

## **CHAPTER 36 - TAXATION**

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## CHAPTER 36

## TAXATION

## ARTICLE I – TAXPAYERS’ RIGHTS CODE

**36-1-1** **TITLE.** This Article shall be known as, and may be cited as, the “Locally Imposed and Administered Tax Rights and Responsibility Code”.

**36-1-2** **SCOPE.** The provisions of this Code shall apply to the City’s procedures in connection with all of the City’s locally imposed and administered taxes.

**36-1-3** **DEFINITIONS.** Certain words or terms herein shall have the meaning ascribed to them as follows:

(A) **Act.** “Act” means the “Local Government Taxpayers’ Bill of Rights Act”.

(B) **Corporate Authorities.** “Corporate Authorities” means the City’s Mayor and City Council.

(C) **Locally Imposed and Administered Tax or “Tax”.** “Locally Imposed and Administered Tax” or “Tax” means each tax imposed by the City that is collected or administered by the City not an agency or department of the State. It does not include any taxes imposed upon real property under the Property Tax Code or fees collected by the City other than infrastructure maintenance fees.

(D) **Local Tax Administrator.** “Local Tax Administrator”, the City’s Mayor, is charged with the administration and collection of the locally imposed and administered taxes, including staff, employees or agents to the extent they are authorized by the local tax administrator to act in the local tax administrator’s stead. The local tax administrator shall have the authority to implement the terms of this Code to give full effect to this Code. The exercise of such authority by the local tax administrator shall not be inconsistent with this Code and the Act.

(E) **City.** “City” means the City of Gibson City, Illinois.

(F) **Notice.** “Notice” means each audit notice, collection notice or other similar notice or communication in connection with each of the City’s locally imposed and administered taxes.

(G) **Tax Ordinance.** “Tax Ordinance” means each ordinance adopted by the City that imposes any locally imposed and administered tax.

(H) **Taxpayer.** “Taxpayer” means any person required to pay any locally imposed and administered tax and generally includes the person upon whom the legal incidence of such tax is placed and with respect to consumer taxes includes the business or entity required to collect and pay the locally imposed and administered tax to the City.

**36-1-4** **NOTICES.** Unless otherwise provided, whenever notice is required to be given, the notice is to be in writing mailed not less than **seven (7) calendar days** prior to the day fixed for any applicable hearing, audit or other scheduled act of the local tax administrator. The notice shall be sent by the local tax administrator as follows:

(A) First class or express mail, or overnight mail, addressed to the persons concerned at the persons’ last known address, or

(B) Personal service or delivery.

**36-1-5** **LATE PAYMENT.** Any notice, payment, remittance or other filing required to be made to the City pursuant to any tax ordinance shall be considered late unless it is:

(A) physically received by the City on or before the due date, or

(B) received in an envelope or other container displaying a valid, readable U.S. postmark dated on or before the due date, properly addressed to the City, with adequate postage prepaid.

**36-1-6** **PAYMENT.** Any payment or remittance received for a tax period shall be applied in the following order:

- (A) first to the tax due for the applicable period;
- (B) second to the interest due for the applicable period; and
- (C) third to the penalty for the applicable period.

**36-1-7** **CERTAIN CREDITS AND REFUNDS.**

(A) The City shall not refund or credit any taxes voluntarily paid without written protest at the time of payment in the event that a locally imposed and administered tax is declared invalidly enacted or unconstitutional by a court of competent jurisdiction. However, a taxpayer shall not be deemed to have paid the tax voluntarily if the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time of payment or if the taxpayer paid the taxes under duress.

(B) The statute of limitations on a claim for credit or refund shall be **two (2) years** after the end of the calendar year in which payment was made. The City shall not grant a credit or refund of locally imposed and administered taxes, interest, or penalties to a person who has not paid the amounts directly to the City.

