

### Part 3 Municipal Energy Sales and Use Tax Act

#### 10-1-301 Title.

This part shall be known as the "Municipal Energy Sales and Use Tax Act."

Enacted by Chapter 280, 1996 General Session

#### 10-1-302 Purpose and intent.

The Legislature finds that:

- (1) the energy industry has previously been highly regulated and monopolistic;
- (2) municipalities have historically raised town or city, respectively, general fund revenues by collecting franchise and business license revenues from the energy industry;
- (3) substantial restructuring of the energy industry has created an opportunity for increased competition within the energy industry;
- (4) the restructuring of the energy industry has diminished the effectiveness and fairness of the revenues collected by municipalities;
- (5) to provide for a stable revenue source for municipalities and to create a more competitive environment for the energy industry, it is necessary to enact taxing authority for municipalities that accomplishes those goals; and
- (6) this part does not alter or affect the municipalities' authority to grant or regulate franchises, or to control municipal streets, highways, or other property.

Amended by Chapter 176, 2014 General Session

#### 10-1-303 Definitions.

As used in this part:

- (1) "Commission" means the State Tax Commission.
- (2) "Contractual franchise fee" means:
  - (a) a fee:
    - (i) provided for in a franchise agreement; and
    - (ii) that is consideration for the franchise agreement; or
  - (b)
    - (i) a fee similar to Subsection (2)(a); or
    - (ii) any combination of Subsections (2)(a) and (b).
- (3)
  - (a) "Delivered value" means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:
    - (i) the value of the energy itself; and
    - (ii) any transportation, freight, customer demand charges, services charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality.
  - (b) "Delivered value" does not include the amount of a tax paid under:
    - (i) Title 59, Chapter 12, Sales and Use Tax Act; or
    - (ii) this part.
- (4) "De minimis amount" means an amount of taxable energy that does not exceed the greater of:

- (a) 5% of the energy supplier's estimated total Utah gross receipts from sales of property or services; or
- (b) \$10,000.
- (5) "Energy supplier" means a person supplying taxable energy, except that the commission may by rule exclude from this definition a person supplying a de minimis amount of taxable energy.
- (6) "Franchise agreement" means a franchise or an ordinance, contract, or agreement granting a franchise.
- (7) "Franchise tax" means:
  - (a) a franchise tax;
  - (b) a tax similar to a franchise tax; or
  - (c) any combination of Subsections (7)(a) and (b).
- (8) "Person" is as defined in Section 59-12-102.
- (9) "Taxable energy" means gas and electricity.

Amended by Chapter 142, 2010 General Session

**10-1-304 Municipality and military installation development authority may levy tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice requirements -- Exemptions.**

- (1)
  - (a) Except as provided in Subsections (4) and (5), a municipality may levy a municipal energy sales and use tax on the sale or use of taxable energy within the municipality:
    - (i) by ordinance as provided in Section 10-1-305; and
    - (ii) of up to 6% of the delivered value of the taxable energy.
  - (b) Subject to Section 63H-1-203, the military installation development authority created in Section 63H-1-201 may levy a municipal energy sales and use tax under this part within a project area described in a project area plan adopted by the authority under Title 63H, Chapter 1, Military Installation Development Authority Act, as though the authority were a municipality.
- (2) A municipal energy sales and use tax imposed under this part may be in addition to any sales and use tax imposed by the municipality under Title 59, Chapter 12, Sales and Use Tax Act.
- (3)
  - (a) For purposes of this Subsection (3):
    - (i) "Annexation" means an annexation to a municipality under Chapter 2, Part 4, Annexation.
    - (ii) "Annexing area" means an area that is annexed into a municipality.
  - (b)
    - (i) If, on or after May 1, 2000, a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:
      - (A) on the first day of a calendar quarter; and
      - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(b)(ii) from the municipality.
    - (ii) The notice described in Subsection (3)(b)(i)(B) shall state:
      - (A) that the city or town will enact or repeal a tax or change the rate of a tax under this part;
      - (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);
      - (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and
      - (D) if the city or town enacts the tax or changes the rate of the tax described in Subsection (3)(b)(ii)(A), the new rate of the tax.
  - (c)

- (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:
    - (A) on the first day of a calendar quarter; and
    - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.
  - (ii) The notice described in Subsection (3)(c)(i)(B) shall state:
    - (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;
    - (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);
    - (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and
    - (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).
- (4)
- (a) Subject to Subsection (4)(b), a sale or use of electricity within a municipality is exempt from the tax authorized by this section if the sale or use is made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new source of alternative energy, as defined in Section 59-12-102, as designated in the tariff by the Public Service Commission of Utah.
  - (b) The exemption under Subsection (4)(a) applies to the portion of the tariff rate a customer pays under the tariff described in Subsection (4)(a) that exceeds the tariff rate under the tariff described in Subsection (4)(a) that the customer would have paid absent the tariff.
- (5)
- (a) A municipality may not levy a municipal energy sales and use tax within any portion of the municipality that is within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act.
  - (b) Subsection (5)(a) does not apply to the military installation development authority's levy of a municipal energy sales and use tax.

