

ORDINANCE NO. 18-021

AN ORDINANCE AMENDING AND ADDING CHAPTER 125, ENTITLED “UTILITY TAXES”, OF THE CITY ORDINANCES OF THE CITY OF MONMOUTH, ILLINOIS

WHEREAS, the State of Illinois has enacted Public Act 90-561, which amended the Illinois Municipal Code with regard to imposition of utility taxes; and

WHEREAS, the City of Monmouth, Illinois, a home rule municipality, desires to comply with the aforementioned revision in the Illinois Municipal Code;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Monmouth, Warren County, Illinois, as follows:

Section 1:

Section 125.100, of Chapter 125 of the Monmouth Code of Ordinances, entitled “GAS UTILITY TAX”, is hereby amended to include the following subsection:

GAS UTILITY TAX

§ 125.100 DEFINITIONS.

For the purpose of the taxes enumerated in this Gas Utility Tax subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GROSS RECEIPTS. The consideration received for distributing, supplying, furnishing or selling gas for use of consumption and not for resale, and the consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale 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 the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever.

For purposes of this section **GROSS RECEIPTS** shall not include amounts added to customers’ bills under § 9-221 of the Public Utility Act (ILCS Ch. 20, Act 5, § 9-221).

PERSON. Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation, the state or any of its political subdivisions, any state university created by statute, or as a receiver, trustee, guardian or other representative appointed by order of any court.

PURCHASE AT RETAIL. Any acquisition of gas by a purchaser for purposes of use or consumption, and not for resale.

PURCHASER. Any person who uses or consumes, within the corporate limits of the city, gas acquired in a purchase at retail.

RETAIL PURCHASER. Any person who purchases gas in a **PURCHASE AT RETAIL.**

TAXPAYER. Any person engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the corporate limits of the city, and not for resale.

§ 125.101 IMPOSITION OF TAX.

A tax is imposed on all persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the city and not for resale, at a rate of 1.25% of the gross receipts therefrom.

§ 125.102 TAX IN ADDITION TO OTHER MUNICIPAL TAXES.

The tax under this subchapter shall be in addition to the payment of money, or value of products or services furnished to this city 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 taxpayer's business.

§ 125.103 TAXPAYER'S REPORT.

(A) On or before the last day of each month, each taxpayer, in the case of the taxes imposed under this § 125.100, shall make a return to the City Administrator for the preceding month stating:

- (1) His or her name;
- (2) His or her principal place of business;
- (3) His or her gross receipts during those months upon the basis of which the tax is imposed;
- (4) Amount of tax; and
- (5) Such other reasonable and related information as the corporate authorities may require.

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

(C) If the person delivering gas fails to collect the tax imposed under § 35.302, from the purchaser or is excused from collecting the tax, then the purchaser shall file the return as set forth in division (A) above and pay the tax directly to the City Administrator on or before the last day of the month following the month during which the gas is used or consumed.

(D) Every taxpayer, or purchaser under the terms of § 125.103(C), required to pay the tax imposed by this subchapter shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that give rise or may have given rise, to any tax liability under this chapter. The books and records shall be subject to and available for inspection by the city at all times during business hours.

§ 125.104 OVERPAYMENT.

If it shall appear that an amount of tax has been paid which was not due under the provisions of this subchapter 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 subchapter from the taxpayer or purchaser who made the erroneous payment, provided that, no amounts erroneously paid more than three 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 subchapter shall be commenced more than three years after the due date of such amount.

§ 125.105 TRANSMITTAL OF TAX REVENUE.

(A) In case any person who is required under this subchapter to file a tax return to the city fails to file a return when and as required under this subchapter, such person shall pay to the city, in addition to the amount of tax required to be transmitted, a penalty of 5% of the tax that such person is required to transmit to the city provided, however, a 20% penalty shall be imposed for any fraudulent failure to transmit such tax.

(B) In case any person who is required under this subchapter to file a tax return to the city files a return at the time required but fails to transmit the tax proceeds, or any portion thereof to the city when due, a penalty of 5% of the amount of tax not transmitted to the city shall be added thereto; provided, however, the fraudulent failure to pay such tax shall result in a 20% penalty.

