

COUNCIL WORKSHOP ITEM

ITEM: An Ordinance in Connection with Rights and Responsibilities Related to Locally Imposed and Administered Taxes of the Village of Downers Grove, Illinois

DATE: January 24, 2001

PREPARED BY: Enza Petrarca, Staff Attorney

PURPOSE: To adopt tax processes and procedures to provide all necessary due process rights to a taxpayer in the collection and enforcement of local tax ordinances.

DISCUSSION:

The Local Government Taxpayers' Bill of Rights Act (the "Act") became effective January 1, 2001. (50 ILCS 45/1 *et al.*) The legislative intent of the Act states as follows:

"The provisions of this Act are designed to reduce the burden on both taxpayers and tax collectors by specifically providing that fair and consistent tax processes and procedures be adopted and disseminated to taxpayers at the local level while at the same time preserving local government's full authority to collect taxes lawfully due under their taxing ordinances." (50 ILCS 45/5.)

As a result of this Act all municipalities are required to adopt an ordinance establishing certain procedures for the administration and enforcement of local government tax ordinances. This Act applies to all locally imposed home rule taxes, including: Hotel Use Tax, Municipal Utility Tax, Telecommunication Tax, Telecommunication Infrastructure Maintenance Fee, Electricity Tax, and Motor Fuel Tax.

The proposed ordinance names the Village Treasurer as the local tax administrator, who will be responsible for administering this ordinance. The ordinance provides specific notice, time and procedure requirements. For example, a four-year statute of limitations is established for a claim of a credit or refund of any taxes paid in error. A written claim for a refund or credit of any taxes paid in error must be submitted to the local tax administrator, along with a statement specifying the type of tax, the tax period in question, the canceled check or receipt for the payment, and an amended or revised tax return within four years from the time the payment was made. The local tax administrator must render a decision on such claim within ten days of receipt of the claim.

The ordinance also provides for an audit procedure. The ordinance allows the local tax administrator to request an audit of any taxpayer's records. The taxpayer must be afforded proper notice, and the audit must be conducted during normal business hours. Every taxpayer is required to keep accurate books and records of the taxpayer's business and activities, and shall make them available for inspection by the Village.

The ordinance further provides taxpayers an appeal process to dispute a tax assessment or other tax determination. The taxpayer must file a written protest and petition for a hearing within 45 days of receipt of the written notice of the tax assessment or determination. The local tax administrator must schedule the hearing within 14 days of receipt of the petition. At the conclusion of the hearing, a written determination must be made and provided to the taxpayer. Finally, the ordinance imposes late filing penalties and specific interest rates that are to be assessed on late payment, underpayment or nonpayment of taxes.

ATTACHMENT:

An Ordinance in Connection with Rights and Responsibilities Related to Locally Imposed and Administered Taxes of the Village of Downers Grove, Illinois

RECOMMENDATION:

Please place ordinance on the February 12, 2001 Workshop Agenda


Approved By Village Manager

cc: Dan Blondin, Village Attorney
Marty Lyons, Dir. of Finance
April Holden, Village Clerk
Jerry Sprecher, Deputy Village Manager
Arlene Balicki, Manager's Office

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ORDINANCE NO. _____

AN ORDINANCE IN CONNECTION WITH RIGHTS AND RESPONSIBILITIES RELATED TO LOCALLY IMPOSED AND ADMINISTERED TAXES OF THE VILLAGE OF DOWNERS GROVE, ILLINOIS

WHEREAS, the State of Illinois pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 et seq., has determined it reasonable and necessary to create the Local Government Taxpayers' Bill of Rights Act; and

WHEREAS, the Local Government Taxpayers' Bill of Rights Act requires that a municipality adopt tax processes and procedures to provide all necessary due process rights to a taxpayer in the collection and enforcement of local tax laws; and

WHEREAS, the Village of Downers Grove, Illinois (the "Village") has determined it reasonable and necessary to establish certain procedures in regard to locally imposed and administered taxes.

NOW THEREFORE, be it ordained by the Village of Downers Grove, in the exercise of its home rule powers as follows:

SECTION 1. That Chapter 21, Article XII is hereby added as follows:

21-1200ART. Article XII. Locally Imposed and Administered Tax Rights and Responsibilities

21-1200SEC. Title:

This ordinance shall be known as, and may be cited as, the "Locally Imposed and Administered Tax Rights and Responsibility Ordinance."

