

Chapter 3.32 UTILITY USER TAX

* Chapter 3.32 was reinstated by Ord. 1454. The operative date of 9/30/93 was established by Ord. 1476.

3.32.010 Definitions.

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

- (a) “City” means the city of Palm Springs.
- (b) “Cogenerator” means any corporation or person employing cogeneration technology (as defined in Section 281.5 of the California Public Utilities Code) for producing power from other than a conventional power source for the generation of electricity for self use or sale to others.
- (c) “Gas” means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.
- (d) “Month” means a calendar month.
- (e) “Non-utility supplier” means: (1) a service supplier, other than an electrical corporation franchised to serve the city, which generates electrical energy in capacities of at least fifty kilowatts for its own use or for sale to others, including those using cogeneration or fuel cell technologies; or (2) a gas supplier other than a gas corporation, that sells or supplies gas to other users within the city.
- (f) “Person” means any domestic or foreign corporation, municipal corporation, public agency, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individual.
- (g) “Service supplier” means a person required to collect and remit a tax imposed by this chapter.
- (h) “Service user” means a person required to pay a tax imposed by this chapter.
- (i) “Tax administrator” means the city manager of the city, or his designee.
- (j) “Telephone corporation,” “electrical corporation” and “gas corporation” shall have the same meanings as defined in Section 234, 218 and 222 respectively, of the Public Utilities Code of the state of California, as said sections existed on May 30, 1986. “Water supplier” means and includes a water corporation, as defined in Public Utilities

Code Section 240, or any municipality, district or agency engaged in the selling or supplying water to a service user.

(Ord. 1454 § 2, 1993; Ord. 1272 § 1, 1986; Ord. 1268 § 1 (part), 1986)

3.32.020 Exemptions.

(a) 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 the Constitution of the state of California, or any valid statute or regulation of either the United States of America, or the state of California.

(b) The city council may, by ordinance or resolution, establish one or more classes of persons, or one or more classes of utility service, 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. (Ord. 1268 § 1 (part), 1986)

3.32.030 Telephone users tax.

(a) There is hereby imposed a tax on the amounts paid for any intrastate telephone corporation using such services. The tax imposed by this section shall be five percent of the charges made for such services, and shall be paid by the person paying for such services.

(b) As used in this section, the term “charges” shall not include charges for services paid for by inserting coins in coin-operated telephones, except that where such coin-operated service is furnished for a guaranteed amount, the amount paid under such guarantee plus any fixed monthly or other periodic charges shall be included in the base for computing the amount of tax due; nor shall the term “charges” include charges for any type of service or equipment furnished by a service supplier subject to the 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 the Public Utility Regulation; nor shall the words “telephone communication services” include land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as said section existed on January 1, 1970. The term “telephone communication services” refers to that service which provides access to a telephone system and the privilege of telephone-quality communication with substantially all persons having telephone stations which are part of such telephone system. 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. The situs shall be the service address, if known, otherwise the billing address.

(c) The tax imposed by this section shall be collected from the service user by the person providing the intrastate telephone communication services, or the person

receiving payment for such services. The amount of the 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) Notwithstanding the provisions of subsection (a), the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code. (Ord. 1454 § 3, 1993; Ord. 1272 § 2, 1986; Ord. 1268 § 1 (part), 1986)

3.32.040 Electricity users tax.

(a) There is hereby imposed a tax upon every person using electrical energy in the city. The tax imposed by this section shall be five percent of the charges made for such energy and shall be paid by the person paying for such energy. "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 annual and monthly charges, fuel, cost adjustments, and the like.

(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 him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include 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 as an electric public utility; 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 electrical energy for the pumping of water by a public utility, mutual water company or governmental agency for distribution to consumers through mains or pipes, if such public utility, mutual water company or governmental agency is a "service supplier" as defined in Section 3.32.010(4), and as service supplier does collect from its customers and remit to the tax administrator the water users tax imposed by Section 3.32.060.

