

MILITARY INSTALLATION DEVELOPMENT AUTHORITY

ORDINANCE 2025-01

AN ORDINANCE OF THE MILITARY INSTALLATION DEVELOPMENT AUTHORITY (“MIDA”) LEVYING A MUNICIPAL TELECOMMUNICATIONS LICENSE TAX AND A MUNICIPAL ENERGY SALES AND USE TAX IN THE UTAH NATIONAL GUARD PROJECT AREA

WHEREAS, §10-1-403(1)(a)(ii) Utah Code Annotated 1953, as amended (“UCA”) provides that the Military Installation Development Authority (“MIDA”) “may levy and collect a municipal telecommunications license tax... as though the authority were a municipality”; and

WHEREAS, §10-1-304(1)(b) UCA provides that MIDA “may levy a municipal energy sales and use tax...as though the authority were a municipality”; and

WHEREAS, the levying of taxes in the Utah National Guard Project Area (“Project Area”) will benefit the Project Area by providing certain revenue that will assist in funding development, municipal services, and the administration of the Project Area; and

WHEREAS, §63H-1-203 UCA requires the affirmative vote of the MIDA Board and a “majority of all elected members of the authority board” to levy a municipal telecommunications license tax and a municipal energy tax.

NOW, THEREFORE, BE IT ORDAINED BY THE MIDA BOARD that:

1. The attached ordinance Title 6 Taxation for the Utah National Guard Project Area Chapters 1 through 2 are hereby adopted and shall be effective on the date identified in each chapter.
2. The Executive Director is authorized to make such changes and enter into such agreements as necessary to have the Utah State Tax Commission collect and remit the taxes.

PASSED AND ADOPTED by the MIDA Board this 24th day of June, 2025.

Military Installation Development Authority



J. Stuart Adams
Chair

Attest:

A handwritten signature in cursive script, appearing to read 'S. Turner', positioned above a horizontal line.

Sara Turner
MIDA Staff

TITLE 6: TAXATION FOR THE UTAH NATIONAL GUARD PROJECT AREA
CHAPTER 1: MUNICIPAL TELECOMMUNICATIONS LICENSE TAX

6-1-101 Short Title

This Chapter shall be known as the "Utah National Guard Project Area Municipal Energy Sales and Use Tax" or "UNG Project Area Telecommunications Tax."

6-1-102 Definitions

As used in this Chapter:

(1) "Commission" means the Utah 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 section "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:

(i) of telecommunications service; or

(ii) for Mobile Telecommunication 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) (a) "Gross Receipts From Telecommunications Service" mean the revenue that a Telecommunications Provider receives for telecommunications service rendered except for amounts collected or paid as:

(i) a tax, fee, or charge:

(A) imposed by a governmental entity;

(B) separately identified as a tax, fee, or charge in the transaction with the Customer for the telecommunications service; and

(C) imposed only on a Telecommunications Provider;

(ii) sales and use taxes collected by the Telecommunications Provider from a Customer under Utah Code Title 59, Chapter 12, Sales and Use Tax Act; or

(iii) 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.

(b) "Gross Receipts From Telecommunications Services" includes a charge necessary to complete a sale of a telecommunications service.

(5) "Mobile Telecommunications Service" is defined in the Mobile Telecommunications Sourcing Act, 4 USC Section 124.

(6) "Place Of Primary Use":

(a) for telecommunications service other than Mobile Telecommunication Service, means the street address representative of where the Customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the Customer; or

(ii) the primary business street address of the Customer; or

(b) for Mobile Telecommunications Service, is as defined in the Mobile Telecommunications Sourcing Act, 4 USC Section 124.

(7) "Project Area" means the Utah National Guard Project Area.

(8) Notwithstanding where a call is billed or paid, "Service Address" means:

(a) if the location described in this Subsection (8)(a) is known, the location of the telecommunications equipment:

(i) to which a call is charged; and

(ii) from which the call originates or terminates;

(b) if the location described in Subsection (8)(a) is not known but the location described in this Subsection (8)(b) is known, the location of the origination point of the signal of the telecommunications service first identified by:

(i) the telecommunications system of the Telecommunications Provider; or

(ii) 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 Subsection (8)(a) or (b) are not known, the location of a Customer's Place of Primary Use.

(9) (a) Subject to Subsections (9)(b) and (9)(c), "Telecommunications Provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; or

(ii) engages in an activity described in Subsection (9)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (9)(a) of this definition is a Telecommunications Provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

(ii) 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.

(10) "Telecommunications Service" means

(a) Telecommunications service, as defined in Utah Code Section 59-12-102, other than Mobile Telecommunication Service, that originates and terminates within the boundaries of this state; and

(b) Mobile Telecommunication Service, as defined in Utah Code Section 59-12-102:

(i) that originates and terminates within the boundaries of one state; and

(ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 USC Section 116 et seq. or

(c) an ancillary service as defined in Utah Code Section 59-12-102.