(C) The procedure for claiming a credit or refund of locally imposed and administered taxes, interest or penalties paid in error shall be as follows:

- (1) The taxpayer shall submit to the local tax administrator in writing a claim for credit or refund together with a statement specifying:
  - (a) the name of the locally imposed and administered tax subject to the claim;
  - (b) the tax period for the locally imposed and administered tax subject to the claim;
  - (c) the date of the tax payment subject to the claim and the cancelled check or receipt for the payment;
  - (d) the taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and
  - (e) a request for either a refund or a credit in connection with the claim to be applied to the amount of tax, interest and penalties overpaid, and as applicable, related interest on the amount overpaid; provided, however, that there shall be no refund and only a credit given in the event the taxpayer owes any monies to the City.
- (2) Within **ten (10) days** of the receipt by the local tax administrator of any claim for a refund or credit, the local tax administrator shall either:
  - (a) grant the claim; or
  - (b) deny the claim, in whole or in part, together with a statement as to the reason for the denial or the partial grant and denial.
- (3) In the event the local tax administrator grants, in whole or in part, a claim for refund or credit, the amount of the grant for refund or credit shall bear interest at the rate of **six percent (6%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed, from the date of the overpayment to the date of mailing of a refund check or the grant of a credit.

**36-1-8**      **AUDIT PROCEDURE.** Any request for proposed audit pursuant to any local administered tax shall comply with the notice requirements of this Code.

(A)            Each notice of audit shall contain the following information:

- (1)        the tax;
- (2)        the time period of the audit; and
- (3)        a brief description of the books and records to be made available for the auditor.

(B)            Any audit shall be conducted during normal business hours and if the date and time selected by the local tax administrator is not agreeable to the taxpayer, another date and time may be requested by the taxpayer within **thirty (30) days** after the originally designated audit and during normal business hours.

(C)            The taxpayer may request an extension of time to have an audit conducted. The audit shall be conducted not more than **thirty (30) days** from the date the notice is given, unless the taxpayer and the local tax administrator agreed to some other convenient time. In the event taxpayer is unable to comply with the audit on the date in question, the taxpayer may request another date within the **thirty (30) days**, approved in writing, that is convenient to the taxpayer and the local tax administrator.

(D)            Every taxpayer shall keep accurate books and records of the taxpayer's business or activities, including original source documents and books of entry denoting the transactions which had given rise or may have given rise to any tax liability, exemption or deduction. All books shall be kept in the English Language and shall be subject to and available for inspection by the City.

(E)            It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the City. If the taxpayer or tax collector fails to provide the documents necessary for audit within the time provided, the local tax administrator may issue a tax determination and assessment based on the tax administrator's determination of the best estimate of the taxpayer's tax liability.

(F)            If an audit determines there has been an overpayment of a locally imposed and administered tax as a result of the audit, written notice of the amount of overpayment shall be given to the taxpayer within **thirty (30) days** of the City's determination of the amount of overpayment.

(G)            In the event a tax payment was submitted to the incorrect local governmental entity, the local tax administrator shall notify the local governmental entity imposing such tax.

**36-1-9**      **APPEAL.**

(A)            The local tax administrator shall send written notice to a taxpayer upon the local tax administrator's issuance of a protestable notice of tax due, a bill, a claim denial, or a notice of claim reduction regarding any tax. The notice shall include the following information:

- (1)        the reason for the assessment;
- (2)        the amount of the tax liability proposed;
- (3)        the procedure for appealing the assessment; and
- (4)        the obligations of the City during the audit, appeal, refund and collection process.

(B)            A taxpayer who receives written notice from the local tax administrator of a determination of tax due or assessment may file with the local tax administrator a written protest and petition for hearing, setting forth the basis of the taxpayer's request for a hearing. The written protest and petition for hearing must be filed with the local tax administrator within **forty-five (45) days** of receipt of the written notice of the tax determination and assessment.

(C)            If a timely written notice and petition for hearing is filed, the local tax administrator shall fix the time and place for hearing and shall give written notice to the taxpayer. The hearing shall be scheduled for a date within **fourteen (14) days** of receipt of the written protest and petition for hearing, unless the taxpayer requests a later date convenient to all parties.

(D) If a written protest and petition for hearing is not filed within the **forty-five (45) day** period, the tax determination, audit or assessment shall become a final bill due and owing without further notice.