21-1201. Scope:

The provisions of this ordinance shall apply to the Village's procedures in connection with all of the Village's locally imposed and administered taxes.

21-1202. Definitions:

Certain words or terms herein shall have the meaning ascribed to them as follows:

"Act" means the "Local Government Taxpayers' Bill of Rights Act."

"Corporate Authorities" means the Village's Mayor and Village Council.

"Locally imposed and administered tax" or "tax" means each tax imposed by the Village that is collected or administered by the Village not an agency or department of the State. It does not include any taxes imposed upon real property under the Property Tax Code or fees collected by the Village other than infrastructure maintenance fees.

"Local tax administrator," the Village's Treasurer, is charged with the administration and collection of the locally imposed and administered taxes, including staff, employees or agents to the extent they are authorized by the local tax administrator to act in the local tax administrator's stead. The local tax administrator shall have the authority to implement the terms of this ordinance to give full effect to this ordinance. The exercise of such authority by the local tax administrator shall not be inconsistent with this ordinance and the Act.

"Village" means the Village of Downers Grove, Illinois.

"Notice" means each audit notice, collection notice or other similar notice or communication in connection with each of the Village's locally imposed and administered taxes.

"Tax Ordinance" means each ordinance adopted by the Village that imposes any locally imposed and administered tax.

"Taxpayer" means any person required to pay any locally imposed and administered tax and generally includes the person upon whom the legal incidence of such tax is placed and with respect to consumer taxes includes the business or entity required to collect and pay the locally imposed and administered tax to the Village.

21-1203. Notices.

Unless otherwise provided, whenever notice is required to be given, the notice is to be in writing mailed not less than seven (7) calendar days prior to the day fixed for any applicable hearing, audit or other scheduled act of the local tax administrator. The notice shall be sent by the local tax administrator as follows:

- (a) First class or express mail, or overnight mail, addressed to the persons concerned at the persons' last known address, or
- (b) Personal service or delivery.

21-1204. Late payment.

Any notice, payment, remittance or other filing required to be made to the Village pursuant to any tax ordinance shall be considered late unless it is:

- (a) physically received by the Village on or before the due date, or
- (b) received in an envelope or other container displaying a valid, readable U.S. Postmark dated on or before the due date, properly addressed to the Village, with adequate postage prepaid.

21-1205. Payment.

Any payment or remittance received for a tax period shall be applied in the following order:

- (1) first to the tax due for the applicable period;
- (2) second to the interest due for the applicable period; and
- (3) third to the penalty for the applicable period.

21-1206. Certain Credits and Refunds.

(a) The Village shall not refund or credit any taxes voluntarily paid without written protest at the time of payment in the event that a locally imposed and administered tax is declared invalidly enacted or unconstitutional by a court of competent jurisdiction. However, a taxpayer shall not be deemed to have paid the tax voluntarily if the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time of payment or if the taxpayer paid the taxes under duress.

(b) The statute of limitations on a claim for credit or refund shall be four (4) or less years after the end of the calendar year in which payment in error was made. The Village shall not grant a credit or refund of locally imposed and administered taxes, interest, or penalties to a person who has not paid the amounts directly to the Village.

(c) The procedure for claiming a credit or refund of locally imposed and administered taxes, interest or penalties paid in error shall be as follows:

(i) The taxpayer shall submit to the local tax administrator in writing a claim for credit or refund together with a statement specifying:

- (ii) the name of the locally imposed and administered tax subject to the claim;
- (iii) the tax period for the locally imposed and administered tax subject to the claim;
- (iv) the date of the tax payment subject to the claim and the canceled check or receipt for the payment;

(v) the taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and

(vi) a request for either a refund or a credit in connection with the claim to be applied to the amount of tax, interest and penalties overpaid, and, as applicable, related interest on the amount overpaid; provided, however, that there shall be no refund and only a credit given in the event the taxpayer owes any monies to the Village.

(d) Within ten (10) days of the receipt by the local tax administrator of any claim for a refund or credit, the local tax administrator shall either:

(i) grant the claim; or

(ii) deny the claim, in whole or in part, together with a statement as to the reason for the denial or the partial grant and denial.

(e) In the event the local tax administrator grants, in whole or in part, a claim for refund or credit, the amount of the grant for refund or credit shall bear interest at the rate of one percent (1%) per annum, based on a year of 365 days and the number of days elapsed, from the date of the overpayment to the date of mailing of a refund check or the grant of a credit.

21-1207. Audit Procedure.

