

Chapter 3.40 UTILITY USERS' TAX

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3.40.010 Tax imposed.

There is hereby established and imposed, commencing January 1, 1986, a utility users' tax in the amounts provided for in this chapter. (Prior code § 8-7.01)

3.40.020 Disposition of tax revenue.

The tax revenue imposed by this chapter is for the purpose of raising revenues for the general governmental purposes of the city. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund. (Prior code § 8-7.02)

3.40.030 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- A. "Administrator" shall mean the finance director of the city.
- B. "Cable television corporation," "electrical corporation," "gas corporation," "telephone corporation," and "water corporation" shall have the same meanings as defined in Sections 215.5, 218, 222, 234, and 241, respectively, of the Public Utilities Code of the state.
- C. "Supplier" shall mean a person required to collect and remit the tax imposed by this chapter.
- D. "User" shall mean a person required to pay the tax imposed by this chapter. (Prior code § 8-7.03)

3.40.040 Exemptions.

Nothing contained in this chapter shall be construed as imposing a tax upon any public agency or any religious organization exempt from Federal income tax by subsection (3) of subsection (c) of Section 501 of the Internal Revenue Code. (Prior code § 8-7.04)

3.40.050 Conflicts.

Nothing contained in this chapter is intended to conflict with the applicable rules, regulations, and tariffs of any supplier subject to the jurisdiction of the Public Utilities Commission of the state. In the event of any conflict, the provisions of said rules, regulations, and tariffs shall control. (Prior code § 8-7.05)

3.40.060 Telephone users' tax.

There is hereby imposed a tax upon every person in the city, other than a telephone corporation, using intrastate telephone communication services in the city at a rate to be fixed and levied not later than July 1st of each year by the council, at a percentage of the charges made for such services, which tax shall be paid by the person paying for such services. (Prior code § 8-7.06)

3.40.070 Electrical energy users' tax.

There is hereby imposed a tax upon every person in the city, other than an electrical corporation or a gas corporation, using electrical energy in the city. The tax imposed by this section shall be at a rate to be fixed and levied not later than July 1st of each year by the council, at a percentage of the charges made for such energy, including minimum charges for such services, which tax shall be paid by the person paying for such energy. (Prior code § 8-7.07)

3.40.080 Electrical energy users' tax-- Exclusions.

As used in Section 3.40.070 of this chapter, the words "using electrical energy" shall not mean:

- A. The storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; or
- B. The receiving of such energy by an electrical corporation or a governmental agency at a point within the city for resale to service users. (Prior code § 8-7.08)

3.40.090 Gas users' tax.

There is hereby imposed a tax upon every person in the city, other than a gas corporation or an electrical corporation, using gas in the city which is delivered through mains or pipes. The tax imposed by this section shall be at a rate to be fixed and levied not later than July 1st of each year by the council, at a percentage of the charges made for such gas, including minimum charges for such services, which tax shall be paid by the person paying for such gas. (Prior code § 8-7.09)

3.40.100 Gas users' tax--Exclusions.

As used in Section 3.40.090 of this chapter, the term "charges" shall not:

- A. Include charges made for gas used in the generation of electrical energy by a public utility or a governmental agency; or
- B. Be construed to mean the receiving of such gas by a gas corporation or governmental agency at a point within the city for resale to service users. (Prior code § 8-7.10)

3.40.110 Water users' tax.

There is hereby imposed a tax upon every person in the city, other than a water corporation, using water in the city which is delivered through mains or pipes. The tax imposed by this section shall be at a rate to be set not later than July 1st of each year by the council, at a percentage of the charges made for such water, which tax shall be paid by the person paying for such water. (Prior code § 8-7.11)

3.40.120 Cable television users' tax.

There is hereby imposed a tax upon every person in the city using cable television service in the city. The tax imposed by this section shall be at a rate to be set not later than July 1st of each year by the council, at a percentage of the charges made for such service, which tax shall be paid by the person paying for such service. (Prior code § 8-7.12)

3.40.130 Collection.

Each tax imposed by this chapter shall be collected from the user by the person selling the particular commodity or service. The amount collected in one month shall be remitted to the administrator on or before the last day of the following month. (Prior code § 8-7.13)

