

EMIGRATION CANYON METRO TOWNSHIP

ORDINANCE #2022-11- 01

AN ORDINANCE ADOPTING TITLE 3 CHAPTER 13, MUNICIPAL ENERGY SALES AND USE TAX

WHEREAS, the Emigration Canyon Metro Township Council (“Council”) has limited sources of revenue;

WHEREAS, it is sound accounting to the have more diverse funding sources;

WHEREAS, the Emigration Canyon Metro Township relies heavily on property taxes;

WHEREAS, the Utah State Legislature authorized Townships to collect the Municipal Energy Sales And Use Tax starting in May 2021 pursuant to Utah Code 10-3c-204 in accordance with Utah Code 10-1-3;

WHEREAS, it is likely that the Unified Fire Authority and the Unified Police Department, which both serve the citizens and visitors in Emigration Canyon, will need additional funding in the years to come;

WHEREAS, the Council finds at this time that it is necessary to implement a Municipal Energy Sales and Use Tax in Emigration Canyon Metro Township to help with the burden and rising costs that are associated with operating a township.

NOW, THEREFORE, BE IT ORDAINED BY THE EMIGRATION CANYON METRO TOWNSHIP COUNCIL, UTAH, THAT:

SECTION I: Adopted. The following Title 3, Chapter 13 is hereby adopted as shown in Exhibit A.

SECTION II: Effective Date. This Ordinance shall take effect upon publication.

PASSED AND ADOPTED by the Emigration Canyon Metro Township, Utah, this 15 day of November in the year 2022.

EMIGRATION CANYON METRO TOWNSHIP

Joe Smolka, Mayor

ATTEST:

Township Clerk

Exhibit A:

MUNICIPAL ENERGY SALES AND USE TAX

3.13.010 Title of Provisions

The ordinance codified in this chapter shall be known as the “Municipal Energy Sales And Use Tax”

3.13.015 DEFINITIONS.

A. “Consumer” means a person who acquires taxable energy for any use that is subject to the municipal energy sales and use tax.

B. “Contractual franchise fee” means:

1. A fee:

a. Provided for in a franchise agreement; and

b. That is consideration for the franchise agreement; or

2. a. A fee similar to subsection (B)(1)(a) of this section; or

b. Any combination of subsection (B)(1)(a) or (B)(1)(b) of this section.

C. 1. “Delivered value” means the fair market value of the taxable energy delivered for sale or use in the municipality and includes:

a. The value of the energy itself; and

b. 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 municipality.

2. “Delivered value” does not include the amount of a tax paid under Title 59, Chapter 12, Part 1, Tax Collection, Part 2, Local Sales and Use Tax Act, Utah Code Annotated 1953, or this chapter.

D. “De minimis amount” means an amount of taxable energy that does not exceed the greater of:

1. Five percent of the energy supplier’s estimated total Utah gross receipts from sales of property or services; or

2. Ten thousand dollars.

E. “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 State Tax Commission.

F. “Franchise agreement” means a franchise or an ordinance, contract, or agreement granting a franchise.

G. “Franchise tax” means:

1. A franchise tax;
2. A tax similar to a franchise tax; or
3. Any combination of subsection (G)(1) or (G)(2) of this section.

H. “Person,” “sale,” “storage” and “use” mean the same as defined in Section [59-12-102](#), Utah Code Annotated 1953.

I. “Renewable energy source” means the same as defined in Section [54-17-502](#), Utah Code Annotated 1953.

J. “Taxable energy” means gas and electricity.

K. “Township” means Emigration Canyon Metro Township.

13-3-020: MUNICIPAL ENERGY SALES AND USE TAX LEVIED.

There is hereby levied, subject to the provisions of this chapter, a tax on every sale or use of taxable energy made within the township equaling six percent (6.0%) of the delivered value of the taxable energy to the consumer. This tax shall be known as the municipal energy sales and use tax.

13-3-025: EFFECTIVE DATE.

The municipal energy sales and use tax shall become effective on and after January 1, 2023.

A. The tax shall be calculated on the delivered value of the taxable energy to the consumer.

B. The tax shall be in addition to any sales or use tax on taxable energy imposed by the township authorized by Title 59, Chapter 12, Utah Code, Sales and Use Tax Act.

13-3-030: EXEMPTIONS FROM THE MUNICIPAL ENERGY SALES AND USE TAX.

A. No exemptions are granted from the municipal energy sales and use tax except as expressly provided in Section [10-1-305\(2\)\(b\)](#), Utah Code Annotated 1953, notwithstanding an exemption granted by Section [59-1-104](#), Utah Code Annotated 1953.

B. The following are exempt from the municipal energy sales and use tax, pursuant to Section [10-1-305\(2\)\(b\)](#), Utah Code Annotated 1953:

1. Sales and use of aviation fuel, motor fuel, and special fuels subject to taxation under Title [59](#), Chapter [13](#), Utah Code Annotated 1953;

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 Title [59](#), Chapter [13](#), Utah Code Annotated 1953;
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 township.

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 Title [59](#), Chapter [12](#), Part 3, Utah Code Annotated 1953; and
2. The township 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.

13.03.040 No effect upon existing franchises – Credit for franchise fees.

- A. This chapter shall not alter any existing franchise agreements between the township and energy suppliers.
- B. 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 township pursuant to a franchise agreement in effect on July 1, 1997;
 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.

13-3-50: TAX COLLECTION CONTRACT WITH STATE TAX COMMISSION.

On or before the effective date of the ordinance codified in this chapter, the township shall contract with the 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, except for functions relating to taxes collected by the township as the energy supplier as provided in Section [10-1-307](#)(3), Utah Code Annotated 1953, as amended 1996. The mayor, with the approval of the township attorney, is hereby authorized to enter into 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 chapter.

13-3-060: MONTHLY PAYMENTS BY SUPPLIER AND DEDUCTION OF FRANCHISE FEES.

A. An energy supplier shall pay the municipal energy sales and use tax revenues collected from consumers directly to the township monthly if:

1. The township 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.

B. An energy supplier paying the municipal energy sales and use tax directly to the township 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).

13-3-070: INCORPORATION OF TITLE 59, CHAPTER 12, PART 1, UTAH CODE ANNOTATED 1953, INCLUDING AMENDMENTS.

A. Except as herein provided, and except insofar as they are inconsistent with the provisions of the Municipal Energy Sales and Use Tax Act, as well as this chapter, all of the provisions of Title 59, Chapter 12, Part 1, Utah Code Annotated 1953, as amended, and in force and effect on the effective date of this ordinance, insofar as they relate to sales and use taxes, excepting Sections 59-12-101 and 59-12-1119, Utah Code Annotated 1953, and excepting 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.

B. Wherever, and to the extent that in Title 59, Chapter 12, Part 1, and Title 10, Part 3, Utah Code Annotated 1953, the state of Utah is named or referred to as the “taxing agency,” the name of the township shall be substituted, insofar as is necessary for the purposes of that part. Nothing in this subsection shall be deemed to require substitution of the name “Riverdale Township” 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 Riverdale Township 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

Riverdale Township 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. Any amendments to the provisions of Title 59, Chapter 12, Part 1, Tax Collection, Utah Code Annotated 1953, that relate to levying or collecting a municipal energy sales and use tax and that would be applicable to Riverdale Township for the purposes of carrying out this chapter are hereby adopted and incorporated herein by reference and shall be effective upon the date that they are effective as a Utah statute.

13-3-080: 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, Utah Code Annotated 1953.