

Regular meeting of the Common Council of the City of Plattsburgh, New York, held July 9th, 1937.

PRESENT: Mayor Bouyea, Aldermen Holland, McMillan, Raymond, Light, Behan and Shay.

By Alderman BEHAN, seconded by Alderman RAYMOND:

LOCAL LAW NO. 3 OF 1937.

ENTITLED AN ACT to impose a tax on the gross incomes or gross operating incomes of corporations and persons furnishing utility services in the City of Plattsburgh, New York, for the purpose of granting relief from the hardships and suffering caused by unemployment, as authorized by Section Twenty-B of the General City Law of the State of New York.

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

SECTION 1. Tax on utilities. 1. 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 its gross income for the period from July first, Nineteen Hundred Thirty-seven, to June thirtieth, Nineteen Hundred Thirty-eight, is hereby imposed upon every utility doing business in the City of Plattsburgh, New York, which is subject to the supervision of the State Department of Public Service, and a tax equal to one per centum of its gross operating income is hereby imposed for the same period upon every other utility doing business in the City of Plattsburgh, New York, which taxes shall have application only within the territorial limits of the City of Plattsburgh, New York, and shall be in addition to any and all other taxes and fees imposed by any other provision of law for the same period. 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 be necessarily performed with respect to such transaction within such limits.

2. As used in this Section, (a) the word "utility" includes every person subject to the 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 or of operating railroads other than street surface, rapid transit, subway and elevated railroads, and also includes every person (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 telegraphy, delivered through mains, pipes or wires, or of furnishing gas, electric, steam, water, refrigerator, telephone or telegraph service, by means of mains, pipes, or wires; (b) the word "person" means persons, corporations, companies, associations, joint-stock associations, co-partnerships, estates, assignee of rents, any person acting in a fiduciary capacity, or any other entity, and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or by any other means, except the state, municipalities, political and civil sub-divisions 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 expense whatsoever; also profits from the sale of securi-

ties; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the period 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" mean and include 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, or in or by reason of the furnishing to persons for such consumption or use of gas, electric, steam, water, refrigerator, telephone or telegraph 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 services or other costs, interest or discount paid, or any other expenses 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 that period or may require that they be kept longer.

4. On or before the Twenty-fifth day of August, Nineteen Hundred Thirty-seven and on or before the Twenty-fifth day of every month thereafter until the Twenty-fifth day of July, Nineteen Hundred Thirty-eight, every utility subject to tax hereunder shall file a return with the City Chamberlain of the City of Plattsburgh, New York, on a form to be furnished by him for such purpose. Such return shall state the gross income or gross operating income in the City of Plattsburgh, New York, as the case may be, of such utility for the preceding calendar month, and shall contain any other data, information or matter which the City Chamberlain may require to be included therein. The City Chamberlain of the City of Plattsburgh, New York, may require at any time a further or supplemental return, which shall contain any data that may be specified by the said City Chamberlain. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or of the owner or of a co-partner thereof, or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that the statements contained therein are true.

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, the tax imposed by this Section for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

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 the 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 said 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 penalties thereon, 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 a Justice of the Supreme Court shall approve, to the effect that, if such order be dismissed or the tax confirmed, the applicant for the order will pay all costs and charges which may accrue in the prosecution of the certiorari proceeding, 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 person for whom it is intended, in a postpaid envelope, addressed to such person at the address given by him in the last return filed by him under this Section, or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice 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, or 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 centum 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 that 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 refund 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 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 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 relating to the granting of such an order.

10. The tax imposed by this Section shall be charged against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others but shall constitute a part of the operating costs of such utility.

11. Whenever any person shall fail to pay any tax 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 such action shall be paid to the City Chamberlain of the City of Plattsburgh, New York. Each such tax and penalty shall be a 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 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, 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 return under this Section. The officer charged with the custody of such returns shall not be required to produce any of them or 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 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, of 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 showing the names of persons who have failed to pay their taxes at the time and in the manner provided for by this Section, together with any relevant information which in the opinion of the City Chamberlain of the City of Plattsburgh, New York, may assist in the collection of such delinquent taxes; or the inspection by the Corporation Counsel or other legal representatives of the City of Plattsburgh, New York, of the return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action has been instituted in accordance with the provisions of this Section.

Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding One Thousand Dollars or by imprisonment not exceeding Six Months, or both, and if the offender be 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 Tax 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 deposited by him in a separate bank account or accounts, and shall be used solely and exclusively for the purpose of granting relief from the hardships and suffering caused by unemployment within the City of Plattsburgh, New York.

SECTION 2. This Local Law shall take effect immediately.

On roll call, Aldermen Holland, McMillan, Raymond, Light, Behan and Shay voted in the affirmative; no one in the negative.
CARRIED.

Certified to the Mayor this 10th day of July, 1937.

M. J. Anagnost
CITY CLERK.

Approved after Public Hearing held this 19th day of
July, 1937.

L. G. Bourque
MAYOR.

Local Law No. 3 of 1937, introduced at Regular Meeting of
the Common Council held June 25th, 1937.

Adopted at a Regular Meeting held July 9th, 1937.

Certified to the Mayor, July 10th, 1937.

Notice of Public Hearing published July 12, 1937.

Public Hearing held July 19, 1937.

