

ORDINANCE NO. 09-12-2017

AN ORDINANCE AMENDING THE RATE OF THE MUNICIPAL ENERGY SALES AND USE TAX.

WHEREAS, the City of Eureka desires that the City Treasurer receive quarterly reports setting forth the delivered value of taxable energy sold or used within Eureka City, as well as the appropriate tax due and payable directly to Eureka City; and

WHEREAS, the City of Eureka finds it is the public's interest to increase the rate to 6% pursuant to §10-1-304 of the Utah Code Ann., and

WHEREAS, Title 10 Chapter 3 and § 10-8-84 of the Utah Code authorizes the City Council to pass ordinances which are reasonably and appropriately related to the providing for the public health, safety, morals, convenience, order, prosperity, and general welfare of the City and its residents;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF EUREKA CITY, THAT THE FOLLOWING ORDINANCE BE ADOPTED AS FOLLOWS:

REPEAL AND REPLACE

Any prior ordinance or conflicting provisions is hereby repealed and replaced with this Ordinance.

I. Purpose

It is the intent of Eureka City to adopt the Municipal Energy Sales and Use Tax, pursuant to, and in conformance with, Utah Code Ann. Section 10-1-301 et seq., "The Municipal Energy Sales and Use Tax Act."

II. Definitions

As used in this chapter, the following terms are defined in this section:

1. **"Consumer"** means a person who acquires taxable energy for any use that is subject to the Municipal Energy Sales and Use Tax.

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. a fee similar to subsection above; or
 - c. any combination of subsections above.

3. **"Delivered Value":**
 - a. 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, service charges, or other costs typically incurred in providing taxable energy in usable form to each class of customer in the municipality, and
 - b. does not include the amount of a tax paid under Part I or Part 2 of Chapter 12, Title 59 of the Utah Code Annotated
4. **"De minimus amount"** means an amount of taxable energy that does not exceed the greater of:
 - a. five percent of the energy supplier's estimated total Utah gross receipts from sales of property or services; or
 - b. \$10,000.00
5. **"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.
6. **"Franchise Agreement"** means a franchise or an ordinance, contract or agreement granting a franchise.
7. **"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, and such other entity as may be identified in Utah Code §59-12-102.
8. **"Sale"** means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy for a consideration, including but not necessarily limited to:
 - a. installment and credit sales;
 - b. any closed transaction constituting a sale; and
 - c. any transaction under which right to acquire, use, or consume taxable energy is granted under a lease or contract and the transfer would be taxable if an outright sale were made.
9. **"Storage"** means any keeping or retention of taxable energy in Eureka City for any purpose except sale in the regular course of business.
10. **"Taxable energy"** means gas and electricity.

11. "Use"

- a. means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy-;
- b. does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.

III. Rate of Municipal Energy Sales And Use Tax

There is levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within Eureka City equaling six percent (6%) of the delivered value of the taxable energy to the consumer. This tax shall be known as the "Municipal Energy Sales and Use Tax."

- A. The tax shall be calculated on the delivered value of the taxable energy to the consumer.
- B. The tax shall be in addition to any sales or use tax on taxable energy imposed by Eureka City authorized by Title 59, Chapter 12, Part 2 of the Utah Code Annotated, the Local Sales and Use Tax Act.

IV. Exemptions From The Municipal Energy Sales And Use Tax

- A. There are no exemptions granted from the Municipal Energy Sales and Use Tax except as expressly provided in Utah Code Annotated, Section 10-1-305(2)(b); notwithstanding an exemption granted by Section 59-1-104 of the Utah Code.
- B. The following are currently exempt from the Municipal Energy Sales and Use Tax, pursuant to Utah Code Annotated Section 10-1-305(2)(b):
 1. Sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under Title 59, Chapter 13 of the Utah Code Annotated;
 2. Sales and use of taxable energy that is exempt from taxation under federal law, the United States Constitution, or the Utah Constitution;
 3. Sales and use of taxable energy purchased or stored for resale;
 4. 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 the Utah Code Annotated;
 5. 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;

6. The sale or use of taxable energy for any purpose other than as a fuel or energy; and
 7. The sale of taxable energy for use outside the boundaries of Eureka City.
- C. 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:
1. 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
 2. Eureka City 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.

