

ORDINANCE 188

AN ORDINANCE ESTABLISHING A TAX ON THE GROSS RECEIPTS OF TELECOMMUNICATIONS SERVICE PROVIDERS; SETTING THE RATE FOR SUCH TAX; AND ESTABLISHING THE EFFECTIVE DATE OF THE TAX

WHEREAS, THIS MUNICIPALITY, PURSUANT TO UTAH CODE SECTIONS 10-1-401 ET SEQ. MAY LEVY A TAX ON THE GROSS RECEIPTS OF TELECOMMUNICATION SERVICE PROVIDERS; AND

WHEREAS, THIS MUNICIPALITY HAS DETERMINED THAT THE NEED FOR SUCH A TAX AS A SOURCE OF GENERAL REVENUE; AND

WHEREAS, THIS MUNICIPALITY HAS PREVIOUSLY RAISED GENERAL FUND REVENUE FROM TAXES OR FEES FROM CERTAIN TELECOMMUNICATION PROVIDERS UNDER THE AUTHORITY OF UTAH CODE SECTIONS 10-1-203 OR 11-26-1 ET SEQ. AND NOW WISHES TO REPEAL THOSE TAXES.

NOW THEREFORE BE IT ORDAINED BY THE LEGISLATIVE BODY OF THIS MUNICIPALITY AS FOLLOWS:

DEFINITIONS.

AS USED IN THIS ORDINANCE:

(1) COMMISSION" MEANS THE STATE TAX COMMISSION.

(2) (A) SUBJECT TO SUBSECTIONS (2) (B) AND (C), "CUSTOMER" MEANS 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 ORDINANCE, "CUSTOMER" MEANS:

(I) THE PERSON WHO IS OBLIGATED UNDER A CONTRACT WITH A TELECOMMUNICATIONS PROVIDER TO PAY FOR TELECOMMUNICATIONS SERVICE RECEIVED UNDER THE CONTRACT; OR

(II) IF THE END USER IS NOT THE PERSON DESCRIBED IN SUBSECTION (2) (B) (I), THE END USER OF TELECOMMUNICATIONS SERVICE.

(C) "CUSTOMER" DOES NOT INCLUDE A RESELLER:

(I) OF TELECOMMUNICATIONS SERVICE; OR

(II) FOR MOBILE TELECOMMUNICATIONS SERVICE, OF A SERVING CARRIER UNDER AN AGREEMENT TO SERVE THE CUSTOMER OUTSIDE THE TELECOMMUNICATIONS PROVIDER'S LICENSED SERVICE AREA.

(3) (A) "END USER" MEANS THE PERSON WHO USES A TELECOMMUNICATIONS SERVICE.

(B) 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 PROVIDE THE TELECOMMUNICATIONS SERVICE.

(4) "GROSS RECEIPTS ATTRIBUTED TO THE MUNICIPALITY" MEANS THOSE GROSS RECEIPTS FROM A TRANSACTION FOR TELECOMMUNICATIONS SERVICES THAT IS LOCATED WITHIN THE MUNICIPALITY FOR THE PURPOSES OF SALES AND USE TAXES UNDER UTAH CODE TITLE 59, CHAPTER 12, SALES AND USE TAX ACT AND DETERMINED IN ACCORDANCE WITH UTAH CODE SECTION 59-12-207.

(5) "GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE" MEANS THE REVENUE THAT A TELECOMMUNICATIONS PROVIDER RECEIVES FOR TELECOMMUNICATIONS SERVICE RENDERED EXCEPT FOR AMOUNTS COLLECTED OR PAID AS:

(A) A TAX, FEE, OR CHARGE:

(I) IMPOSED BY A GOVERNMENT ENTITY;

(II) SEPARATELY IDENTIFIED AS A TAX, FEE, OR CHARGE IN THE TRANSACTION WITH THE CUSTOMER FOR TELECOMMUNICATIONS SERVICE; AND

(III) IMPOSED ONLY ON A TELECOMMUNICATIONS PROVIDER;

(B) SALES AND USE TAXES COLLECTED BY THE TELECOMMUNICATIONS PROVIDER FROM A CUSTOMER UNDER TITLE 59, CHAPTER 12 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.

(6) "MOBILE TELECOMMUNICATIONS SERVICE" IS AS DEFINED IN THE MOBILE TELECOMMUNICATIONS SOURCING ACT, 4 U.S.C. SEC. 124.

(7) "MUNICIPALITY" MEANS ELSINORE TOWN.

