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At a Regular Meeting of the Common Council of the City of Plattsburgh, New York held June 23rd, 1950.

PRESENT: Mayor Tyrell, Aldermen Holland, LeClair, Demary, Slattery and Cardi.

ABSENT: Alderman Villoni.

By Alderman Holland; Seconded by Alderman Cardi:

LOCAL LAW NO. 5 OF 1950.

ENTITLED AN ACT to impose a tax on the gross income or gross operating income of corporations and persons furnishing utility services in the City of Plattsburgh, New York, as authorized by Section Twenty-B of the General City Law of the State of New York.

BE IT ENACTED by the Mayor and the Common Council of the City of Plattsburgh, New York, as follows:

SECTION 1. Tax on Utilities. Pursuant to the authority granted by Section Twenty-B of the General City Law of the State of New York, a tax equal to one per centum of gross income is hereby imposed on every utility doing business in the City of Plattsburgh, New York, which is subject to the supervision of the State Department of Public Service, except as hereinafter set forth in Subdivision 2 of this Section, and a tax equal to one per centum of its gross operating income is hereby imposed for the same upon every other utility doing business in the City of Plattsburgh, which taxes shall have application only within the territorial limits of the City of Plattsburgh and shall be in addition to the law for the same period, to any and all other taxes and fees imposed. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the City of Plattsburgh, New York, notwithstanding that some act may be necessarily performed with respect to some transaction within such limits.

2. As used in this Section (a) the word "utility", includes every person subject to 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, of the operating railroads other than street surface, rapid transit, subway and elevated railroads, and motor carriers and brokers subject to such supervision of 3-B of the Public Service Law, and also includes every (whether or not such person is subject to such supervision), who shall engage in the business of selling gas, electricity, steam, water, refrigeration, telephony or telegraph, delivered through mains, wires, pipes or of furnishing gas, electric, steam, water refrigerator, telephone or telegraph service, by means of pipes, mains or wires; (b) the words "person" means persons, corporations, companies, associations, joint-stock associations, co-partnership, estates, assignee of rents, any person acting in a fiduciary capacity or any other entity, and persons, their assignees, leasees, 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; (c) the words "gross income" mean and include receipts received in or by reason of any sale (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 to persons for ultimate consumption or use by them in the City of Plattsburgh, New York, 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 expenses whatsoever; also profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of an interest in such property; also profit from the sale of personal property (other than property of a kind which would be included in the inventory of the taxpayer if on hand at the close of the periods for which a return is made; also receipts from interest, dividends and royalties, derived from sources within the City of Plattsburgh, New York, 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 within the City of Plattsburgh, New York, whatsoever; and (d) the words "gross operating income" shall mean and include the receipts received in or by reason of any sale made to persons for ultimate consumption or use by them of gas, electricity, steam, water, refrigeration, telephony, or telegraphy service in the City of Plattsburgh, New York, 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 expenses of any other costs, interest or discount paid, or any other services whatsoever.

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

4. Every utility subject to the tax hereunder, shall file on or before the 24th days of January, April, July and October of each year, the return for the three (3) calendar months preceding. The first return to be made and filed on or before October 25th, 1950. Each of such returns shall state the gross income or the gross operating income for the period covered by such return. The return shall be filed with the City Chamberlain of the City of Plattsburgh on forms furnished by the City Chamberlain for such purpose, and shall contain any further added information or matter which the City Chamberlain may require to be included therein. Any public utility subject to the payment of this tax, may upon its election file such return upon the 25th day of each month for the month preceding. Any utility which gross income or average gross income as the case may be, for any three months period which is less than fifteen hundred (\$1500) dollars may file its return for such period on July 25th, 1950. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or the owner or of a co-partner thereof or a Principal officer of the corporation, if such business be conducted by a corporation, to the effect that the statements contained therein are true.

5. At the time of filing a return as required by this Section, each utility shall pay to the City Chamberlain of the City of Plattsburgh, New York, a tax imposed by this Section for the period covered by such return. Such tax shall be due and payable at the time of the 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.

6. In case any return filed pursuant to this Section shall be insufficient or unsatisfactory to the City Chamberlain of the City of Plattsburgh, New York, and if a corrected or sufficient return is not filed within twenty days after the same is required by notice from the City Chamberlain of the City of Plattsburgh, New York, or if no return is made for any period, the City Chamberlain of the City of Plattsburgh, New York, 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 City Chamberlain of the City of Plattsburgh, New York, 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 thirty days after the giving of notice of such determination, apply to the City Chamberlain of said City of Plattsburgh, New York, for a hearing, or unless the said City Chamberlain of his own motion shall reduce the same. After such hearing, the said City Chamberlain shall give notice of his decision to the person liable for the tax. The decision of the City Chamberlain may be reviewed by certiorari, if application therefor is made within thirty days after the giving of notice of such decision. An order of certiorari shall not be granted unless the amount of any tax sought to be reviewed, with the penalties thereof, if any, shall be first deposited with the City Chamberlain of the City of Plattsburgh, New York, and an undertaking filed with him, in such amount and with such sureties as Justice of the Supreme Court shall approve, to the effect that, if such order be dismissed or the tax affirmed, the application for the order will pay costs and charges which may accrue in the prosecution of the certiorari proceedings, or at the option of the applicant, such undertaking may be in a sum sufficient to cover the tax, penalties, costs and charges aforesaid, in which event the applicant shall not be required to pay such tax and penalties as a condition precedent to the granting of such order.

