

70 E. Main Street
Lake Zurich, IL 60047



AGENDA ITEM

9A

Phone: (847) 438-5141
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www.LakeZurich.org

MEMORANDUM

Date: April 9, 2014
To: Village Board of Trustees
From: Jason T. Slowinski, Village Manager
Subject: Ordinance Authorizing Municipal Utility Tax

Issue: The implementation of a municipal gas and electric utility tax has been discussed at great length in recent months as a primary method to produce a balanced budget for fiscal year 2014-2015. At the February 18, 2014 Village Board meeting, Trustees voted to postpone a vote on authorization of the municipal utility tax until further discussions could occur regarding the proposed budget for fiscal year 2014-2015.

Analysis: The Village Board met as a Committee of the Whole for a budget workshop session on April 5, 2014. After additional review and discussion of the proposed budget, the direction was given to staff to prepare a budget that included a combination of General Fund expenditure reductions and revenues from a municipal utility tax.

Village Board consensus was also to draft a revised Ordinance that implemented a phased-in utility tax at 2.5% for the first six months, with an increase to 5% after the first six months. The effective dates for the tax are May 1, 2014 at 2.5% and November 1, 2014 at 5%. This tax is projected to generate \$900,000 in new revenue in the first year.

This combination of expenditure reductions and revenue enhancements is expected to result in a balanced budget that will minimize the impact on services provided to Lake Zurich residents and businesses.

Recommendation: Staff recommends the Village Board approve the proposed Ordinance enacting a municipal utility tax at 2.5% with a scheduled increase to 5% six months later.


w/ Attachments: Original Memo to Village Board re: municipal utility tax
Ordinance authorizing Municipal Utility Tax

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MEMORANDUM

Date: February 12, 2014
To: Village Board of Trustees
From: Jason T Slowinski, Village Manager 
Subject: Implementation of Utility Tax (Municipal Gas and Electric)

Issue: Despite recent significant accomplishments (e.g. S&P AAA bond rating designation), the Village of Lake Zurich continues to deal with the harsh reality of less than spectacular financial projections for FY 2015 and beyond.

The upcoming budget for FY 2015 is set to be a challenging one. Continuing economic uncertainty, rising pension (\$3.86M) and healthcare costs (20% increase), and unstable revenue sources, combine to create a challenging budgetary environment. The draft budget in its current form projects a General Fund budget deficit of approximately \$1.6M. This projection does not account for General Fund-supported TIF debt payments which will begin in FY 2016, further burdening the General Fund. Without any new revenue streams, staff is unable to present a balanced General Fund budget without significant reductions in service to our residents. In order to continue to provide the current level of service enjoyed by residents, staff submits the implementation of a municipal gas and electric utility tax for Village Board consideration.

Background: For the past several years, the Village has taken prudent financial actions and engaged in conservative spending practices. In analyzing the General Fund expenditures of the past several years (see Figure 1 below), the Village has done a tremendous job in controlling discretionary spending. Since 2009, the cost of General Fund operations—i.e., contractual and commodities—has actually *decreased* 0.93% to \$4.78M. The cost of salaries and benefits (excluding health insurance) charged to the General Fund has risen a modest 4.36% during this period to \$14.75M. Total personnel (i.e. full-time employees) charged to the General Fund has been reduced by 20 positions, from 164 to 144. Staff is absolutely committed to continuing these responsible financial practices. In fact, Standard & Poor's cited the Village's strong financial management and budgetary flexibility as one of its justifications for the recent AAA bond rating upgrade.

Despite the efforts noted above, increased costs in certain areas continue to devastate the General Fund. Since 2009, pension costs have dramatically increased from \$1.01M to \$3.86M, a whopping 280.8%. This increase is due not only to actuarial calculations but also making up ground from previous decisions to not fully fund the annual public safety pension payments. State law requires public safety pensions to be fully funded by the year 2044. Similarly, health insurance costs for

Village employees also continue to increase. The uncertainty of the industry in light of the Affordable Care Act requires the Village to budget for a 20% increase in health insurance premiums for FY 2015.

