

# Village of Barker

Mayor *JoAnn Greenwald*  
Dep. Mayor; *William R. Bodine*  
Trustees: *Margaret E. Cole*  
*David Desmarais*  
*Herbert C. Meyer*  
Police Chief *W. Ross Annable*

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Clerk-Treasurer  
*Kathie K Smith*  
Deputy-Clerk-Treasurer  
*Ruth H. Wendler*  
Superintendent of Public Works  
*Mark D. Remington*

December 7, 2010

National Grid  
Attn. Arthur Ward  
Transaction Tax Department

Dear Sir;

The Village of Barker adopted a local law imposing the gross utility tax in September of this year 2010. Due to ignorance of the procedures, National Grid was not notified in a timely manner.

Therefore, there will be no charges or penalties assessed for those months prior to notification. We will expect to begin assessing this tax for the month of January 2011.

Thank you for your cooperation with us on this issue.

Sincerely,

JoAnn N. Greenwald  
Mayor

JNG/kks

**ARTICLE IV**  
**Utility Tax**

**§ 183-7. Imposition of tax.**

A tax equal to 1% of its gross income or of gross operating income, as the case may be, from and after October 1, 2010, is hereby imposed upon every utility doing business in the Village of Barker. This tax shall have application only within the territorial limits of the Village of Barker and shall be in addition to any and all other taxes. Such tax shall not be imposed on any transaction originating or consummated outside the territorial limits of the Village of Barker, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

**§ 183-8. Definitions.**

As used in this article, the following terms shall have the meanings as established by Section 186-a of the Tax Law of the State of New York and Section 5-30 of the Village Law of the State of New York: "GROSS INCOME", "GROSS OPERATING INCOME", "PERSON" and "UTILITY".

**§ 183-9. Gross income.**

Notwithstanding any other provisions of this article or of § 186-a of the Tax Law of the State of New York, the words, "gross income," shall include, in the case of a utility engaged in selling telephony or telephone service, only receipts from local exchange service wholly consummated within the Village of Barker; and in the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village of Barker.

**§ 183-10. Records to be kept.**

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

**§ 183-11. Filing of return.**

Every utility subject to tax hereunder shall file annually, on or before the 25th day of February, a return for the 12 consecutive months ending December 31 preceding such return date or any portion thereof for which the tax imposed hereby is effective; provided, however, that in lieu of the annual return required by the foregoing provisions, any utility may file quarterly, on or before May 25, August 25, November 25 and February 25, a return for the three calendar months preceding each such return date, and in the case of the first such return, for all preceding calendar months during which the tax imposed was effective. Every return shall state the gross income or gross operating income for the period covered. Returns shall be filed with the Village Treasurer on a form to be furnished by him for such purpose and shall contain such other data, information or matter as the Village Treasurer may require to be included therein. Every return shall have annexed thereto a certification by the head of the utility making the same, or of the owner or of a copartner thereof, or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that the statements contained therein are true.

**§ 183-12. Payment due.**

At the time of filing a return as required by this article, each utility shall pay to the Village Treasurer 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.

**§ 183-13. Insufficient returns.**

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Village Treasurer, and if a corrected or sufficient return is not filed within 20 days after the same is required by notice from the Village Treasurer, or if no return is made for any period, the Village Treasurer 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 Village Treasurer 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 one year after the giving of notice of such determination, apply to the Village Treasurer for a hearing, or unless the Village Treasurer, of his own motion shall reduce the same. After such hearing, the Village Treasurer shall give notice of his decision to the person liable for the tax. 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 78 of the Civil Practice Law and Rules as provided by § 5-530 of the Village Law of the State of New York. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Village Treasurer, and such officer shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules as provided by § 5-530 of the Village Law of the State of New York.

**§ 183-14. Notices.**

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 section, or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice 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.

**§ 183-15. Penalty.**

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 Village Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

**§ 183-16. Refunds.**

If, within one year from the giving of notice of any determination or assessment of any tax or penalty, the person liable for the tax shall make application for a refund thereof and the Village Treasurer or the Court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Village Treasurer 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 Village Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Treasurer as hereinbefore provided unless the Village Treasurer, 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 in the manner provided by § 5-530 of the Village Law 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 Village Treasurer may receive additional evidence with respect thereto. After making his determination, the Village Treasurer shall give notice thereof to the person interested, and he shall be entitled to commence a proceeding to review such determination as provided by § 5-530 of the Village Law.

**§ 183-17. Not to be billed separately to customers.**

The tax imposed by this article shall be charged against 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.

**§ 183-18. Legal action to collect.**

Whenever any person shall fail to pay any tax or penalty imposed under the provisions of this article, the Village Attorney shall, upon the request of the Village Treasurer, bring an action to enforce the payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Village Treasurer.

**§ 183-19. Administration.**

In the administration of this article, the Village Treasurer 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 of witnesses and the production of books, records, papers and documents.

Certified this 13<sup>th</sup> day of September, 2010

Kathie K Smith, CMC, RMC, CMFO  
Clerk-Treasurer