

MUNICIPALITY OF DANIEL, UTAH

ORDINANCE NO. 2008-09-08

AN ORDINANCE SETTING THE TAX ON SALE OR USE OF TAXABLE ENERGY

Enactment Date: September 8, 2008.

Effective Date: The later of October 1, 2008 or the date deemed effective by the Utah State Tax Commission.

- (1) Be it ordained by the legislative body of the municipality of Daniel, Utah, under its authority as a political subdivision of the state of Utah and under its statutory authority granted under Utah Code Annotated (UCA) Sec. 10-1-304, that there is hereby levied a tax rate on every sale or use of taxable energy made within a municipality at a rate determined by the municipality that is _____% of the delivered value of the taxable energy that is not otherwise exempted by law or hereunder payable to the general fund of the municipality;
- (2) The provisions of Title 59, Chapter 12, Part 1, Tax Collection of the Utah Code Annotated (UCA), as they relate to sales and use tax, are hereby incorporated by reference including any subsequent amendments thereto, 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 UCA Title 59, Chapter 12, Part 1, Tax Collection, except exemptions for:
 - (i) the sales and use of aviation fuel, motor fuel, or special fuel subject to taxation under UCA 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 UCA 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.
- (3) Notwithstanding Subsection (1) hereof, a sale or use of electricity within the municipality is exempt from the tax authorized by this ordinance if the sale or use is:
 - (a) made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy source, as

designated in the tariff by the Public Service Commission of Utah; and

(b) for an amount of electricity that is:

(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (3)(a) above; and

(ii) equivalent to the number of kilowatt-hours specified in the tariff described in Subsection (3)(a) above that may be purchased under the tariff described in Subsection (3)(a) above.

(4) (a) Except as provided under Subsection (4)(b) below, the sale, storage, use, or other consumption of taxable energy is exempt from the tax due under this 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 state law 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 this ordinance if the tax due under this ordinance exceeds the tax paid to another municipality.

(5) On or before the effective date of this ordinance, the municipality shall enter into a contract with the Utah state tax commission to have the commission perform all functions related to the administration or operation of this ordinance, except that the municipality may collect the municipal energy sales and use tax directly as provided in U.C.A. [10-1-307\(3\)](#).

VOTES

FOR

AGAINST

Statutory References:

UCA 10-1-304; UCA 10-1-305; UCA 10-1-301, et seq.; UCA 59-12; UCA 59-13.

Passed and adopted by the mayor and Town Council of Daniel, Utah this _____
Day of _____, 2008

Mayor or Deputy

Recorder or Deputy

10-1-304. Municipality may levy tax -- Rate -- Imposition or repeal of tax -- Tax rate change -- Effective date -- Notice requirements -- Exemptions.

(1) Except as provided in Subsection (4), a municipality may levy a municipal energy sales and use tax on the sale or use of taxable energy within the municipality:

- (a) by ordinance as provided in Section [10-1-305](#); and
- (b) of up to 6% of the delivered value of the taxable energy.

(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 Title 10, 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) Notwithstanding Subsection (1), a sale or use of electricity within a municipality is exempt from the tax authorized by this section if the sale or use is:

(a) made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy source, as designated in the tariff by the Public Service Commission of Utah; and

(b) for an amount of electricity that is:

(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (4)(a); and

(ii) equivalent to the number of kilowatthours specified in the tariff described in Subsection (4)(a) that may be purchased under the tariff described in Subsection (4)(a).

Amended by Chapter 255, 2004 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