

ORDINANCE NO. 09 - 13

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

WHEREAS, the Municipal Telephone and Business License Tax (telco tax) was passed by the 2003 Utah Legislative Session and was effective July, 2004; and

WHEREAS, the tax base for the telco tax is the gross receipts from telecommunication services attributed to the town and is based on the billing address of the phone user; and

WHEREAS, the Town Council finds good cause for imposing a telecommunications tax of 3.5% 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 approve the levy of a municipal telecommunications license tax at a rate of 3.5% with the provisions as outlined in Town Code Title 1B Chapter 1 Telecommunication Tax, adopted and incorporated hereto as Exhibit A.

SECTION II: Notification. Upon passage of this ordinance, the Utah State Tax Commission shall be notified by the Town Treasurer pursuant to U.C.A. Section 10-1-403(3)(b)(ii).

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 Telecommunications Tax shall take effect 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 telecommunications 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 1. TELECOMMUNICATION SERVICE PROVIDERS TAX.

- 1B.01.101 Definitions.
- 1B.01.102 Levy of tax.
- 1B.01.103 Tax Rate.
- 1B.01.104 Rate Limitation and Exemption.
- 1B.01.105 Effective Date of Tax Levy.
- 1B.01.106 Changes in Rate or Repeal of the Tax.
- 1B.01.107 Interlocal Agreement for Collection of the Tax.
- 1B.01.108 Procedures for Taxes Erroneously Recovered from Customers.
- 1B.01.109 Repeal of Inconsistent Taxes and Fees.

1B.01.101. DEFINITIONS.

As used in this ordinance:

- (1) "Commission" means the State Tax Commission.
- (2) (a) Subject to Subsections (2)(b) and (c), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.
 - (b) For purposes of this ordinance, "customer" means:
 - (i) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or
 - (ii) if the end user is not the person described in Subsection (2)(b)(i), the end user of telecommunications service.
 - (c) "Customer" does not include a reseller for telecommunications service, or for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.
- (3) (a) "End user" means the person who uses a telecommunications service.
 - (b) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.
- (4) "Gross receipts attributed to the town" means those gross receipts from a transaction for telecommunications services that is located within the town for the purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code Section 59-12-207.

(5) "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

(a) a tax, fee, or charge imposed by a governmental entity, separately identified as a tax, fee or charge in the transaction with the customer for the telecommunications service, and imposed only on a telecommunications provider;

(b) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or

(d) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(6) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(7) "Municipality" means Town of Hideout.

(8) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address of the customer or the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(9) Notwithstanding where a call is billed or paid "service address" means:

(a) if the location described in this section is known, the location of the telecommunications equipment to which a call is charged, and from which the call originates or terminates;

(b) if the location described in this section is not known, the location of the origination point of the signal of the telecommunications service first identified by the telecommunications system of the telecommunications provider, or if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

(c) if the locations described in sections (a) or (b) are not known, the location of a customer's place of primary use.

(10) (a) Subject to subsections (b) and (c), "telecommunications provider" means a person that owns, controls, operates, or manages a telecommunications service, or engages that engages in owning, controlling, operating or managing a telecommunications service for the shared use with or resale to any person of the telecommunications service.

(b) A person described in subsection (a) is a telecommunications provider whether or not the Public Service Commission of Utah regulates that person, or the telecommunications service that the person owns, controls, operates, or manages.

(c) "Telecommunications provider" does not include an aggregator as defined in Utah Code Section 54-8b-2, as amended.

(11) "Telecommunications service" means:

(a) telephone service, as defined in Utah Code Section 59-12-102, as amended, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and

(b) mobile telecommunications service, as defined in Utah Code Section 59-12-102, as amended, that originates and terminates within the boundaries of one state, and only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1B.01.102. LEVY OF TAX.

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to this municipality.

1B.01.103. TAX RATE.

The rate of the tax levy shall be 3.5% of the telecommunication provider's gross receipt from telecommunications service that are attributed to the municipality. If the location of a transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Section 10-1-407, as amended.

1B.01.104. RATE LIMITATION AND EXEMPTION.

The rate of this levy shall not exceed 4% of the telecommunication provider's gross receipts from telecommunication service attributed to the municipality, unless a higher rate is approved by a majority vote of the voters in this municipality that vote in a municipal general election, a regular general election, or a local special election. If the location of a transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah code section 10-1-407.

1B.01.105. EFFECTIVE DATE OF TAX LEVY.

This tax shall be levied beginning January 1, 2010.

1B.01.106. CHANGES IN RATE OR REPEAL OF THE TAX.

This ordinance is subject to the requirements of Utah Code Section 10-1-403, as amended. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Section 10-1-403, as amended.

1B.01.107. INTERLOCAL AGREEMENT FOR COLLECTION OF THE TAX.

On or before the effective date of the ordinance, the municipality shall enter into the uniform interlocal agreement with the Commission as described in Utah Code Section 10-1-405 under which the Commission collects, enforces, and administers the municipal telecommunications license tax.

1B.01.108. PROCEDURES FOR TAXES ERRONEOUSLY RECOVERED FROM CUSTOMERS.

Pursuant to the provisions of Utah Code Section 10-1-408, as amended, a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer municipal telecommunications license taxes authorized by this part unless the customer meets the same requirements that a purchaser is required to meet to bring a cause of action against a seller for a refund or credit as provided in U.C.A. Section 59-12-110.1(3).

1B.01.109. REPEAL OF INCONSISTENT TAXES AND FEES.

Any tax or fee previously enacted by this municipality under authority of Utah Code Section 10-1-203 or Title 11, Chapter 26, local taxation of utilities limitation is hereby repealed.

Nothing in this article shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights of way of the municipality, if the fee is imposed in accordance with Utah Code Section 72-7-102 and is not related to the municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right of way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right of way nor does this article limit the municipality's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this article and locate telecommunications facilities, as defined in Utah Code Section 72-7-108, in this municipality.