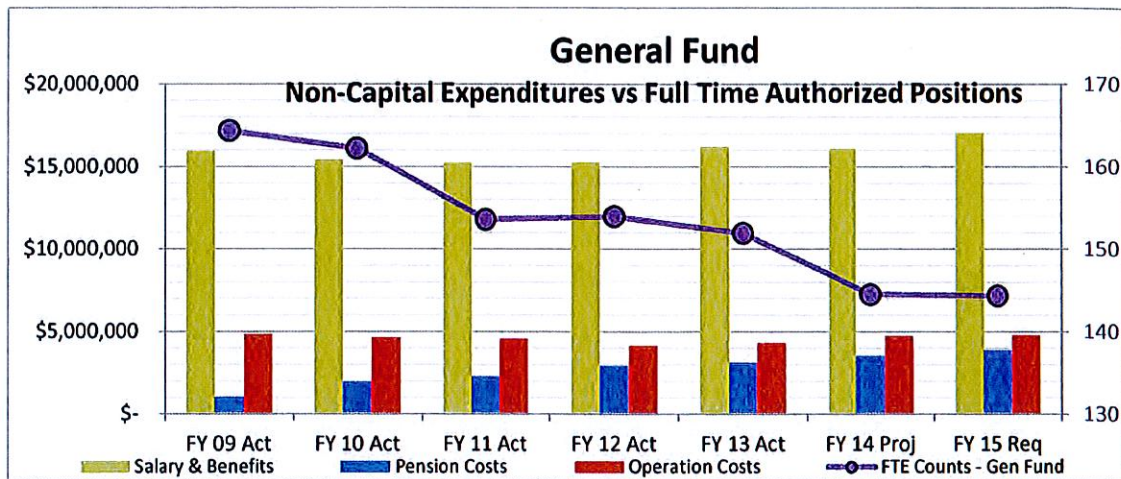


Figure 1

While not impossible, it is increasingly difficult to make further reductions in personnel without significantly impacting the services provide to Village residents. Without additional revenue, Lake Zurich residents and businesses will notice service reductions required to close the \$1.6M budget deficit.

Analysis: A municipal gas and electric utility tax not to exceed 5% may be imposed by non-home rule communities under Illinois statutes. The utility tax is a tax on the consumption of electricity and natural gas and does not impact the level of property taxes levied on homeowners and businesses. It would represent a stable source of significant revenue for the Village yet allows individuals flexibility over their payments by reducing consumption of gas and electricity. The Village previously had a 2.5% utility tax that expired by ordinance in May 2012.

Staff surveyed area communities and determined that the vast majority of area communities have a utility tax in place (see Figure 2 below). It is an increasingly common source of revenue for municipalities. Since 2009, at least twelve (12) area communities have enacted the utility tax including many of our immediate neighbors. Hoffman Estates enacted the utility tax on electricity and gas in December 2013 and Elk Grove Village as recently as January 2014.

RE: Implementation of Utility Tax (Municipal Gas and Electric)

February 11, 2014

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Municipality	Year Enacted	Municipality	Year Enacted
Algonquin	2006	Libertyville	2010
Arlington Heights	2011	Lincolnshire	2009
Barrington	1999	Lincolnwood	1993
Barrington Hills	N/A	Lisle	2008
Bartlett	N/A	Lombard	1986
Bensenville	1986	Mt. Prospect	N/A
Buffalo Grove	2009	Mt. Zion	1998
Carol Stream	N/A	Naperville	N/A
Carpentersville	1999	Niles	1990's
Cary	1998	North Aurora	2004
Countryside	2009	Northbrook	2005
Des Plaines	2009	Northfield	1989
Deer Park	1992	Palatine	2011
Elk Grove	2014	Rolling Meadows	2009
Elmwood Park	2003	Roselle	1999
Evanston	1966	Skokie	2010
Geneva	1986	Streamwood	2001
Glen Ellyn	1998	Vernon Hills	1969
Glenview	2008	West Chicago	1987
Grayslake	2004	Wheeling	2002
Hawthorn Woods	N/A	Wheaton	2000
Highland Park	N/A	Wilmette	1998
Hoffman Estates	2013		
Homewood	N/A		
Kenilworth	N/A		
Lake Barrington	2006		
Lake Forest	2013		

