

ORDINANCE NO. 1356

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE UTILITY USERS TAX TO CLARIFY ORIGINAL INTENT AND REMOVE OBSOLETE REFERENCES

TITLE II - ADMINISTRATION CHAPTER 5 - TAXATION ARTICLE 1.5 – UTILITY USERS TAX

The City Council of the City of Arcata does ordain as follows:

Section 1: The City Council finds and declares:

- A. The Arcata Utility Users Tax defines “telecommunications services” by referring to definitions in the Federal Excise Tax law administered by the Internal Revenue Service (“IRS”). The common understanding of these definitions was set forth in IRS Revenue Ruling 79-404.
- B. On May 25, 2006, the Internal Revenue Service announced that it had changed its interpretation of the definitions in the Federal Excise Tax and specifically revoked notices adopted in 2005, which had reaffirmed Revenue Ruling 79-404.
- C. The City Council does not wish to adopt the Internal Revenue Service’s new understanding of the Federal Excise Tax, but rather wishes to continue to impose the Utility Users Tax as it has been historically imposed.
- D. The amendments are not intended to make any change in the way in which the tax is calculated, imposed or administered. Therefore, the changes made by this ordinance to the definition of “telecommunications services” do not constitute a change in the methodology of calculating the tax.

Section 2: Title II (Administration), Chapter 5 (Taxation), Section 2625(h) of the Arcata Municipal Code, is hereby amended to read as follows:

SEC. 2625. Definitions.

(h) “Telephone communication services” shall mean any telephonic type and quality of communication including that which is interconnected to the public switched network, which allows people to talk to each other without the necessity of conversing in person. In determining whether a service constitutes a telephone communication service, all technology used to transmit voice communications from one person to another shall be included irrespective of whether, for example, such technology utilizes computer processing applications on the form, code or protocol of the content of the communication or where the origination and/or termination points of the transmission, conveyance or routing are not fixed. Such means of transmission shall include, without limitation, for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data facsimile, video, or text) by electronic, radio or similar means whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave [including, but not limited to, cellular service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service regardless of radio spectrum used], switching facilities, satellite or any other similar facilities.

Section 3: Title II (Administration), Chapter 5 (Taxation), Section 2627 of the Arcata Municipal Code, is hereby amended to read as follows:

SEC. 2627. Telephone Users Tax.

(a) There is hereby imposed a tax upon every person who uses any international, interstate and/or intrastate telephone communication services in the City, other than a telephone corporation. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such telephone communication services. The tax shall be collected from the service user by the telephone communication services supplier or its billing agent. To the extent allowed by law, the tax on telephone communication services shall apply to a service user if the billing or service address of the service user is within the City's boundaries, irrespective of whether a particular telephone communication service originates and/or terminates within the City. If the billing address of the service user is different from the service address, the service address of the service user shall be used.

(b) The following shall be exempt from the tax imposed by this section if any:

1. Service paid for by inserting coins in coin-operated telephones with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; 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. 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. Payment received for services furnished to an international organization, or to the American National Red Cross.

4. 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. 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.

6. The 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 federal and state income tax under section 501(a) of the Internal Revenue Code.

7. Any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. 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 section 501 (a) of the Internal Revenue Code. The term also includes a school operated as an activity of an organization which is exempt from income tax under section 501 (a) if such 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.

9. Private mobile radio service. For purposes of this chapter “private mobile radio service” is a radio communication service which is not a commercial mobile service. A “mobile service” means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled “Amendment to the Commission’s Rules to Establish New Personal Communications Services” (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding. A “commercial mobile service is a “mobile service” that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.

(c) The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this article , an administrative ruling identifying those telecommunication services that are subject to the tax of subsection (a) above. This administrative ruling shall implement the intent of the City Council that the telephone users tax be imposed on any person who initiates or receives high-quality voice communications without regard to the type or kind of transmission media or technology that exists on the date the amendments to this section became effective or which may be developed in the future. This administrative ruling shall be consistent with and shall not impose a new tax, or increase an existing tax without voter approval.

(d) As used in this section, the term “charges” shall include 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 communication services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can identifies, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

(e) As used in this section, the term “charges” shall not include: charges for 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.

(f) To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another state or city on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of

credit shall not exceed the tax owed to the City under this section. For purposes of establishing sufficient legal nexus for the imposition and collection of utility users' tax on charges for telephone communication services pursuant to this chapter, "minimum contacts" shall be construed broadly in favor of the imposition and collection of the utility users' tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

(g) The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator on or before the last day of the following month; and must be received by the tax administrator on or before the last day of the following month.

Section 4. This ordinance will take effect immediately upon adoption pursuant to Government Code 36937(e).

Dated: October 4, 2006.

ATTEST:

/s/ Michael Hackett
City Clerk, City of Arcata

APPROVED:

/s/ Michael Machi
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1356** passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, California, held on the 4th day of October, 2006, by the following vote:

AYES: MACHI, GROVES, MESERVE, PITINO, WHEETLEY

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Michael Hackett
City Clerk, City of Arcata