(E) Upon the showing of reasonable cause by the taxpayer and the full payment of the contested tax liability along with interest accrued as of the due date of the tax, the local tax administrator may reopen or extend the time for filing a written protest and petition for hearing. In no event shall the time for filing a written protest and petition for hearing be reopened or extended for more than **ninety (90) days** after the expiration of the **forty-five (45) day** period.

**36-1-10 HEARING.**

(A) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under **Section 36-1-9**, above, the local tax administrator shall conduct a hearing regarding any appeal.

(B) No continuances shall be granted except in cases where a continuance is absolutely necessary to protect the rights of the taxpayer. Lack of preparation shall not be grounds for a continuance. Any continuance granted shall not exceed **fourteen (14) days**.

(C) At the hearing the local tax administrator shall preside and shall hear testimony and accept any evidence relevant to the tax determination, audit or assessment. The strict rules of evidence applicable to judicial proceedings shall not apply.

(D) At the conclusion of the hearing, the local tax administrator shall make a written determination on the basis of the evidence presented at the hearing. The taxpayer or tax collector shall be provided with a copy of the written decision.

**36-1-11 INTEREST AND PENALTIES.** In the event a determination has been made that a tax is due and owing, through audit, assessment or other bill sent, the tax must be paid within the time frame otherwise indicated.

(A) **Interest.** The City hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax to be **eight percent (8%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed.

(B) **Late Filing and Payment Penalties.** If a tax return is not filed within the time and manner provided by the controlling tax ordinance, a late filing penalty, of **five percent (5%)** of the amount of tax required to be shown as due on a return shall be imposed; and a late payment penalty of **five percent (5%)** of the tax due shall be imposed. If no return is filed within the time or manner provided by the controlling tax ordinance and prior to the City issuing a notice of tax delinquency or notice of tax liability, then a failure to file penalty shall be assessed equal to **twenty-five percent (25%)** of the total tax due for the applicable reporting period for which the return was required to be filed. A late filing or payment penalty shall not apply if a failure to file penalty is imposed by the controlling ordinance.

**36-1-12 ABATEMENT.** The local tax administrator shall have the authority to waive or abate any late filing penalty, late payment penalty or failure to file penalty if the local tax administrator shall determine reasonable cause exists for delay or failure to make a filing.

**36-1-13 INSTALLMENT CONTRACTS.** The City may enter into an installment contract with the taxpayer for the payment of taxes under the controlling tax ordinance. The local tax administrator may not cancel any installment contract so entered unless the taxpayer fails to pay any amount due and owing. Upon written notice by the local tax administrator that the payment is **thirty (30) days** delinquent, the taxpayer shall have **fourteen (14) working days** to cure any delinquency. If the taxpayer fails to cure the delinquency within the **fourteen (14) day** period or fails to demonstrate good faith in restructuring the installment contract with the local administrator, the installment contract shall be canceled without further notice to the taxpayer.

**36-1-14**      **STATUTE OF LIMITATIONS.** The City, through the local tax administrator, shall review all tax returns in a prompt and timely manner and inform taxpayers of any amounts due and owing. The taxpayer shall have **forty-five (45) days** after receiving notice of the reviewed tax returns to make any request for refund or provide any tax still due and owing.

(A)              No determination of tax due and owing may be issued more than **two (2) years** maximum after the end of the calendar year for which the return for the applicable period was filed or for the calendar year in which the return for the applicable period was due, whichever occurs later.

(B)              If any tax return is not filed or if during any **four (4) year** period for which a notice of tax determination or assessment may be issued by the City, the tax paid was less than **seventy-five percent (75%)** of the tax due, the statute of limitations shall be **six (6) years** maximum after the end of the calendar year in which return for the applicable period was due or end of the calendar year in which the return for the applicable period was filed.

(C)              No statute of limitations shall not apply if a fraudulent tax return was filed by the taxpayer.