3.40.140 Suits by the city.

Any tax required to be paid by a user pursuant to this chapter shall be deemed a debt owed by the user to the city. Any such tax collected from a user which has not been remitted to the 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 pursuant to the provisions of this chapter shall be liable in an action brought in the name of the city for the recovery of such amount, and judgment therefor shall include an award of reasonable attorneys' fees, or, in the case of proceedings in the small claims court, for administrative and collection costs at the rate of fifty dollars (\$50.00) per hour actually expended by officers and employees of the city to collect such sum due and owing. Such attorneys' fees and administrative and collection costs shall also be awarded to the city in any action or proceeding wherein any provision of this chapter or any decision thereunder is successfully defended by the city. (Prior code § 8-7.14)

3.40.150 Duty to collect--Procedures.

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

A. 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 supplier. Except in those cases where a user pays the full amount of such charges but does not pay any portion of the tax imposed by this chapter, or where a user has notified a supplier that he is refusing to pay the tax imposed by this chapter which the supplier is required to collect, if the amount paid by the user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

B. The duty to collect the tax from a user shall commence with the beginning of the first regular billing period applicable to the person which starts on or after November 1, 1985. 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 period. (Prior code § 8-7.15)

3.40.160 Administrative regulations.

The administrator may adopt regulations to carry out, interpret, or facilitate the operation of this chapter and may make administrative agreements to vary the strict requirements of this chapter so that the collection of any tax imposed by this chapter may be made in conformance with the billing procedures of a particular supplier so long as the overall result of such agreements results in the 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 and available for public examination in the city Hall. (Prior code § 8-7.16)

3.40.170 Delinquent taxes.

Taxes collected from a user which are not remitted to the administrator on or before the due dates provided in this chapter shall be delinquent. (Prior code § 8-7.17)

3.40.180 Suppliers--Failure to make timely remittances--Penalties.

In addition to remitting the amount of the tax, any supplier who fails to remit the tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax which shall be added on the last day of each month following the date on which the remittance was due until the tax and penalties are remitted. The total amount of the monthly penalties provided for in this section shall not exceed double the total amount of the tax due. (Prior code § 8-7.18)

3.40.190 Suppliers--Fraud--Penalties.

If the administrator determines that the nonpayment by any supplier of any remittance due under this chapter is wilful, or is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto, in addition to the penalties set forth in Section 3.40.180 of this chapter. (Prior code § 8-7.19)

3.40.200 Suppliers--Interest.

In addition to the penalties imposed by Sections 3.40.180 and 3.40.190 of this chapter, any supplier who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid. (Prior code § 8-7.20)

3.40.210 Suppliers--Penalties and interest part of tax.

Every penalty imposed upon a supplier and such interest as accrues pursuant to the provisions of Sections 3.40.190 and 3.40.200 of this chapter shall become a part of the tax required to be remitted. (Prior code § 8-7.21)

3.40.220 Users--Failure to make timely or correct remittances--Penalties.

In addition to paying the amount of the tax, any user who fails to pay any tax imposed by this chapter within thirty (30) days after the date of the receipt of a notice of the amount of tax due from the supplier, or who uses an exemption therefrom belonging to another person, shall pay a penalty of ten (10) percent of the amount of the tax which shall be added on the last day of each month following the date on which the payment was due until the tax and penalties are paid. The total amount of the monthly penalties shall not exceed double the total amount of the tax due. (Prior code § 8-7.22)

3.40.230 Users--Fraud--Penalties.

If the administrator determines that the nonpayment by any user of any tax imposed by this chapter is wilful, or is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto, in addition to the penalties set forth in Section 3.40.220 of this chapter. (Prior code § 8-7.23)

3.40.240 Users--Interest.

In addition to the penalties imposed by Sections 3.40.220 and 3.40.230 of this chapter, any user who fails to pay any tax imposed by this chapter shall pay interest at the rate of one percent per month, or fraction thereof, exclusive of penalties, from the date on which the remittance first became delinquent until paid and a collection charge of ten dollars (\$10.00) for each delinquent account. (Prior code § 8-7.24)

3.40.250 Users--Penalties and interest part of tax.

Every penalty imposed and such interest as accrues upon a user pursuant to Sections 3.40.230 and 3.40.240 of this chapter shall become a part of the tax required to be paid. (Prior code § 8-7.25)

3.40.260 Users--Penalties and interest collected by the city.

The penalties, interest, and collection charges imposed by Sections 3.40.220 through 3.40.250 of this chapter shall not be collected by the supplier, but by the city. (Prior code § 8-7.26)