Amended by Chapter 410, 2012 General Session

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

- Each municipal energy sales and use tax ordinance under Subsection 10-1-304(1) shall include:
- (1) a provision imposing a tax on every sale or use of taxable energy made within a municipality at a rate determined by the municipality that is up to 6% of the delivered value of the taxable energy;
  - (2) provisions substantially the same as those required by Title 59, Chapter 12, Part 1, Tax Collection, as they relate to sales and use tax, except that:
    - (a) the tax shall be calculated on the delivered value of the taxable energy to the consumer;
    - (b) an exemption is not allowed from a tax imposed under this part for the sale or use of taxable energy that is exempt from the state sales and use tax under Title 59, Chapter 12, Part 1, Tax Collection, except that the municipality shall include in its ordinance an exemption for:
      - (i) the sales and use of aviation fuel, motor fuel, or special fuel subject to taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act;
      - (ii) the sales and use of taxable energy that the municipality is prohibited from taxing under federal law or the Constitution of the United States or the Utah Constitution;
      - (iii) the sales and use of taxable energy purchased or stored in the state for resale;

- (iv) the sales or use of taxable energy to a person if the primary use is for use in compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act;
  - (v) 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;
  - (vi) the sales or use of taxable energy for any purpose other than use as a fuel or energy; and
  - (vii) the sale of taxable energy for use outside a municipality imposing a municipality energy sales and use tax;
- (c) the ordinance may provide for an exemption from the municipal energy sales and use tax under this part for customers who, as of July 1, 1997, were being supplied electrical energy by a supplier other than the municipality if:
- (i) the municipality is a generator of electrical energy for customers within its borders; and
  - (ii) the municipality is unable to generate electrical energy for the customer;
- (d) the name of the municipality as the taxing agency shall be substituted for that of the state when necessary for purposes of this part; and
- (e) an additional license to collect the tax is not required if one has been issued under Section 59-12-106;
- (3) a provision that, on or before the effective date of the ordinance, the municipality shall enter into a contract with the commission to have the commission perform all functions related to the administration or operation of the ordinance, except that a municipality may collect the municipal energy sales and use tax directly as provided in Subsection 10-1-307(3);
- (4) a provision that:
- (a) except as provided under Subsection (4)(b), the sale, storage, use, or other consumption of taxable energy is exempt from the tax due under the ordinance if the delivered value of the taxable energy has been subject to a municipal energy sales or use tax under an ordinance enacted in accordance with this part by another municipality in this state; and
  - (b) the municipality shall be paid the difference between the tax paid to another municipality as described in this section and the tax that would otherwise be due under the ordinance if the tax due under the ordinance exceeds the tax paid to another municipality; and
- (5) a provision providing a credit against the tax in the amount of a contractual franchise fee paid if:
- (a) an energy supplier pays a contractual franchise fee to a municipality 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 taxpayer as a separately itemized charge; and
  - (c) the energy supplier has accepted the franchise; and
- (6) a provision providing that the ordinance adopts by reference any amendments to the provisions of Title 59, Chapter 12, Part 1, Tax Collection, that relate to levying or collecting a municipal energy sales and use tax.

Amended by Chapter 180, 1998 General Session

**10-1-306 Rules for delivered value and point of sale.**

- (1) The delivered value of taxable energy under this part shall be established pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The rules made by the commission under Subsection (1):

- (a) shall provide that an arm's length sales price for taxable energy sold or used by a taxpayer in the municipality is the delivered value, unless the sales price does not include some portion of the taxable energy or component of delivered value;
  - (b) shall establish one or more default methods for determining the delivered value for each customer class one time per calendar year on or before January 31 for taxable energy when the commission determines that the sales price does not accurately reflect delivered value; and
  - (c) shall provide that for purposes of determining the point of sale or use of taxable energy the location of the meter is normally the point of sale or use unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.
- (3) In establishing a default method under Subsection (2)(b), the commission:
- (a) shall take into account quantity discounts and other reductions or increases in value that are generally available in the marketplace for various grades or types of property and classes of services; and
  - (b) may consider:
    - (i) generally applicable tariffs for various classes of utility services approved by the Public Service Commission or other governmental entity;
    - (ii) posted prices;
    - (iii) spot-market prices;
    - (iv) trade publications;
    - (v) market data; and
    - (vi) other information and data prescribed by the commission.