**36-1-15**      **VOLUNTARY DISCLOSURE.** For any locally imposed and administered tax for which a taxpayer has not received a written notice of an audit, investigation, or assessment from the local tax administrator, a taxpayer is entitled to file an application with the local tax administrator for a voluntary disclosure of the tax due. A taxpayer filing a voluntary disclosure application must agree to pay the amount of tax due, along with interest of **one percent (1%)** per month, for all periods prior to the filing of the application but not more than **four (4) years** before the date of filing the application. A taxpayer filing a valid voluntary disclosure application may not be liable for any additional tax, interest, or penalty for any period before the date the application was filed. However, if the taxpayer incorrectly determined and underpaid the amount of tax due, the taxpayer is liable for the underpaid tax along with applicable interest on the underpaid tax, unless the underpayment was the result of fraud on the part of the taxpayer, in which case the application shall be deemed invalid and void. The payment of tax and interest must be made by no later than **ninety (90) days** after the filing of the voluntary disclosure application or the date agreed to by the local tax administrator. However, any additional amounts owed as a result of an underpayment of tax and interest previously paid under this Section must be paid within **ninety (90) days** after a final determination and the exhaustion of all appeals of the additional amount owed or the date agreed to by the local tax administrator, whichever is longer.

**36-1-16**      **PUBLICATION OF TAX ORDINANCES.** Any locally administered tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the Internet shall satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the City Clerk's office.

**36-1-17**      **INTERNAL REVIEW PROCEDURE.** The local tax administrator shall establish an internal review procedure regarding any liens filed against any taxpayers for unpaid taxes. Upon a determination by the local tax administrator that the lien is valid, the lien shall remain in full force and effect. If the lien is determined to be improper, the local tax administrator shall:

- (A)              timely remove the lien at the City's expense;
- (B)              correct the taxpayer's credit record; and
- (C)              correct any public disclosure of the improperly imposed lien.

**36-1-18**      **APPLICATION.** This Ordinance shall be liberally construed and administered to supplement all of the City's tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

(Ord. No. 00-22; 12-26-00)

## ARTICLE II – GENERALLY

**36-2-1**            **CORPORATE RATE.** The maximum rate for general corporate purposes of the City be and the same is hereby established at a rate of .25%. (See 65 ILCS 5/8-3-1) (Ord. No. 605; 05-24-77)

**36-2-2**            **POLICE TAX.** The maximum rate for police protection purposes of the City be and the same is hereby established at a rate of .075%. (See 65 ILCS 5/11-1-3)

**36-2-3**            **AUDIT TAX.** The City Council may levy a "Municipal Auditing Tax" upon all taxable property in the City which will produce an amount which will equal the cost of all auditing for the City. (See 65 ILCS 5/8-8-8)

**36-2-4**            **F.I.C.A. TAX.** The City Council may levy a tax upon all taxable property in the City at whatever rate is necessary to participate in the federal Social Security System. (See 40 ILCS 5/21-101 et seq.)

**36-2-5**            **SWIMMING POOL TAX.** The City Council may levy a "Playground and Recreation Tax" upon all taxable property in the City at a rate not to exceed .09%. (See 65 ILCS 5/11-95-7 and 5/11-95-8)

**36-2-6**            **BAND FUND.** The maximum tax rate limit for the Band Fund of the City shall be established at .04% of the full, fair cash value of all taxable property in the City. (Ord. No. 605; 05-24-77)

**36-2-7**            **WORKMEN'S COMPENSATION.** The maximum tax for Worker's Compensation and Occupational Diseases Claims purposes, be and the same is hereby established at a rate to pay for legal services, purchase insurance, purchase claim services, pay for judgments and settlements. (See 745 ILCS 10/9-107)

**36-2-8**            **PUBLIC PARKS TAX.** The maximum tax for Public Park purposes, be and the same is hereby established at a rate of .075%. (See 65 ILCS 5/11-98-1) (Ord. No. 605; 05-24-77)

**36-2-9**            **STREET AND BRIDGE.** The maximum tax for Street and Bridge purposes, be and the same is hereby established at a rate of .06%. (See 65 ILCS 5/11-81-1 and 5/11-81-2)

**36-2-10**           **FORESTRY PROGRAM.** The maximum tax for the Forestry Program purposes, be and the same is hereby established at a rate of .05%. (See 65 ILCS 5/11-7-1)



### ARTICLE III - SIMPLIFIED TELECOMMUNICATION TAX

**36-3-1**        **TELECOMMUNICATIONS TAX RECITALS.**    This Article is adopted pursuant to the provisions of the Illinois Simplified Municipal Telecommunications Tax Act, Public Act 92-526 (the "Act").

