

THE VILLAGE OF FLANAGAN

LIVINGSTON COUNTY, ILLINOIS

ORDINANCE NUMBER _____ 10-7 _____

AN ORDINANCE DESIGNATING LOCALLY IMPOSED
AND ADMINISTERED TAX RIGHTS AND RESPONSIBILITIES
(TAXPAYERS' BILL OF RIGHTS)

R. JEROME ROCKE, Village President

PAUL INGOLD, Village Clerk

CLAYTON AUGSBURGER

TODD BARTON

DOUG CARLS

BEVERLEY FRIESE

ALLEN HULSE

JASON MONTELLO

Village Trustees

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Flanagan

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Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C. – 207 W. Jefferson, Suite 402,
Bloomington, IL 61701

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NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of
Flanagan, Livingston County, Illinois, as follows:

Section 1: SCOPE; APPLICATION OF PROVISIONS:

A. 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.

B. Application Of Provisions; Conflicting Provisions: This ordinance shall be liberally construed and administered to supplement all of the Village tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

Section 2: DEFINITIONS: Certain words or terms herein shall have the meanings ascribed to them as follows:

ACT: The Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1, et seq.

CORPORATE AUTHORITIES: The President and Board of Trustees.

LOCAL TAX ADMINISTRATOR: The __Village_Treasure_ 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.

LOCALLY IMPOSED AND

ADMINISTERED TAX OR TAX: Each tax imposed by the Village that is collected or administered by the Village and not an agency or department of the State, including the taxes authorized by Section 8-11-2 of the Illinois Municipal Code, 65 ILCS 5/8-11-2, or any successor law. It does not include any taxes imposed upon real property under the property tax code or fees collected by the Village.

NOTICE: Each audit notice, collection notice or other similar notice or communication in connection with each of the Village's locally imposed and administered taxes.

TAXPAYER: 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 utility taxes, includes the business or entity required to collect and pay the Locally Imposed and Administered Tax to the Village.

THIRD PARTY PROVIDER Any person engaged and authorized by the Village to conduct an audit, assist with the conduct of an audit, or perform any statistical analysis of a Taxpayer's books and records, for the purposes described in this Ordinance. A Third Party Provider may operate independently or in cooperation with Village staff.

VILLAGE: The Village of Flanagan, Illinois.

Section 3: NOTICE REQUIREMENTS: Unless otherwise provided, whenever notice is required to be given, the notice is to be in writing and mailed not less than seven (7) calendar days prior to the day fixed for any applicable hearing, audit, statute of limitations or other scheduled act of the Local Tax Administrator. The notice shall be sent by U.S. registered or certified mail.

Section 4: DELINQUENT NOTICES, PAYMENTS, REMITTANCES OR OTHER FILINGS: 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.

Section 6: APPLICATION OF TAX PAYMENTS: Any payment or remittance received for a tax period shall be applied in the following order: a) first, the interest due for the applicable period; b) second, to the tax due for the applicable period and c) to the penalty for the applicable period.

Section 7: CERTAIN CREDITS AND REFUNDS:

A. **Written Protest Required:** 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. **Statute Of Limitations:** 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. Procedure: The procedure for claiming a credit or refund of Locally Imposed and Administered Taxes, interest or penalties paid in error shall be as follows:
1. The Taxpayer shall submit to the Local Tax Administrator in writing a claim for credit or refund, together with a statement specifying:
 - a. The name of the Locally Imposed and Administered Tax subject to the claim;
 - b. The tax period for the Locally Imposed and Administered Tax subject to the claim;
 - c. The date of the tax payment subject to the claim and the canceled check or receipt for the payment;
 - d. The Taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and
 - e. 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 or shall owe any monies to the Village.
 2. 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:
 - a. Grant the claim; or
 - b. 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.
 3. In the event the Local Tax Administrator grants, in whole or in part, a claim for a 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 three hundred sixty (360) days and the number of days elapsed, from the date of the overpayment to the date of mailing a refund check or the grant of a credit.

Section 8: AUDIT PROCEDURE: Not more than once every two (2) years, the Village may conduct an audit of a Taxpayer's books and records. Any request for a proposed audit pursuant to any Locally Imposed and Administered Tax shall comply with the notice requirements of this ordinance.

