STATE OF NEW YORK

6626

2019-2020 Regular Sessions

IN ASSEMBLY

March 14, 2019

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:

Section 1. Section 20-b of the general city law, as amended by chapter 310 of the laws of 1962 and the opening paragraph as amended by chapter 287 of the laws of 1979, is amended to read as follows:

§ 20-b. Cities authorized to impose taxes on utilities. **1.** Notwithstanding any other provisions of law to the contrary, any city of this state, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city a tax such as was imposed by section one hundred eighty-six-a of the tax law, in effect on January first, nineteen hundred fifty-nine, except that the rate thereof shall not exceed one per centum of gross income or of gross operating income, as the case may be, and may make provision for the collection thereof by the chief fiscal officer of such city; provided, however, that the rate of such tax imposed by the cities of Rochester, Buffalo and Yonkers shall not exceed three per centum of gross income or gross operating income, as the case may be; and provided further that nothing herein contained shall be construed so as to prevent any city from adopting local laws exempting from such tax omnibus corporations subject to the supervision of the state department of public service [~~under article three-a of the public service law~~]. A tax imposed pursuant to this section shall have application only within the territorial limits of any such city, and shall be in addition to any and 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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tax on any **gas or electric** transaction [~~originating or consummated outside of the territorial limits of any such city, notwithstanding that some act be necessarily performed with respect to such transaction within such limits~~] **that passes through the boundaries of a taxing jurisdiction but does not serve a residential or commercial customer within such boundaries, but such tax shall apply to any transaction that is requested or received by a residential or commercial customer located within the boundaries of such taxing jurisdiction**.

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

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

4. 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 seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited 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.

5. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty 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 proper fiscal officer or officers 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.

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

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

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

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law, and shall apply to gross income or gross operating income, as the case may be, earned on and after such date.