3.40.270 Determinations of tax by the administrator--Notices.

If any supplier fails to make, within the time provided in this chapter, any report and remittance of the tax, or any portion thereof required by this chapter, the administrator shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due. As soon as the administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed under this chapter and payable by any supplier who has failed or refused to make such report and remittance, the administrator shall proceed to determine and assess against such supplier the tax, interest, and penalties provided for by this chapter. In case such a determination is made, the administrator shall give a notice of the amount so

assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the supplier so assessed at its last known address. (Prior code § 8-7.27)

3.40.280 Determinations of tax--Hearings.

The supplier, within ten (10) days after the serving or mailing of the notice referred to in Section 3.40.270 of this chapter, may make an application in writing to the administrator for a hearing on the amount assessed. If an application by the supplier for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the administrator shall become final and conclusive and immediately due and payable. If such an application is made, the administrator shall give not less than five days' written notice, in the manner prescribed in Section 3.40.270 of this chapter, to the supplier to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest, and penalties. At such hearing, the supplier may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed. (Prior code § 8-7.28)

3.40.290 Determinations of tax following hearings.

After a hearing on the amount of tax assessed, the administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the supplier in the manner prescribed in Section 3.40.270 of this chapter of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days, unless an appeal is taken as provided in this chapter. (Prior code § 8-7.29)

3.40.300 Collection of tax from users by the city.

Whenever the administrator determines that a user has deliberately withheld the amount of any tax imposed on him by this chapter from the amounts remitted to a supplier required to collect the tax, or that a user has failed to pay the amount of the tax to such supplier for a period of two or more billing periods, or whenever the administrator deems it in the best interests of the city, he may relieve such supplier of the obligation to collect the taxes due under this chapter from certain named users for specified billing periods. The administrator shall notify the user that he has assumed responsibility to collect the taxes due for the stated periods and demand the payment of such taxes, plus any penalty imposed and such interest as may be due pursuant to the provisions of Sections 3.40.280 and 3.40.290 of this chapter. The notice shall be served on the user by handing it to him personally or by the deposit of the notice in the United States mail, postage prepaid thereon, addressed to the user at the address to which the billing was made by the supplier required to collect the tax or, should the user have changed his address, to his last known address. (Prior code § 8-7.30)

3.40.310 Appeals.

Any person aggrieved by, and having a direct financial interest in, any decision of the administrator pursuant to this chapter may appeal to the city manager by filing a written notice of appeal with the city manager within fifteen (15) days after the serving or mailing of the decision. (Prior code § 8-7.31)

3.40.320 Appeals--Hearings--Notices.

The city manager shall fix a time and place for hearing such appeals. The city manager shall give notice thereof in writing to such person by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to such person at his last known address. (Prior code § 8-7.32)

3.40.330 Appeals--Hearings--Determinations.

The city manager shall have the authority to determine all questions raised on such appeal at the time of the hearing. No determination so made by the city manager shall conflict with any substantive provision of this chapter. The decision of the city manager shall be final, subject to the provisions of Section 1094.5 of the Code of Civil Procedure of the state. (Prior code § 8-7.33)

3.40.340 Records.

It shall be the duty of every supplier required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of five years, all records as may be necessary to determine the amount of such tax as such supplier may have been required to collect and remit to the city, which records the administrator shall have the right to inspect at all reasonable times. (Prior code § 8-7.34)

3.40.350 Procedure for refunds.

Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the city under this chapter, such amount may be refunded as provided in this section and Sections 3.40.360 and 3.40.370 of this chapter, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the administrator within thirty (30) days after the date of payment or the date upon which oral or written notice was given to the user that the supplier would not refund or credit the amount claimed, whichever is later. The claim shall be on forms furnished by the administrator. (Prior code § 8-7.35)

3.40.360 Supplier refunds.

A supplier may claim a refund or take as credit against taxes collected and remitted an amount overpaid, paid more than once, or erroneously collected or received when it is established in a manner prescribed by the administrator that the person from whom the

tax has been collected was not a user or is otherwise entitled to such refund or credit.
(Prior code § 8-7.36)

3.40.370 User refunds.

Any user may obtain a refund of taxes overpaid, or paid more than once, or erroneously collected or received by the city by filing a claim in the manner provided in Section 3.40.350 of this chapter but only when the user having paid the tax to the supplier establishes to the satisfaction of the administrator that the user has been unable to obtain a refund or credit from the supplier who collected the tax. (Prior code § 8-7.37)