A. Information Required: Each notice shall contain the following information:

1. The tax;

2. The time period of the audit; and
3. A brief description of the books and records to be made available for the auditor, in the format maintained by the Taxpayer in the ordinary course of its business. The information that may be requested by the Local Tax Administrator, or third party provider, includes:
 - a. In an electronic format used by the Taxpayer in the ordinary course of its business, the database used by the Taxpayer to determine the amount of tax due to the Village; provided, however, that, if the Village requests customer-specific billing, usage, and load shape data from a Taxpayer that is an electric utility and has not provided the electric utility with the customers' verifiable authorization required by Section 16-122 of the Public Utilities Act, then the electric utility shall remove from the database all customer-specific billing, usage, and load shape data before providing it to the Village; and
 - b. In a format used by the Taxpayer in the ordinary course of its business, summary data, as needed by the Village, to determine the unit consumption of utility services by providing the gross therms, kilowatts, minutes, or other units of measurement being taxed within the Village's jurisdiction and the gross revenues collected and the associated taxes assessed.
4. The identity of the Village representative, or third party provider, who will be conducting the audit, together with the written authorization, if applicable.
5. For audits to be conducted by third party providers, no contact may be made by the third party provider until the Local Tax Administrator's authorization is received by the Taxpayer

B. Time For Conducting Audit:

1. The audit shall be conducted at a time selected by the Local Tax Administrator, but in no event sooner than sixty (60) days after the date of the notice described in Paragraph A above; provided that if the Taxpayer notifies the Local Tax Administrator within thirty (30) days of receiving the notice that it is cooperating with audits for three (3) or more municipalities, or municipalities with cumulatively more than 100,000 customers, the audit shall be conducted no sooner than ninety (90) days.
2. 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.
3. 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 agree to some other convenient time. In the event the 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.

C. Taxpayer's Books And Records:

1. 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.

2. It is the duty and responsibility of every Taxpayer to make available his 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 liability.

3. The auditor or Third Party Provider must sign a commercially reasonable confidentiality agreement upon request by the Taxpayer.

D. **Audit Closure Report:** Upon the completion of the audit, the Local Tax Administrator must issue an audit closure report to the Taxpayer with the results of the audit. If an underpayment is determined by the audit, the Taxpayer must submit a written response within sixty (60) days after the date the audit closure report was postmarked stating that it has corrected the error or stating the reason that the error is inapplicable or inaccurate. The municipality then has sixty (60) days after the receipt of the Taxpayer's response to review and contest the conclusion of the Taxpayer. If the parties are unable to agree on the disposition of the audit findings within 120 days after the notification of the underpayment to the Taxpayer, then either party may submit the matter for appeal as outlined in Section 9 of this Ordinance.

E. **Overpayments:** If an audit determines there has been an overpayment of a Locally Imposed and Administered Tax, written notice of the amount of overpayment shall be given to the Taxpayer by the Local Tax Administrator, and the auditor, if different, within thirty (30) days of the Village's determination of the amount of overpayment. The Audit Closure Report may satisfy this requirement if it is timely delivered.

F. **Payment To Improper Entity:** 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.

Section 9: APPEALS:

A. **Contents of Notice Regarding Taxes Due:** 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:

1. The reason for the assessment;
2. The amount of the tax liability proposed;
3. The procedure for appealing the assessment; and

4. The obligations of the Village during the audit, appeal, refund and collection process.

B. Request for Hearing: The Taxpayer who receives written notice from the Local Tax Administrator of a determination of tax due or assessment, or the Village, may file with the Local Tax Administrator a written protest and petition for hearing, setting forth the basis of the appellants 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 or in the time otherwise required herein.

C. Hearing Scheduled; Notice: 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 Village and 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. Time Limit For Filing Hearing Request: 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. Reopening, Extension Of Hearing Request: 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 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 (45) day period.

F. Conduct Of Hearing; Decision:

1. Whenever a Taxpayer (or a tax collector) has filed a timely written protest and petition for hearing under this section, the Local Tax Administrator shall conduct a hearing regarding any appeal.

2. 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.

