

1 **MUNICIPAL ENERGY SALES AND USE TAX**

2 **EXEMPTION**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Lyle W. Hillyard**

6 AN ACT RELATING TO CITIES AND TOWNS; ALLOWING A MUNICIPALITY TO
7 PROVIDE FOR AN EXEMPTION FROM THE ENERGY SALES AND USE TAX; AND
8 MAKING TECHNICAL CORRECTIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **10-1-305**, as enacted by Chapter 280, Laws of Utah 1996

12 *Be it enacted by the Legislature of the state of Utah:*

13 Section 1. Section **10-1-305** is amended to read:

14 **10-1-305. Municipal energy sales and use tax ordinance provisions.**

15 [The] Each municipal energy sales and use tax ordinance [required by] under Subsection
16 10-1-304(1) shall include:

17 (1) a provision imposing a tax on every sale or use of taxable energy made within a
18 municipality at a rate determined by the municipality that is up to 6% of the delivered value of the
19 taxable energy;

20 (2) provisions substantially the same as those required by Title 59, Chapter 12, Part 1, Tax
21 Collection, as they relate to sales and use tax, except that:

22 (a) the tax shall be calculated on the delivered value of the taxable energy to the consumer;

23 (b) an exemption is not allowed from a tax imposed under this part for the sale or use of
24 taxable energy that is exempt from the state sales and use tax under Title 59, Chapter 12, Part 1,
25 Tax Collection, except that the municipality shall include in its ordinance an exemption for:

26 (i) the sales and use of aviation fuel, motor fuel, or special fuel subject to taxation under
27 Title 59, Chapter 13, Motor and Special Fuel Tax Act;

1 (ii) the sales and use of taxable energy that the municipality is prohibited from taxing
2 under federal law or the Constitution of the United States or the Utah Constitution;

3 (iii) the sales and use of taxable energy purchased or stored in the state for resale;

4 (iv) the sales or use of taxable energy to a person if the primary use is for use in
5 compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13,
6 Motor and Special Fuel Tax Act;

7 (v) taxable energy brought into the state by a nonresident for the nonresident's own
8 personal use or enjoyment while within the state, except taxable energy purchased for use in the
9 state by a nonresident living or working in the state at the time of purchase;

10 (vi) the sales or use of taxable energy for any purpose other than use as a fuel or energy;
11 and

12 (vii) the sale of taxable energy for use outside a municipality imposing a municipality
13 energy sales and use tax;

14 (c) the ordinance may provide for an exemption from the municipal energy sales and use
15 tax under this part for customers being supplied electrical energy by a provider other than the
16 municipality if:

17 (i) the municipality is the primary supplier of electrical energy for customers within its
18 borders; and

19 (ii) the municipality is unable to provide electrical energy to the customer;

20 [~~c~~] (d) the name of the municipality as the taxing agency shall be substituted for that of
21 the state when necessary for purposes of this part; and

22 [~~d~~] (e) an additional license to collect the tax is not required if one has been issued under
23 Section 59-12-106;

24 (3) a provision that, on or before the effective date of the ordinance, the municipality shall
25 enter into a contract with the commission to have the commission perform all functions related to
26 the administration or operation of the ordinance, except that a municipality may collect the
27 municipal energy sales and use tax directly as provided in Subsection 10-1-307(3);

28 (4) a provision that:

29 (a) except as provided under Subsection (4)(b), the sale, storage, use, or other consumption
30 of taxable energy is exempt from the tax due under the ordinance if the delivered value of the
31 taxable energy has been subject to a municipal energy sales or use tax under an ordinance enacted

1 in accordance with this part by another municipality in this state; and

2 (b) the municipality shall be paid the difference between the tax paid to another
3 municipality as described in this section and the tax that would otherwise be due under the
4 ordinance if the tax due under the ordinance exceeds the tax paid to another municipality; and

5 (5) a provision providing a credit against the tax in the amount of a contractual franchise
6 fee paid if:

7 (a) an energy supplier pays a contractual franchise fee to a municipality pursuant to a
8 franchise agreement in effect on July 1, 1997;

9 (b) the contractual franchise fee is passed through by the energy supplier to a taxpayer as
10 a separately itemized charge; and

11 (c) the energy supplier has accepted the franchise; and

12 (6) a provision providing that the ordinance adopts by reference any amendments to the
13 provisions of Title 59, Chapter 12, Part 1, Tax Collection, that relate to levying or collecting a
14 municipal energy sales and use tax.

Legislative Review Note
as of 1-7-98 7:37 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel