

MUNICIPAL ENERGY SALES AND USE TAX

AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Municipal Energy Sales and Use Tax Act.

Highlighted Provisions:

This bill:

- ▶ limits the amount of energy sales and use tax a municipality may charge on gas sold or used to an average historical amount based on a per decatherm calculation;
- ▶ enacts definitions; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-1-303, as last amended by Chapter 251, Laws of Utah 2000

10-1-304, as last amended by Chapter 255, Laws of Utah 2004

10-1-305, as last amended by Chapter 180, Laws of Utah 1998

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



28 Section 1. Section **10-1-303** is amended to read:

29 **10-1-303. Definitions.**

30 As used in this part:

31 (1) "Commission" means the State Tax Commission.

32 (2) "Contractual franchise fee" means:

33 (a) a fee:

34 (i) provided for in a franchise agreement; and

35 (ii) that is consideration for the franchise agreement; or

36 (b) (i) a fee similar to Subsection (2)(a); or

37 (ii) any combination of Subsections (2)(a) and (b).

38 (3) (a) "Delivered value" means the fair market value of the taxable energy delivered
39 for sale or use in the municipality and includes:

40 (i) the value of the energy itself; and

41 (ii) any transportation, freight, customer demand charges, services charges, or other
42 costs typically incurred in providing taxable energy in usable form to each class of customer in
43 the municipality.

44 (b) "Delivered value" does not include the amount of a tax paid under:

45 (i) Title 59, Chapter 12, Part 1, Tax Collection;

46 (ii) Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; or

47 (iii) this part.

48 (4) "De minimis amount" means an amount of taxable energy that does not exceed the
49 greater of:

50 (a) 5% of the energy supplier's estimated total Utah gross receipts from sales of
51 property or services; or

52 (b) \$10,000.

53 (5) "Energy supplier" means a person supplying taxable energy, except that the
54 commission may by rule exclude from this definition a person supplying a de minimis amount
55 of taxable energy.

56 (6) "Franchise agreement" means a franchise or an ordinance, contract, or agreement
57 granting a franchise.

58 (7) "Franchise tax" means:

- 59 (a) a franchise tax;
 60 (b) a tax similar to a franchise tax; or
 61 (c) any combination of Subsections (7)(a) and (b).

62 (8) "Historical average" means the average of the monthly totals of municipal energy
 63 sales and use tax that a municipality has imposed on the sale or use of gas over the historical
 64 period, calculated on a per decatherm basis.

65 (9) "Historical period" means a period ending on December 31, 2004 and beginning
 66 on:

- 67 (a) January 1, 1995, for a municipality incorporated on or before that date; or
 68 (b) for a municipality incorporated after January 1, 1995, the date the municipality was
 69 incorporated.

70 [~~(8)~~] (10) "Person" is as defined in Section 59-12-102.

71 [~~(9)~~] (11) "Taxable energy" means gas and electricity.

72 Section 2. Section **10-1-304** is amended to read:

73 **10-1-304. Municipality may levy tax -- Rate -- Imposition or repeal of tax -- Tax**
 74 **rate change -- Effective date -- Notice requirements -- Exemptions.**

75 (1) (a) Except as provided in Subsection (4), a municipality may levy a municipal
 76 energy sales and use tax on the sale or use of taxable energy within the municipality:

77 [~~(a)~~] (i) by ordinance as provided in Section 10-1-305; and

78 [~~(b)~~] (ii) (A) for a tax on electricity, of up to 6% of the delivered value of the [taxable
 79 energy.] electricity; and

80 (B) for a tax on gas, an amount per decatherm of gas sold or used that, for any
 81 customer class, may not exceed the historical average for that customer class.

82 (b) The commission and each gas supplier shall cooperate with and provide necessary
 83 information to each municipality that requests cooperation or information in order to enable the
 84 municipality to calculate the historical average.

85 (2) A municipal energy sales and use tax imposed under this part may be in addition to
 86 any sales and use tax imposed by the municipality under Title 59, Chapter 12, Sales and Use
 87 Tax Act.

88 (3) (a) For purposes of this Subsection (3):

89 (i) "Annexation" means an annexation to a municipality under Title 10, Chapter 2, Part

90 4, Annexation.

