

ORDINANCE NO. 09 - 12

AN ORDINANCE IMPOSING A MUNICIPAL ENERGY AND USE TAX FOR THE TOWN OF HIDEOUT, UTAH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, regulated utilities have served as a source for municipal revenue for much of the past twentieth century. Franchise charges were compensation to cities for the use of the rights-of-way and involved permission given by the city to the utility for authority to operate within a city. The Utah legislature established a statutory tax framework and a rate cap and local governments administered the franchise tax independently outside of the administration of other taxes; and

WHEREAS, the gas and electric utility business began to experience major changes in the 1990s and the national policy allowed retail natural gas services to deregulate. As such, large natural gas consumers could purchase their own natural gas directly from out-of-state providers. Since any existing franchise tax was imposed on the providers rather than the consumers, these out-of-state purchasers would be exempt from a franchise tax; and

WHEREAS, in 1996 the Utah Legislature created the Municipal Energy and Use Tax (MET) Act that authorizes a municipality to levy a tax on the sale or use of energy. For all practical purposes, the MET was designed virtually identical to the old utility franchise tax, however, the structure of the tax changed from a tax on utility operations to a tax on energy sales, and the Utah State Tax Commission is involved in the administration of the tax; and

WHEREAS, the Town Council finds good cause for imposing a municipal energy and use tax for municipal revenue for the Town of Hideout, Utah.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF HIDEOUT, UTAH:

SECTION I: **Approval.** That the Town Council of Hideout, Wasatch County, State of Utah, does hereby adopt Title 1B, Chapter 2, Municipal Energy and Use Tax, of the Hideout Town Code and approve the levy of a municipal energy and use tax on the sale or use of energy with provisions as outlined in Exhibit A.

SECTION II: **Notification.** Upon passage of this ordinance, the Utah State Tax Commission shall be notified by the Town Clerk.

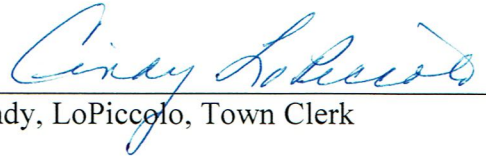
SECTION III: **Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

SECTION IV: **Effective Date.** This ordinance shall be effective upon posting pursuant to law. The Municipal Energy and Use Tax shall become effective on January 1, 2010.

PASSED AND ADOPTED by the Town Council of Hideout, Utah, this 12th day of August, 2009.


RICHARD H. SPRUNG, Mayor

ATTEST:


Cindy, LoPiccolo, Town Clerk

CERTIFICATE

The undersigned duly acting and appointed clerk for Hideout, Utah, hereby certifies that the foregoing is a true and correct copy of the ordinance imposing a municipal energy and use tax for the Town of Hideout, passed by the Town Council on the 12th day of August, 2009. The undersigned further certifies that this Ordinance was deposited, postage prepaid, in the United States Mail, the 31st day of August, 2009, addressed to the Utah State Tax Commission, 210 North 1950 West, Salt Lake City, Utah 84134.



Cindy LoPiccolo, Town Clerk for Hideout, Utah

EXHIBIT A

**TITLE 1B, CHAPTER 2
MUNICIPAL ENERGY SALES AND USE TAX**

Sections

- 1B.02.101. Purpose.
- 1B.02.102. Definitions.
- 1B.02.103. Municipal Energy Sales and Use Tax.
- 1B.02.104. Exemptions from the Municipal Energy Sales and Use Tax.
- 1B.02.105. Tax Collection Contract with Utah State Tax Commission.
- 1B.02.106. Incorporation of Part 1, Chapter 12, Title 59, Utah Code, including Amendments.
- 1B.02.107. No Additional License to Collect the Municipal Energy Sales and Use Tax Required – No Additional License or Reporting Requirements.
- 1B.02.108. Effective Date.

1B.02.101. PURPOSE.