(8) "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:

(I) THE RESIDENTIAL STREET ADDRESS OF THE CUSTOMER; OR

(II) THE PRIMARY BUSINESS STREET ADDRESS OF THE CUSTOMER; OR

(B) FOR MOBILE TELECOMMUNICATIONS SERVICE, IS AS DEFINED IN THE MOBILE TELECOMMUNICATIONS SOURCING ACT, 4 U.S.C. SEC. 124.

(9) NOTWITHSTANDING WHERE A CALL IS BILLED OR PAID, "SERVICE ADDRESS" MEANS:

(A) IF THE LOCATION DESCRIBED IN THIS SUBSECTION (9) (A) IS KNOWN, THE LOCATION OF THE TELECOMMUNICATIONS EQUIPMENT:

(I) TO WHICH A CALL IS CHARGED; AND

(II) FROM WHICH THE CALL ORIGINATES OR TERMINATES;

(B) IF THE LOCATION DESCRIBED IN SUBSECTION (9) (A) IS NOT KNOWN BUT THE LOCATION DESCRIBED IN THIS SUBSECTION (8) (B) IS KNOWN, THE LOCATION OF THE ORIGINATION POINT OF THE SIGNAL OF THE TELECOMMUNICATIONS SERVICE FIRST IDENTIFIED BY:

(I) THE TELECOMMUNICATIONS SYSTEM OF THE TELECOMMUNICATIONS PROVIDER; OR

(II) 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 SUBSECTION (9) (A) AND (9) (B), ARE NOT KNOWN, THE LOCATION OF A CUSTOMER'S PLACE OF PRIMARY USE.

(8) (A) SUBJECT TO SUBSECTIONS (9) (B) AND (9) (C), "TELECOMMUNICATIONS PROVIDER" MEANS A PERSON THAT:

(I) OWNS, CONTROLS, OPERATES, OR MANAGES A TELECOMMUNICATIONS SERVICE; OR

(II) ENGAGES IN AN ACTIVITY DESCRIBED IN SUBSECTION (9) (A) (I) FOR THE SHARED USE WITH OR RESALE TO ANY PERSON OF THE TELECOMMUNICATIONS SERVICE.

(B) A PERSON DESCRIBED IN SUBSECTION (9) (A) IS A TELECOMMUNICATIONS PROVIDER WHETHER OR NOT THE PUBLIC SERVICE COMMISSION OF UTAH REGULATES:

(I) THAT PERSON; OR

(II) THE TELECOMMUNICATIONS SERVICE THAT THE PERSON OWNS, CONTROLS, OPERATES, OR MANAGES.

(C) "TELECOMMUNICATIONS PROVIDER" DOES NOT INCLUDE AN AGGREGATOR AS DEFINED IN UTAH CODE SECTION 54-8B-2.

(10) "TELECOMMUNICATIONS SERVICE" MEANS:

(A) TELEPHONE SERVICE, AS DEFINED IN UTAH CODE SECTION 59-12-102, OTHER THAN MOBILE TELECOMMUNICATIONS SERVICE, THAT ORIGINATES AND TERMINATES WITHIN THE BOUNDARIES OF THIS STATE; AND

(B) TELECOMMUNICATIONS SERVICE, AS DEFINED IN UTAH STATE CODE SECTION 59-12-102:

(I) THAT ORIGINATES AND TERMINATES WITHIN THE BOUNDARIES OF ONE STATE; AND

(II) ONLY TO THE EXTENT PERMITTED BY THE MOBILE TELECOMMUNICATIONS SOURCING ACT, 4 U.S.C. SEC. 116 ET SEQ.

LEVY OF TAX.

THERE IS HEREBY LEVIED A MUNICIPAL TELECOMMUNICATIONS LICENSE TAX ON THE GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE ATTRIBUTED TO THIS MUNICIPALITY.

RATE.

THE RATE OF THE TAX LEVY SHALL BE 4% OF THE TELECOMMUNICATION PROVIDER'S GROSS RECEIPTS FROM TELECOMMUNICATION SERVICE THAT ARE ATTRIBUTED TO THE MUNICIPALITY SUBJECT TO THE FOLLOWING:

IF THE LOCATION OF A TRANSACTION IS DETERMINED TO BE OTHER THAN THIS MUNICIPALITY THEN THE RATE IMPOSED ON THE GROSS RECEIPTS FOR TELECOMMUNICATIONS SERVICES SHALL BE THE LOWER OF (1) THE RATE IMPOSED BY THE TAXING JURISDICTION IN WHICH THE TRANSACTION IS LOCATED OR (2) THE RATE FOR NON-MOBILE TELECOMMUNICATION SERVICES SHALL THE RATE IMPOSED BY THE MUNICIPALITY IN WHICH THE CUSTOMER'S SERVICE ADDRESS IS LOCATED; OR FOR MOBILE TELECOMMUNICATIONS SERVICE, THE RATE IMPOSED BY THE MUNICIPALITY OF THE CUSTOMER'S PRIMARY PLACE OF USE.

