

## **Chapter 3.25**

# **UTILITY USERS EXCISE TAX**

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### **3.25.010 Purpose.**

The purpose of this chapter is to impose a utility users excise tax as a revenue measure necessary to pay the usual and current expenses of conducting the municipal government of the city, the proceeds of which shall be paid into the general fund of the city. (Ord. 89-6 N.S. § 1, 1989).

### **3.25.020 Short title.**

This chapter shall be known and may be cited as the "utility users excise tax ordinance." (Ord. 89-6 N.S. § 2, 1989).

### **3.25.030 Definitions.**

Except where the context otherwise requires, the definitions set forth in this section govern the construction of this chapter.

- A. "City" means the city of Benicia.
- B. "Gas" includes natural gas and any other gas used for light, heat and power.
- C. "Month" means a calendar month.
- D. "Nonutility supplier" means a service supplier, other than an electrical corporation serving within the city, which generates electrical energy in capacities of at least 100 kilowatts monthly for its own use or for sale to others.
- E. "Person" means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individual.

F. "Tax administrator" means the finance director of the city.

G. "Telephone corporation," "electrical corporation," "gas corporation," and "cable television corporation" have the same meanings as defined in Section 234, 218, 222 and 215.5, respectively, of the California Public Utilities Code (as said sections existed on June 1, 1989), except that "electrical corporation" shall also be construed to include any municipality or person engaged in the selling or supplying of electrical power to a service user.

H. "Service supplier" means any entity required to collect or self-impose and remit a tax as imposed by this chapter.

I. "Service user" means a person required to pay a tax imposed by this chapter. (Ord. 89-6 N.S. § 3, 1989).

### **3.25.040 Rules of construction.**

Words of the masculine gender are deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number include the plural number and vice versa. (Ord. 89-6 N.S. § 17, 1989).

### **3.25.050 Benefit to all persons.**

The city council has found and determined and declares that all persons using utility services in the city enjoy the privilege of using and benefit from the providing, by the city, of municipal services and facilities. (Ord. 89-6 N.S. § 18, 1989).

### **3.25.060 Power in addition.**

The powers conferred by this chapter are in addition to, and the limitations imposed by this chapter do not affect, the powers conferred by any other law or ordinance. (Ord. 89-6 N.S. § 19, 1989).

### **3.25.070 Conflicting provisions.**

If this chapter is inconsistent with any other law, this chapter is controlling. (Ord. 89-6 N.S. § 20, 1989).

### **3.25.080 Liberal construction.**

This chapter shall be liberally construed to promote its objects. (Ord. 89-6 N.S. § 21, 1989).

### **3.25.090 Defect or omission – Validity of proceedings or taxes.**

If the jurisdiction of the city council to order the proposed act is not affected, the defect or omission of any officer in proceedings under this chapter does not invalidate the proceedings or taxes levied under this chapter. (Ord. 89-6 N.S. § 22, 1989).

### **3.25.100 Limitation of actions.**

The validity of this chapter or of any tax levied pursuant to this chapter shall not be contested in any action or proceeding or defense unless such action or proceeding or defense has been brought or raised within 60 days from the date of the adoption of the ordinance codified in this chapter. Unless an action or proceeding is commenced or such defense raised within said period, this chapter and any tax levied pursuant to this chapter shall be held valid and in every respect legal and incontestable. (Ord. 89-6 N.S. § 23, 1989).

### **3.25.110 Termination or suspension of tax.**

The service supplier shall, upon notification, terminate or suspend any utility users tax commencing with the first full billing period which occurs after the effective date of such action by the city council. (Ord. 89-6 N.S. § 25, 1989).

**3.25.120 Exemptions.**

A. Any individual who qualifies as a "claimant" under the Gonsalves-Deukmejian-Petris Senior Citizens Property Tax Assistance Law (Chapter 1, commencing with Section 20501, of Part 10.5 of Division 2 of the Revenue and Taxation Code of the state of California) shall be exempt from the tax imposed by this chapter and any such tax paid by any such individual is subject to refund under BMC 3.25.240.

B. Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state of California.

