

# STATE OF NEW YORK

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8295

2017-2018 Regular Sessions

## IN ASSEMBLY

June 6, 2017

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Introduced by M. of A. McDONALD -- read once and referred to the Committee on Cities

AN ACT to amend the general city law and the village law, in relation to prohibiting the imposition of tax by a city or village on certain gas or electric transactions that pass through the boundaries of a taxing jurisdiction but do not serve residential or commercial customers within such boundaries

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 20-b of the general city law, as amended by chapter  
2 310 of the laws of 1962 and the opening paragraph as amended by chapter  
3 287 of the laws of 1979, is amended to read as follows:  
4 § 20-b. Cities authorized to impose taxes on utilities. 1. Notwith-  
5 standing any other provisions of law to the contrary, any city of this  
6 state, acting through its local legislative body, is hereby authorized  
7 and empowered to adopt and amend local laws imposing in any such city a  
8 tax such as was imposed by section one hundred eighty-six-a of the tax  
9 law, in effect on January first, nineteen hundred fifty-nine, except  
10 that the rate thereof shall not exceed one per centum of gross income or  
11 of gross operating income, as the case may be, and may make provision  
12 for the collection thereof by the chief fiscal officer of such city;  
13 provided, however, that the rate of such tax imposed by the cities of  
14 Rochester, Buffalo and Yonkers shall not exceed three per centum of  
15 gross income or gross operating income, as the case may be; and provided  
16 further that nothing herein contained shall be construed so as to  
17 prevent any city from adopting local laws exempting from such tax omni-  
18 bus corporations subject to the supervision of the state department of  
19 public service under article three-a of the public service law. A tax  
20 imposed pursuant to this section shall have application only within the  
21 territorial limits of any such city, and shall be in addition to any and  
22 all other taxes. This section shall not authorize the imposition of a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 tax on any gas or electric transaction [~~originating or consummated~~  
2 ~~outside of the territorial limits of any such city, notwithstanding that~~  
3 ~~some act be necessarily performed with respect to such transaction with-~~  
4 ~~in such limits] that passes through the boundaries of a taxing jurisdic-  
5 tion but does not serve a residential or commercial customer within such  
6 boundaries, but such tax shall apply to any transaction that is  
7 requested or received by a residential or commercial customer located  
8 within the boundaries of such taxing jurisdiction.~~

9 2. Revenues resulting from the imposition of taxes authorized by this  
10 section heretofore or hereafter imposed shall be paid into the treasury  
11 of the city imposing the same, and shall be credited to and deposited in  
12 the general fund of such city.

13 3. All of the provisions of section one hundred eighty-six-a of the  
14 tax law, so far as the same are or can be made applicable, with such  
15 limitations as are set forth in this section, and such modifications as  
16 may be necessary in order to adapt such taxes to local conditions shall  
17 apply to the taxes authorized by this section.

18 4. Any final determination of the amount of any tax payable hereunder  
19 shall be reviewable for error, illegality or unconstitutionality or any  
20 other reason whatsoever by a proceeding under article seventy-eight of  
21 the civil practice law and rules if application therefor is made to the  
22 supreme court within thirty days after the giving of the notice of such  
23 final determination, provided, however, that any such proceeding under  
24 article seventy-eight of the civil practice law and rules shall not be  
25 instituted unless the amount of any tax sought to be reviewed, with such  
26 interest and penalties thereon as may be provided for by local law or  
27 regulation, shall be first deposited and an undertaking filed, in such  
28 amount and with such sureties as a justice of the supreme court shall  
29 approve to the effect that if such proceeding be dismissed or the tax  
30 confirmed the petitioner will pay all costs and charges which may accrue  
31 in the prosecution of such proceeding.

32 5. Where any tax imposed hereunder shall have been erroneously, ille-  
33 gally or unconstitutionally collected and application for the refund  
34 thereof duly made to the proper fiscal officer or officers, and such  
35 officer or officers shall have made a determination denying such refund,  
36 such determination shall be reviewable by a proceeding under article  
37 seventy-eight of the civil practice law and rules, provided, however,  
38 that such proceeding is instituted within thirty days after the giving  
39 of the notice of such denial, that a final determination of tax due was  
40 not previously made, and that an undertaking is filed with the proper  
41 fiscal officer or officers in such amount and with such sureties as a  
42 justice of the supreme court shall approve to the effect that if such  
43 proceeding be dismissed or the tax confirmed, the petitioner will pay  
44 all costs and charges which may accrue in the prosecution of such  
45 proceeding.

46 § 2. Subdivision 1 of section 5-530 of the village law is amended to  
47 read as follows:

48 1. Notwithstanding any other provisions of law to the contrary, any  
49 village is hereby authorized and empowered to adopt and amend local laws  
50 imposing in any such village a tax such as was imposed by section one  
51 hundred eighty-six-a of the tax law, in effect on January first, nine-  
52 teen hundred fifty-nine, except that the rate thereof shall not exceed  
53 one per centum of gross income or of gross operating income, as the case  
54 may be, and may make provision for the collection thereof by the chief  
55 fiscal officer of such village; provided, however, that nothing herein  
56 contained shall be construed so as to prevent any village from adopting

1 local laws exempting from such tax omnibus corporations subject to the  
2 supervision of the state department of public service [~~under article~~  
3 ~~three-a of the public service law~~]. A tax imposed pursuant to this  
4 section shall have application only within the territorial limits of any  
5 such village, and shall be in addition to any and all other taxes. This  
6 section shall not authorize the imposition of a tax on any gas or elec-  
7 tric transaction [~~originating or consummated outside of the territorial~~  
8 ~~limits of any such village, notwithstanding that some act be necessarily~~  
9 ~~performed with respect to such transaction within such limits~~] that  
10 passes through the boundaries of a taxing jurisdiction but does not  
11 serve a residential or commercial customer within such boundaries, but  
12 such tax shall apply to any transaction that is requested or received by  
13 a residential or commercial customer located within the boundaries of  
14 such taxing jurisdiction.

15 § 3. This act shall take effect on the one hundred eightieth day after  
16 it shall have become a law.