

ARTICLE X
Utility Tax
[Adopted 12-5-2011 by L.L. No. 15-2011]

§ 199-40. Legislative intent.

By § 20-b of the General City Laws, as added by Chapter 321 of the Laws of 1937, and as amended by Chapter 245 of the Laws of 1942, cities are authorized to enact local laws imposing a tax such as was imposed by § 186-a of the Tax Law. Pursuant to such authority, this article is modeled upon said § 186-a. It is intended thereby and likewise by this article, enacted pursuant to the above-mentioned authority, to impose a tax on utility services, whether rendered by utilities in the strict sense or not, and whether such services are in the main or incidental part of their business and regardless of whether the public streets are used in any manner. Accordingly, such a utility is defined for the purposes of the tax as including every person subject to the supervision of the Department of Public Service and every other person furnishing utility services. It is intended to include persons and corporations which are directly in competition with ordinary utilities, such as landlords and submeterers, who buy their services from other utilities and in turn resell such services. For that reason, the tax is imposed in receipts from sales to ultimate consumers. Receipts from the sale of such utility services to submeterers are not taxed, but receipts of submeterers from their own customers are intended to be taxed. Any other construction would result in a complete exemption from taxation of utility services sold or furnished by this particular method. Furthermore, it is believed that submeterers have common characteristics that distinguish them from other businesses and justify the conclusion that the method, character and nature of their business, in this aspect, is substantially similar to the business of an ordinary utility and requires similar treatment for the purposes of the tax. This conclusion is strongly fortified by the fact that such landlords and submeterers are in direct competition with ordinary utilities and hence should bear similar tax burdens in order to avoid inequality of treatment.

§ 199-41. Imposition of tax.

Pursuant to the authority granted by § 20-b of the General City Law of the State of New York, a tax equal to 1% of its gross income from and after July 1, 1937, is hereby imposed upon every utility doing business in the City of Beacon which is subject to the supervision of the State Department of Public Service, which has a gross income for the 12

months ending May 31 in excess of \$500, except motor carriers or brokers subject to such supervision under Transportation Law § 240 et seq., and a tax equal to 1% of its gross operating income is hereby imposed from and after July 1, 1937, upon every other utility doing business in the City of Beacon which has a gross operating income for the 12 months ending May 31 in excess of \$500, which taxes shall have application only within the territorial limits of the City of Beacon and shall be in addition to any and all other taxes and fees imposed by any other provisions of law for the same period. Such taxes shall not be imposed on any transactions originating or consummated outside of the territorial limits of the City of Beacon, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

§ 199-42. Definitions.

As used in this article, the following terms shall have the meanings indicated:

GROSS INCOME — Means and includes receipts received in or by reason of any sale, conditional or otherwise (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in gross income), made or service rendered for ultimate consumption or use by the purchaser in the City of Beacon, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or services or other costs, interest or discount paid or any other expense whatsoever; also profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the period for which a return is made); also receipts from interest, dividends and royalties derived from sources within the City of Beacon, other than such as are received from a corporation a majority of whose voting stock is owned by the taxpaying utility without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof; and also profits from any transaction (except sales for resale and rentals) within the City of Beacon whatsoever.

GROSS OPERATING INCOME — Means and includes receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, electricity, steam, water, refrigeration, telephony or telegraphy, or in or by

reason of the furnishing for such consumption or use of gas, electric, steam, water, refrigerator, telephone or telegraph service in the City of Beacon, including cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid or any other expenses whatsoever.

PERSONS — Means persons, corporations, companies, associations, joint-stock associations, co-partnerships, estates, assignees of rents, any person acting in a fiduciary capacity, or any other entity, and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or by any other means, except the state, municipalities, political and civil subdivisions of the state or municipality, and public districts.

UTILITY — Includes every person subject to the supervision of either division of the State Department of Public Service, except persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, and also includes every person (whether or not such person is subject to such supervision) who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water, refrigerator, telephone or telegraph service, by means of mains, pipes or wires; regardless of whether such activities are the main business of such person or are only incidental thereto, or of whether use is made of the public streets.

§ 199-43. Recordkeeping required.

Every utility subject to tax under this article shall keep such records of its business and in such form as the Director of Finance may require, and such records shall be preserved for a period of three years, except that the Director of Finance may consent to their destruction within that period or may require that they be kept longer.

§ 199-44. Filing of returns with Director of Finance; due dates for filing.

Every utility subject to tax hereunder shall file, on or before September 25, December 25, March 25 and June 25, a return for the three calendar months preceding each such return date, including any period for which the tax imposed hereby or by any amendment hereof is effective, each of which returns shall state the gross income or gross operating income for the period covered by each such return. Returns shall be filed with the Director of Finance on a form to be

furnished by him for such purpose and shall contain such other data, information or matter as the Director of Finance may require to be included therein. Notwithstanding the foregoing provisions of this section, any utility whose average gross income or average gross operating income, as the case may be, for the aforesaid three-month periods is less than \$1,500, may file a return annually on June 25, for the 12 preceding calendar months, and the Director of Finance may require any utility doing business in the City of Beacon to file an annual return which shall contain any data specified by the Director of Finance regardless of whether the utility is subject to tax under this article. The Director of Finance in order to ensure payment of the tax imposed may require at any time a further or supplemental return, which shall contain any data that may be specified by the Director of Finance. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or of the copartner thereof, or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that statements contained therein are true.