C. The city council may, by order or resolution, establish one or more classes of persons or one or more classes of utility service (which shall include energy generated by solar heat and/or wood-burning stoves produced on the premises) otherwise subject to payment of a tax imposed by this chapter and provide that such classes of persons or service shall be exempt, in whole or in part, from such tax.

D. The tax administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier. (Ord. 89-6 N.S. § 4, 1989).

**3.25.130 Telephone users tax.**

A. Tax Imposed. There is imposed a tax (herein called the "telephone users tax") on the amounts paid for any intrastate telephone services by every person in the city using such services. The tax imposed by this section shall be at the rate of four percent of the charges made for such services and shall be paid by the person paying for such services. The telephone users tax is intended to, and does, apply to all charges billed to a telephone account having a situs in the city, irrespective of whether a particular communication service originates and/or terminates within the city.

B. Definitions. The following definitions apply to this section, in addition to those in BMC 3.25.030:

"Intrastate telephone service" means all telephone communications services or telephone services where the point or points of origin and the point or points of destination of the service are all located in this state.

"Charges" means the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone service. Charges shall not include:

1. Any tax imposed by the United States or by any charter city;
2. Amounts billed to nonsubscribers for coin shortages;
3. Amounts billed for any nonrecurring, installation, service connection service charges;

or

4. Amounts billed by a hotel or motel for service rendered in placing calls for its guests.

"Telephone communications services" or "telephone services" refers to that service which provides access to a telephone system and the privilege of telephonic quality communication with substantially all persons having telephone stations which are part of such telephone system.

C. Collection. The telephone users tax shall be collected from the service user by the person providing the intrastate communication services, or the person receiving payment for such services. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month; or, at the option of the person required to collect and remit the tax, an estimated amount of tax collected, measured by the tax bill in the previous month, shall be remitted to the tax administrator on or before the last day of each month.

D. Exemptions. In addition to the exemptions set forth in BMC 3.25.120, the telephone users tax imposed under this section shall not be imposed on any of the following:

1. Certain Coin-Operated Service. Service paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than \$0.25; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

2. News Services. No tax shall be imposed, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

3. International Organizations or Red Cross. No tax shall be imposed on any payment received for services furnished to an international organization, or to the American National Red Cross.

4. Servicemen in Combat Zone. No tax shall be imposed on any payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the secretary may by regulations prescribe, is furnished to the person receiving such payment.

5. Items Otherwise Taxed. Only one payment of tax under subsection (A) of this section shall be required with respect to the tax on any service, notwithstanding the lines or stations of one or more persons are used in furnishing such service.

6. Common Carriers and Communications Companies. No tax shall be imposed on the amount paid for any toll telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

7. Installation Charges. No tax shall be imposed on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

8. Nonprofit Hospitals. No tax shall be imposed on any amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital which is exempt from income tax under Internal Revenue Code Section 501(a).

9. State and Local Governmental Exemption. No tax shall be imposed on any payment received for services or facilities furnished to the government of any state, or any political subdivision thereof, or the District of Columbia.

10. Exemption for Nonprofit Educational Organizations. No tax shall be imposed on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization which is exempt from income tax under Internal Revenue Code Section 501(a). The term also includes a school operated as an activity of an organization which is exempt from income tax under Section 501(a), if the school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

11. Land Mobile or Maritime Mobile Services. No tax shall be imposed on telephone communications services that are land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as the section existed on January 1, 1970.

12. Other Service or Equipment. Any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar

services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation. (Ord. 06-07 § 1, 2006; Ord. 89-6 N.S. § 5, 1989).

### **3.25.140 Electricity users tax.**

A. There is imposed a tax (herein called the "electricity users tax") upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of four percent of the charges made for such energy by an electrical corporation franchised to serve the city and shall be billed to and paid by the person using the energy. The tax applicable to electrical energy provided by a nonutility supplier shall be based on the above tax rate and the sale price of that electrical energy if there is an arms-length transaction for the sale of the electrical energy between the nonaffiliated nonutility supplier and the service user. If there is not an arms-length sale from a nonutility supplier, the tax shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the city. Rate schedules for this purpose shall be available from the city. Nonutility suppliers shall install, maintain and use an appropriate utility-type metering system which will enable compliance with this section. "Charges," as used in this section, shall include charges made for: (1) metered energy and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges, fuel or other cost adjustments, authorized by the California Public Utilities Commission or the Federal Regulatory Commission.

