

## Chapter 9

# TELECOMMUNICATIONS SERVICE PROVIDERS TAX

### 2-9-1: DEFINITIONS:

### 2-9-2: LEVY OF TAX:

### 2-9-3: RATE:

### 2-9-4: RATE LIMITATION AND EXEMPTION:

### 2-9-5: EFFECTIVE DATE OF TAX LEVY:

### 2-9-6: TAXES ERRONEOUSLY RECOVERED:

### 2-9-7: CHANGES IN RATE OR REPEAL OF TAX:

### 2-9-8: INTERLOCAL AGREEMENT FOR COLLECTION:

### 2-9-9: REPEAL OF INCONSISTENT TAXES AND FEES:

### **2-9-1: DEFINITIONS:**

As used in this chapter:

**COMMISSION:** The state tax commission.

### **CUSTOMER:**

- A. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
- B. For purposes of this chapter, "customer" means:
  - 1. The person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or
  - 2. If the end user is not the person described in subsection B1 of this definition, the end user of the telecommunications service.
- C. "Customer" does not include a reseller:
  - 1. Of telecommunications service; or
  - 2. For mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

**END USER:** The person who uses a telecommunications service. For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

**GROSS RECEIPTS ATTRIBUTED TO THE TOWN:** Those gross receipts from a transaction for telecommunications services that is located within the town for purposes of sales and use taxes under Utah Code Annotated title 59, chapter 12, the sales and use tax act, and determined in accordance with Utah Code Annotated section [59-12-207](#).

**GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE:** The revenue that a telecommunications provider receives for telecommunications service rendered, except for amounts collected or paid as:

- A. A tax, fee or charge:
  - 1. Imposed by a governmental entity;
  - 2. Separately identified as a tax, fee or charge in the transaction with the customer for the telecommunications service; and
  - 3. Imposed only on a telecommunications provider;
- B. Sales and use taxes collected by the telecommunications provider from a customer under Utah Code Annotated [title 59, chapter 12](#), the sales and use tax act; or
- C. Interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

**MOBILE TELECOMMUNICATIONS SERVICE:** Is as defined in the mobile telecommunications sourcing [act, 4 USC section 124](#).

**PLACE OF PRIMARY USE:**

- A. For telecommunications service, other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:
  - 1. The residential street address of the customer; or
  - 2. The primary business street address of the customer; or
- B. For mobile telecommunications service, is as defined in the mobile telecommunications sourcing act, [4 USC section 124](#).

**SERVICE ADDRESS:** Notwithstanding where a call is billed or paid, means:

- A. If the location described in subsection A of this definition is known, the location of the telecommunications equipment:
  - 1. To which a call is charged; and
  - 2. From which the call originates or terminates;

- B. If the location described in subsection A of this definition is not known but the location described in subsection B of this definition is known, the location of the origination point of the signal of the telecommunications service first identified by:
  - 1. The telecommunications system of the telecommunications provider; or
  - 2. If the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or
- C. If the locations described in subsections A or B of this definition are not known, the location of a customer's place of primary use.

**TELECOMMUNICATIONS PROVIDER:**

- A. A person that:
  - 1. Owns, controls, operates or manages a telecommunications service; or
  - 2. Engages in an activity described in subsection (10)(a) for the shared use with or resale to any person of the telecommunications service.
- B. A person described in subsection A of this definition is a telecommunications provider whether or not the public service commission of Utah regulates:
  - 1. That person; or
  - 2. The telecommunications service that the person owns, controls, operates or manages.
- C. "Telecommunications provider" does not include an aggregator as defined in Utah Code Annotated section 54-8b-2.

**TELECOMMUNICATIONS SERVICE:**

- A. "Telephone service", as defined in Utah Code Annotated section [59-12-102](#), other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and
- B. "Mobile telecommunications service", as defined in Utah Code Annotated section [59-12-102](#):
  - 1. That originates and terminates within the boundaries of one state; and
  - 2. Only to the extent permitted by the mobile telecommunications sourcing act, [4 USC section 116 et seq.](#)

TOWN: Brian Head Town, Utah. (Ord. 04-002, 6-29-2004)

**2-9-2: LEVY OF TAX:**

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to the town. (Ord. 04-002, 6-29-2004)

**2-9-3: RATE:**

The rate of the tax levy shall be four percent (4%) of the telecommunication provider's gross receipts from telecommunications service a transaction is determined to be other than this town, then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Annotated section 10-1-407. (Ord. 04-002, 6-29-2004)

**2-9-4: RATE LIMITATION AND EXEMPTION:**

The rate of this levy shall not exceed four percent (4%) of the telecommunications provider's gross receipts from telecommunication service attributed to the town, unless a higher rate is approved by a majority vote of the voters in the town that vote in:

- A. A municipal general election;
- B. A regular general election; or
- C. A local special election. (Ord. 04-002, 6-29-2004)

**2-9-5: EFFECTIVE DATE OF TAX LEVY:**

This tax shall be levied beginning July 1, 2004. (Ord. 04-002, 6-29-2004)

**2-9-6: TAXES ERRONEOUSLY RECOVERED:**

Pursuant to the provisions of Utah Code Annotated section [10-1-408](#), a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer the municipal telecommunication license tax, except as provided in Utah Code Annotated section [10-1-408](#). (Ord. 04-002, 6-29-2004)

**2-9-7: CHANGES IN RATE OR REPEAL OF TAX:**

This chapter is subject to the requirements of Utah Code Annotated section [10-1-401](#). If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Annotated section [10-1-403](#). (Ord. 04-002, 6-29-2004)

## **2-9-8: INTERLOCAL AGREEMENT FOR COLLECTION:**

On or before the effective date hereof, the town shall enter into a uniform interlocal agreement with the state tax commission, as described in Utah Code Annotated section [10-1-405](#), for the collection, enforcement and administration of this municipal telecommunications license tax. (Ord. 04-002, 6-29-2004)

## **2-9-9: REPEAL OF INCONSISTENT TAXES AND FEES:**

- A. Any tax or fee previously enacted by the town under authority of Utah Code Annotated section [10-1-203](#), or [title 11, chapter 26](#), local taxation of utilities limitation, is hereby repealed.
- B. Nothing in this chapter shall be interpreted to repeal any town ordinance or fee which provides that the town may recover from a telecommunications provider the management costs of the town caused by the activities of the telecommunications provider in the rights of way of the town, if the fee is imposed in accordance with Utah Code Annotated section [72-7-102](#), and is not related to the town's loss of use of a highway as a result of the activities of the telecommunications provider in a right of way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right of way, nor does this chapter limit the town's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this chapter and locate "telecommunication facilities", as defined in Utah Code Annotated section [72-7-108](#), in the town. (Ord. 04-002, 6-29-2004)