

**VILLAGE OF BARRINGTON HILLS  
ORDINANCE AMENDING CHAPTER 5 AND ADDING CHAPTER 8  
TO TITLE 3 BUSINESS REGULATIONS**

**WHEREAS**, the Village of Barrington Hills (the “Village”) is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

**WHEREAS**, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

**WHEREAS**, in furtherance of its home rule powers, it is necessary and desirable for the Village to amend its ordinances regarding taxation by repealing the municipal utility tax on gas and creating a municipal gas use tax.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Barrington Hills, Cook County, Illinois, as follows:

Section One: The title of Section 3-5-5 of the Village Code be and hereby is amended as follows, where ~~strikeout~~ (~~delete~~) indicates deleted text and double underline (insert) indicates new text:

**3-5-5: TAXATION OF GAS, ELECTRICITY AND COMMUNICATION SERVICES**

Section Two: Paragraph 1 of subsection (A) of Section 3-5-5 of the Village Code be and is hereby amended as follows, where ~~strikeout~~ (~~delete~~) indicates deleted text and double underline (insert) indicates new text:

1. **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 or selling water for use or consumption and not for resale, and for all services rendered 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 cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expenses whatsoever. "Gross receipts" shall not include amounts paid by telecommunications retailers under the Telecommunications Municipal Infrastructure Fee Act. For purposes of this Section, "gross receipts" shall not include: a) amounts added to customers' bills under section 9-221 of the Public Utilities Act, or b) charges added to customers' bills to recover the surcharge imposed under the Emergency Telephone System Act. In the case of persons engaged in the business of transmitting messages through the use of mobile equipment, such as cellular phones and paging systems, the gross receipts from the business shall be deemed to originate within the corporate limits of the Village only if the address to which the bills for the service are sent is within the corporate limits of the Village. If, however, that address is not located within the

Village, then: a) if the party responsible for the bill is not an individual, the gross receipts from the business shall be deemed to originate within the corporate limits of the municipality where that party's principal place of business in Illinois is located, and b) if the party responsible for the bill is an individual, the gross receipts from the business shall be deemed to originate within the corporate limits of the municipality where that party's principal residence in Illinois is located.

Section Three: Paragraph 5 of subsection (A) of Section 3-5-5 of the Village Code be and is hereby amended as follows, where ~~delete~~ indicates deleted text and double underline (insert) indicates new text:

5. TAXPAYER means a person engaged in the business of transmitting messages by a means of electricity, ~~or distribution, supplying, furnishing or selling gas for use or consumption and not for resale,~~ or distributing, supplying, furnishing or selling electricity for use or consumption and not for resale.

Section Four: Paragraph 2 of subsection (B) of Section 3-5-5 of the Village Code be and is hereby deleted in its entirety and replaced with the following:

2. Reserved.

Section Five: Subsection (D) of Section 3-5-5 of the Village Code be and is hereby amended as follows, where ~~delete~~ indicates deleted text and double underline (insert) indicates new text:

- (D) Exempt Entities: No tax is imposed by this Section 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 persons engaged in the business of transmitting messages or distributing, supplying, furnishing or selling gas or electricity be subject to taxation under the provisions of this Section for such transaction as are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Taxation Act" authorized by section 8-11-1 of the Illinois Municipal Code, as amended.

Section Six: The Village Code be and is hereby amended by adding a new Chapter 8 to Title 3 as follows:

## **CHAPTER 8 Municipal Gas Use Tax**

### **3-8-1 Short Title**

The tax imposed by this Chapter shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the Village of Barrington Hills, the State of Illinois, or any other municipal corporation or political subdivision thereof.

### **3-8-2 Definitions**

For the purpose of this Chapter, the following definitions shall apply:

- (A) "Person" means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal

corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

- (B) “Public Utility” means a public utility as defined in Section 3-105 of the Public Utilities Act.
- (C) “Public Utilities Act” means the Public Utilities Act as amended, (220 ILCS 5/1-101 et seq.).
- (D) “Retail Purchaser” means any Person who purchases gas in a Sale at Retail.
- (E) “Sale at Retail” means any sale of gas by a retailer to a Person for use or consumption, and not for resale. For this purpose, the term “retailer” means any Person engaged in the business of distributing, supplying, furnishing or selling gas.

### 3-8-3 Tax

- (A) Except as otherwise provided by this Chapter, a tax is imposed on the privilege of using or consuming gas in the Village that is purchased in a Sale at Retail at the rate of (\_\_\_) cent(s) per therm.
- (B) The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Chapter shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.
- (C) The Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Retail Purchaser’s premises, to the Public Utility designated to collect the tax pursuant to Section 3-8-4 of this Chapter on or before the payment due date of the Public Utility’s bill first reflecting the tax, or directly to the Village Treasurer on or before the fifteenth (15<sup>th</sup>) day of the second month following the month in which the gas is delivered to the Retail Purchaser if no Public Utility has been designated to collect the tax pursuant to Section 3-8-4 or if the gas is delivered by a person other than a Public Utility so designated.
- (D) Nothing in this Chapter shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the Village.
- (E) A Person who purchases gas for resale and therefore does not pay the tax imposed by this Chapter with respect to the use or consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the Village Treasurer on or before the fifteenth (15<sup>th</sup>) day of the second month following the month in which the gas is used or consumed.
- (F) The tax shall apply to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after \_\_\_\_\_, \_\_\_\_\_. [Note: This date must match the date in the Agreement]
- (G) 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 mistake of fact or an error of law, then such amount shall be (i) credited against any tax due, or to become due, under this Chapter from the taxpayer who made the erroneous payment or (ii) subject to a refund if no such tax is due or to become due; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.
- (H) No action to recover any amount of tax due under the provisions of this Chapter shall be commenced more than three (3) years after the due date of such amount.
- (I) Reserved.

3-8-4 Collection of Tax by Public Utility.

The President is authorized to enter into a contract for collection of the tax imposed by this Chapter with any Public Utility providing gas service in the Village. The contract shall include and substantially conform with the following provisions:

- (1) the Public Utility will collect the tax from Retail Purchasers as an independent contractor;
- (2) the Public Utility will remit collected taxes to the Village Treasurer no more often than once each month;
- (3) the Public Utility will be entitled to withhold from tax collections a service fee equal to 3% of the amounts collected and timely remitted to the Village Treasurer;
- (4) the Public Utility shall not be responsible to the Village for any tax not actually collected from a Retail Purchaser; and
- (5) such additional terms as the parties may agree upon.

3-8-5 Books and records.

Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Chapter. All such books and records shall, at all times during business hours, be subject to and available for inspection by the Village.

Section Seven: This Ordinance shall be in full force and effect, and shall be controlling, from and after its passage, approval and publication in pamphlet form as provided by law; provided, however, that any amounts due or payable to the Village for any tax periods ending prior to \_\_\_\_\_ 1, 20\_\_ shall nevertheless remain payable as if this Ordinance had not been adopted.

Section Eight: All ordinances or parts of ordinances thereof in conflict with this Ordinance are hereby repealed to the extent of any such conflict.

Section Nine: Any Section or provision of this Ordinance that is construed to be invalid or void shall not affect the remaining Sections or provisions which shall remain in full force and effect thereafter.

PASSED by the Board of Trustees of the Village of Barrington Hills, Illinois, on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

AYES: \_\_\_\_\_ NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

APPROVED AND SIGNED by the President of the Village of Barrington Hills, Illinois, on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Robert Abboud, President

ATTEST: \_\_\_\_\_  
Village Clerk