Figure 2: Area Communities

Analysis—Impact to Lake Zurich: It is estimated that a 5% municipal utility tax will generate approximately \$1.2 million annually, providing much of the relief necessary to close the \$1.6M budget deficit, with the remaining \$400K to come from expenditure reduction in the form of continued analysis and minor adjustments to our operations and staffing levels. These adjustments would not be expected to impact services to residents.

Obviously, Lake Zurich residents would experience an impact in the amount paid for electricity and natural gas. According to usage data from Commonwealth Edison, the average Lake Zurich residential electric bill is \$492 annually (or \$41 per month). Based on this data, the proposed 5% utility tax would raise the average residential electricity bill by approximately \$24.60 annually (or \$2.05 per month). NICOR data indicates the average homeowner's gas bill is \$460.68 (or \$38.39 per month). Estimates show the gas portion of the utility tax would increase the average gas bill by approximately \$23.04 annually (or \$1.92 per month). In total, the average residential user would pay \$47.64 more per year for electricity and natural gas with a 5% utility tax in place.

This additional tax would be added to the regular utility bills residents receive from ComEd and NICOR, with the user submitting payment to those companies. ComEd and NICOR would then

submit payment of the tax to the Village on or before the last day of every month for the corresponding one-month period.

It is worth noting that savings Lake Zurich residents have experienced through the electrical aggregation program would offset the incremental costs of a new utility tax. Lake Zurich's two-year municipal electrical aggregation program has saved an average of \$247 for Lake Zurich households, for a cumulative Village-wide savings of \$1,337,000 in just its first year. Even with the implementation of the 5% utility tax, Village residents would still experience nearly \$200 in savings from utility costs prior to the aggregation program taking place.

Recommendation: Staff recommends the Village Board approve the proposed Ordinance enacting a 5% municipal utility tax on natural gas and electricity. This tax is expected to generate \$1.2M in new revenue for the Village.

w/ Attachment: Ordinance Approving 5% Utility Tax

VILLAGE OF LAKE ZURICH
ORDINANCE NO. 2014-4-968

AN ORDINANCE AMENDING TITLE 3, CHAPTER 5 OF THE LAKE ZURICH
MUNICIPAL CODE
(Utility Tax)

WHEREAS, pursuant to Section 8-11-2 of the Illinois Municipal Code, 65 ILCS 5/8-11-2, the President and Board of Trustees of the Village of Lake Zurich have determined that it is useful, appropriate, and in the best interests of the Village to impose a tax on (i) persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, and (ii) the privilege of using or consuming electricity acquired in the purchase at retail and used or consumed within the corporate limits of the Village.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lake Zurich, Lake County and the State of Illinois as follows:

Section 1. Recital. The foregoing recital is incorporated into this Ordinance as a finding of the President and Board of Trustees.

Section 2. Establishment of Taxes. A tax is hereby 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 corporate limits of the Village, and not for resale, at a rate of 2.5% of the gross receipts therefrom for the first six (6) months of the tax and at a rate of 5% of the gross receipts therefrom after the first six (6) months of the tax; and

B. The privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the Village, calculated on a monthly basis for each purchaser for the first six (6) months of the tax:

- (i) For the first 2,000 kilowatt-hours used or consumed in a month; .305 cents per kilowatt-hour;
- (ii) For the next 48,000 kilowatt-hours used or consumed in a month; .20 cents per kilowatt-hour;
- (iii) For the next 50,000 kilowatt-hours used or consumed in a month; .18 cents per kilowatt-hour;
- (iv) For the next 400,000 kilowatt-hours used or consumed in a month; .175 cents per kilowatt-hour;

- (v) For the next 500,000 kilowatt-hours used or consumed in a month; .17 cents per kilowatt-hour;
- (vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; .16 cents per kilowatt-hour;
- (vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; .1575 cents per kilowatt-hour;
- (viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; .155 cents per kilowatt-hour;
- (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; .1525 cents per kilowatt-hour; and
- (x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, .15 cents per kilowatt-hour.

