



Staff Report

Agenda Item: **RESOLUTION DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "AN ORDINANCE OF THE TOWN OF CLARKDALE, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; AMENDING THE TOWN TAX CODE BY ELIMINATING THE TAX CREDIT AGAINST THE UTILITY TAX FOR FRANCHISE FEES PAID TO THE TOWN; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING FOR SEVERABILITY; AND DESIGNATING AN EFFECTIVE DATE.** – Discussion and consideration of Resolution # 1321, declaring as a public record that certain document filed with the Town Clerk entitled "An Ordinance Of The Town Of Clarkdale, Arizona, Relating To The Privilege License Tax; Amending The Town Tax Code By Eliminating The Tax Credit Against The Utility Tax For Franchise Fees Paid To The Town; Providing Penalties For The Violation Thereof; Providing For Severability; And Designating An Effective Date".

Staff Contact: Kathy Bainbridge, Town Clerk

Meeting Date: November 10, 2009

Background: Franchise Agreements provide for a Franchise Fee to be paid to the Town by a utility based upon a percentage of the revenue generated by their customers in the Town of Clarkdale. Since most Franchise Agreements have a length of 25 years, when they were initiated, there was no sales tax collection and the utility paid the Town a flat percentage of revenues generated. When the Town started to collect sales tax, the tax code treated the sales tax collected as an offset for franchise fees.

Approval of this ordinance amendment deletes the treatment of sales tax collection as an offset for franchise fees and allows sales tax collection along with a franchise fee collection. The franchise fee is passed on to the customer through the utility bill and reimbursed to the Town.

The ordinance was drafted by the League of Arizona Cities and Towns based upon discussions with the Arizona Department of Revenue and was reviewed by the Town Attorney.

Section 1. Section 8A- 2-480 of the Town Tax Code is amended to read:

Sec. 8A-2-480. Utility services.

~~d. Tax credit offset for franchise fees. There shall be allowed as an offset any franchise fees paid to the Town pursuant to the terms of a franchise agreement. However, such offset~~

~~shall not be allowed against taxes imposed by any other Section of this Chapter. Such offsets shall not be deemed in conflict with or violation of subsection 8A-2-400(b).~~
(RESERVED)

Section 2. Regulation 8A- 2-350.2 of the Town Tax Code is amended to read:
Reg. 8A-2-350.2. Recordkeeping: expenditures.

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

- (e) as applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
 - (1) all construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
 - (2) disbursement of collected gratuities and related payroll information required of restaurants.
 - (3) franchise and license fee payments and computations thereto which relate to:
 - (A) ~~utility service~~-(RESERVED)
 - (B) telecommunication service.
 - (4) the validity of any claims of proof of exemption, as provided by Regulation.
 - (5) a claimed alternative prior value for reconstruction.
 - (6) (Reserved)
 - (7) costs used to compute the "computed charge" claimed for retail service and repair.
 - (8) payments of tax to the Arizona Department of Transportation and computations therefor, when a motor-vehicle transporter claims such the exemption.
 - (9) (Reserved)

To save the cost of publishing in the newspaper a lengthy ordinance, this change is being first made a public record by resolution (this agenda item) and then is adopted by reference by an ordinance.

Recommendation: To adopt a Resolution # 1321, declaring as a public record that certain document filed with the Town Clerk entitled "An Ordinance Of The Town Of Clarkdale, Arizona, Relating To The Privilege License Tax; Amending The Town Tax Code By Eliminating The Tax Credit Against The Utility Tax For Franchise Fees Paid To The Town; Providing Penalties For The Violation Thereof; Providing For Severability; And Designating An Effective Date".

RESOLUTION # _____

RESOLUTION DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED “AN ORDINANCE OF THE TOWN OF CLARKDALE, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; AMENDING THE TOWN TAX CODE BY ELIMINATING THE TAX CREDIT AGAINST THE UTILITY TAX FOR FRANCHISE FEES PAID TO THE TOWN; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING FOR SEVERABILITY; AND DESIGNATING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA:

That certain document entitled ““AN ORDINANCE OF THE TOWN OF CLARKDALE, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; AMENDING THE TOWN TAX CODE BY ELIMINATING THE TAX CREDIT AGAINST THE UTILITY TAX FOR FRANCHISE FEES PAID TO THE TOWN; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING FOR SEVERABILITY; AND DESIGNATING AN EFFECTIVE DATE.”, three copies of which are on file in the office of the Town Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED by the Mayor and Council of the Town of Clarkdale, Arizona, this _____ day of _____, 2009.

ATTEST:

Doug Von Gausig, Mayor

Kathy Bainbridge, Town Clerk

APPROVED AS TO FORM:

Robert Pecharich, Town Attorney