

TOQUERVILLE CITY

June 18, 2009

Ordinance No. ORD.2009.04

AN ORDINANCE ESTABLISHING THE MUNICIPAL ENERGY SALES AND USE TAX WITHIN THE CITY OF TOQUERVILLE.

WHEREAS, the City Council has considered and evaluated the current and future budgetary needs of the City of Toquerville to provide services to its citizenry; and

WHEREAS, the cost of providing services to the citizens of the City of Toquerville have increased over time; and

WHEREAS, the balancing of revenue sources provides for more consistent, predictable, and sustainable revenue reliability;

WHEREAS, the establishment of revenue sources based on usage levels and the consumption of services more equitably distributes the financial burden predominantly born by property owners through the City of Toquerville property tax levy; and

WHEREAS, under the State of Utah's Municipal Energy Sales and Use Tax Act, Utah Code Annotated Section 10-1-301 et. seq., the City of Toquerville is authorized to levy a sales and use tax on the sale or use of taxable energy within the City

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOQUERVILLE, STATE OF UTAH, as follows:

1: INTENT:

It is the intent of the City to adopt the municipal energy sales and use tax, pursuant to and in conformance with Utah Code Annotated section 10-1-301 et seq., the Municipal Energy Sales and Use Tax Act.

2: DEFINITIONS:

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

CONSUMER: A person who acquires taxable energy for any use that is subject to the City's municipal energy sales and use tax.

CONTRACTUAL FRANCHISE FEE:

A. A fee:

1. Provided for in a franchise agreement; and

2. That is consideration for the franchise agreement; or
- B. 1. A fee similar to subsection A of this definition; or
2. Any combination of subsection A or B of this definition.

DELIVERED VALUE:

- A. The fair market value of the taxable energy delivered for sale or use in the City and includes:
1. The value of the energy itself; and
 2. 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 City.
- B. Delivered value does not include the amount of a tax paid under:
1. Utah Code Annotated title 59, chapter 12, Part 1 or Part 2; or
 2. Utah Code Annotated Title 10, Chapter 1, Part 3.

ENERGY SUPPLIER: 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: A franchise or an ordinance, contract or agreement granting a franchise.

FRANCHISE TAX:

- A. A franchise tax.
- B. A tax similar to a franchise tax; or
- C. Any combinations of subsection A or B of this definition.

PERSON: Includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, the State of Utah, any county, city, municipality, district, or other local governmental entity of the State of Utah, or any group or combination acting as a unit.

SALE: 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 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.

STORAGE: Any keeping or retention of taxable energy in this City for any purpose, except sale in the regular course of business.

TAXABLE ENERGY: Gas and electricity.

USE:

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

3: TAX IMPOSED:

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within the 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. Calculation: The tax shall be calculated on the delivered value of the taxable energy to the consumer.
- B. Additional Tax: The tax shall be in addition to any sales or use tax on taxable energy imposed by the City or the State as authorized by Utah Code Annotated title 59, chapter 12, part 2, the local sales and use tax act.

4: EXEMPTIONS TO TAX:

- A. No exemptions are 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 under Utah Code Annotated title 59, chapter 12, part 1, tax collection.
- B. The following are 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 Utah Code Annotated title 59, chapter 13;
 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 Utah Code Annotated title 59, chapter 13;
 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 the 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 Utah Code Annotated title 10, chapter 1, part 3; and
 2. The 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.

5: EXISTING FRANCHISE AGREEMENTS:

- A. No Alteration: This chapter shall not alter any existing franchise agreements between the City and energy suppliers.
- B. Credit Against Tax Due: 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 the City pursuant to previous franchise agreements;
 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.

6: CONTRACT WITH STATE TAX COMMISSION:

- A. Required; Authority Of Mayor: On or before the effective date hereof, the City shall contract with the Utah State Tax Commission to perform all functions incident to the administration and collection of the municipal energy sales and use tax, in accordance with this chapter. This contract may be a supplement to any existing contract with the commission to administer and collect the local sales and use tax. The mayor, with the approval of the Toquerville City Council and the Toquerville City Attorney, is hereby authorized to enter 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.

- B. Monthly Payments By Supplier; Conditions: An energy supplier shall pay the municipal energy sales and use tax revenues collected from consumers directly to the City monthly, if:
 - 1. The City is the energy supplier; or

 - 2. a. The energy supplier estimates that the municipal energy sales and use tax collected annually from its Utah consumers equals one million dollars (\$1,000,000.00) or more; and

 - b. The energy supplier collects the municipal energy sales and use tax.

- C. Deduction Of Franchise Fees: An energy supplier paying the municipal energy sales and use tax directly to the 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 Utah Code Annotated section 10-1-307(4).

7: STATE STATUTES INCORPORATED:

- A. Specified; Exemptions: Except as herein provided, and except insofar as they are inconsistent with the provisions of Utah Code Annotated title 10, chapter 1, part 3, municipal energy sales and use tax act, as well as this ordinance, all of the provisions of Utah Code Annotated title 59, chapter 12, part 1, as amended, and in force and effect on the effective date hereof, insofar as they relate to sales and use taxes, excepting sections 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. Substitution Of Terms: Wherever, and to the extent that in Utah Code Annotated title 59, chapter 12, part 1, as amended, the state is named or referred to as the "taxing agency", the name of the City shall be substituted, insofar as is necessary for the purposes of that part, as well as Utah Code Annotated title 10, chapter 1, part 3, as amended. Nothing in this subsection shall be deemed to require substitution of the name of the 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 the 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 the 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. Amendments: Any amendments made to Utah Code Annotated title 59, chapter 12, part 1, as amended, which would be applicable to the City for the purposes of carrying out this ordinance are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute.

8: ADDITIONAL LICENSE OR REPORTING NOT REQUIRED:

No additional license to collect or report the municipal energy sales and use tax levied by this chapter is required, provided the energy supplier collecting the tax has a license issued under Utah Code Annotated section 59-12-106.

9: EFFECTIVE DATE OF LEVY:

This ordinance is effective June 18, 2009. The municipal energy sales and use tax shall be levied beginning one minute after twelve o'clock (12:01) A.M., October 1, 2009.

10: SEVERABILITY:

If any section, clause or portion of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

11: EFFECTIVE DATE/CERTIFICATION:

It is hereby found and declared by the City of Toquerville that the creation and preservation of reliable revenue sources is of utmost imminent importance and is therefore certifies that, notwithstanding effective date of the tax levy pursuant to Section 9, above, all other provisions of this Ordinance shall become effective and of full force from and after its passage and approval.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE CITY OF TOQUERVILLE,
WASHINGTON COUNTY, STATE OF UTAH, ON THIS 18 DAY OF June
 , 2009.

CITY OF TOQUERVILLE



Daren LeFevre, Interim Mayor

ATTEST:



Carol Pogue, City Clerk/Recorder



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