After the first six (6) months of the tax, the rate shall increase to:

- (i) For the first 2,000 kilowatt-hours used or consumed in a month; .61 cents per kilowatt-hour;
- (ii) For the next 48,000 kilowatt-hours used or consumed in a month; .40 cents per kilowatt-hour;
- (iii) For the next 50,000 kilowatt-hours used or consumed in a month; .36 cents per kilowatt-hour;
- (iv) For the next 400,000 kilowatt-hours used or consumed in a month; .35 cents per kilowatt-hour;
- (v) For the next 500,000 kilowatt-hours used or consumed in a month; .34 cents per kilowatt-hour;
- (vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; .32 cents per kilowatt-hour;
- (vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; .315 cents per kilowatt-hour;
- (viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; .31 cents per kilowatt-hour;
- (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; .305 cents per kilowatt-hour; and
- (x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, .30 cents per kilowatt-hour.

Section 3. Amendment of Title 3, Chapter 5 of the Lake Zurich Municipal Code. Chapter 5, titled "Occupation Taxes," of Title 3 of the Lake Zurich Municipal Code is hereby amended to include a new Section 3-5-8, titled "Gas Utility Tax," and a new Section 3-5-9, titled "Electric Utility Tax," as set forth in Exhibit A attached to and by this reference incorporated into this Ordinance.

Section 4. Term of Taxes. The tax authorized by Subsection 2A of this Ordinance will be based on the gross receipts, as defined in Exhibit A, actually paid for services billed on or after May 1, 2014, with increases scheduled to start on November 1, 2014. The tax authorized by Subsection 2B of this Ordinance will be imposed with respect to the use or consumption of electricity beginning with the first bill issued to customers on or after May 1, 2014, with increases scheduled to start on November 1, 2014.

Section 5. Effective Date; Notice to Utilities. This Ordinance will be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law. The Village Clerk is hereby authorized and directed to send a certified copy of this Ordinance to each utility company affected by this Ordinance.

PASSED this 21st day of April, 2014, pursuant to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED 21st day of April, 2014.

By: _____
Thomas Poynton, Village President

SEAL

ATTEST:

Kathleen Johnson, Village Clerk

Published: _____

EXHIBIT A

NEW SECTION 3-5-8 "GAS UTILITY TAX"

3-5-8: GAS UTILITY TAX:

- A. **Establishment of Tax:** A tax is imposed on all persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, and not for resale, at a rate of 2.5% of the gross receipts therefrom for the first six (6) months of the tax and at a rate of 5% of the gross receipts therefrom after the first six (6) months of the tax.
- B. **Limitations:** No tax is imposed by this Section with respect to any transaction in interstate commerce or otherwise to the extent to which that business may not be made the subject of taxation by the State of Illinois or this Village under the Constitution and statutes of the United States. Nor will any persons engaged in the business of distributing, supplying, furnishing, or selling gas within the corporate limits of the Village be subject to taxation under the provisions of this Section for such transactions as are or may become subject to taxation under the provision of the Illinois Municipal Retailer's Occupation Tax Act.
- C. **Taxes in Addition to Other Compensation:** The tax enumerated in this Section is in addition to the payment of money or value of products or services furnished to the Village 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.
- D. **Definitions:** For the purposes of this Section, the following definitions apply:

GROSS RECEIPTS: The consideration received for distributing, supplying, furnishing, or selling gas for use or consumption and not for resale, as the case may be; 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 which are determined without any deduction on account of the cost of the service, product, or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever; except that "gross receipts" does not include any amounts specifically excluded from the definition of gross receipts in Section 8-11-2(d) of the Illinois Municipal Code, 65 ILCS 5/8-11-2(d) or as otherwise required by law.