**36-3-2**        **DEFINITIONS.**    As used in this Article, the following terms shall have the following meanings:

(A)            **"Amount Paid"** means the amount charged to the taxpayer's service address in such municipality regardless of where such amount is billed or paid.

(B)            **"Department"** means the Illinois Department of Revenue.

(C)            **"Gross Charge"** means the amount paid for the act or privilege of originating or receiving telecommunications in such municipality and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within this State, charges for the channel mileage between each channel point within this State, and charges for that portion of the interstate inter-office channel provided within Illinois. However, "gross charge" shall not include:

- (1) any amounts added to a purchaser's bill because of a charge made pursuant to:
  - (a) the tax imposed by this Section,
  - (b) the tax imposed by the Telecommunications Excise Tax Act,
  - (c) the tax imposed by Section 4251 of the Internal Revenue Code,
  - (d) 911 surcharges, or
  - (e) charges added to customers' bills pursuant to the provisions of Section 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in those provisions of the Public Utilities Act;
- (2) charges for a sent collect telecommunication received outside of such municipality;
- (3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;
- (4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;
- (5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community Affairs;

- (6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Act has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;
- (7) bad debts (“bad debt” means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
- (8) charges paid by inserting coins in coin-operated telecommunication devices; or
- (9) amounts paid by telecommunications retailers under the Telecommunications Infrastructure Maintenance Fee Act.

(D) **“Interstate Telecommunications”** means all telecommunications that either originate or terminate outside this State.

(E) **“Intrastate Telecommunications”** means all telecommunications that originate and terminate within this State.

(F) **“Person”** means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, country, or other political subdivision of this State.

(G) **“Purchase at Retail”** means the acquisition, consumption or use of telecommunications through a sale at retail.

(H) **“Retailer”** means and includes every person engaged in the business of making sales at retail as defined in this Section. The Department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion.

(I) **“Retailer maintaining a place of business in this State”**, or any like term, means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(J) **“Sale at Retail”** means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.

(K) **“Service Address”** means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, and maritime systems, “service address” means the

customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

(L) **"Taxpayer"** means a person who individually or through his or her agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in a municipality and who incurs a tax liability as authorized by the Article.

(M) **"Telecommunications"**, in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll, and wide area telephone service, private line services, channel services, telegraph services, teletypewriter, computer exchange services, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. As used in this Article, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchases of telecommunications by a telecommunication service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable as sales for resale. Prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Act. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailer's Occupations Tax Act.

**36-3-3 SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX IMPOSED.** A tax imposed upon any and all of the following acts or privileges:

(A) The act or privilege of originating in the City or receiving in the City intrastate telecommunications by a person at a rate of **three percent (3%)** of the gross charge for such telecommunications purchased at retail from a retailer.

(B) The act or privilege of originating in the City or receiving in the City interstate telecommunications by a person at a rate of **three percent (3%)** of the gross charge for such telecommunications purchased at retail from a retailer. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this Section, any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Section to the extent of the amount of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in this State.

(C) The tax imposed by this Article is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the City.

**36-3-4 COLLECTION OF TAX BY RETAILERS.**

(A) The tax authorized by this Article shall be collected from the taxpayer by a retailer maintaining a place of business in this State and shall be remitted by such retailer to the Department. Any tax required to be collected pursuant to or as authorized by this Article and any such tax collected by such retailer and required to be remitted to the Department shall constitute a debt owed by the retailer to the State. Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving

telecommunications when sold for use, in the manner prescribed by the Department. The tax authorized by this Article shall constitute a debt of the taxpayer to the retailer until paid, and, if unpaid, is recoverable at law in the same manner as the original charge for such sale at retail. If the retailer fails to collect the tax from the taxpayer, then the taxpayer shall be required to pay the tax directly to the Department in the manner provided by the Department.

