

(Draft 11/30/2016)

ORDINANCE NO. 16-33

AN ORDINANCE REPEALING THE VILLAGE OF EAST DUNDEE'S MUNICIPAL GAS UTILITY TAX AND ESTABLISHING A MUNICIPAL GAS USE TAX

WHEREAS, the Village of East Dundee (the "Village") is a duly organized and validly existing home-rule municipality created in accordance with Subsection (a) of Section 6 of Article VII of the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, subject to said Section, a home rule municipality may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and,

WHEREAS, the Village pursuant to Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2) adopted a gas gross receipts tax as codified in Section 35.06 of the Code of the Village of East Dundee; and,

WHEREAS, in furtherance of its home rule powers, it is necessary and desirable for the Village of East Dundee to amend its gas tax by repealing its municipal gas utility tax and creating a municipal gas use tax.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of East Dundee, Kane and Cook Counties, Illinois as follows:

Section 1: That Section 35.03, Utility Tax, of the Code of the Village of East Dundee, as amended, be and is hereby amended as follows:

- A. That subsection 35.03(A)(1) be and is hereby repealed.
- B. That subsection 35.03(B) is amended by deleting the phrase "gas or" from that subsection.
- C. That subsection 35.03(D), definition of "Gross Receipts" is amended by deleting the phrase "gas or" from that definition.

Section 2: That Section One of Ordinance No. 01-04 entitled *ORDINANCE EXTENDING THE UTILITY TAX AND TELECOMMUNICATIONS TAX IN THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS*, adopted April 16, 2001, continuing the municipal gas utility tax that was not codified, be and is hereby repealed.

Section 3: That a new Section 35.14 be and is hereby added to the Code of the Village of East Dundee to read as follows:

"Sec. 35.14 MUNICIPAL GAS USE TAX

- A. Short Title. The tax imposed by this Section shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the Village of East Dundee, the State of Illinois, or any other municipal corporation or political subdivision thereof.
- B. Definitions. For the purpose of this Section, the following definitions shall apply:
"Person" means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.
"Public Utility" means a public utility as defined in Section 3-105 of the Public Utilities Act.
"Public Utilities Act" means the Public Utilities Act as amended, (220 ILCS 5/1-101 et seq.).
"Retail Purchaser" means any Person who purchases gas in a Sale at Retail.
"Sale at Retail" means any sale of gas by a retailer to a Person for use or consumption, and not for resale. For this purpose, the term "retailer" means any Person engaged in the business of distributing, supplying, furnishing or selling gas.
- C. Tax.
- (1) Except as otherwise provided by this Section, a tax is imposed on the privilege of using or consuming gas in the Village that is purchased in a Sale at Retail at the rate of five cents (\$0.05) per therm.
 - (2) The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Section shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.
 - (3) The Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Retail Purchaser's premises, to the Public Utility designated to collect the tax pursuant to Section 35.14D of this Section on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the Village's Finance Director on or before the fifteenth day of the second month following the month in which the gas is delivered to the Retail Purchaser if no Public Utility has been designated to collect the tax pursuant to Section 35.14D or if the gas is delivered by a person other than a Public Utility so designated.
 - (4) Nothing in this Section shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the Village.
 - (5) A Person who purchases gas for resale and therefore does not pay the tax imposed by this Section with respect to the use or consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the Village's Finance Director on or before the fifteenth day of the second month following the month in which the gas is used or consumed.

- (6) The tax shall apply to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after March 1, 2017.
- (7) If it shall appear that an amount of tax has been paid which was not due under the provisions of this Section, whether as a result of mistake of fact or an error of law, then such amount shall be (a) credited against any tax due, or to become due, under this Section from the taxpayer who made the erroneous payment or (b) subject to a refund if no such tax is due or to become due; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.
- (8) No action to recover any amount of tax due under the provisions of this Section shall be commenced more than three (3) years after the due date of such amount.
- (7) Reserved

D. Collection of tax by Public Utility.

The Village President, Village Administrator and Village Finance Director are each authorized to enter into a contract for collection of the tax imposed by this Section with any Public Utility providing gas service in the Village. The contract shall include and substantially conform with the following provisions:

- (1) the Public Utility will collect the tax from Retail Purchasers as an independent contractor;
- (2) the Public Utility will remit collected taxes to the Village Finance Director no more often than once each month;
- (3) the Public Utility will be entitled to withhold from tax collections a service fee equal to 3% of the amounts collected and timely remitted to the Village's Finance Director;
- (4) the Public Utility shall not be responsible to the Village for any tax not actually collected from a Retail Purchaser; and
- (5) such additional terms as the parties may agree upon.

E. Books and records. Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Section. All such books and records shall, at all times during business hours, be subject to and available for inspection by the Village.”

Section 4: All ordinances or parts of ordinances thereof in conflict with this ordinance are hereby repealed to the extent of any such conflict.

Section 5: Any Section or provision of this ordinance that is construed to be invalid or void shall not affect the remaining Sections or provisions which shall remain in full force and effect thereafter.

Section 6: This Ordinance shall be in full force and effect upon its passage, approval, and publication in pamphlet form as provided by law, however, the tax repealed in Sections 1 and 2 shall be effective for all bills issued on or after March 1, 2017; provided that any amounts due or

payable for any tax periods ending prior to March 1, 2017 are nevertheless to remain payable as if this Ordinance had not been adopted.

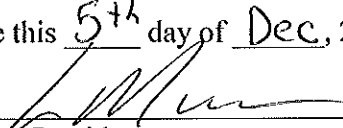
ADOPTED this 5th day of Dec., 2016 pursuant to a roll call vote as follows:

AYES: Trustees Gorman, Lynam, Skillicorn, Selep and Wood

NAYS: 0

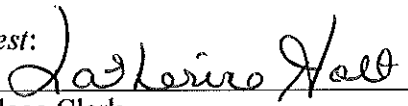
ABSENT: Trustee Hall

APPROVED by me this 5th day of Dec., 2016



Village President

Attest:



Village Clerk

Published in pamphlet form:

December 6, 2016