(c) The tax imposed by this section shall be collected from the service user by the person supplying such energy. 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, 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. Remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers. (Ord. 1454 § 4, 1993; Ord. 1278 § 1, 1986; Ord. 1272 § 3, 1986; Ord. 1268 § 1 (part), 1986)

3.32.050 Gas users tax.

(a) There is hereby imposed a tax upon every person using gas in the city, gas which is transported through a pipeline distribution system or by mobile transport. The tax imposed by this section shall be at the rate of five percent of the charges made for such gas and shall be paid by the person using the gas. The tax applicable to gas provided by non-utility suppliers shall be determined by applying the tax rate to the actual charges the service user incurred. "Charges," as used in this section, shall include: (1) the charge for gas which is delivered through a gas pipeline distribution system or by mobile transport; (2) gas transportation charges; and (3) demand charges, service charges, customer charges, minimum charges, annual and monthly charges, and any other charges authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

(b) There shall be excluded from the base on which the tax imposed in this section is computed:

- (1) Charges made for gas which is to be resold and delivered through mains or pipes;
- (2) Charges made for gas sold for use in the generation of electrical energy;
- (3) Charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities;
- (4) Charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state utilizing natural gas; and
- (5) Charges related to late payments and returned checks.

(c) The tax imposed in this section shall be collected from the service user by the person selling the gas. The person selling 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 billed during the preceding calendar month. At the time such returns are filed, the person selling the gas shall remit payments to the tax administrator in accordance with schedules established or approved by the tax administrator. The tax administrator is authorized to require such further information as he deems necessary to properly determine if the tax here imposed is being levied and collected in accordance with this chapter. Returns and remittances are due from the person selling the gas immediately upon cessation of business for any reason. (Ord. 1454 § 5, 1993; Ord. 1268 § 1 (part), 1986)

3.32.060 Tax on cogenerated electricity.

(a) Notwithstanding the rate provisions in Section 3.32.040 of this chapter, the tax imposed on every person using cogenerated electrical energy in the city shall be at the rate of five percent of the value of the cogenerated electrical energy consumed in the city. Cogenerated electricity shall be valued at the electric utility supplier's combined "Avoided Cost Energy Pricing and Avoided Cost Capacity Pricing" which is filed with the California Public Utilities Commission.

(b) The cogenerator shall install and maintain an appropriate metering system which will enable compliance with this section.

(c) The tax shall be collected and paid by the cogenerator under Section 3.32.065 if the cogenerator consumes the energy. If the cogenerator sells the energy for consumption in the city, the tax will be imposed on the charges made for such service and shall be collected and paid by the person to whom the energy is sold. (Ord. 1454 § 6, 1993)

3.32.065 Service user receiving direct purchase of gas or electricity.

(a) Any service user subjected to the tax imposed by Sections 3.32.040, 3.32.050 or 3.32.060 hereof, who produce electricity or gas for self use or who will receive electricity or gas directly from a non-utility supplier, shall report such fact to the tax administrator and remit the tax due directly to the city within thirty days of such use.

(b) The tax administrator may require the service user to identify its non-utility supplier and to provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity of electricity or gas used and the price thereof. (Ord. 1454 § 7, 1993)

3.32.070 Collection of tax—Duty—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 regular billing practice of the service supplier. 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 may be applied to the energy charge first until such charge has been fully satisfied. Any remaining balance shall be applied to the taxes due.

(b) The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of the ordinance codified in this chapter. Where a service user is

billed for more than one billing period, the duty to collect shall arise separately for each separate billing period.

(Ord. 1272 § 4, 1986; Ord. 1268 § 1 (part), 1986)

[3.32.080 Delinquent taxes—Service supplier—When delinquent.](#)

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. (Ord. 1268 § 1 (part), 1986)

[3.32.090 Delinquent taxes—Service supplier—Penalty for failure to remit.](#)

In addition to remitting the amount of the tax, any service supplier who fails to remit any tax collected under this chapter within the time required and upon ten (10) days' written notice to the service supplier of its failure to remit, shall pay a penalty of ten percent on the amount of tax, which shall be added on the last day of each month following the date on which remittance was due until the tax and penalties are remitted. (Ord. 1272 § 5, 1986; Ord. 1268 § 1 (part), 1986)

[3.32.100 Delinquent taxes—Service supplier—Penalty for fraud.](#)

If the tax administrator determines that the nonpayment by any service supplier of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added to the penalty imposed by Section 3.32.090 above. (Ord. 1268 § 1 (part), 1986)

[3.32.110 Delinquent taxes—Service supplier—Interest.](#)

In addition to the penalty imposed by Section 3.32.090 of this chapter, any service supplier who fails to remit any tax collected under 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. (Ord. 1272 § 6, 1986; Ord. 1268 § 1 (part), 1986)