RATE LIMITATION AND EXEMPTION THEEFROM.

THIS RATE OF THIS LEVY SHALL NOT EXCEED 4% OF THE TELECOMMUNICATION PROVIDER'S GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE ATTRIBUTED TO THE MUNICIPALITY UNLESS A HIGHER RATE IS APPROVED BY A MAJORITY VOTE OF THE VOTERS IN THIS MUNICIPALITY THAT VOTE IN:

- (A) A MUNICIPALITY GENERAL ELECTION;
- (B) A REGULAR GENERAL ELECTION; OR
- (C) A LOCAL SPECIAL ELECTION.

EFFECTIVE DATE OF TAX LEVY.

THIS TAX SHALL BE LEVIED BEGINNING THE EARLIER OF JULY 1, 2004 OR THE FIRST DAY OF ANY CALENDAR QUARTER AFTER A 75 DAY PERIOD BEGINNING ON THE DATE THE COMMISSION RECEIVED NOTICE PURSUANT TO UTAH CODE SECTION 10-1-403 THAT THIS MUNICIPALITY HAS ENACTED THIS ORDINANCE.

CHANGES IN RATE OR REPEAL OF THE TAX.

THIS ORDINANCE IS SUBJECT TO THE REQUIREMENTS OF UTAH CODE SECTION 10-1-403. IF THE TAX RATE IS CHANGED OR THE TAX IS REPEALED, THEN THE APPROPRIATE NOTICE SHALL BE GIVEN AS PROVIDED IN UTAH CODE SECTION 10-1-403.

INTERLOCAL AGREEMENT FOR COLLECTION OF THE TAX.

ON OR BEFORE THE EFFECTIVE DATE OF THE ORDINANCE, THE MUNICIPALITY SHALL ENTER INTO THE UNIFORM INTERLOCAL AGREEMENT WITH THE COMMISSION AS DESCRIBED IN UTAH CODE SECTION 10-1-405 FOR THE COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF THIS MUNICIPAL TELECOMMUNICATIONS LICENSE TAX;

REPEAL OF INCONSISTENT TAXES AND FEES.

ANY TAX OR FEE PREVIOUSLY ENACTED BY THIS MUNICIPALITY UNDER AUTHORITY OF UTAH CODE SECTION 10-1-203 OR UTAH CODE TITLE 11, CHAPTER 26, LOCAL TAXATION OF UTILITIES LIMITATION IS HEREBY REPEALED.

NOTHING IN THIS ORDINANCE SHALL BE INTERPRETED TO REPEAL ANY MUNICIPAL ORDINANCE OR FEE WHICH PROVIDES THAT THE MUNICIPALITY MAY RECOVER FROM A TELECOMMUNICATIONS PROVIDER THE MANAGEMENT COSTS OF THE MUNICIPALITY CAUSED BY THE ACTIVITIES OF THE TELECOMMUNICATIONS PROVIDER IN THE RIGHTS-OF-WAY OF THE MUNICIPALITY, IF THE FEE IS IMPOSED IN ACCORDANCE WITH UTAH CODE SECTION 72-1-102 AND IS NOT RELATED TO THE MUNICIPALITY'S LOSS OF USE OF A HIGHWAY AS A RESULT OF THE ACTIVITIES IF 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 ORDINANCE LIMIT THE MUNICIPALITIES RIGHT TO CHARGE FEES OR TAXES ON PERSONS THAT ARE NOT SUBJECT TO THE MUNICIPAL TELECOMMUNICATIONS LICENSE TAX UNDER THIS ORDINANCE AND LOCATE TELECOMMUNICATIONS FACILITIES, AS DEFINED IN UTAH CODE SECTION 72-1-108, IN THIS MUNICIPALITY.

THIS ORDINANCE SHALL TAKE EFFECT UPON POSTING.

PASSED AND DATED THIS 4TH DAY OF MAY , 2004.