(11) (a) Except as provided in Subsection 11(b), "telecommunications tax or fee" means any of the following imposed by MIDA on a Telecommunications Provider:

(i) a tax;

(ii) a license;

(iii) a fee;

(iv) a license fee;

(v) a license tax;

(vi) a franchise fee; or

(vii) a charge similar to a tax, license, or fee described in Subsections 11(a)(i) through (vi).

(b) "Telecommunications tax or Fee" does not include:

(i) the license tax authorized by Title 10, Chapter 1, Part 4 of the Utah Code.

(ii) a tax, fee or charge, including a tax imposed under Title 59, Revenue and Taxation, that is imposed:

(A) on telecommunications providers; and

(B) on persons who are not telecommunications providers.

6-1-103 Levy of Tax

There is hereby levied a municipal telecommunications license tax on the Gross Receipts From Telecommunications Service attributed to the Project Area, in accordance with Utah Code Section 10-1-407.

6-1-104 Rate

The rate of the tax levy shall be 3.5 percent (3.5%) of the Telecommunication Provider's Gross Receipts from Telecommunications Service that are attributed to the Project Area in accordance with Utah Code section 10-1-407. If the location of a transaction is determined to be other than the Project Area, then the

rate imposed on the gross receipts for telecommunications service shall be determined pursuant to the provisions of Utah Code Section 10-1-407.

6-1-105 Rate Limitation and Exemption Therefrom

The rate of this levy shall not exceed 3.5 percent (3.5%) of the Telecommunication Provider's Gross Receipts From Telecommunication Service attributed to the Project Area unless a higher rate is approved by a majority vote of the voters in the Project Area that vote in:

- (1) a municipal general election;
- (2) a regular general election; or
- (3) a local special election.

6-1-106 Effective Date of Tax Levy

This tax shall be levied beginning July 1, 2025, or the execution of the Interlocal Agreement described in Subsection 6-1-108.

6-1-107 Changes in Rate or Repeal of the Tax

This chapter is subject to the requirements of Utah Code Section 10-1-403. 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.

6-1-108 Interlocal Agreement for Collection of the Tax

On or before the effective date hereof, MIDA shall enter into a uniform interlocal agreement with the Commission as described in Utah Code Section 10-1-405 for the collection, enforcement, and administration of the municipal telecommunications license tax. The Executive Director is authorized to enter the agreement with the Commission.

6-1-109 Procedures for Taxes Erroneously Recovered From Customers

Pursuant to the provisions of Utah Code Section 10-1-408, a Customer may not bring a cause of action against a Telecommunications Provider on the grounds that the Telecommunications Provider erroneously recovered from the Customer the municipal telecommunication license tax except as provided in Utah Code Section 10-1-408.

6-1-110 Transactions Consisting of Telecommunications Service and Nontelecommunications Services

(1) For purposes of this section, "Nontelecommunications Services" means services or tangible personal property that are:

- (a) not Telecommunications Service; and

(b) provided by a Telecommunications Provider to a Customer.

(2) Except to the extent prohibited by federal law, if a Telecommunications Provider provides Nontelecommunications Services to a Customer as part of the same transaction in which the Telecommunications Provider provides Telecommunications Service, the gross receipts from the Nontelecommunications Services provided by the Telecommunications Provider are subject to a tax under this Chapter unless:

(a) the charge for the Nontelecommunications Services is separately identified in the statement of the transaction with the Customer of the Telecommunications Service; or

(b) from the books and records of the Telecommunications Provider that are kept in the regular course of business, the Telecommunications Provider can reasonably identify the portion of the total charge for the transaction that is attributable to:

(i) the Nontelecommunications Services; and

(ii) the Telecommunications Service.

6-1-111 Violation; Penalty

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable as set forth in the Utah Code.

CHAPTER 2: MUNICIPAL ENERGY SALES AND USE TAX

6-2-101 Short Title

This Chapter shall be known as the "Utah National Guard Project Area Municipal Energy Sales and Use Tax" or "UNG Project Area Municipal Energy Tax."

6-2-102 Purpose

It is the purpose of this Chapter to conform the Municipal Energy Tax to the requirements of the municipal energy sales and use tax law of the State of Utah, Part 3 of Chapter 1 of Title 10, Utah Code Annotated, 1953, as currently amended ("Utah Code").