(C) In addition to any penalty for which provision is made in this subchapter, any amount of tax not transmitted when due shall bear interest at the rate of 2% per month, or fraction thereof, until fully transmitted.

§ 125.106 COLLECTION.

Whenever any person shall fail to pay any tax as provided in this subchapter, the City Attorney shall, upon the request of the City Administrator, bring or cause to be brought an action to enforce the payment of such tax on behalf of the city in any court of competent jurisdiction.

§ 125.107 EFFECTIVE DATE.

The tax imposed in § 125.100 above shall apply to gas for which the delivery to the retail purchaser is billed by a public utility on or after August 1, 2018.

Section 125.200, of Chapter 125 of the Monmouth Code of Ordinances, entitled “ELECTRIC UTILITY TAX”, is hereby amended to include the following subsection:

ELECTRIC UTILITY TAX

§ 125.200 SHORT TITLE.

The tax imposed by this subchapter shall be known as the “Electric Utility Tax” and is imposed in addition to all other taxes imposed by the city.

§ 125.201 DEFINITIONS.

For the purpose of the tax enumerated in this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PERSON. Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation, the state or any of its political subdivisions, any state university created by statute, or as a receiver, trustee, guardian or other representative appointed by order of any court. Notwithstanding the foregoing, no municipal utility tax shall be assessed upon bills for utility service rendered to the municipality itself.

PERSON MAINTAINING A PLACE OF BUSINESS IN THIS STATE. Any person having or maintaining within the State of Illinois, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within the State of Illinois under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in the State of Illinois, permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in the State of Illinois.

PURCHASE AT RETAIL. Any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale but shall not include the use of electricity by a public utility as defined in § 8-11-2 of the Illinois Municipal Code (ILCS Ch. 65, Act 5, § 8-11-2), directly in the generation, production, transmission, delivery or sale of electricity.

PURCHASER. Any person who uses or consumes, within the corporate limits of the city, electricity acquired in a purchase at retail.

TAX COLLECTOR. The person delivering electricity to the purchaser.

§ 125.202 TAX IMPOSED.

(A) Pursuant to ILCS Ch. 65, Act 5, § 8-11-2 and any and all other applicable authority, a tax is imposed upon 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) For the first 2,000 kilowatt-hours used or consumed in a month; \$0.001525 per kilowatt-hour;
- (2) For the next 48,000 kilowatt-hours used or consumed in a month; \$0.001 per kilowatt-hour;
- (3) For the next 50,000 kilowatt-hours used or consumed in a month; \$0.0009 cents per kilowatt-hour;
- (4) For the next 400,000 kilowatt-hours used or consumed in a month; \$0.000875 per kilowatt-hour;
- (5) For the next 500,000 kilowatt-hours used or consumed in a month; \$0.00085 per kilowatt-hour;
- (6) For the next 2,000,000 kilowatt-hours used or consumed in a month; \$0.0008 per kilowatt-hour;
- (7) For the next 2,000,000 kilowatt-hours used or consumed in a month; \$0.0007875 per kilowatt-hour;
- (8) For the next 5,000,000 kilowatt-hours used or consumed in a month; \$0.000775 per kilowatt-hour;
- (9) For the next 10,000,000 kilowatt-hours used or consumed in a month; \$0.000763 per kilowatt-hour;
- (10) For kilowatt-hours in excess of 20,000,000 kilowatt-hours used or consumed in a month \$0.000750 per kilowatt-hour;

(B) Pursuant to ILCS Ch. 65, Act 5, § 8-11-2, the rates set forth in division (A) above shall be effective on August 1, 2018, for residential and nonresidential customers.

(C) This tax is in addition to all taxes, fees and other revenue measures imposed by the city, the State of Illinois or any other political subdivision of the state.

(D) Notwithstanding any other provisions of this chapter, the tax shall not be imposed if and to the extent that imposition or collection of the tax would violate the Constitution or statutes of the United States or the Constitution of the State of Illinois.

§ 125.203 BOOKS AND RECORDS.

Every tax collector 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 subchapter. All such books and records shall at all times during business hours be subject to and available for inspection by the city.

