



Staff Report

Agenda Item: **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 Ordinance # 324, amending the Town Tax Code by eliminating the tax credit against the utility tax for franchise fees paid to the Town.

Staff Contact: Kathy Bainbridge, Town Clerk/Finance Director

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.

This ordinance adopts the document made a public record by resolution.

Recommendation: To adopt Ordinance # 324, 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, in Article 8-2 of the Town Code.

ORDINANCE NO. ____

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 ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA:

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

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

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:
 - (1) consumers or ratepayers who reside within the Town.
 - (2) (Reserved)
- (b) Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 8A-2-460 and 8A-2-465, and not considered gross income taxable under this Section.
- (c) Resale utility services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.
- (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)
- (e) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

- (g) The tax imposed by this Section shall not apply to:
- (1) revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.
 - (2) revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.
- (h) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.

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:

- (a) the total price of all goods acquired for use or storage in the Town.
- (b) the date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the Town.
- (c) documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.
- (d) the gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (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)
- (f) any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.

Section 3. Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 5. The provisions of this ordinance shall become effective on January 1, 2010.

PASSED AND ADOPTED by the Mayor and Council of the Town of Clarkdale, Arizona, this 10th day of November, 2009.

Doug Von Gausig, Mayor

ATTEST:

Kathy Bainbridge, Town Clerk

APPROVED AS TO FORM:

Robert Pecharich, Town Attorney