PERSON: 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 subdivisions, any State university created by statute or a receiver, trustee, guardian, or other representative appointed by order of any court.

E. **Effective Date of Tax:** The tax provided for in Subsection A of this Section will be based on the gross receipts, as herein defined, actually paid to the person engaged in the business of distributing, supplying, furnishing, or selling gas for services billed on or after May 1, 2014, with an increase scheduled for November 1, 2014.

F. **Returns:** On or before May 1, 2014, each person engaged in the business of distributing, supplying, furnishing, or selling gas must make a return to the village treasurer for the month of April 2014, stating:

1. The person's name;

2. The person's principal place of business;

3. The person's gross receipts during those months on the basis of which the tax is imposed;

4. The amount of tax; and

5. Such other reasonable and related information as the board of trustees may require.

On or before the last day of every month thereafter, each person engaged in the business of distributing, supplying, furnishing, or selling gas must make a similar return to the village treasurer for a corresponding one month period.

The person making a return pursuant to this subsection F must pay, at the time of making that return, the village treasurer the amount of tax herein imposed; except that in connection with any return the person, if the person so elects, may report and pay an amount based on the person's 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 on any differences between such billings and the taxable gross receipts.

G. **Credits For Overpayment; Limitation:** If it appears that an amount of tax has been paid that was not due under the provisions of this section, whether as a result of a mistake of fact or an error of law, then that amount will be credited against any tax due, or to become due, under this section from the person who made the erroneous payment on a filing of a claim for a credit by that person with the Village, except that no amount erroneously paid will be credited if that amount was paid more than three (3) years prior to the filing of a claim for a credit.

No action to recover any amount of tax due under the provisions of this section may be commenced more than three (3) years after the due date of that amount.

H. **Violations; Penalty:** Any person that fails to make a return, or that makes a fraudulent return, or that wilfully violates any other provision of this section is guilty of a misdemeanor and, on conviction thereof, may be fined not less than one hundred dollars (\$100.00) and not more than seven hundred dollars (\$700.00), and in addition may be liable in a civil action for the amount of tax due.

EXHIBIT B

NEW SECTION 3-5-9 "ELECTRIC UTILITY TAX"

3-5-9: ELECTRIC UTILITY TAX:

- A. Establishment Of Tax: A tax at the rates specified in this subsection is hereby established and levied by the village on all persons engaged in the privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the village, calculated on a monthly basis for each purchaser for the first six (6) months of the tax:
- (i) For the first 2,000 kilowatt-hours used or consumed in a month; .305 cents per kilowatt-hour;
 - (ii) For the next 48,000 kilowatt-hours used or consumed in a month; .20 cents per kilowatt-hour;
 - (iii) For the next 50,000 kilowatt-hours used or consumed in a month; .18 cents per kilowatt-hour;
 - (iv) For the next 400,000 kilowatt-hours used or consumed in a month; .175 cents per kilowatt-hour;
 - (v) For the next 500,000 kilowatt-hours used or consumed in a month; .17 cents per kilowatt-hour;
 - (vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; .16 cents per kilowatt-hour;
 - (vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; .1575 cents per kilowatt-hour;
 - (viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; .155 cents per kilowatt-hour;
 - (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; .1525 cents per kilowatt-hour; and
 - (x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, .15 cents per kilowatt-hour.

After the first six (6) months of the tax, the rate shall increase to:

- (i) For the first 2,000 kilowatt-hours used or consumed in a month; .61 cents per kilowatt-hour;
- (ii) For the next 48,000 kilowatt-hours used or consumed in a month; .40 cents per kilowatt-hour;
- (iii) For the next 50,000 kilowatt-hours used or consumed in a month; .36 cents per kilowatt-hour;
- (iv) For the next 400,000 kilowatt-hours used or consumed in a month; .35 cents per kilowatt-hour;
- (v) For the next 500,000 kilowatt-hours used or consumed in a month; .34 cents per kilowatt-hour;
- (vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; .32 cents per kilowatt-hour;
- (vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; .315 cents per kilowatt-hour;
- (viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; .31 cents per kilowatt-hour;
- (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; .305 cents per kilowatt-hour; and
- (x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, .30 cents per kilowatt-hour.

