

TAXATION

Chapter 54

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ARTICLE I
Utilities Tax

- S 54-1. Imposition of tax.**
- S 54-2. Definitions.**
- S 54-3. Records.**
- S 54-4. Filing of return.**
- S 54-5. Payment of tax.**
- S 54-6. Incorrect returns.**
- S 54-7. Method of serving notice.**
- S 54-8. Penalty for late filing or payment.**
- S 54-9. Refunds.**
- S 54-10. Tax to be operating cost.**
- S 54-11. Enforcement procedures.**
- S 54-12. Promulgation of additional rules and regulations.**
- S 54-13. Confidentiality of information.**
- S 54-14. Disposition of funds.**
- S 54-15. Effective date.**

ARTICLE II
Partial Real Property Exemption

- S 54-16. Purpose.**
- S 54-17. Partial exemption for persons over sixty-five.**
- S 54-18. When effective.**

ARTICLE III
Veterans Exemption

- S 54-19. Establishment of statutory exemption.**
- S 54-20. When effective.**

ARTICLE IV
Termination of Status as Assessing Unit

- S 54-21. Legislative intent.**
- S 54-22. Cessation of Village status as assessing unit.**
- S 54-23. Board of Assessors abolished.**
- S 54-24. Board of Assessment Review abolished.**
- S 54-25. Tax levy; taxable status date.**

- S 54-26. Filing of local law.**
S 54-27. When effective; referendum.

ARTICLE V
Fire Department Exemption

- S 54-28. Fire Department exemptions.**
S 54-29. When effective.

**[HISTORY: Adopted by Attica Village Board as indicated in article histories.
Amendments noted where applicable.]**

ARTICLE I
Utilities Tax
[Adopted 6-1-1972 by L.L. No. 1-1972]

S 54-1. Imposition of tax.

Pursuant to the authority granted by S 6-640 of the Village Law of the State of New York, a tax equal to 1% of its gross income from and after the first day of July 1972 is hereby imposed upon every utility doing business in the Village of Attica, New York, which is subject to the supervision of the State Department of Public Service and which is subject to the tax imposed by S 186-a of the Tax Law of the State of New York, except motor carriers or brokers subject to such supervision under Article 3-B of the Public Service Law, and a tax equal to 1% of its gross operating income from and after the first day of July 1972 is hereby imposed upon every other utility doing business in the Village of Attica which has a gross operating income in excess of \$500, as defined in S 186-a of the Tax Law, which taxes shall have application only within the territorial limits of the Village of Attica, New York, and shall be in addition to any and all other taxes and fees imposed by any other provision of law. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village of Attica, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

S 54-2. Definitions.

As used in this local law, the following terms shall have the meanings indicated:

GROSS INCOME – Receipts received in or by reason of any sale, conditional or otherwise (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 for ultimate consumption or use by the purchaser in the Village of Attica, 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 securities; 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 Village of Attica, New York, other than such as 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 the Village of Attica, New York, whatsoever; provided, however, that the words "gross income" shall include, in the case of a utility engaged in selling telephony or telephone service, only receipts from transactions wholly consummated within the Village of Attica, New York, and in the case of a utility engaged in selling telegraphy or telegraph service, only receipts from transactions wholly consummated within the Village of Attica, New York. The said term "gross income" shall also include all items in such definition as contained in S 6-640 of the Village Law whether or not specifically hereinabove set forth.

GROSS OPERATING INCOME – Receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, electricity, steam, water, refrigeration, telephony or telegraphy, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water, refrigerator, telephone or telegraph service in the Village of Attica, 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 expense whatsoever.

UTILITY and PERSON – As they mean and are defined in Subdivision 2 of S 186-a of the Tax Law of the State of New York.

S 54-3. Records.

Every utility subject to tax under this local law shall keep such records of its business and in such form as the Treasurer of the Village of Attica may require, and such records shall be preserved for a period of three (3) years, except that the Treasurer of the Village of Attica may consent to their destruction within that period or may require that they be kept longer.

S 54-4. Filing of return.

Every utility subject to tax hereunder shall file annually, on or before the 25th day of March, a return for the twelve (12) calendar months preceding such return date or any portion thereof for which the tax imposed hereby is effective; provided however, that in lieu of the annual return required by the foregoing provisions, any utility may file quarterly, on or before September 25, December 25, March 25 and June 25, a return for the three (3) calendar months preceding each such return date, and in the case of the first such return, for all preceding calendar months during which the tax imposed hereby was effective. Every return shall state the gross income or gross operating income for the period covered thereby. Returns shall be filed with the Treasurer of the Village of Attica

on a form to be furnished by him for such purpose and shall contain such other data, information or matter as he may require to be included therein. The Treasurer of the Village of Attica, in order to ensure payment of the tax imposed, may require at any time a further or supplemental return, which shall contain any data that may be specified by him, and he may require any utility doing business in the Village of Attica to file an annual return, which shall contain any data specified by him, regardless of whether the utility is subject to tax under this local law. Every return shall have annexed thereto an affidavit of a principal officer of the utility making the same, or of the owner or of a copartner thereof, to the effect that the statements contained therein are true.