7. Any notice authorized or required under the provisions of this section may be given by mailing the same to the persons ~~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 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 Section by the giving of notice, shall commence to run from the date of mailing of such notice.

8. Any person failing to file a return or corrected return to pay any tax or any portion thereof, within the time required by this section shall be subject to a penalty of five per centum of the amount of tax due, plus one per cent 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 City Chamberlain of the City of Plattsburgh, New York if satisfied with the delay was excusable, may remit all or any portion of such penalty.

9. If, within one year from the payment of any tax or penalty the payer thereof shall make application for a refund thereof and the City Chamberlain of the City of Plattsburgh, New York, or the Court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the City Chamberlain of the City of Plattsburgh, New York, shall return the amount so determined. For like cause and within the same period a refund may be so made on the initiative of the City Chamberlain of the City of Plattsburgh, New York. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the said City Chamberlain, as hereinbefore provided unless the said City Chamberlain, after a hearing as hereinbefore provided, or of his own motion shall have reduced the tax or penalty or if

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if it shall have been established in a certiorari proceeding that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this Section. An application for a refund, made as hereinbefore provided, shall be deemed 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 City Chamberlain of the City of Plattsburgh, New York, may receive additional evidence with respect thereto. After making his determination, the said City Chamberlain shall give notice thereof to the person interested, and he shall be entitled to a certiorari order to review such determination, subject to the provisions hereinbefore contained to relating to the granting of such order.

10. The tax imposed by this Section shall be charged against and 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.

11. Whenever any person shall fail to pay any taxes or penalty imposed by this Section, the Corporation Counsel shall, upon the request of the City Chamberlain of the City of Plattsburgh, New York, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any action shall be paid to the City Chamberlain of the City of Plattsburgh, New York. Each such tax and penalty shall be in 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 Section One hundred Eighty Six A of the Tax Law is made a lien.

12. In the administration of this Section the City Chamberlain of the City of Plattsburgh, New York, 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 the 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 Section, and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

13. Except in accordance with the proper judicial order or as otherwise provided by law, it shall be unlawful for the City Chamberlain of the City of Plattsburgh, New York, or any agent, clerk or employee of the City of Plattsburgh, New York, or any agent, clerk 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 such return under this Section. The officer charged with the custody of such returns shall not be required to produce any of them or disclose evidence of anything contained in them in any action or proceeding in any Court, except on behalf of the City of Plattsburgh, New York, in an action or proceeding under the provisions of this Section, 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 Section or on behalf of the State 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, or 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 shown the names of persons who have failed to pay their taxes at the times and in the manner provided by this Section, together with any relevant information which in the opinion of the City Chamberlain of the City of Plattsburgh, may assist in the

collection of such delinquent taxes; or the inspection of the Corporation Counsel or any other legal representative of the City of Plattsburgh, New York, of the return of any person who shall bring action to set aside or review the tax thereon, or against whom an action has been instituted in accordance with the provisions of the Section.

Any offense against the foregoing secrecy provisions shall be punishable by fine not exceeding One Thousand Dollars or imprisonment not exceeding Six Months, or both, and if the offender by an officer, agent, clerk or employee of the City of Plattsburgh, New York, he shall be dismissed from office and shall be incapable of holding any office or employment in the City of Plattsburgh, New York, for a period of Five Years thereafter.

Notwithstanding any provisions of this Section, the City Chamberlain of the City of Plattsburgh, New York, may exchange with the Chief Fiscal Officer of any other City in the State of New York, information contained in returns filed under this Section provided such other city grants similar privileges to the City of Plattsburgh, New York, and provided such information is to be used for tax purposes, only, and the City Chamberlain of the City of Plattsburgh, New York, shall upon request furnish the State Commission with any information contained in such returns.

14. All taxes and penalties received by the City Chamberlain of the City of Plattsburgh, New York, under this Section shall be paid into the General Fund.

SECTION 2. This Local Law shall take effect after due publication and approval by the Mayor.

On roll call, Aldermen Holland, LeClair, Demary, Slattery, and Cardi voted in the affirmative; no one in the negative, CARRIED.

Certified to the Mayor this 29th day of June, 1950.

*George E. Miller*  
CITY CLERK

The foregoing Local Law is hereby approved after Public Hearing held this 30th day of June, 1950.

*John J. Farrell*  
MAYOR

(SEAL)