§ 199-45. Due dates for payment.

At the time of filing a return as required by this article, each utility shall pay to the Director of Finance the tax imposed by this article for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

§ 199-46. Insufficient returns; determination of tax; interest and penalties.

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Director of Finance, and if a corrected or sufficient return is not filed within 20 days after the same is required by notice from the Director of Finance, or if no return is made for any period, the Director of Finance shall determine the amount of tax due from such information as he is able to obtain, and, if necessary, may estimate the tax on the basis of external indices or otherwise. The Director of Finance shall give notice of such determination to the person liable for such tax. Such determination shall finally and irrevocably fix such tax unless the person against whom it is assessed shall, within 30 days after the giving of notice of such determination, apply to the Director of Finance for a hearing, or unless the Director of Finance of his own motion shall reduce the same. After such hearing, the Director of Finance shall give notice of his decision to the person liable for the tax. Any final determination by the Director

of Finance 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 78 of the Civil Practice Law and Rules if application is made to the Supreme Court within 30 after the giving of a notice of such final determination; provided, however, that any such proceeding under Article 78 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.

§ 199-47. Mailing of notice.

Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended, in a postpaid envelope, addressed to such person at the address given by him in the last return filed by him under this article or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of mailing of such notice.

§ 199-48. Penalty for failure to file; exceptions.

Any person failing to file a return or corrected return, or to pay any tax or any portion thereof, within the time required by this article shall be subject to a penalty of 5% of the amount of tax due, plus 1% of such tax for each month of delay or fraction thereof, excepting the first month, after such return was required to be filed or such tax became due; but the Director of Finance, if satisfied that the delay was excusable may remit all or any portion of such penalty.

§ 199-49. Refunds.

If, within one year from the payment of any tax or penalty, the payer thereof shall make application for a refund thereof and the Director of Finance or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Director of Finance shall refund the amount so determined. For like cause and within the same period, a refund may be so made on the initiative

of the Director of Finance. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Director of Finance as hereinbefore provided unless the Director of Finance, after a hearing as hereinbefore provided, or of his own motion, shall have reduced the tax or penalty or it shall have been established in a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this article. An application for a refund, made as hereinbefore provided, shall be deemed an application for the revision of any tax or penalty complained of and the Director of Finance may receive additional evidence with respect thereto. After making this determination, the Director of Finance shall give notice thereof to the person interested, and he shall be entitled to an order to review such determination under said Article 78, subject to the provisions hereinbefore contained relating to the granting of such an order.

§ 199-50. Tax constitutes part of operating costs.

The tax imposed by this article shall be charged and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others but shall constitute a part of the operating costs of such utility.

§ 199-51. Failure to pay tax or penalty.

Whenever any person shall fail to pay any tax or penalty imposed by this article, the City Attorney shall, upon the request of the Director of Finance, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Director of Finance. Each such tax and penalty shall be a lien upon the property of the person liable to pay the same, in the same manner and to the same extent that the tax and penalty imposed by § 186-a of the Tax Law is made a lien.

§ 199-52. Powers of Director of Finance; administration and enforcement.

In the administration of this article, the Director of Finance shall have power to make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of his powers and the performance of his duties, and to prescribe the form of blanks, reports and other records relating to the administration and enforcement of the tax, to take testimony and proofs, under oath, with reference to any matter within the line of his official duty under

this article, and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

§ 199-53. Secrecy provisions; penalties for offenses.

- A. Except in accordance with the proper judicial order as otherwise provided by law, it shall be unlawful for the Director of Finance, or any agent, Clerk or employee of the City of Beacon to divulge or make known in any manner the amount of gross income or gross operating income, or any particulars set forth or disclosed in any return under this article. The officer charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City of Beacon in an action or proceeding under the provisions of this article, or on behalf of the State Tax Commission in an action or proceeding under the provisions of the Tax Law of the State of New York or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the publication of delinquent lists showing the names of persons who have failed to pay their taxes at the time and in the manner provided for by this article, together with any relevant information which in the opinion of the Director of Finance may assist in the collection of such delinquent taxes; or the inspection by the City Attorney or other legal representatives of the City of Beacon of the return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action has been instituted in accordance with the provisions of this article.
- B. Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding six months, or both, and if the offender be an officer, agent, Clerk or employee of the City of Beacon he shall be dismissed from office, and shall be incapable of holding any office or employment in the City of Beacon for a period of five years thereafter.

- C. Notwithstanding any provisions of this article, the Director of Finance may exchange with the chief fiscal officer of any other city in the State of New York information contained in returns filed under this article, provided that such other city grants similar privileges to the City of Beacon, and provided that such information is to be used for tax purposes only, and the Director of Finance shall, upon request, furnish the State Tax Commission with any information contained in such returns.

§ 199-54. Taxes deposited in general fund.

All taxes and penalties received by the Director of Finance under this article shall be credited to and deposited in the general fund of the City of Beacon.