6-2-103 Definitions

- (1) "Commission" means the State Tax Commission.
- (2) "Consumer" means a person who acquires Taxable Energy for any use that is subject to the Municipal Energy Tax.
- (3) "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)
 - (i) a fee similar to Subsection (3)(a); or
 - (ii) any combination of Subsection (3)(a) and (b).
- (4)
 - (a) "Delivered Value" means the fair market value of the Taxable Energy delivered for sale or use in the Project Area 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 Project Area.
 - (b) "Delivered Value" does not include the amount of a tax paid under:
 - (i) Title 59, Chapter 12, Sales and Use Tax Act of the Utah Code;
 - (ii) this Chapter.
- (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 Commission.
- (6) "Franchise Agreement" means a franchise or an ordinance, contract, or agreement granting a franchise.
- (7) "Franchise Tax" means:

- (a) a franchise tax;
 - (b) a tax similar to a franchise tax; or
 - (c) any combination of Subsections (7)(a) and (b).
- (8) "Person" is as defined in Utah Code Section 59-12-102.
- (9) "Taxable Energy" means gas and electricity.

6-2-104 Municipal Energy Sales and Use Tax Imposed

- (1) There is hereby levied a tax on every sale or use of Taxable Energy made within the Utah National Guard Project Area at a rate of six percent (6%) of the Delivered Value of the Taxable Energy.
- (2) The tax shall be calculated on the Delivered Value of the Taxable Energy to the Consumer.
- (3) The tax shall be in addition to any sales or use tax on Taxable Energy imposed by any other governmental entity as authorized by Title 59, Chapter 12, Sales and Use Tax Act of the Utah Code.

6-2-105 Exemptions from the Municipal Energy Tax

(1) An exemption is not allowed from the tax 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 following are exempt from the tax:

- (a) the sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act of the Utah Code;
- (b) the sales and use of Taxable Energy that is exempt from taxation under federal law, the Constitution of the United States or the Utah Constitution;
- (c) the sales and use of Taxable Energy purchased or stored for resale;
- (d) 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 of the Utah Code;
- (e) 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;
- (f) the sales 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 Project Area.

(2) The following exemption also applies:

- (a) except as provided in Subsection (2)(b), the sale, storage, use, or other consumption of Taxable Energy is exempt from the tax if 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; and

(b) MIDA 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.

6-2-106 Credit for Franchise Fees

(1) There is a credit against the tax due from any Consumer 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.

6-2-107 Tax Collection Contract with State Tax Commission

(1) MIDA shall contract with the Commission to perform all functions incident to the administration and collection of the Municipal Energy Sales and Use Tax, in accordance with this Chapter. The Executive Director, or designee, is authorized to enter the contract with the Commission.

(2) An Energy Supplier shall pay the tax revenues collected from Consumers directly to MIDA monthly if:

(a) MIDA is the Energy Supplier; or

(b)

(i) the Energy Supplier estimates that the municipal energy sales and use tax collected annually from its Utah customers equals one million dollars (\$1,000,000.00) or more, and

(ii) the Energy Supplier collects the municipal energy sales and use tax.

(3) An Energy Supplier paying the tax directly to MIDA may retain the percentage of the tax authorized under Utah Code Subsection 59-12-108(2) for the Energy Supplier's costs of collecting and remitting the tax.

(4) A Consumer shall pay the tax monthly directly to MIDA if its Energy Supplier is exempt from having to collect the tax and remit the revenue to the Commission or pay it directly to MIDA pursuant to Subsection (2).

6-2-108 Incorporation of Part 1, Chapter 12, Title 59, Utah Code, Including Amendments:

(1) Except insofar as they are inconsistent with the provisions of Utah Code Title 10, Chapter 1, Part 3, Municipal Energy Sales And Use Tax Act, and as required by Utah Code Section 10-1-305(2) all of the provisions of Utah Code Title 59, Chapter 12, Part 1, Tax Collection, insofar as they relate to sales and use taxes, excepting sections 59-12-101, 59-12-104 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 Chapter as if fully set forth herein.

(2) Pursuant to Utah Code Section 10-1-305(d) MIDA's name, as the taxing entity shall be substituted for that of the state when necessary for purposes Utah Code Title 10, Chapter 1, Part 3. Nothing in this subsection shall be deemed to require substitution of MIDA's name 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 MIDA's name 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 MIDA, rather than by or against the state tax commission in performing the functions incident to the administration or operation of this Chapter.

(3) Pursuant to Utah Code Section 10-1-305(6), this ordinance adopts by reference any amendments to the provisions of Utah Code Title 59, Chapter 12, part 1, Tax Collection, that relate to levying or collecting this tax.

6-2-109 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 tax is required by an Energy Supplier, provided the Energy Supplier collecting the tax has a license issued under Utah Code Section 59-12-106.

6-2-110 Effective Date of Tax Levy

This tax shall be levied beginning July 1, 2025.

6-2-111 Violation; Penalty

Any Person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable as set forth in the Utah Code.