B. As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by such person for use in an automobile or other machinery device apart from the premises upon which the energy was received; provided, however, that the term includes the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric utility supplier in the conduct of its business; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the city for resale; nor shall the term include the use of such energy in the production or distribution of water by a public utility or a governmental agency.

C. The electricity users tax shall be collected from the service user by the service supplier. The electricity users tax on use supplied by self-generation or cogeneration or from a nonutility supplier not subject to the jurisdiction of this chapter, shall be collected and remitted to the tax administrator in the manner set forth in BMC 3.25.160. The amount of tax collected by a service supplier or a nonutility supplier in one month shall be remitted by United States mail to the tax administrator, postmarked on or before the last day of the following month; or, at the option of the person required to collect and remit the tax, an estimated amount of tax measured by the tax billed in the previous month, shall be remitted by United States mail, to the tax administrator, postmarked on or before the last day of each month. The amount of the tax remitted may be estimated by a formula based upon the payment pattern of the supplier's customers.

D. Notwithstanding any other provision of this chapter, a service user receiving electricity directly from a nonutility supplier, or otherwise not having the full tax due, billed and collected by the service supplier, shall report said fact to the tax administrator within 30 days of said use, and shall remit directly to the city the amount of said tax due.

E. The tax administrator may require from said service user the filing of tax returns or other satisfactory evidence documenting the sales price, or fair market value in the absence of a sales price, and quantity of electricity used.

F. Notwithstanding the provisions of BMC 3.25.200 (A), if the amount paid by a service user is less than the full amount of the energy charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the energy charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. (Ord. 89-6 N.S. § 6, 1989).

**3.25.150 Gas users tax.**

A. There is imposed a tax (herein called the "gas users tax") upon every person in the city other than a gas corporation or electrical corporation, using, in the city, gas which is delivered through mains or pipes or by motor vehicle or by rail. The gas users tax shall be at the rate of four percent of the charges made for the gas and shall be billed to and paid by the person using the gas. The tax applicable to gas or gas transportation provided by nonutility suppliers shall be based on the sale price of the gas or gas transportation if that is derived from an arms-length transaction between a nonaffiliated nonutility supplier and the service user. If there is not an arms-length sale, the tax shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the gas or gas transportation had been provided by the gas corporation franchised by the city. "Charges" as used in this section shall include:

1. Those billed for gas which is delivered through mains or pipes or by motor vehicle or by rail;
2. Gas transportation charges; and
3. Demand charges, service charges, customer charges, minimum charges, annual and monthly charges and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

B. The gas users tax is not applicable to:

1. The charges made for gas which is to be resold and delivered through mains and pipes or by motor vehicle or by rail;
2. Charges made for gas sold by a public utility or governmental agency for use in the generation of electrical energy or for the production or distribution of water;
3. Charges made by a gas public utility or gas used and consumed in the course of its public utility business; and
4. Charges made for gas used in the propulsion of a motor vehicle, as authorized in the Vehicle Code of the state of California.

C. The gas users tax shall be collected from the service user by the person selling or transporting the gas. A person selling only transportation services to a user for delivery of

gas through mains or pipes or by motor vehicle or by rail shall collect the tax from the service user based on the transportation charges. The person selling or transporting the gas shall, on or before the twentieth of each calendar month, commencing on the twentieth day of the calendar month after the effective date of the ordinance codified in this chapter, make a return to the tax administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the person selling or transporting the gas shall remit tax payments to the tax administrator in accordance with schedules established or approved by the tax administrator.

D. Notwithstanding any other provision of this chapter, a service user receiving gas directly from the nonutility supplier, or otherwise not having the full tax due, billed and collected by the service supplier, shall report said fact to the tax administrator within 30 days of said use, and shall remit directly to the city the amount of said tax due.

E. The tax administrator may require from said service user the filing of tax returns or other satisfactory evidence documenting the sales price, or fair market value in the absence of a sales price, and quantity of gas used. (Ord. 89-6 N.S. § 7, 1989).