B. Limitations: No tax is imposed by this section with respect to any transaction in interstate commerce or otherwise to the extent to which that business may not be made the subject of taxation by the state of Illinois or this village under the constitution and statutes of the United States. Nor will any persons engaged in using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the village 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 the Illinois municipal retailers' occupation tax act.

C. Tax In Addition To Other Compensation: The tax enumerated in this section is in addition to the payment of money or value of products or services furnished to the village 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.

D. Definition: For the purposes of this section, the following definition applies:

PERSON: 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 subdivisions, any state university created by statute, or a receiver, trustee, guardian, or other representative appointed by order of any court.

E. Effective Date Of Tax: Any amount of taxes due and payable for any tax levied for any tax period prior to the effective date of this section will remain due and payable in the manner provided at such time for such taxes regardless of the provisions of this section. The tax provided for in subsection A of this section will be imposed with respect to the use or consumption of electricity, beginning with the first bill issued to customers on or after May 1, 2014, with an increase scheduled for November 1, 2014.

F. Credits For Overpayment; Limitation: If it appears that an amount of tax has been paid that was not due under the provisions of this section, whether as a result of a mistake of fact or an error of law, then that amount will be credited against any tax due, or to become due, under this section from the person who made the erroneous payment on a filing of a claim for a credit by that person with the village, except that no amount erroneously paid will be credited if that amount was paid more than three (3) years prior to the filing of a claim for a credit.

No action to recover any amount of tax due under the provisions of this section may be commenced more than three (3) years after the due date of that amount.

G. Collection Of Tax: The person maintaining a place of business in the state of Illinois who delivers the electricity to the purchaser shall collect the tax authorized by subsection A of this section from the purchaser and shall file a return with, and pay the amount of the tax collected to, the village. This tax constitutes a debt of the purchaser 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. Any tax required to be collected pursuant to subsection A of this section and any such tax collected by a person delivering electricity constitutes a debt owed to the village by the person delivering the electricity. With respect to such debt owed to the village, the person delivering electricity may be allowed a credit against such debt to the extent the tax related to deliveries of electricity is not collected because the charges for such electricity are written off as uncollectible; except that if such charges are thereafter collected by the person delivering electricity, then that person must remit the tax to the village. Any partial payment not specifically identified by the purchase will be deemed to be for the delivery of electricity. Persons delivering electricity may collect the tax from the purchaser by adding the tax to the gross charge for delivering the electricity. Persons delivering electricity also are authorized to add to the gross charge an amount equal to three percent (3%) of the tax to reimburse the person delivering electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting the tax, and supplying data to the village on the village's request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser will be required to pay the tax directly to the village by filing a tax return

in the form and manner that the village will prescribe. The person delivering electricity who files returns pursuant to this section must pay the village, at the time of filing such return, the amount of the tax collected pursuant to subsection A of this section.

- H. Books And Records: The person maintaining the place of business in the state of Illinois who collects the tax authorized by subsection A of this section from the purchaser is required to keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that gave rise, or may have given rise, to any tax liability under this section. The books and records are subject to and available for inspection by the village at reasonable times during normal business hours.
- I. Violations; Penalty: Any person that fails to make a return required of that person by this section, or that makes a fraudulent return, or that wilfully violates any other provision of this section is guilty of a misdemeanor and on conviction may be fined not less than one hundred dollars (\$100.00) and not more than seven hundred dollars (\$700.00), and in addition may be liable in a civil action for the amount of tax due and may be subject to the penalties provided in section 3-1-20 of this title.