Any request for proposed audit pursuant to any local administered tax shall comply with the notice requirements of this ordinance.

(a) Each notice of audit shall contain the following information:

(i) the tax;

(ii) the time period of the audit; and

(iii) a brief description of the books and records to be made available for the auditor.

(b) Any audit shall be conducted during normal business hours and if the date and time selected by the local tax administrator is not agreeable to the taxpayer, another date and time may be requested by the taxpayer within thirty (30) days after the originally designated audit and during normal business hours.

(c) The taxpayer may request an extension of time to have an audit conducted.

The audit shall be conducted not less than seven (7) days nor more than thirty (30) days from the date the notice is given, unless the taxpayer and the local tax administrator agreed to some other convenient time. In the event taxpayer is unable to comply with the audit on the date in question, the taxpayer may request another date within the thirty (30) days, approved in writing, that is convenient to the taxpayer and the local tax administrator.

(d) Every taxpayer shall keep accurate books and records of the taxpayer's business or activities, including original source documents and books of entry denoting the transactions which had given rise or may have given rise to any tax liability, exemption or deduction. All books shall be kept in the English language and shall be subject to and available for inspection by the Village.

(e) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the Village. If the taxpayer or tax collector fails to provide the documents necessary for audit within the time provided, the local tax administrator may issue a tax determination and assessment based on the tax administrator's determination of the best estimate of the taxpayer's tax liability.

(f) If an audit determines there has been an overpayment of a locally imposed and administered tax as a result of the audit, written notice of the amount of overpayment shall be given to the taxpayer within thirty (30) days of the Village's determination of the amount of overpayment.

(g) In the event a tax payment was submitted to the incorrect local governmental entity, the local tax administrator shall notify the local governmental entity imposing such tax.

21-1208. Appeal.

(a) The local tax administrator shall send written notice to a taxpayer upon the local tax administrator's issuance of a protestable notice of tax due, a bill, a claim denial, or a notice of claim reduction regarding any tax. The notice shall include the following information:

- (i) the reason for the assessment;
- (ii) the amount of the tax liability proposed;
- (iii) the procedure for appealing the assessment; and
- (iv) the obligations of the Village during the audit, appeal, refund and collection

process.

(b) A taxpayer who receives written notice from the local tax administrator of a determination of tax due or assessment may file with the local tax administrator a written protest and petition for hearing, setting forth the basis of the taxpayer's request for a hearing. The written protest and petition for hearing must be filed with the local tax administrator within forty-five (45) days of receipt of the written notice of the tax determination and assessment.

(c) If a timely written notice and petition for hearing is filed, the local tax administrator shall fix the time and place for hearing and shall give written notice to the taxpayer. The hearing shall be scheduled for a date within fourteen (14) days of receipt of the written protest and petition for hearing, unless the taxpayer requests a later date convenient to all parties.

(d) If a written protest and petition for hearing is not filed within the forty-five (45) day period, the tax determination, audit or assessment shall become a final bill due and owing without further notice.

(e) Upon the showing of reasonable cause by the taxpayer and the full payment of the contested tax liability along with interest accrued as of the due date of the tax, the local tax administrator may reopen or extend the time for filing a written protest and petition for hearing.

In no event shall the time for filing a written protest and petition for hearing be reopened or extended for more than ninety (90) days after the expiration of the forty-five day period.

21-1209. Hearing.

(a) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under Section 21-1208, above, the local tax administrator shall conduct a hearing regarding any appeal. The taxpayer may request that a hearing officer conduct the hearing rather than the local tax administrator.

(b) No continuances shall be granted except in cases where a continuance is absolutely necessary to protect the rights of the taxpayer. Lack of preparation shall not be grounds for a continuance. Any continuance granted shall not exceed fourteen (14) days.

(c) At the hearing the local tax administrator or hearing officer shall preside and shall hear testimony and accept any evidence relevant to the tax determination, audit or assessment. The strict rules of evidence applicable to judicial proceedings shall not apply.

(d) At the conclusion of the hearing, the local tax administrator or hearing officer shall make a written determination on the basis of the evidence presented at the hearing. The taxpayer or tax collector shall be provided with a copy of the written decision.

21-1210. Interest and Penalties.

In the event a determination has been made that a tax is due and owing, through audit, assessment or other bill sent, the tax must be paid within the time frame otherwise indicated.

(a) Interest. The Village hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax, to be one percent (1%) per annum, based on a year of 365 days and the number of days elapsed.