(B) Whenever possible, the tax authorized by this Article shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.

**36-3-5 RETURNS TO DEPARTMENT.** Commencing on **February 1, 2003**, the tax imposed under this Article on telecommunication retailers shall be returned with appropriate forms and information as required by the Department pursuant to the Illinois Simplified Municipal Telecommunications Tax Act (Public Act 92-526, Section 5-50) and any accompanying rules and regulations created by the Department to implement this Act.

**36-3-6 RESELLERS.**

(A) If a person who originates or receives telecommunications claims to be a reseller of such telecommunications, such person shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for the tax authorized by this Article on any of such purchases and shall furnish such additional information as the Department may reasonably require.

(B) Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to the applicant. The Department may cancel any number which is obtained through misrepresentation, or which is used to send or receive such telecommunications tax-free when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

(C) Except as provided hereinabove in this Section, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.

## ARTICLE IV - MUNICIPAL UTILITY TAX

**36-4-1**        **TAX IMPOSED.** A tax is imposed on all persons engaged in the following occupations or privileges:

(A)            Persons engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the City and not for resale, at the rate of **three percent (3%)** of the gross receipts therefrom.

(B)            Persons engaged in the business of distributing, supplying, furnishing, or selling water for use or consumption within the corporate limits of the City and not for resale, and persons engaged in the business of providing sewerage services within the corporate limits of the City, at the rate of **three percent (3%)** of the gross receipts therefrom. (Ord. No. 769)

**36-4-2**        **EXCEPTIONS.** None of the taxes authorized by this Article may be imposed 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 person engaged in the business of distributing, supplying, furnishing or selling gas, water, or engaged in the business of transmitting messages, be subject to taxation under the provisions of this Section for such transactions as are or may become subject to taxation under the provisions of this Section for such transactions as are or may become subject to taxation under the provisions of the "**Municipal Retailers' Occupation Tax Act**" authorized by Chapter 65, Sec. 5/8-11-1, Illinois Compiled Statutes, nor shall any tax authorized by this Section be imposed upon any person engaged in the business unless such tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the Municipality, whether privately or municipally owned or operated.

**36-4-3**        **ADDITIONAL TAXES.** Such tax shall be in addition to the payment of money, or value of products or services furnished to this Municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayers' business. (Ord. No. 769; 02-13-84)

**36-4-4**        **DEFINITIONS.** For the purposes of this Article, the following definitions shall apply:

**"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, and the consideration received for distributing, supplying, furnishing or selling water for use or consumption and not for resale, except for that consideration received from the City; and for all services rendered in connection 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 service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expenses whatsoever.

**"TRANSMITTING MESSAGES"**, in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages

to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons for the transmission of messages.

**“PERSON”** means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator, or other representative appointed by order of any court.

**36-4-5**        **REPORTS TO MUNICIPALITY.** On or before the last day of **June, 1984**, each taxpayer shall make a return to the City Treasurer for the month of **May, 1984**, stating:

- (A)            His name.
- (B)            His principal place of business.
- (C)            His gross receipts during those months upon the basis of which the tax is imposed.
- (D)            Amount of tax.
- (E)            Such other reasonable and related information as the corporate authorities may require.

On or before the last day of every third month thereafter, each taxpayer shall make a like return to the City Treasurer for a corresponding **three (3) month** period.

The taxpayer making the return herein provided for shall, at the time of making such return, pay to the City Treasurer, the amount of tax herein imposed; provided that in connection with any return, the taxpayer may, if he so elects, report and pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings, and the taxable gross receipts.

**36-4-6**        **CREDIT FOR OVER-PAYMENT.** If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this Article from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than **three (3) years** prior to the filing of a claim therefor shall be so credited.

No action to recover any amount of tax due under the provisions of this Article shall be commenced more than **three (3) years** after the due date of such amount.

