

ORDINANCE 190

AN ORDINANCE IMPOSING AN ENERGY AND USE TAX UNDER THE MUNICIPAL ENERGY SALES AND USE TAX (10-1-301, ET. SEQ., UTAH CODE ANNOTATED 1953) OF ELSINORE TOWN, SEVIER COUNTY, UTAH; SUPPLEMENTING AND MODIFYING EXISTING SIMILAR TAXES, EXCISES AND LEVIES NOT WITHDRAWN EXCEPT AS EXPRESSLY PROVIDED IN THIS ORDINANCE.

CHAPTER I. MUNICIPAL ENERGY SALES AND USE TAX-PREAMBLE STATING PURPOSE AND TITLE

SECTION 1. PURPOSE. IT IS THE INTENT OF ELSINORE TOWN, UTAH TO REPEAL ITS PRESENT ENERGY FUEL EXCISE TAX LEVIED ON GAS AND ELECTRICITY AND TO ADOPT THE MUNICIPAL ENERGY SALES AND USE TAX PURSUANT TO, AND IN CONFORMANCE WITH, UTAH CODE ANNOTATED 10-1-301 ET SEQ, "THE MUNICIPAL ENERGY SALES AND USE TAX ACT." (THE ACT)

SECTION 2. DEFINITIONS. AS USED HEREIN THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS, UNLESS THE CONTEXT OTHERWISE CLEARLY REQUIRES.

"CONSUMER" MEANS A PERSON WHO ACQUIRES TAXABLE ENERGY (AS HEREIN DEFINED) FOR ANY USE THAT IS SUBJECT TO THE MUNICIPAL ENERGY SALES AND USE TAX REFERRED TO IN THE PREAMBLE UNDER "PURPOSES".

"CONTRACTUAL FRANCHISE FEE" MEANS:

- A. A FEE:
 - A. PROVIDED FOR IN A FRANCHISE AGREEMENT; AND
 - B. THAT IS CONSIDERATION FOR THE FRANCHISE AGREEMENT; OR
- B. A FEE SIMILAR TO SUBSECTION (2) (A); OR
 - A. ANY COMBINATION OF SUBSECTIONS (2)(A) OR (2)(B)

"DELIVERED VALUE" MEANS THE FAIR MARKET VALUE OF THE TAXABLE ENERGY DELIVERED FOR SALE OR USE IN THE MUNICIPALITY AND INCLUDES:

- A. THE VALUE OF THE ENERGY ITSELF; AND
- B. 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 MUNICIPALITY.

"DELIVERED VALUE" DOES NOT INCLUDE THE AMOUNT OF TAX PAID UNDER PART 1 OR PART 2 OF CHAPTER 12, TITLE 59 OF THE UTAH CODE ANNOTATED.

"ENERGY SUPPLIER" MEANS 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" MEANS A FRANCHISE OR AN ORDINANCE, CONTRACT, OR AGREEMENT GRANTING A FRANCHISE.

"FRANCHISE TAX" MEANS:

- A. A FRANCHISE TAX
- B. A TAX SIMILAR TO A FRANCHISE TAX; OR
- C. ANY COMBINATION OF SUBSECTIONS (A) OR (B)

"PERSON" INCLUDES ANY INDIVIDUAL, FIRM, 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" MEANS 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 THE (OR ANY) RIGHT TO ACQUIRE, USE OR CONSUME TAXABLE ENERGY IS GRANTED UNDER A LEASE OR CONTRACT AND THE TRANSFER WOULD BE TAXABLE IF ANY OUTRIGHT SALE WERE MADE.

"STORAGE" MEANS ANY KEEPING OR RETENTION OF TAXABLE ENERGY IN THIS TOWN FOR ANY PURPOSE EXCEPT SALE IN THE REGULAR COURSE OF BUSINESS.

"USE" MEANS THE EXERCISE OF ANY RIGHT OR POWER OVER TAXABLE ENERGY INCIDENT TO THE OWNERSHIP OR THE LEASING OF THE TAXABLE ENERGY. "USE" DOES NOT INCLUDE THE SALE, DISPLAY, DEMONSTRATION, OR TRIAL OF TAXABLE ENERGY IN THE REGULAR COURSE OF BUSINESS AND HELD FOR RESALE.

"TAXABLE ENERGY" MEANS NATURAL GAS, OR ANY FORM OF GAS EXCEPT THOSE ENUMERATED HEREINAFTER AND ELECTRICITY OR ELECTRICAL ENERGY OR POWER.