3. At the hearing, the Local Tax Administrator 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.

4. At the conclusion of the hearing, the Local Tax Administrator 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.

G. Administrative Review: If the appeals process does not produce a satisfactory result, then either party may pursue the alleged error in a court of competent jurisdiction.

Section 10: PAYMENT REQUIRED; INTEREST AND PENALTIES:

- A. Time For Payment: 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.
- B. 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 five percent (5%) per annum, based on a year of three hundred sixty (360) days and the number of days elapsed.
- C. 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.
- D. Abatement Of Penalties: 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.
- E. Notwithstanding anything herein to the contrary, no Taxpayer is liable for any error in past collections and payments that was unknown by it prior to the audit process unless (i) the error was due to negligence by the Taxpayer in the collection or processing of required data and (ii) the Village had not failed to respond in writing on an accurate and timely basis to any written request of the Taxpayer to review and correct information used by the Taxpayer to collect the Village's Locally Imposed and Administered Tax if a diligent review of such information by the Village reasonably could have been expected to discover such error. If, however, an error in past collections or payments resulted in a customer, who should not have owed a Locally Imposed and Administered Tax to the Village, having paid a tax to the Village, then the customer may, to the extent allowed by Section 9-252 of the Public Utilities Act, recover the tax from the Taxpayer, and any amount so paid by the Taxpayer may be deducted by that Taxpayer from any taxes then or thereafter owed by the Taxpayer to the Village.

Section 11: 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) working day period or fails to demonstrate good faith in restructuring the installment contract

with the Local Tax Administrator, the installment contract shall be canceled without further notice to the Taxpayer.

Section 12: STATUTE OF LIMITATIONS:

- A. 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.
- B. 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.
- C. If any tax return is not filed or if, during any four (4) year period for which a notice of tax determination or assessment may be issued by the Village, the tax paid was less than seventy five percent (75%) of the tax due, the statute of limitations shall be six (6) years maximum after the end of the calendar year in which the return for the applicable period was due, or end of the calendar year in which the return for the applicable period was filed, whichever occurs later.
- D. No statute of limitations shall apply if a fraudulent tax return was filed by the Taxpayer.

Section 13: 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. Except for the amount of tax and interest due under this section, 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 no later than ninety (90) days after the filing of the voluntary disclosure application or the date agreed to by the Local Tax Administrator, whichever is longer. 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.

Section 14: PUBLICATION OF TAX ORDINANCES; COPIES: Any Locally Imposed and Administered Tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the internet will satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the Village Clerk's office.

Section 15: REVIEW OF LIENS: The Local Tax Administrator shall establish an internal review procedure regarding any liens filed against any Taxpayer 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:

- A. Timely remove the lien at the Village's expense;
- B. Correct the Taxpayer's credit record; and
- C. Correct any public disclosure of the improperly imposed lien.

Section 16: Effective Date. This Ordinance shall be in full force and effect, following its passage, approval and publications as required by law .

Passed by the Board of Trustees of the Village of Flanagan, Livingston County, Illinois, on the __17th__ day of __August____, 2010, by the following vote:

AYES: 4

NAYS: 0

ABSENT: 2

Approved this __17th__ day of __August____ 2010

R. JEROME ROCKE, Village President

ATTEST:

PAUL INGOLD, Village Clerk

STATE OF ILLINOIS)
) SS.
COUNTY OF LIVINGSTON)

CERTIFICATE

I, PAUL INGOLD, certify that I am the duly elected and acting Village Clerk of the Village of Flanagan, Livingston County, Illinois.

I further certify that on __August_17th_____, 2010, the Corporate Authorities of such municipality passed and approved Ordinance No. __10-7____, entitled "An Ordinance Designating Locally Imposed And Administered Tax Rights And Responsibilities (Taxpayers' Bill Of Rights)" which provided by its terms that it should be published in pamphlet form. A draft copy of said ordinance was on file for public inspection at least once a week before passage.

The pamphlet form of Ordinance No. _10-7____, including the Ordinance and a cover sheet thereof, was prepared and posted in the Village Hall commencing on ____August_18th_____, 2010, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request to the Village Clerk.

Dated at Flanagan, Illinois, this__18th__ day of ____August____, 2010.

____Paul Ingold_____

Village Clerk