**36-4-7**        **PENALTY.** Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Article shall, upon conviction, be fined as provided in **Section 1-1-20** of the City Code and in addition, shall be liable in a civil action for the amount of tax due.

(Ord. No. 769; 02-13-84)

(See 65 ILCS 5/8-11-2)

## ARTICLE V - ELECTRIC UTILITY TAX

**36-5-1**        **TAX IMPOSED.** A tax is imposed on all persons engaged in the following occupations or privileges:

(A)            The privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the City at the following rates, calculated on a monthly basis for each purchaser:

(1)	First 2,000 KWH	.277 cents per KWH
(2)	Next 48,000 KWH	.181 cents per KWH
(3)	Next 50,000 KWH	.163 cents per KWH
(4)	Next 400,000 KWH	.159 cents per KWH
(5)	Next 500,000 KWH	.154 cents per KWH
(6)	Next 2,000,000 KWH	.145 cents per KWH
(7)	Next 2,000,000 KWH	.143 cents per KWH
(8)	Next 5,000,000 KWH	.141 cents per KWH
(9)	Next 10,000,000 KWH	.138 cents per KWH
(10)	Over 20,000,000 KWH	.136 cents per KWH

The tax rates set forth in the preceding table will be used at least through **December 31, 2008**, are proportional to the rates enumerated in **65 ILCS 5/8-11-2** (as modified by Public Act 90-561), and do not exceed the revenue that could have been collected during 1997 using the rates enumerated in **65 ILCS 5/8-11-2** (as modified by Public Act 90-561).

**36-5-2**        **TYPE OF CUSTOMER -- RATE EFFECTIVE.** Pursuant to **65 ILCS 5/8-11-2**, the rates set forth in **Section 36-5-1** above shall be effective:

(A)            On **August 1, 1998** for residential customers; and

(B)            On the earlier of:

(1)          the last bill issued prior to **December 31, 2000**, or

(2)          the date of the first bill issued pursuant to **220 ILCS 5/16-104**, for non-residential customers.

**36-5-3**        **EFFECTIVE DATE FOR ARTICLE.** The provisions of **Section 36-5-1** shall not be effective until **August 1, 1998**.

**36-5-4**        **EXCEPTIONS.** None of the taxes authorized by this Article may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privileges 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 distributing, supplying, furnishing, or selling or transmitting gas or electricity, or using or consuming electricity acquired in a Purchase at Retail, be subject to taxation under the provisions of this Article for those transactions that are or may become subject to taxation under the provisions of the "**Municipal Retailers' Occupation Tax Act**" authorized by Section 8-11-1 of the Illinois Municipal Code; nor shall any tax authorized by this Article be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in business of the same class in the City, whether privately or municipally owned or operated, or exercising the same privilege within the City. However, no such tax shall be imposed on City buildings and/or facilities owned by the City of Gibson City Municipal Corporation. (**Ord. No. 16-03; 02-08-16**)

**36-5-5**        **ADDITIONAL TAXES.** Such tax shall be in addition to other taxes levied upon the taxpayer or its business.

**36-5-6**        **COLLECTION.** The tax authorized by this Article shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to this Article and any such tax collected by a person delivering electricity shall constitute a debt owed to the City by such person delivering the electricity. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to **three percent (3%)** of the tax to reimburse the person delivering electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the City upon request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the City in the manner prescribed by the City. Persons delivering electricity who file returns pursuant to this Section shall, at the time of filing such return, pay the City the amount of the tax collected pursuant to this Article.

**36-5-7**        **REPORTS TO CITY.** On or before the last day of each month, each taxpayer shall make a return to the City for the preceding month stating:

- (A)            His name.
- (B)            His principal place of business.
- (C)            His gross receipts and/or kilowatt-hour usage during the month upon the basis of which the tax is imposed.
- (D)            Amount of tax.
- (E)            Such other reasonable and related information as the corporate authorities may require.

The taxpayer making the return herein provided for shall, at the time of making such return, pay to the City, the amount of tax herein imposed; provided that in connection with any return, the taxpayer may, if he so elects, report and pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings, and the taxable gross receipts.