V. Credit For Franchise Fees

- A. There is a credit against the tax due from any consumer in the amount of a contractual franchise fee paid if:
1. The energy supplier pays the contractual franchise fee to Eureka City pursuant to a franchise agreement in effect on July 1, 1997;
 2. The contractual franchise fee is passed through by the energy supplier to a consumer as a separately itemized charge; and
 3. The energy supplier has accepted the franchise.

VI. Tax Collection Contract With State Tax Commission

- A. On or before the effective date of this chapter, Eureka City shall contract with the State Tax Commission to perform all functions incident to the administration and collection of the Municipal Energy Sales and Use Tax, to the extent required by, and in accordance with, this chapter and the provisions of the State's Municipal Energy Sales and Use Tax Act. The Mayor, with the approval of the city attorney, as applicable is authorized to enter supplementary agreements with the Utah 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 chapter.
- B. An energy supplier shall pay the Municipal Energy Sales and Use Tax revenues collected from consumers directly to Eureka City monthly if:
1. Eureka City is the energy supplier; or

2. The energy supplier estimates that the Municipal Energy Sales and Use Tax collected annually from its Utah consumers equals one million dollars or more; and the energy supplier collects the Municipal Energy Sales and Use Tax.
- C. An energy supplier paying the Municipal Energy Sales and Use Tax directly to Eureka City may deduct any contractual franchise fees collected by the energy supplier qualifying as a credit and remit the net tax less any amount the energy supplier retains as authorized by Section 10-1-307(4), Utah Code Annotated.

VII. Incorporation Of Part 1, Chapter 12, Title 59, Utah Code, Including Amendments

- A. Except as herein provided, and except insofar as they are inconsistent with the provisions of Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act, as well as this chapter, 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 sales and use taxes, excepting Sections 59-12-101 et. seq. thereof, and excepting for the amount of the sales and use taxes levied therein, are adopted and made a part of this chapter 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 Eureka City 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 subsection ~~(A)(2)~~ shall be deemed to require substitution of the name Eureka City 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 Eureka City be substituted for that of the state in any section when the result of such a substitution would require action to be taken by or against Eureka City 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 Eureka City for the purposes of carrying out this chapter are incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute.

VIII. No Additional License To Collect The Municipal Energy Sales And Use Tax Required; No Additional License Or Reporting Requirements

Additional licenses to collect or report the Municipal Energy Sales and Use Tax levied by this chapter are not required; provided, the energy supplier collecting the tax has a license issued

under Section 59-12-106, Utah Code Annotated.

IX. Report to City on Delivered Value of Taxable Energy and Tax Due – Direct Payment of Tax.

Energy suppliers paying the Municipal Energy Sales and Use Tax directly to Eureka City shall— at the time they remit the appropriate tax due to the Eureka City under the provisions of this chapter and Utah Code §§ 59-12-107(4) and 59-12-108, which set forth whether such remittance is to be made on a monthly or quarterly basis—file with the City Treasurer a report setting forth the delivered value of the taxable energy sold or used within Eureka City, Utah, for such quarter, as well as the appropriate tax due and payable directly to Eureka City less any credits, adjustments, or corrections provided under this chapter and the “Municipal Energy Sales and Use Tax Act”. The City may inspect the records of supplier at a mutually agreeable time and place for the purpose of verifying such reports.

X. Attorneys’ Fees and Costs of Collection.

Every person obligated to pay the tax levied or imposed under this chapter shall be required to pay all costs of collection of the tax imposed herein—including reasonable attorneys’ fees, court costs, and all other costs incident to the collection of the tax—as are or may be incurred by the Eureka City in the enforcement of this chapter.

XI. SEVERABILITY

If any provisions or clause of this chapter or its application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications which can be implemented without the invalid provision, clause, or application. To this end, the provisions of this chapter are declared to be severable.

XII. EFFECTIVE DATE

This amendment to the ordinance shall become effective on the date passed by the City Council of Eureka. The Rate change to 6% becomes effective on the first day of the quarter after 90 days from the date the State Tax Commission received notice.

PASSED AND ADOPTED THIS 12 DAY OF September 2017.

MAYOR OF EUREKA:

A handwritten signature in cursive script, appearing to read "Nick Castleton", written over a horizontal line.

NICK CASTLETON

ATTEST:

A handwritten signature in cursive script, appearing to read "Patricia Bigler", written over a horizontal line.
CITY RECORDER