It is the intent of the Town of Hideout to adopt the municipal energy and use tax pursuant to, and in conformance with, Section 10-1-301, et seq., Utah Code Annotated 1953, as amended, “The Municipal Energy Sales and Use Tax.”

1B.02.102. DEFINITIONS.

- (1) “Consumer” means a person who acquires taxable energy for any use that is subject to the Municipal Energy Sales and Use Tax.
- (2) “Delivered Value” means the fair market value of the taxable energy delivered for sale or use in the town and includes:
 - (a) The value of the energy itself; and
 - (b) 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.

“Delivered Value” does not include the amount of a tax paid under Part 1 or Part 2 of Chapter 12, Title 59 of the Utah Code.

- (3) “Energy Supplier” means a person supplying taxable energy, except for persons supplying a de minimus amount of taxable energy, if such persons are excluded by rule promulgated by the State Tax Commission.
- (4) “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 as a unit.

(5) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of taxable energy for 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.

(6) "Storage" means any keeping or retention of taxable energy in the City for any purpose except sale in the regular course of business.

(7) "Use" means the exercise of any right or power over taxable energy incident to the ownership or the leasing of the taxable energy.

"Use" does not include the sale, display, demonstration, or trial of the taxable energy in the regular course of business and held for resale.

(8) "Taxable Energy" means gas and electricity.

1B.02.103. MUNICIPAL ENERGY SALES AND USE TAX.

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within the Town of Hideout 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.

(1) The tax shall be calculated on the delivered value of the taxable energy to the consumer.

(2) The tax shall be in addition to any sales or use tax or taxable energy imposed by the Town of Hideout authorized by Title 59, Chapter 12, Part 2 of the Utah Code, The Local Sales and Use Tax Act.

1B.02.104. EXEMPTIONS FROM THE MUNICIPAL ENERGY SALES AND USE TAX.

(1) No exemptions are granted from the municipal Energy Sales and Use Tax except as expressly provided in Section 10-1-305(2)(b) of the Utah Code, as amended; notwithstanding an exemption granted by Section 59-12-104 of the Utah Code, as amended.

(2) The following are exempt from the Municipal Energy Sales and Use Tax, pursuant to Section 10-1-305(2)(b) of the Utah Code:

- (a) Sales and use of aviation fuel, motor fuel, and special fuels, subject to taxation under Title 59, Chapter 13 of the Utah Code;
- (b) Sales and use of taxable energy that is exempt from taxation under federal law, the United States Constitution, or the Utah Constitution;
- (c) Sales and use of taxable energy purchased or stored for resale;
- (d) Sales or use of taxable energy to a person, of 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;
- (e) Taxable energy brought into the state by a nonresident for the nonresident's own personal
- (f) The sale or use of taxable energy for any purpose other than as a fuel or energy; and
- (g) The sale of taxable energy for use outside the boundaries of the City.

(3) 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:

- (a) 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; and
- (b) The Town has 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.

1B.02.105. TAX COLLECTION CONTRACT WITH UTAH STATE TAX COMMISSION.

On or before the effective date of this chapter, the Town 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 an existing contract with the Commission to administer and collect tax for the Town. The Mayor is hereby 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 by this ordinance.

1B.02.106. INCORPORATION OF PART 1, CHAPTER 12, TITLE 59, UTAH CODE, INCLUDING AMENDMENTS.

(1) (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, and in force and effect on the effective date of this chapter, insofar as they relate to levying or collecting a municipal energy sales and use tax, are hereby adopted and made a part of this chapter as if fully set forth herein.

(b) Any amendments made to Part 1, Chapter 12, Title 59 of the Utah Code, which would be applicable to the Town for purposes of carrying out this chapter are hereby incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute.

1B.02-107. NO ADDITIONAL LICENSE TO COLLECT THE MUNICIPAL ENERGY SALES AND USE TAX REQUIRED – NO ADDITIONAL LICENSE OR REPORTING REQUIREMENTS.

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 Section 59-12-106 of the Utah Code.

1B.02.108. EFFECTIVE DATE.

This tax shall be levied effective January 1, 2010.