

CHAPTER 2

SALES AND USE TAX

ARTICLE A. MUNICIPAL ENERGY SALES AND USE TAX; UTAH POWER

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3-2A-1: **INTENT:** It is the intent of the City to repeal its franchise tax levied on gas and electricity as applicable and adopt the municipal energy sales and use tax, pursuant to and in conformance with, Utah Code Annotated section 10-1-301 et seq., The Municipal Energy Sales and Use Tax Act. (Ord., 6-17-1997, eff. 6-30-1997)

3-2A-2: **DEFINITIONS:** As used in this Article, the following words and terms shall have the meanings ascribed to them in this Section:

CONSUMER: A person who acquires taxable energy for any use that is subject to the municipal energy sales and use tax.

CONTRACTUAL FRANCHISE FEE: A. A fee:

1. Provided for in a franchise agreement; and
2. That is consideration for the franchise agreement; or

B. A fee similar to subsection A of this definition; or

C. Any combination of subsections A1 or A2 of this definition.

- DELIVERED VALUE:** A. The fair market value of the taxable energy delivered for sale or use in the City and includes:
1. The value of the energy itself; and
 2. Any transportation, freight, customer demand charges, service charges or other costs typically incurred in providing taxable energy in usable form to each class of customer in the City.
- B. Delivered value does not include the amount of a tax paid under part 1 or part 2 of chapter 12, title 59 of the Utah Code Annotated.
- ENERGY SUPPLIER:** A person supplying taxable energy, except for persons supplying a de minimis amount of taxable energy, if such persons are excluded by rule promulgated by the State Tax Commission.
- FRANCHISE AGREEMENT:** A franchise of an ordinance, contract or agreement granting a franchise.
- FRANCHISE TAX:** A. A franchise tax;
- B. A tax similar to a franchise tax; or
- C. Any combination of subsections A or B of this definition.
- PERSON:** Includes any individual, form, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this State, any county, city, municipality, district or other local governmental entity of the State, or any group or combination acting as a unit.
- SALE:** Any transfer of title, exchange or barter, conditional or otherwise, in any manner, of taxable energy for a consideration. It includes:
- A. Installment and credit sales;
 - B. Any closed transaction constituting a sale;

C. Any transaction under which right to acquire, use or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.

STORAGE: Any keeping or retention of taxable energy in this City for any purpose, except sale in the regular course of business.

TAXABLE ENERGY: Gas and Electricity.

USE: A. The exercise of any right or power over taxable energy incident to the ownership of the leasing of the taxable energy.

B. Use does not include the sale, display, demonstration or trial of the taxable energy in the regular course of business and held for resale. (Ord. 6-17-1997, eff. 6-30-1997)

3-2A-3: TAX LEVIED: There is hereby levied, subject to the provisions of this Article, a tax on every sale or use of taxable energy made within the City equaling five percent (5%) of the delivered value of the taxable energy to the consumer. This tax shall be known as the municipal energy sales and use tax.

A. Calculation: The tax shall be calculated on the delivered value of the taxable energy to the consumer.

B. Additional to Other Sales or Use Tax: The tax shall be in addition to any sales or use tax on taxable energy imposed by the City authorized by Title 59, Chapter 12, Part 2 of the Utah Code Annotated, The Local Sales and Use Tax Act. (Ord. 6-17-1997, eff 6-30-1997)

3-2A-4: EXEMPTIONS TO TAX:

A. No exemptions are granted from the municipal energy sales and use tax, except as expressly provided in Utah Code Annotated Section 10-1-305 (2)(b); notwithstanding an exemption granted by Utah Code Annotated Section 59-1-104.

B. The following are exempt from the municipal energy sales and use tax, pursuant to Utah Code Annotated Section 10-1-305 (2)(b):

1. Sales and use of aviation fuel, motor fuel and special fuels subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated;
 2. Sales and use of taxable energy that is exempt from taxation under Federal law, the United States Constitution or the Utah Constitution;
 3. Sales and use of taxable energy purchased or stored for resale;
 4. Sales or use of taxable energy to a person, if the primary use of the taxable energy is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 3 of the Utah Code Annotated;
 5. Taxable energy brought into the State by a nonresident for the nonresident's own personal use or enjoyment while within the State, except taxable energy purchased for use in the State by a nonresident living or working in the State at the time of purchase;
 6. The sale or use of taxable energy for any purpose other than as a fuel or energy; or
 7. The sale or taxable energy for use outside the boundaries of the City.
- C. The sale, storage, use or other consumption of taxable energy is exempt from the municipal energy sales and use tax levied by this Article, provided:
1. The delivered value of the taxable energy has been subject to a municipal energy sales or use tax levied by another municipality within the State authorized by Title 59, Chapter 12, part 3 of the Utah Code Annotated; and
 2. The City is paid the difference between the tax paid to the other municipality and the tax that would otherwise be due under this Article, if the tax due under this Article exceeds the tax paid to the other municipality. (Ord. 6-17-1997, eff. 6-30-1997)