**36-5-8**        **CREDIT FOR OVER-PAYMENT.** If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this Article from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than **three (3) years** prior to the filing of a claim therefor shall be so credited.

No action to recover any amount of tax due under the provisions of this Article shall be commenced more than **three (3) years** after the due date of such amount.

**36-5-9**        **PENALTY.** Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Article is guilty of a misdemeanor and, upon conviction thereof, shall be fined as provided in **Section 1-1-20** of this Code and in addition, shall be liable in a civil action for the amount of tax due.

**36-5-10**       **UNCONSTITUTIONALITY OF LAW.** In the event that Public Act 90-561 is declared unconstitutional, or if Section 46 of Article X created by this Amendatory Ordinance is voided by court action, the provision of Article IV, Section 36 of the City Code (commonly known as the Gross Receipts Utility Tax) shall remain in effect in all respects as if it had never been amended by this Ordinance, and any amounts paid to the City by any person delivering electricity pursuant to this Amendatory Ordinance shall be deemed to have been paid pursuant to the Gross Receipts Utility Tax as it existed prior to the passage of this Amendatory Ordinance. (**Ord. No. 99-05; 05-10-99**)

(See 65 ILCS 5/8-11-2)



**ARTICLE VI – MUNICIPAL SALES TAX**

**36-6-1**        **INTENT OF ARTICLE.** It is the intent of this Article to impose a **one percent (1%)** Non-Home Rule Municipal Retailers' Occupation Tax, as authorized by and pursuant to Illinois statutes, specifically **65 ILCS 5/11-1.2 *et seq.***

**36-6-2**        **DEFINITIONS.** The definition of words used in this Article shall have the same meaning and definitions as provided in **65 ILCS 8/11-1.1 *et seq.***, including especially **65 ILCS 5/8-11-1.2.**

**36-6-3**        **IMPOSITION OF 1% NON-HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX.**

(A)            There is hereby imposed in the City, a Non-Home Rule Municipal Retailers' Occupation Tax, pursuant to and as provided in **65 ILCS 5/8-11-1.3**, upon all persons engaged in the business of selling tangible personal property, other than on an item of tangible personal property which is titled and registered by an agency of Illinois Government, at retail in the City, in the amount of **one percent (1%)** of gross receipts from such sales made in the course of such business.

(B)            The Non-Home Rule Municipal Retailers' Occupation Tax imposed by this Article shall not be imposed on the sale of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, as provided in said **65 ILCS 5/8-11-1.3.**

(C)            The proceeds from said Non-Home Rule Municipal Retailers' Occupation Tax Act shall be used only for expenditure on public infrastructure or for property tax relief or both, as defined in **65 ILCS 5/8-11-1.2.**

**36-6-4**        **LIMITATIONS OF TAXES IMPOSED BY THIS ARTICLE.** With respect to the provisions of this Article imposing a Non-Home Rule Municipal Retailers' Occupation Tax, nothing in this Section should be construed to impose a tax upon the privilege of engaging in any business which under the Constitution of the United States may not be made the subject of taxation by the State of Illinois or by the City.

**36-6-5**        **COLLECTION AND ADMINISTRATION OF SAID TAXES.** Pursuant to state statute, the State of Illinois Department of Revenue shall enforce the provisions of this Article by collecting said taxes pursuant to said statute, which Department of Revenue shall transmit payment to the City pursuant to said statutes.

**36-6-6**        **APPLICABLE DATE OF ARTICLE.** This Article shall apply to taxable sales on and after the **first (1<sup>st</sup>) day of January, 2025**, pursuant to **65 ILCS 5/8-11-1.1 *et seq.***

**36-6-7**        **STATUTORY AUTHORITY.** This Article and the taxes imposed by this Article are authorized by Illinois Statutes, **65 ILCS 5/8-11-1.1 *et seq.***, and subsequent relevant amendments thereto shall also apply to this Article, to the extent required by or permitted by law.

(Ord. No. 2024-O-11; 08-12-24)