S 54-5. Payment of tax.

At the time of filing a return as required by this local law, each utility shall pay to the Treasurer of the Village of Attica the tax imposed by this local law 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.

S 54-6. In correct returns.

- A. In case any return filed pursuant to this local law shall be insufficient or unsatisfactory to the Treasurer of the Village of Attica, and if a corrected or sufficient return is not filed within twenty (20) days after the same is required by notice from him, or if no return is made for any period, the Treasurer of the Village of Attica 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. He shall give notice of such determination to the person against whom it is assessed shall, within thirty (30) days after the giving of notice of such determination, apply to the Treasurer of the Village of Attica for a hearing, or unless the Treasurer, of his own motion, shall reduce the same. After such hearing, the Treasurer shall give notice of his decision to the person liable for the tax. Such decision may be reviewed by a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York if application therefore is made within ninety (90) days after the giving of notice of such decision. An order to review such decision shall not be granted unless the amount of any tax sought to be reviewed, with interest and penalties thereon, if any, shall be first deposited with the Village Treasurer 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 proceeding be dismissed or the tax confirmed, the applicant will pay all costs and charges which may accrue in the prosecution of such proceeding, or, at the option of the applicant, such undertaking may be in a sum sufficient to cover the tax, interest, penalties, costs and charges aforesaid, in which event the applicant shall not be required to pay such tax, interest and penalties as a condition precedent to the granting of such order.
- B. Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three (3) years from the date of the filing of a return; provided, however, that

where no return has been filed as required by this local law the tax may be assessed at any time.

S 54-7. Method of serving notice.

Any notice authorized or required under the provisions of this local law 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 local law 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 local law by the giving of notice, shall commence to run from the date of mailing of such notice.

S 54-8. Penalty for late filing or payment.

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 local law shall be subject to a penalty of five per centum (5%) of the amount of tax due, plus one per centum (1%) of such tax for each month of delay or fraction thereof, except the first month, after such return was required to be filed or such tax became due: but the Treasurer of the Village of Attica, for cause shown, may extend the time for filing any return and, if satisfied that the delay was excusable, may remit all or any portion of the penalty fixed by the foregoing provisions of this section.

S 54-9. Refunds.

If, within one (1) year from the payment of any tax or penalty, the payer thereof shall make application for a refund thereof and the Treasurer of the Village of Attica or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Treasurer of the Village of Attica 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 same period, a refund may be made on the initiative of the Treasurer of the village. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Treasurer of the village as hereinbefore provided unless the said Treasurer, 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 proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this local law. 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 Village Treasurer may receive additional evidence with respect thereto. After making his determination, the Village Treasurer shall give notice thereof to the person interested, and he shall be entitled to an order to review such determination under said Article 78, subject to the provision hereinbefore contained relating to the granting of such an order.

S 54-10. Tax to be operating cost.

The tax imposed by this local law 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.

S 54-11. Enforcement procedures.

Whenever any person shall fail to pay any tax or penalty imposed by this local law, the Village Attorney shall, upon the request of the Village Treasurer, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Village Treasurer. 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 S 186-a of the Tax Law is made a lien.

S 54-12. Promulgation of additional rules and regulations.

In the administration of this local law the Village Treasurer shall have the 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; 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 local law; and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

S 54-13. Confidentiality of information.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Village Treasurer or any agent, clerk or employee of the Village of Attica to divulge or make known in any manner the amount of gross income or gross operating income or any particulars set for the or disclosed in any return under this local law. 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 Village of Attica in an action or proceeding under the provisions of this local law, on behalf of any party to any action or proceeding under the provisions of this local law 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 returns and the items thereof, or the publication of delinquent lists showing the names of persons who have failed to pay their taxes and the time and in the manner provided for by this local law, together with any relevant information which, in the opinion of the Village Treasurer, may assist in the collection of such delinquent taxes; or the inspection by the Village Attorney or other legal representatives of the Village of Attica 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 any provisions of this local law, the Village Treasurer may exchange with chief fiscal officer of any city or any other village grants similar privileges to the Village of Attica and provided such information is to be used for tax purposes only; and the Village Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

S 54-14. Disposition of funds.

All taxes and penalties received by the Village Treasurer under this local law shall be paid into the treasury of the village and shall be credited to and deposited in the general fund of the village.

S 54-15. Effective date.

This local law shall take effect on the 30th day of June 1972.

ARTICLE II
Partial Real Property Exemption
[Adopted 5-4-72 by resolution]

S 54-16. Purpose.

The purpose of this resolution is to grant a partial exemption from the village tax on real property to the extent of fifty per centum (50%) of the assessed valuation of real property which is owned by certain persons with limited income who are sixty-five (65) years of age or over and who meet the requirements set forth in S 467 of the Real Property Tax Law of New York State.

S 54-17. Partial exemption for persons over sixty-five.