3-2A-5: EXISTING FRANCHISE AGREEMENTS:

- A. No Alteration: This Article shall not alter any existing franchise agreements between the City and energy suppliers.

- B. Credit: There is a credit against the tax due from any consumer in the amount of a contractual franchise fee paid if:
1. The energy supplier pays the contractual franchise fee to the City pursuant to a franchise agreement in effect on July 1, 1997;
 2. The contractual franchise fee is passed through by the energy supplier to a consumer as a separately itemized charge; and
 3. The energy supplier has accepted the franchise. (Ord. 6-17-1997, eff. 6-30-1997)

3-2A-6: **CONTRACT WITH STATE TAX COMMISSION:**

- A. Required: On or before the effective date hereof, the City shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the municipal energy sales and use tax, in accordance with this Article. This contract is a supplement to the existing contract with the Commission to administer and collect the local sales and use tax, as provided in the uniform local sales and use tax ordinance of the City, as adopted in Chapter 2 of this Title. The Mayor, with the approval of the City Attorney, is hereby authorized to enter into supplementary agreements with the State Tax Commission that may be necessary to the continued administration and operation of the municipal energy sales and use tax ordinance enacted by this Article.
- B. Monthly Payments; Conditions: An energy supplier shall pay the municipal energy sales and use tax revenues collected from consumers directly to the City monthly if:
1. City Is Supplier: The City is the energy supplier; or
 2. Amount; Collection By Supplier:
 - a. The energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals one million dollars (\$1,000,000.00) or more; and
 - b. The energy supplier collects the municipal energy sales and use tax.
- C. Deductions: Any energy supplier paying the municipal energy sales and use tax

directly to the City may deduct any contractual franchise fees collected by the energy supplier qualifying as a credit and remit the net tax, less any amount the energy supplier retains as authorized by section 10-1-307(4) Utah Code Annotated. (Ord. 6-17-1997, eff. 6-30-1997)

3-2A-7: INCORPORATION OF STATE STATUTES:

- A. Except as herein provided and except insofar as they are inconsistent with the provisions of Title 10, Chapter 1, Part 3 Municipal Energy Sales and Use Tax Act, as well as this Article, all of the provisions of Part 1, Chapter 12, Title 59 of the Utah Code Annotated, as amended, and in force and effect on the effective date hereof, insofar as they relate to sales and use taxes, excepting sections 59-12-101 and 59-12-119 thereof, and excepting for the amount of the sales and use taxes levied therein, are hereby adopted and made a part of this Article as if fully set forth herein.
- B. Wherever and to the extent that in Part 1, Chapter 12, Title 59, Utah Code Annotated, as amended, the State is named or referred to as the "taxing agency", the name of the City shall be substituted, insofar as is necessary for the purposes of that part, as well as Part 3, Chapter 1, Title 10, Utah Code Annotated, as amended. Nothing in this subsection shall be deemed to require substitution of the name City for the word State when that word is used as part of the title of the State Tax Commission or of the Constitution of Utah, nor shall the name of the City be substituted for that of the State in any section when the result of such a substitution would require action to be taken by or against the City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this Article.
- C. Any amendments made to Part 1, Chapter 12, Title 59, Utah Code Annotated, as amended, which would be applicable to the City for the purposes of carrying out this Article are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute. (Ord. 6-17-1997, eff. 6-30-1997)

3-2A-8: ADDITIONAL LICENSE OR REPORTING NOT REQUIRED:

No additional license to collect or report the municipal energy sales and use tax levied by this Article is required, provided the energy supplier collecting the tax has a license issued under section 59-12-106 Utah Code Annotated. (Ord. 6-17-1997, eff. 6-30-1997)

3-2A-9: EFFECTIVE DATE OF LEVY: This Article is effective June 30, 1997. The municipal energy sales and use tax shall be levied beginning one minute after twelve o'clock (12:01) A.M., July 1, 1997. (Ord. 6-17-1997, eff. 6-30-1997)