

CHAPTER 51.3

UTILITY TAXES

1. **DEFINITIONS.** Words and phrases, when used in this Chapter, shall have the meanings ascribed to them in Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2).

2. **TAX IMPOSED.** 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 City of Decatur, and not for resale, at the rate of four and one-fourth percent (4.25 %) of the gross receipts therefrom, but excluding the distribution, supplying, furnishing, or sale of gas to school districts or units of local government; and,

(b) persons (but excluding school districts and units of local government) 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 City of Decatur at the following rates, calculated on a monthly basis for each purchaser:

(i) For the first 2,000 kilowatt-hours used or consumed in a month: 0.2533 cents per kilowatt-hour;

(ii) For the next 48,000 kilowatt-hours used or consumed in a month: 0.16592 cents per kilowatt-hour;

(iii) For the next 50,000 kilowatt-hours used or consumed in a month: 0.14926 cents per kilowatt-hour;

(iv) For the next 400,000 kilowatt-hours used or consumed in a month: 0.14518 cents per kilowatt-hour;

(v) For the next 500,000 kilowatt-hours used or consumed in a month: 0.14110 cents per kilowatt-hour;

(vi) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.13294 cents per kilowatt-hour;

(vii) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.13056 cents per kilowatt-hour;

Revised 10/2019

(viii) For the next 5,000,000 kilowatt-hours used or consumed in a month: 0.12852 cents per kilowatt-hour;

(ix) For the next 10,000,000 kilowatt-hours used or consumed in a month: 0.12648 cents per kilowatt-hour;

(x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month: 0.12444 cents per kilowatt-hour;

The tax rates set forth in the preceding table are proportional and do not exceed the revenue that could have been collected using the rates enumerated in 65ILCS 5/8-11-2.

Those persons responsible for paying or collecting the taxes imposed by subsections (a) and (b) hereof shall submit returns to the City Treasurer, including the taxes due, for all such taxes arising out of gross receipts generated by customer bills and kWh used or consumed issued on or after January 1, 2020.

(Amended, Ordinance 2019-163, October 7, 2019)

3. **EXCEPTIONS.** None of the taxes authorized by this Chapter may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege 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 persons taxed hereunder be subject to taxation under the provisions of this Chapter for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1 of the Illinois Municipal Code (65 ILCS 5/8-11-1); nor shall any tax authorized by this Chapter be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in a like manner and at the same rate upon all persons engaged in business of the same class in the municipality, whether privately or municipally owned or operated, or exercising the same privilege within the municipality.

4. **ADDITIONAL TAXES.** Such taxes shall be in addition to other taxes levied upon the taxpayer or its business.

5. **COLLECTION.** The tax authorized by Section 2(b) of this Chapter shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to said Section 2(b) and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality 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. For purposes of this Section 5, any partial payment not specifically identified by the purchaser shall be deemed to be for the delivery of electricity. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity, in the manner prescribed by the municipality. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to 3% of the tax to reimburse the person delivering electricity for the expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipality upon request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the municipality in the manner prescribed by the municipality. Persons delivering electricity who file returns pursuant to this Section 5 shall, at the time of filing such return, pay the municipality the amount of the tax collected pursuant to Section 2(b).

6. **PAYMENT OF TAX.** (A) On or before the last day of each month, each taxpayer (expressly including those persons required to collect taxes pursuant to Section 5 hereof) shall make a return to the City for the preceding month stating:

- (i) His name.
- (ii) His principal place of business.

- (iii) His gross receipts and/or kilowatt-hour usage during the month upon the basis of which the tax is imposed.
- (iv) Amount of tax.
- (v) Such other reasonable and related information as the Director of Finance may require.

The taxpayer making the return herein provided for shall, at the time of making such return, pay to the City of Decatur the amount of tax herein imposed for the month reported in said return, 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.

(B) In case any person who is required under this Chapter to file a tax return with the City fails to file a return when and as required under this Chapter, such person shall pay to the City, in addition to the amount of tax required to be transmitted, a penalty of five percent of the tax that such person is required to transmit to the City provided, however, a 20 percent penalty shall be imposed for any fraudulent failure to transmit such tax.

(C) In case any person who is required under this Chapter to file a tax return with the City files a return at the time required but fails to transmit the tax proceeds, or any portion thereof to the City when due, a penalty of five percent of the amount of tax not transmitted to the City shall be added thereto; provided, however, the fraudulent failure to pay such tax shall result in a 20 percent penalty.

(D) In addition to any penalty for which provision is made in this Chapter, any amount of tax not transmitted when due shall bear interest at the rate of two percent per month, or fraction thereof, until fully transmitted.

7. CREDIT FOR OVERPAYMENT. If it shall appear that an amount of tax has been paid which was not due under the provisions of this Chapter, whether as a 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 Chapter 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 person shall be entitled to a refund of, or credit for, a tax imposed under this Chapter 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.

8. **BOOKS AND RECORDS.** Every tax collector and every taxpayer required to pay any of the taxes imposed by this Chapter shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that give rise, or may have given rise, to any tax liability under this Chapter. The books and records shall be subject to and available for inspection by employees or agents of the City at all times during regular business hours of the tax collector or taxpayer.

9. **REGULATIONS.** The City Manager is authorized to promulgate rules and regulations for the administration of this Chapter consistent with the provisions hereof and consistent with the provisions of 65 ILCS 5/8-11-2.

10. **PENALTY; CIVIL ACTION.** (A) Any taxpayer, including those persons required to collect taxes pursuant to Section 5 hereof, who fails to make a return within the time required therefor, or who fails to pay the tax due, or any portion thereof, for any month within the time required therefor, or who makes a fraudulent return or willfully violates any other provision of this Chapter shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00). (Amended, Ordinance No. 2011-72)

(B) All taxes required to be paid to the City under to the terms of this Chapter shall constitute a debt owed to the City, and the payment thereof may be enforced by the City in any

court of competent jurisdiction. The payment of such debt, whether pursuant to legal action or otherwise, is in addition to any penalty imposed under subsection (A) hereof.

11. **SEVERABILITY.** If any portion of this Chapter is found invalid or unenforceable by any court of competent jurisdiction, the remainder thereof shall continue in full force and effect.