§ 125.204 EXEMPTIONS.

No tax is imposed by this subchapter with respect to any transaction in interstate commerce or otherwise to the extent which business may not, under the Constitution and statutes of the United States, be made subject to taxation by this state or any political subdivision thereof. The City of Monmouth accounts are exempt from the tax listed in Sections 125.101 and 125.202.

§ 125.205 COLLECTION OF TAX.

The tax authorized by this subchapter 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 subchapter and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality 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 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 municipality upon request. On or before the last day of each month, persons delivering electricity shall make a return to the city for the preceding month and shall, at the time of filing such return, pay the municipality the amount of the tax collected pursuant to this subchapter.

§ 125.206 TAX IN ADDITION TO OTHER MUNICIPAL TAXES.

The tax under this subchapter shall be in addition to the payment of money, or value of products or services furnished to this city 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 taxpayer's business.

§ 125.207 REPORTS TO THE MUNICIPALITY.

(A) On or before the last day of each month, each tax collector shall make a return to the city Director of Finance and Information Systems for the preceding month stating:

- (1) His or her name;
- (2) His or her principal place of business;
- (3) His or her gross receipts and/or kilowatt-hour usage during the month upon the basis of which the tax is imposed;
- (4) Amount of tax; and
- (5) Such other reasonable and related information as the corporate authorities may require.

(B) The tax collector 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 or tax collector may, if he or she so elects, report and pay an amount based upon his or her 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.

(C) If the person delivering electricity fails to collect the tax from the purchaser or is excused from collecting the tax, then the purchaser shall file the return as set forth in division (A) above and pay the tax directly to the City Administrator on or before the last date of the month following the month during which the electricity is used or consumed.

(D) Every tax collector required to pay the tax imposed by this subchapter shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that give rise or may have given rise, to any tax liability under this chapter. The books and records shall be subject to and available for inspection at all times during business hours of the day.

§ 125.208 CREDIT FOR OVERPAYMENT.

(A) If it shall appear that an amount of tax has been paid which was not due under the provisions of this subchapter, 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 subchapter from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three years prior to the filing of a claim therefore shall be so credited.

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

§ 125.209 TRANSMITTAL OF TAX REVENUE.

(A) In case any person who is required under this subchapter to file a tax return to the city fails to file a return when and as required under this subchapter, such person shall pay to the city, in addition to the amount of tax required to be transmitted, a penalty of 5% of the tax that such person is required to transmit to the city provided, however, a 20% penalty shall be imposed for any fraudulent failure to transmit such tax.

(B) In case any person who is required under this subchapter to file a tax return to the city files a return at the time required but fails to transmit the tax proceeds, or any portion thereof to the city when due, a penalty of 5% of the amount of tax not transmitted to the city shall be added thereto; provided, however, the fraudulent failure to pay such tax shall result in a 20% penalty.

(C) In addition to any penalty for which provision is made in this subchapter, any amount of tax not transmitted when due shall bear interest at the rate of 2% per month, or fraction thereof, until fully transmitted.

§ 125.210 COLLECTION.

Whenever any person shall fail to pay any tax as provided in this subchapter, the City Attorney shall, upon the request of the City Administrator, bring or cause to be brought an action to enforce the payment of such tax on behalf of the city in any court of competent jurisdiction.

§ 125.211 PENALTY.

(A) Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with, or resisting or opposing the enforcement of any of the provisions of this Utility Taxes Ordinance (§§ 125.100-125.310), upon conviction thereof, shall be punished by a fine of not less than \$500.00 for the first offense and not less than \$1,000.00 for the second and each subsequent offense in any 180-day period.

Section 2:

In all other respects, Chapter 125 of the Monmouth Code of Ordinances previously enacted shall remain in full force and effect.

Section 3:

This ordinance shall be in full force and effect August 1, 2018 and after due publication in pamphlet form, passage and approval thereof as provided by law.

PASSED this _____ day of _____, A.D., 2018.

APPROVED this _____ day of _____, A.D., 2018.

MAYOR

ATTESTED:

CITY CLERK

Ayes: _____

Nays: _____

Absent or not voting: _____