing. Every utility subject to a tax hereunder shall file on or before December 1 and June 1 a return for the six calendar months preceding each return date, including any period for which the tax imposed hereby or amendment thereof is effective. However, any utility whose average gross income or gross average operating income for the aforesaid six months period is less than \$3,000 may file a return annually on May 1 for the 12 calendar months preceding each return date, including any period for which the tax imposed hereby or any amendment thereof

is effective. Any utility, whether subject to tax under this law or not, may be required by the Village Treasurer to file an annual return.

- B. Contents. Returns shall be filed with the Village Treasurer on a form to be furnished by the Treasurer for such purpose and shall show thereon the gross income or gross operating income for a period covered by the return and such other information, data or matter as the Village Treasurer may require to be included therein. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner or a co-partner thereof, or of a principal corporate officer to the effect that the statements contained therein are true.

§ 89-10 Payment.

At the time of filing a return as required by this article, each utility shall pay to the Village Treasurer the tax imposed hereby for the period covered by such return. Such tax shall be due and payable at the time of the filing of the return or, if a return is not filed when due, on the first day when the return is required to be filed.

§ 89-11 Penalties and interest.

Any utility failing to file a return or a corrected return, or to pay any tax or any portion thereof within the time required by this law, shall be subject to a penalty of five per centum (5%) of the amount of tax due, plus one per centum (1%) of such amount for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due; but the Village Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 89-12 Supplemental returns.

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Village Treasurer, he or she may require at any time a further or supplemental return, which shall contain any data that may be specified by him or her and, if a corrected or sufficient return is not filed within 20 days after the same is required by notice from the Treasurer, or, if no return is made for any period, the Village Treasurer shall determine the amount due from such information as he or she is able to obtain and, if necessary, may estimate the tax on the basis of external indices or otherwise. He or she shall give notice of such determination to the utility liable for such tax.

§ 89-13 Review of final determination.

Any final determination 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 Law and Rules if the proceeding is commenced within 90 days after the

giving of such notice of such final determination; provided, however, that any such proceeding under this article 78 shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided by local law, ordinance or resolution, shall be first deposited with the Village Treasurer 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.

§ 89-14 Notice.

Any notice authorized or required under the provisions of this article may be given by mailing the same to the utility for which it is intended, in a postpaid envelope, addressed to such utility at the address given by it in the last return filed by it 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 utility to which it is addressed. Any period of time which is determined according to the provisions of this section by giving of notice shall commence to run from the date of mailing of such notice.

§ 89-15 Refunds.

If within one year from the giving of notice of any determination or assessment of any tax or penalty, the person liable for the tax shall make application for a refund thereof, and the Village Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously charged, the Village 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 Village Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination if the Village Treasurer as hereinbefore provided, on his or her own motion, shall have reduced the tax or penalty or it shall have been established in a proceeding in the manner provided in the Civil Practice Law and Rules that such determination was erroneous or illegal. An application for a refund, made as hereinbefore provided, shall be deemed an application for the revision of any tax or penalty complained of and the Village Treasurer may receive any additional evidence with respect thereto. After making his or her determination, the Village Treasurer shall give notice thereof to the person interested, and he or she shall be entitled to commence a proceeding to review such determination in accordance with the provisions of the following section hereof.

§ 89-16 Review of proceedings for refunds.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Village Treasurer, and he or she shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that such proceeding is instituted within 90 days after the giving of the notice of such denial, that a final determination of tax due was not previously made and that an undertaking is filed with the

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.

Rebecca Rivera
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body
Rebecca Rivera, Village Clerk
Date: _____

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ORANGE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Henry N. Christensen, Jr.
Signature
Henry N. Christensen, Jr.
Title Attorney for the Village

County
City of Chester
Town _____
Village _____

Date: _____