3.40.380 Proof required for claims for refunds.

No refund shall be credited or paid by the city pursuant to Sections 3.40.350 through 3.40.370 of this chapter unless the claimant establishes his right thereto by written records and other evidence satisfactory to the administrator showing entitlement thereto. No refund or credit shall bear interest. (Prior code § 8-7.38)

3.40.390 Exemptions for low income persons over sixty-five years of age.

A. Every person shall be exempt from each tax imposed by this chapter who:

1. Is at least sixty-five (65) years of age;
2. Resides in a household where the gross annual income of all residents thereof is eighteen thousand dollars (\$18,000.00) or less;
3. Is responsible to pay, and pays, the charges for service for which an exemption is sought;
4. Is not having all, or any portion, of the charges for service and/or the tax for which an exemption is claimed paid by any public agency or for which the supplier receives any funds from any public agency for the charges for services and/or the tax imposed by this chapter; and
5. Complies with, and continues to meet, the provisions of this section.

B. Every person claiming an exemption shall file an application therefor, under penalty of perjury, with the administrator. The administrator may require such information as will enable him to determine the eligibility of the applicant for such exemption. Failure to supply the information requested shall be sufficient grounds for the denial of the application. The administrator shall determine, within fifteen (15) days after the receipt of a complete application and all requested information, the eligibility of the applicant for an exemption. No exemption shall become effective for seventy-five (75) days following the date of the receipt of an application therefor, and all information requested by the administrator, unless the supplier is able to adjust its billing procedures to so provide therefor at an earlier time. No claim for a credit or refund due to an exemption for any period prior to the end of said seventy-five (75) day period shall be paid.

C. Promptly upon the determination of such an exemption, the administrator shall notify each supplier for which the exemption is granted, furnishing to such supplier the name of the user, the address to which the service is being supplied, the account number, if any, and such other information as the administrator deems necessary to enable the supplier to

remove the tax from billing for such service or services.

D. The supplier shall discontinue billing for the tax upon the service it supplies as soon as possible, but not later than forty-five (45) days after receipt of a notice from the administrator. Any tax collected following the filing of an application for an exemption, up to the cessation of billing therefor under this section, shall be remitted to the administrator and shall not be subject to a refund.

E. Every person shall report promptly to the administrator any change in facts or circumstances which would be cause for the termination of such exemption. Failure to report shall be subject to Sections 3.40.220 through 3.40.260 of this chapter.

F. Every supplier shall commence to bill, collect, and remit the taxes imposed by this chapter whenever the name on any account changes, or the billing address of the exempt person changes, or any other information, fact, or circumstance becomes known to, or should have become known to, a supplier that such person no longer qualifies for such exemption for any reason.

G. The administrator is empowered to demand evidence of the continued eligibility for an exemption from any exempt person. Failure to provide satisfactory evidence to the administrator within ten (10) days after a demand therefor shall be cause for the administrator to terminate and cancel the exemption, and to otherwise proceed as if such person was not exempt from the tax imposed by this chapter, including, but not limited to, direction to the supplier to commence the collection of the tax at the commencement of the next billing cycle.

H. The income limit set forth in subsection (2) of subsection (a) of this section shall be adjusted by the city manager, effective July 1st of each year, by the following process: the city manager shall annually obtain the Consumer Price Index from the United States Department of Labor, Bureau of Labor Statistics, for the San Francisco-Oakland Metropolitan Area for the year ending February 28th within said area and shall determine the "mean average percentage change" (MAPC) in said Consumer Price Index for the categories of "All Urban Consumers" and "Urban Wage Earners and Clerical Workers" from said Consumer Price Index. The city manager shall calculate an adjustment in the income limit, rounded to the nearest one hundred dollars (\$100.00), for the next fiscal year by multiplying the then current income limit by the adjustment factor. (Prior code § 8-7.39)

3.40.400 Ceiling on amount of tax--Refunds.

If, in any calendar year, any licensed business user has paid a total amount of tax on all utilities combined, excluding penalties and interest, of at least four hundred one dollars (\$401.00), such user shall be entitled to a refund of fifty (50) percent of the tax paid over four hundred dollars (\$400.00), and all of the tax paid over three thousand six hundred dollars (\$3,600.00) provided such user complies with Sections 3.40.350 and 3.40.380 of this chapter. (Prior code § 8-7.40)