(b) Late Filing and Payment Penalties. If a tax return is not filed within the time and manner provided by the controlling tax ordinance, a late filing penalty, of five percent (5%) of the amount of tax required to be shown as due on a return shall be imposed; and a late payment penalty of five percent (5%) of the tax due shall be imposed. If no return is filed within the time or manner provided by the controlling tax ordinance and prior to the Village issuing a notice of tax delinquency or notice of tax liability, then a failure to file penalty shall be assessed equal to twenty-five percent (25%) of the total tax due for the applicable reporting period for which the return was required to be filed.

A late filing or payment penalty shall not apply if a failure to file penalty is imposed by the controlling ordinance.

21-1211. Abatement.

The local tax administrator shall have the authority to waive or abate any late filing penalty, late payment penalty or failure to file penalty if the local tax administrator shall determine reasonable cause exists for delay or failure to make a filing.

21-1212. Installment Contracts.

The Village may enter into an installment contract with the taxpayer for the payment of taxes under the controlling tax ordinance. The local tax administrator may not cancel any installment contract so entered unless the taxpayer fails to pay any amount due and owing. Upon written notice by the local tax administrator that the payment is thirty (30) days delinquent, the taxpayer shall have fourteen (14) working days to cure any delinquency. If the taxpayer fails to cure the delinquency within the fourteen (14) day period or fails to demonstrate good faith in restructuring the installment contract with the local administrator, the installment contract shall be canceled without further notice to the taxpayer.

21-1213. Statute of Limitations.

The Village, through the local tax administrator, shall review all tax returns in a prompt and timely manner and inform taxpayers of any amounts due and owing. The taxpayer shall have forty-five (45) days after receiving notice of the reviewed tax returns to make any request for refund or provide any tax still due and owing.

(a) No determination of tax due and owing may be issued more than four (4) years after the end of the calendar year for which the return for the applicable period was filed or for the calendar year in which the return for the applicable period was due, whichever occurs later.

(b) If any tax return is not filed or if during any 4-year period for which a notice of tax determination or assessment may be issued by the Village, the tax paid was less than 75% of the tax due, the statute of limitations shall be six (6) years maximum after the end of the calendar year in which return for the applicable period was due or end of the calendar year in which the return for the applicable period was filed.

(c) No statute of limitations shall not apply if a fraudulent tax return was filed by the taxpayer.

21-1214. Voluntary Disclosure.

For any locally imposed and administered tax for which a taxpayer has not received a written notice of an audit, investigation, or assessment from the local tax administrator, a taxpayer is entitled to file an application with the local tax administrator for a voluntary disclosure of the tax due. A taxpayer filing a voluntary disclosure application must agree to pay the amount of tax due, along with interest of one percent (1%) per month, for all periods prior to the filing of the application but not more than four (4) years before the date of filing the application. A taxpayer filing a valid voluntary disclosure application may not be liable for any additional tax, interest, or penalty for any period before the date the application was filed. However, if the taxpayer incorrectly determined and underpaid the amount of tax due, the taxpayer is liable for the underpaid tax along with applicable interest on the underpaid tax, unless the underpayment was the result of fraud on the part of the taxpayer, in which case the application shall be deemed invalid and void. The payment of tax and interest must be made by no later than ninety (90) days after the filing of the voluntary disclosure application or the date agreed to by the local tax administrator. However, any additional amounts owed as a result of an underpayment of tax and interest previously paid under this Section must be paid within ninety (90) days after a final determination and the exhaustion of

all appeals of the additional amount owed or the date agreed to by the local tax administrator, whichever is longer.

21-1215. Publication of Tax Ordinances.

Any locally administered tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the Internet shall satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the Village Clerk's Office.

21-1216. Internal Review.

The local tax administrator shall establish an internal review procedure regarding any liens filed against any taxpayers for unpaid taxes. Upon a determination by the local tax administrator that the lien is valid, the lien shall remain in full force and effect. If the lien is determined to be improper, the local tax administrator shall:

- (i) timely remove the lien at the Village's expense;
- (ii) correct the taxpayer's credit record; and
- (iii) correct any public disclosure of the improperly imposed lien.

21-1217. Application.

This ordinance shall be liberally construed and administered to supplement all of the Village's tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

21-1218. Severability.

If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

SECTION 2. All ordinances or resolutions, or parts thereof, in conflict with the provisions of this ordinance be and are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest:

Village Clerk

[LOCALTAX]