Real property owned by persons sixty-five (65) years of age or over shall be exempt from village taxes to the extent of fifty per centum (50%) of the assessed valuation, subject to the following conditions:

- A. The owner, or all the owners, of the property must file an application annually in the Village of Attica Assessor's office (Village Clerk's office) on or before the taxable status date.
- B. The income of the owner, or the combined income of the owners, as defined by S 467 of the Real Property Tax Law, must not exceed three thousand dollars (\$3,000.) for the income tax year immediately preceding the date of making application.
- C. Title to the property must be vested in the owner, or, if more than one, in all the owners, for at least sixty (60) consecutive months prior to the date the application is filed, as provided for in S 467 of the Real Property Tax Law.

- D. The property must be used exclusively for residential purposes, be occupied in whole or in part by the owners and constitute the legal residence of the owners.
- E. Words and phrases in this resolution shall have the same definition and meaning as in S 467 of the Real Property Tax Law of the State of New York.
- F. Compliance with the provisions of S 467 of the Real Property Tax Law or any amendments which shall be made thereto.

S 54-18. When effective.

This resolution shall be effective immediately.

ARTICLE III
Veterans Exemption
[Adopted 2-19-1985 by L.L. No. 1-1985]

S 54-19. Establishment of statutory exemption.
[Amended 12-18-1997 by L.L. No. 1-1997]

Pursuant to the authority of Paragraph (d) of Subdivision 2 of S 458-a of the Real Property Tax Law, the amount of exemption provided by Paragraphs (a), (b) and (c) of such Subdivision 2 is hereby established as follows:

- A. Paragraph (a) of Subdivision 2: \$27,000.
- B. Paragraph (b) of Subdivision 2: \$18,000.
- C. Paragraph (c) of Subdivision 2: \$90,000.

S 54-20. When effective.

This local law shall take effect immediately.

ARTICLE IV
Termination of Status as Assessing Unit
[Adopted 3-7-2000 by L.L. No. 1-2000]

S 54-21. Legislative intent.

The intent of the Board of Trustees of the Village of Attica is to implement S 1402, Subdivision 3 of the Real Property Tax Law providing for the voluntary termination of the village's status as an assessing unit, as provided in the Village Law and the Real Property Tax Law. It is also the intent of this local law to abolish the position of the Board of Assessors and to terminate any and all responsibility as provided by law for the review of the assessments of real property located within the Village of Attica.

S 54-22. Cessation of village status as assessing unit.

On or after the effective date of this local law, the Village of Attica shall cease to be an assessing unit.

S 54-23. Board of Assessors abolished.

The position of the Board of Assessors in the Village of Attica is hereby abolished.

S 54-24. Board of Assessment Review abolished.

The Board of Assessment Review in the Village of Attica is hereby abolished.

S 54-25. Tax levy; taxable status date.

On or after the effective date of this local law, taxes in the Village of Attica shall be levied on a copy of the applicable part of the assessment roll of the Town of Attica and Town of Alexander with the taxable status date of such towns controlling for Village purposes.

S 54-26. Filing of local law.

Within five days of the effective date of this local law, the Board of Trustees of the Village of Attica shall file a copy of such local law with the Clerk and Assessor of the Town of Attica and Town of Alexander and with the State board of Real Property Services.

S 54-27. When effective; referendum.

This local law shall take effect immediately upon filing with the Secretary of State, provided, however, that such local law is subject to a permissive referendum and the Village clerk shall forthwith proceed to notice such fact and conduct such referendum if required by petition.

ARTICLE V

Fire Department Exemption

[Adopted 4-7-2003 by L.L. No. 1-2003]

S 54-28. Fire Department exemptions.

- A. Real property owned by an enrolled member of the Attica Fire Department, Inc. or such enrolled member and spouse shall be exempt from taxation to the extent of 10% of the assessed value of such property, exclusive of special assessments; provided, however, that such exemption shall in no event exceed \$3,000 multiplied by the latest state equalization rate or the assessing unit in which real property is located.
- B. Such exemption shall not be granted to an enrolled member of the Attica Fire Department, Inc. unless:

- (1) The applicant resides in the Village of Attica;
 - (2) The property is the primary residence of the applicant;
 - (3) The property is used exclusively for residential purposes; provided, however, that in the event any portion of such property is not used exclusively for the applicant's residence but is used for other purposes, such portion shall be subject to taxation and the remaining only shall be entitled to the exemption provided by this section; and
 - (4) The applicant has been certified by the Attica Fire Department, Inc. as an enrolled member of such fire department for at least five years. It shall be the duty and the responsibility of the Village of Attica to determine the procedure for certification.
- C. Any enrolled member of the Attica Fire Department, Inc. who accrues more than 20 years of active service and is so certified by the Attica Fire Department, Inc., shall be granted the ten-percent exemption as authorized by this article for the remainder of his/her life as long as his/her primary residence is located within the Village of Attica.
- D. An application for such exemption shall be filed with the Assessor on or before the taxable status date on a form as prescribed by the State Board.
- E. No applicant who is a member of the Attica Fire Department, Inc. who, by reason of such status, is receiving any benefit under the provisions of this article on the effective date of this section shall suffer any diminution of such benefit because of the provisions of this article.

S 54-29. When effective.

This article shall take effect upon the filing with the Secretary of State.