Amended by Chapter 382, 2008 General Session

**10-1-307 Administration, collection, and enforcement of taxes by commission -- Distribution of revenues -- Administrative charge -- Collection of taxes by municipality.**

- (1)
- (a) Subject to Subsection (1)(b) and except as provided in Subsection (3), the commission shall administer, collect, and enforce the municipal energy sales and use tax from energy suppliers according to the procedures established in:
    - (i) Title 59, Chapter 1, General Taxation Policies; and
    - (ii) Title 59, Chapter 12, Part 1, Tax Collection, except for Sections 59-12-107.1 and 59-12-123.
  - (b) If an energy supplier pays a municipal energy sales and use tax to the commission, the energy supplier shall pay the municipal energy sales and use tax to the commission:
    - (i) monthly on or before the last day of the month immediately following the last day of the previous month if:
      - (A) the energy supplier is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or
      - (B) the energy supplier is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or
    - (ii) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the energy supplier is required to file a sales and use tax return with the commission quarterly under Section 59-12-108.
- (2)
- (a) Except as provided in Subsections 10-1-203(3)(d), 10-1-305(5), and 10-1-310(2) and subject to Subsection (6), the commission shall pay a municipality the difference between:

- (i) the entire amount collected by the commission from the municipal energy sales and use tax authorized by this part based on:
  - (A) the point of sale of the taxable energy if a taxable sale occurs in a municipality that imposes a municipal energy sales and use tax as provided in this part; or
  - (B) the point of use of the taxable energy if the use occurs in a municipality that imposes a municipal energy sales and use tax as provided in this part; and
- (ii) the administrative charge described in Subsection (2)(c).
- (b) In accordance with Subsection (2)(a), the commission shall transfer to the municipality monthly by electronic transfer the revenues generated by the municipal energy sales and use tax levied by the municipality and collected by the commission.
- (c)
  - (i) Subject to Subsection (2)(c)(ii), the commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from revenues the commission collects from a municipal energy sales and use tax under this part.
  - (ii) The commission may not retain or deposit an administrative charge from revenues a municipality collects under Subsection (3) from a tax under this part.
- (3) An energy supplier shall pay the municipal energy sales and use tax revenues it collects from its customers under this part directly to each municipality in which the energy supplier has sales of taxable energy if:
  - (a) the municipality is the energy supplier; or
  - (b)
    - (i) the energy supplier estimates that the municipal energy sales and use tax collected annually by the energy supplier from its Utah customers equals \$1,000,000 or more; and
    - (ii) the energy supplier collects the tax imposed by this part.
- (4) An energy supplier paying a tax under this part directly to a municipality may retain the percentage of the tax authorized under Subsection 59-12-108(2) for the energy supplier's costs of collecting and remitting the tax.
- (5) An energy supplier paying the tax under this part directly to a municipality shall file an information return with the commission, at least annually, on a form prescribed by the commission.
- (6)
  - (a) As used in this Subsection (6):
    - (i) "2005 base amount" means, for a municipality that imposes a municipal energy sales and use tax, the natural gas portion of municipal energy sales and use tax proceeds paid to the municipality for fiscal year 2005.
    - (ii) "2006 base amount" means, for a municipality that imposes a municipal energy sales and use tax, the natural gas portion of municipal energy sales and use tax proceeds paid to the municipality for fiscal year 2006, reduced by the 2006 rebate amount.
    - (iii) "2006 rebate amount" means, for a municipality that imposes a municipal energy sales and use tax, the difference between:
      - (A) the natural gas portion of municipal energy sales and use tax proceeds paid to the municipality for fiscal year 2006; and
      - (B) the 2005 base amount, plus:
        - (I) 10% of the 2005 base amount; and
        - (II) the natural gas portion of municipal energy sales and use tax proceeds paid to the municipality for fiscal year 2006 attributable to an increase in the rate of the municipal energy sales and use tax implemented by the municipality during fiscal year 2006.