91 (ii) "Annexing area" means an area that is annexed into a municipality.

92 (b) (i) If, on or after May 1, 2000, a city or town enacts or repeals a tax or changes the
93 rate of a tax under this part, the enactment, repeal, or change shall take effect:

94 (A) on the first day of a calendar quarter; and

95 (B) after a 90-day period beginning on the date the commission receives notice meeting
96 the requirements of Subsection (3)(b)(ii) from the municipality.

97 (ii) The notice described in Subsection (3)(b)(i)(B) shall state:

98 (A) that the city or town will enact or repeal a tax or change the rate of a tax under this
99 part;

100 (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

101 (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

102 (D) if the city or town enacts the tax or changes the rate of the tax described in
103 Subsection (3)(b)(ii)(A), the new rate of the tax.

104 (c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will
105 result in a change in the rate of a tax under this part for an annexing area, the change shall take
106 effect:

107 (A) on the first day of a calendar quarter; and

108 (B) after a 90-day period beginning on the date the commission receives notice meeting
109 the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.

110 (ii) The notice described in Subsection (3)(c)(i)(B) shall state:

111 (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the
112 rate of a tax under this part for the annexing area;

113 (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

114 (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

115 (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

116 (4) Notwithstanding Subsection (1), a sale or use of electricity within a municipality is
117 exempt from the tax authorized by this section if the sale or use is:

118 (a) made under a tariff adopted by the Public Service Commission of Utah only for
119 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
120 source, as designated in the tariff by the Public Service Commission of Utah; and

121 (b) for an amount of electricity that is:

122 (i) unrelated to the amount of electricity used by the person purchasing the electricity
123 under the tariff described in Subsection (4)(a); and

124 (ii) equivalent to the number of kilowatthours specified in the tariff described in
125 Subsection (4)(a) that may be purchased under the tariff described in Subsection (4)(a).

126 Section 3. Section **10-1-305** is amended to read:

127 **10-1-305. Municipal energy sales and use tax ordinance provisions.**

128 Each municipal energy sales and use tax ordinance under Subsection 10-1-304(1) shall
129 include:

130 (1) a provision imposing a tax on every sale or use of taxable energy made within a
131 municipality at a rate determined by the municipality that is [~~up to 6% of the delivered value of~~
132 ~~the taxable energy~~] consistent with Subsection 10-1-304(1)(a);

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

135 (a) the tax shall be calculated on:

136 (i) for electricity, the delivered value of the taxable energy to the consumer; and

137 (ii) for gas, the quantity of gas measured in decatherms of gas sold or used;

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

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

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

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

147 (iv) the sales or use of taxable energy to a person if the primary use is for use in
148 compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter
149 13, Motor and Special Fuel Tax Act;

150 (v) taxable energy brought into the state by a nonresident for the nonresident's own
151 personal use or enjoyment while within the state, except taxable energy purchased for use in

152 the state by a nonresident living or working in the state at the time of purchase;

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

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

157 (c) the ordinance may provide for an exemption from the municipal energy sales and
158 use tax under this part for customers who, as of July 1, 1997, were being supplied electrical
159 energy by a supplier other than the municipality if:

160 (i) the municipality is a generator of electrical energy for customers within its borders;
161 and

162 (ii) the municipality is unable to generate electrical energy for the customer;

163 (d) the name of the municipality as the taxing agency shall be substituted for that of the
164 state when necessary for purposes of this part; and

165 (e) an additional license to collect the tax is not required if one has been issued under
166 Section 59-12-106;

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

171 (4) a provision that:

172 (a) except as provided under Subsection (4)(b), the sale, storage, use, or other
173 consumption of taxable energy is exempt from the tax due under the ordinance if the delivered
174 value of the taxable energy has been subject to a municipal energy sales or use tax under an
175 ordinance enacted in accordance with this part by another municipality in this state; and

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

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

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

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

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

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

Legislative Review Note

as of 1-19-06 3:54 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0309

Municipal Energy Sales and Use Tax Amendments

27-Jan-06

3:30 PM

State Impact

Passage of this bill could decrease the local revenues from the energy sales and use tax over time.

Individual and Business Impact

Individuals could see a reduction in energy sales and use tax paid over time.

Office of the Legislative Fiscal Analyst