SECTION 3. PRESENT LEVY OF MUNICIPAL ENERGY SALES AND USE TAX. THERE IS HEREBY LEVIED, SUBJECT TO THE PROVISIONS OF THIS CHAPTER, A TAX ON EVERY SALE OF USE OF TAXABLE ENERGY MADE WITHIN ELSINORE TOWN EQUALING THREE PERCENT (3%) OF THE DELIVERED VALUE OF THE TAXABLE ENERGY TO THE CONSUMER. THIS TAX SHALL BE KNOWN AS THE MUNICIPAL ENERGY SALES AND USE TAX.

(1) THE TAX SHALL BE CALCULATE DON THE DELIVERED VALUE OF THE TAXABLE ENERGY TO THE CONSUMER.

SECTION 4. EXEMPTIONS FROM THE MUNICIPAL ENERGY SALES AND USE TAX.

(1) NO EXEMPTIONS ARE GRANTED FORM THE MUNICIPAL ENERGY SALES AND USE TAX, EXCEPT AS EXPRESSLY PROVIDED IN UTAH CODE ANNOTATED, 10-1-305 (2)(B); NOTWITHSTANDING AN EXEMPTION GRANTED BY 59-1-104 OF THE UTAH CODE.

(2) THE FOLLOWING ARE EXEMPT FROM THE MUNICIPAL ENERGY SALE AND USE TAX, PURSUANT TO UTAH CODE ANNOTATED 10-1-305 (2)(B):

- A. SALES AND USE OF AVIATION FUEL, MOTOR FUEL, AND SPECIAL FUELS SUBJECT OT TAXATION UNDER TITLE 59, CHAPTER 13 OF UTAH CODE ANNOTATED;
- B. SALES AND USE TAXABLE ENERGY THAT IS EXEMPT FROM TAXATION UNDER FEDERAL LAW, THE UNITED STATES CONSTITUTION, OR THE UTAH CONSTITUTION;
- C. SALES AND USE OF TAXABLE ENERGY PURCHASED OR STORED FOR RESALE;
- D. 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 13 OF UTAH CODE ANNOTATED;
- E. 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;
- F. THE SALE OR USE OF TAXABLE ENERGY FOR ANY PURPOSE OTHER THAN A S FUEL OR ENERGY; AND
- G. THE SALE OF TAXABLE ENERGY FOR USE OUTSIDE THE BOUNDARIES OF THE TOWN.

(3) THE SALE, STORAGE, USE OR OTHER CONSUMPTION OF TAXABLE ENERGY IS EXEMPT FROM THE MUNICIPAL ENERGY SALES AND USE TAX LEVIED BY THIS CHAPTER, PROVIDED:

- A. 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
- B. THE TOWN IS PAID THE DIFFERENCE BETWEEN THE TAX PAID TO THE OTHER MUNICIPALITY AND THE TAX THAT WOULD OTHERWISE BE DUE UNDER THIS CHAPTER, IF THE TAX DUE UNDER THIS CHAPTER EXCEEDS THE TAX PAID TO THE OTHER MUNICIPALITY.

SECTION 5. NO EFFECT UPON EXISTING FRANCHISES – CREDIT FOR FRANCHISE FEES.

- (1) THIS CHAPTER SHALL NOT ALTER ANY EXISTING FRANCHISE AGREEMENTS BETWEEN THE TOWN AND ENERGY SUPPLIERS.
- (2) THERE IS A CREDIT AGAINST THE TAX DUE FROM ANY CONSUMER IN THE AMOUNT OF A CONTRACTUAL FRANCHISE FEE PAID IF:
 - A. THE ENERGY SUPPLIER PAYS THE CONTRACTUAL FRANCHISE FEE TO THE TOWN PURSUANT TO A FRANCHISE AGREEMENT IN EFFECT ON JULY 1, 1997;
 - B. THE CONTRACTUAL FRANCHISE FEE IS PASSED THROUGH BY THE ENERGY SUPPLIER TO A CONSUMER AS A SEPARATELY ITEMIZED CHARGE; AND
 - C. THE ENERGY SUPPLIER HAS ACCEPTED THE FRANCHISE.

SECTION 6. TAX COLLECTION CONTRACT WITH STATE TAX COMMISSION.

- (1) ON OR BEFORE THE EFFECTIVE DATE OF THIS ORDINANCE, THE TOWN SHALL CONTRACT WITH THE STATE TAX COMMISSION TO PERFORM ALL FUNCTIONS INCIDENT TO THE ADMINISTRATION AND COLLECTION OF THE MUNICIPAL ENERGY SALE AND USE TAX, IN ACCORDANCE WITH THIS ORDINANCE. THIS CONTACT MAY BE A SUPPLEMENT TO THE EXISTING CONTACT WITH THE COMMISSION TO ADMINISTER AND COLLECT THE LOCAL SALES AND USE TAX, AS PROVIDED IN THE REVISED ORDINANCES OF THE ELSINORE TOWN REVISED AS OF 19 JANUARY, 1960 AND ANY ORDINANCE OR ORDINANCES IN EFFECT UNDER ANY DESIGNATION, TITLE, OR ENACTMENT DEFINITION OR WHATSOEVER CITATION OR IDENTITY. THE MAYOR, WITH THE APPROVAL OF THE TOWN COUNCIL, 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 ORDINANCE.
- (2) AN ENERGY SUPPLIER SHALL PAY THE MUNICIPAL ENERGY SALE AND USE TAX REVENUES COLLECTED FROM CONSUMERS DIRECTLY TO THE TOWN MONTHLY IF:
 - A. THE TOWN IS THE ENERGY SUPPLIER; OR
 - B. I. THE ENERGY SUPPLIER ESTIMATES THAT THE MUNICIPAL ENERGY SALE AND USE TAX COLLECTED ANNUALLY FROM ITS UTAH CONSUMERS EQUALS \$1,000,000 OR MORE, AND
II. THE ENERGY SUPPLIER COLLECTS THE MUNICIPAL ENERGY SALES AND USE TAX.
- (3) AN ENERGY SUPPLIER PAYING THE MUNICIPAL ENERGY SALE AND USE TAX DIRECTLY TO THE TOWN MAY DEDUCT ANY CONTRACTUAL FRANCHISE FEES COLLECTED BY THE ENERGY SUPPLIER. QUALIFYING AS A CREDIT AND REMIT THE NET TAX LESS ANY AMOUNT OF ENERGY SUPPLIER RETAINS AS AUTHORIZED BY 10-1-307(4), UTAH CODE ANNOTATED.

SECTION 7. INCORPORATION OF PART 1, CHAPTER 12, TITLE 59. UTAH CODE, INCLUDING AMENDMENTS.

- (1) A. EXCEPT AS HEREIN PROVIDED, AND EXCEPT INsofar AS THEY ARE INCONSISTENT WITH THE PROVISIONS OF TITLE 10, CHAPTER 1, PART 3, MUNICIPAL ENERGY SALE AND USE TAX ACT AS WELL AS THIS ORDINANCE, ALL OF THE PROVISIONS OF PART 1, CHAPTER 12, TITLE 59 OF THE UTAH CODE ANNOTATED 1953, AS AMENDED, AND IN FORCE AND EFFECT ON THE EFFECTIVE DATE OF THIS CHAPTER, INsofar AS THEY RELATE TO THE SALES AND USE TAXES, EXCEPTING 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 ORDINANCE AS IF FULLY SET FORTH HEREIN.

B. WHEREVER, AND TO THE EXTENT THAT IN PART 1, CHAPTER 12, TITLE 59, UTAH CODE ANNOTATED 1953, AS AMENDED, THE STATE OF UTAH IS NAMED OR REFERRED TO AS THE "TAXING AGENCY," THE NAME OF THE TOWN 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 1953, AS AMENDED. NOTHING IN THIS SUBPARAGRAPH (B) SHALL BE DEEMED TO REQUIRE SUBSTITUTION OF THE NAME OF THE TOWN, 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 TOWN BE SUBSTITUTED FOR THAT OF THE STATE IN ANY SECTION WHEN THE RESULT OF SUCH A SUBSTITUTION SHOULD REQUIRE ACTION TO BE TAKEN BY OR AGAINST THE TOWN 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 CHAPTER.

C. ANY AMENDMENTS MADE TO PART 1, CHAPTER 12, TITLE 59, UTAH CODE ANNOTATED 1953, AS AMENDED, WHICH WOULD BE APPLICABLE TO THE TOWN FOR THE PURPOSES OF CARRYING OUT THIS CHAPTER ARE HEREBY INCORPORATED HEREIN BY REFERENCE AND SHALL BE EFFECTIVE UPON THE DATE THAT THEY ARE EFFECTIVE AS A UTAH STATUTE.

SECTION 8. NO ADDITIONAL LICENSE TO COLLECT THE MUNICIPAL ENERGY SALE AND USE TAX REQUIRED – NO ADDITIONAL LICENSE OR REPORTING REQUIREMENTS. NO ADDITIONAL LICENSE TO COLLECT OR REPORT THE MUNICIPAL ENERGY SALE AND USE TAX LEVIED BY THIS CHAPTER IS REQUIRED, PROVIDED THE ENERGY SUPPLIER COLLECTING THE TAX HAS A LICENSE ISSUED UNDER 59-12-106, UTAH CODE ANNOTATED 1993, AS AMENDED TO DATE.

SECTION 9. EFFECTIVE DATE. THIS ORDINANCE IS EFFECTIVE SEPTEMBER 30, 2006. THE MUNICIPAL ENERGY SALES AND USE TAX SHALL BE LEVIED BEGINNING 12:01 A.M., OCTOBER 1, 2006.

PASSED AND APPROVED THIS 5TH DAY OF SEPTEMBER, 2006.