- (iv) "2007 rebate amount" means, for a municipality that imposes a municipal energy sales and use tax, the difference between:
    - (A) the natural gas portion of municipal energy sales and use tax proceeds paid to the municipality for fiscal year 2007; and
    - (B) the 2006 base amount, plus:
      - (I) 10% of the 2006 base amount; and
      - (II) the natural gas portion of municipal energy sales and use tax proceeds paid to the municipality for fiscal year 2007 attributable to an increase in the rate of the municipal energy sales and use tax implemented by the municipality during fiscal year 2007.
  - (v) "Fiscal year 2005" means the period beginning July 1, 2004 and ending June 30, 2005.
  - (vi) "Fiscal year 2006" means the period beginning July 1, 2005 and ending June 30, 2006.
  - (vii) "Fiscal year 2007" means the period beginning July 1, 2006 and ending June 30, 2007.
  - (viii) "Gas supplier" means an energy supplier that supplies natural gas.
  - (ix) "Natural gas portion" means the amount of municipal energy sales and use tax proceeds attributable to sales and uses of natural gas.
- (b)
- (i) In December 2006, each gas supplier shall reduce the natural gas portion of municipal energy sales and use gas proceeds to be paid to a municipality by the 2006 rebate amount.
  - (ii) If the 2006 rebate amount exceeds the amount of the natural gas portion of municipal energy sales and use tax proceeds for December 2006, the gas supplier shall reduce the natural gas portion of municipal energy sales and use tax proceeds to be paid to a municipality each month thereafter until the 2006 rebate amount is exhausted.
  - (iii) For December 2006 and for each month thereafter that the gas supplier is required under Subsection (6)(b)(ii) to reduce the natural gas portion of municipal energy sales and use tax proceeds to be paid to a municipality:
    - (A) each municipality imposing a municipal energy sales and use tax shall provide the gas supplier with the amount by which its municipal energy sales and use tax rate applicable to the sales and uses of natural gas would need to be reduced in order to reduce the natural gas portion of municipal energy sales and use tax proceeds by the same amount as the reduction to the municipality; and
    - (B) each gas supplier shall reduce the municipal energy sales and use tax rate applicable to sales and uses of natural gas by the amount of the tax rate reduction provided by the municipality.
- (c)
- (i) In December 2007, each gas supplier shall reduce the natural gas portion of municipal energy sales and use tax proceeds to be paid to a municipality by the 2007 rebate amount.
  - (ii) If the 2007 rebate amount exceeds the amount of the natural gas portion of municipal energy sales and use tax proceeds for December 2007, the gas supplier shall reduce the natural gas portion of municipal energy sales and use tax proceeds to be paid to a municipality each month thereafter until the 2007 rebate amount is exhausted.
  - (iii) For December 2007 and for each month thereafter that the gas supplier is required under Subsection (6)(c)(ii) to reduce the natural gas portion of municipal energy sales and use tax proceeds to be paid to a municipality:
    - (A) each municipality imposing a municipal energy sales and use tax shall provide the gas supplier with the amount by which its municipal energy sales and use tax rate applicable to the sales and uses of natural gas would need to be reduced in order to reduce the natural gas portion of municipal energy sales and use tax proceeds by the same amount as the reduction to the municipality; and

(B) each gas supplier shall reduce the municipal energy sales and use tax rate applicable to sales and uses of natural gas by the amount of the tax rate reduction provided by the municipality.

- (d) Nothing in this Subsection (6) may be construed to require a reduction under Subsection (6) (b) or (c) if the rebate amount is zero or negative.

Amended by Chapter 309, 2011 General Session

**10-1-308 Report of tax collections -- Allocation when location of taxpayer cannot be accurately determined.**

- (1) All municipal energy sales and use taxes collected under this part shall be reported to the commission on forms that accurately identify the municipality where the taxpayer is located.
- (2) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to proportionally distribute all taxes collected if the municipality where the taxpayer is located cannot be accurately determined.

Amended by Chapter 382, 2008 General Session

**10-1-310 Existing energy franchise taxes or contractual franchise fees.**

- (1) Except as authorized in Subsection (2), Section 59-12-203, or Section 10-1-304, a municipality may not:
- (a) impose on, charge, or collect a franchise tax or contractual a franchise fee from an energy supplier; or
  - (b) collect a franchise tax or contractual franchise fee pursuant to a franchise agreement in effect on July 1, 1997.
- (2) A municipality that collects a contractual franchise fee from an energy supplier pursuant to a franchise agreement in effect on July 1, 1997, may continue to collect that fee at the same rate for the remaining term of the franchise agreement, except the municipality shall provide a credit against the municipal energy sales and use tax in the amount of the contractual franchise fee paid by the energy supplier pursuant to Subsection 10-1-305(5).
- (3)
- (a) Subject to the requirements of Subsection (3)(b), a franchise agreement as defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain a provision that:
    - (i) requires the energy supplier by agreement to pay a contractual franchise fee that is otherwise prohibited under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; and
    - (ii) imposes the contractual franchise fee on or after the day on which Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act is:
      - (A) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-304 is reduced; and
      - (B) is not superseded by a law imposing a substantially equivalent tax.
  - (b) A municipality may not charge a contractual franchise fee under the provisions permitted by Subsection (3)(a) unless the municipality charges an equal contractual franchise fee or a tax on all energy suppliers.
- (4) This section may not affect the validity of any existing or future franchise agreement and any franchise agreement effective on July 1, 1997, shall remain in full force and effect, unless otherwise terminated or altered by agreement or applicable law.

Enacted by Chapter 280, 1996 General Session