[3.32.120 Delinquent taxes—Service supplier—Penalty and interest part of tax.](#)

Every penalty imposed upon a service supplier, and such interest as accrues under the provisions of Sections 3.32.090 through 3.32.110, shall become a part of the tax required to be remitted. (Ord. 1268 § 1 (part), 1986)

[3.32.130 Delinquent taxes—Service user—Penalty for failure to pay.](#)

In addition to paying the amount of the tax, any service user who fails to pay any tax imposed by this chapter within sixty days of the date of the notice of the amount of tax due from the service supplier, 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 payment was due until the tax and penalties are paid. (Ord. 1268 § 1 (part), 1986)

3.32.140 Delinquent taxes—Service user—Penalty for fraud.

If the tax administrator or the service supplier determines that the nonpayment by any service user of any tax imposed by this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalty imposed by Section 3.32.130 above. (Ord. 1272 § 7, 1986; Ord. 1268 § 1 (part), 1986)

3.32.150 Delinquent taxes—Service user—Interest.

In addition to the penalties imposed by Sections 3.32.130 and 3.32.140 of this chapter, any service 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 for each delinquent account. (Ord. 1268 § 1 (part), 1986)

3.32.160 Delinquent taxes—Service user—Penalty and interest part of tax.

Every penalty imposed upon a service user, and such interest as accrued under the provisions of Sections 3.32.130 through 3.32.150, shall become a part of the tax required to be paid. (Ord. 1272 § 8, 1986; Ord. 1268 § 1 (part), 1986)

3.32.170 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 the service user to the city. Any such fee 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. Nothing in this section shall relieve any service supplier of the duty to collect and remit any tax, penalty or interest required by this chapter. (Ord. 1268 § 1 (part), 1986)

3.32.180 Additional powers and duties of tax administrator.

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

(b) The tax administrator shall have power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations, if any, 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 collection of any tax imposed herein 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. (Ord. 1268 § 1 (part), 1986)

3.32.190 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 such users 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 in the best interest of the city, he may relieve such person 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 tax administrator with amounts refused, along with the names, addresses and reasons given by service users refusing 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, provided the service supplier has given notice to the tax administrator of such failure to pay.

(d) The tax administrator shall notify the service user that he has assumed responsibility to collect the taxes due for the stated period, and demand payment of such taxes. The notice shall be served on the service user by handing it to him 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 taxes, or, should the service user have changed his address, to his last known address. If a service user fails to remit the taxes to the tax administrator within fifteen 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 twenty-five percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become part of the taxes herein required to be paid.

(e) Nothing in this section shall relieve the service supplier of any duty to collect and remit any tax penalty or interest due under the provisions of this chapter. (Ord. 1272 § 9, 1986: Ord. 1268 § 1 (part), 1986)

3.32.200 Records.

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 collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all times. (Ord. 1268 § 1 (part), 1986)

3.32.210 Refunds.

(a) Whenever the amount of any tax, interest or penalty has been overpaid, or paid more than once or has been erroneously or illegally collected or received by the city, a claim for refund may be filed pursuant to the city's claims for money or damages procedures in Sections 3.16.015 and 3.16.016.

(b) Notwithstanding any 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 service, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users by the service supplier, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of taxes which is due upon the next monthly return. In the event this chapter is repealed, amounts of any refundable taxes will be borne by the city. (Ord. 1617 § 5, 2002: Ord. 1272 § 10, 1986; Ord. 1268 § 1 (part), 1986)

3.32.220 Violations—Penalties.

Any person violating any provision of this chapter, or any person wilfully refusing to pay any tax required by this chapter, shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. (Ord. 1268 § 1 (part), 1986)

3.32.230 Jurisdiction of the Public Utilities Commission of the state.

Nothing contained in this chapter is intended to conflict with the applicable rules, regulations and tariffs of any service supplier subject to the jurisdiction of the Public Utilities Commission of the state. In the event of any conflict, the provisions of such rules, regulations and tariffs shall control. (Ord. 1268 § 1 (part), 1986)

3.32.240 Proceeds—Fund and purpose.

All of the proceeds of the taxes levied under this chapter shall be placed in the general fund of the city and shall be utilized for general governmental purposes. (Ord. 1268 § 1 (part), 1986)