**3.25.160 Service users receiving direct purchase of gas or electricity.**

A. Notwithstanding any other provision of this chapter, a service user receiving gas or electricity directly from a nonutility supplier not under the jurisdiction of this chapter, or otherwise not having the full tax due on the use of gas or electricity in the city directly billed and collected

by the service supplier, shall report said fact to the tax administrator within 30 days of said use and shall directly remit to the city the amount of tax due.

B. The tax administrator may require from said service user the filed tax returns or other satisfactory evidence documenting the sale price and quantity of gas used. (Ord. 89-6 N.S. § 8, 1989).

### **3.25.170 Cable television users tax.**

A. There is imposed a tax (herein called the "cable television users tax") upon every person in the city using cable television service. The tax imposed by this section shall be at the rate of four percent of the charges made for such service and shall be paid by the person paying for such service.

B. The cable television users tax shall be collected from the service user by the person furnishing the cable television service. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month. (Ord. 89-6 N.S. § 9, 1989).

### **3.25.180 Delinquent taxes – Penalty.**

A. Taxes collected from a service user which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the first regular working day following a Saturday, Sunday or legal holiday.

B. Penalties for delinquency in remittance of any tax collected or any deficiency determination shall attach and be paid by the person required to collect and remit at the rate of 15 percent of the total tax collected or imposed in this section.

C. The tax administrator shall have the power to impose additional penalties upon any person required to collect and remit taxes under the provisions of this chapter for fraud or negligence in reporting or remitting at a rate of 15 percent of the amount of the tax collected or as recomputed by the tax administrator.

D. Every penalty imposed under the provisions of this chapter shall become a part of the tax required to be remitted. (Ord. 89-6 N.S. § 10, 1989).

### **3.25.190 Actions to collect.**

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by a service user to the city. Any such tax collected from a service user which has wilfully been withheld from the tax administrator shall be deemed a debt owed to the city by the person required to collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. 89-6 N.S. § 11, 1989).

### **3.25.200 Duty to collect – Procedures.**

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. Notwithstanding any other provision of this chapter, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the energy charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first, until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of their refusal to pay the tax imposed on said energy charges, BMC 3.25.220 (C) will apply.

B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more

than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing. (Ord. 89-6 N.S. § 12, 1989).

### **3.25.210 Additional power and duties of tax administrator.**

A. The tax administrator shall have the power and duty and is directed to enforce each and all of the provisions of this chapter.

B. The tax administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes imposed in this chapter. A copy of such rules and regulations shall be on file in the tax administrator's office.

C. The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that the collection of any tax imposed may be made in conformance with the billing procedures of a particular service supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the tax administrator's office.

D. The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The tax administrator shall provide the service supplier with the name of any person who the tax administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt person. The tax administrator shall notify the service supplier of termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person. (Ord. 89-6 N.S. § 13, 1989).

### **3.25.220 Assessment – Administrative remedy.**

A. The tax administrator may make an assessment for taxes not remitted by a person required to remit.

B. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by him from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person, or whenever the tax administrator deems it is in the best interest of the city, such person may be relieved of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

C. The service supplier shall provide the city with amounts refused to be paid and/or unpaid along with the names and addresses of the service users neglecting to pay the tax imposed under provisions of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due.

D. The tax administrator shall notify the service user that the tax administrator assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to such user personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user's address change, to the last known address. If a service user fails to remit the tax to the tax administrator within 15 days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of 25 percent of the amount of the tax set forth in the notice shall be imposed, but not less than \$5.00. The penalty shall become part of the tax herein required to be paid. (Ord. 89-6 N.S. § 14, 1989).

**3.25.230 Recordkeeping.**

It shall be the duty of every person required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times. (Ord. 89-6 N.S. § 15, 1989).

**3.25.240 Refunds.**

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded as provided in this section.

B. Notwithstanding the provisions of subsection (A) of this section, a service supplier may claim a refund; or take as credit against taxes remitted in the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from which the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than three years from the date of overpayment.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

D. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly return. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the city.

E. A service supplier may refund the taxes collected to the service user in accordance with this section or by the service supplier's customary practice. (Ord. 89-6 N.S. § 16, 1989).