

## CHAPTER 9

### TELEPHONE, GAS, ELECTRICITY, WATER, AND VIDEO USERS' TAXES

**Note: Sections 8-9.01 through 8-9.18, codified from Ordinance No. 1995 c.s. as amended by Ordinance Nos. 2123 c.s., 2265 c.s., 2368 c.s., 2418 c.s., 2449 c.s., 2463 c.s., 2472 c.s., 2479 c.s., 2660 c.s., 2701 c.s., 2863 c.s., deleted and replaced by Section 1, Ordinance No. 2952, February 3, 2005.**

**Sections 8-9.06.1, 8-9.08.1, 8-9.09.1, 8-9.12.1, 8-9.13.1, 8-9.13.2 and 8-9.15.1, codified from Ordinance No. 2863 c.s., deleted and replaced by Section 1, Ordinance No. 2952, February 3, 2005.**

**§ 8-9.01. Title.**

This chapter shall be known as the "Telephone, Gas, Electricity, Water, and Video Users' Tax Law" of the City.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

**§ 8-9.02. 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:

"Ancillary telecommunications services" mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services including, but not limited to, the following:

- (1) Services that link two or more participants of an audio or video conference call, including the provision of a telephone number;
- (2) Services that separately state information pertaining to individual calls on a customer's billing statement;
- (3) Services that provide telephone number information, and/or address information;
- (4) Services offered in connection with one or more telecommunications services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections;
- (5) Services that enable customers to store, send or receive recorded messages.

"Billing address" means the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

"City" means the City of Redondo Beach.

"City Manager" means the City Manager of the City, or authorized representative.

"Cogenerator" means any corporation or person employing cogeneration (as defined in Section 218.5 of the California Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the Federal Public Utility Regulatory Policies Act of 1978 and

regulations thereunder).

"Exempt wholesale generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C. 79z-5a) and regulations thereunder.

"Gas" means natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

"Month" means a calendar month.

"Non-utility supplier" means:

- (1) A service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include, but is not limited to, any publicly-owned electric utility, investor-owner utility, cogenerator, municipal utility district, federal power marketing authority, electric rural cooperative, or other supplier or seller of electricity;
- (2) An electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City;
- (3) A gas service supplier, aggregator, marketer, or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas to users within the City; and
- (4) A water service supplier, distributor, wholesaler, marketer, or broker, which sells or supplies water to users within the City (other than a supplier of water distribution services to all or a significant portion of the City).

"Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court, or the manager, lessee, agent, servant, officer or employee of any of them.

"Place of primary use" means the street address where the customer's use of the telecommunications service primarily occurs, which must be: (1) the residential street address or the primary business street address of the customer; and (2) in the case of a mobile telecommunications service user, within the licensed service area of the home service provider. (See Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116 et seq.).)

"Service address" means the residential street address or the business street address of the service user. For a telephone communication service user, "service address" means either:

- (1) The location of the telecommunications equipment to which a service user's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid; or

(2) If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications or VoIP service), the service address means the location of the service user's place of primary use.

"Service supplier" means any entity or person, including the City, that provides telephone communication, electric, water, video or gas service to a user of such services within the City, and includes any entity or person required to collect, or self-collect under Section 8-9.07 of this chapter, and remit a tax as imposed by this chapter, including its billing agent.

"Service user" means a person required to pay a tax imposed under the provisions of this chapter.

"State" means the State of California.

"Tax Administrator" means the City Treasurer of the City of Redondo Beach or any person designated by the City Manager or the City Treasurer to perform the functions of the Tax Administrator specified in this chapter.

"Telephone communication services" include the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service with the public switched network, whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service, see 47 USCA Section 332(c)(7)(C)(i), regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of the ordinance codified in this section, and includes, without limitation, fiber optic, coaxial cable, and wireless. The term "telephone communication services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services. "Telephone communication services" include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: central office and custom calling features (including, but not limited to, call waiting, call forwarding, caller identification and three-way calling), local number portability, text messaging, ancillary telecommunication services, prepaid and post-paid telecommunications services (including, but not limited to, prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitles a user to exclusive or priority use of communications channels. "Telephone communication service" does not include: internet access services to the extent they are exempt from taxation under the Internet

Tax Freedom Act, 47 U.S.C. 151 note; internet streamlining of broadcast audio and video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

"Utility" means any telephone corporation, electrical corporation, gas corporation, water corporation, or cable television corporation, as defined in Sections 234, 218, 222, 241, and 215.5, respectively, of the Public Utilities Code of the State of California as said sections existed on January 1, 1969.

"Utilities" mean any product or service provided by a utility.

"Video service supplier" means any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, to or from an address in the City, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges, for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C.A. Section 522(13)); open video systems (OVS) suppliers; suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video programming or communications (including two-way communications), whatever their technology.

"Video services" mean any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use or enjoyment of the video programming, regardless of the content of such video programming or communications. Video services shall not include services for which a tax is paid under Section 8-9.04 of this chapter. (§ 1, Ord. 2952 c.s., eff. February 3, 2005 as amended by Ord. 3031 c.s., eff. April 3, 2009)

### **§ 8-9.03. Constitutional and statutory exemptions.**

- (a) Nothing in this chapter shall be construed as imposing a tax upon:
  - (1) Any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States or the Constitution of the State; and
  - (2) The City.
- (b) Any service user that is exempt from the tax imposed by this chapter pursuant to subsection (a) of this section shall file an application with the Tax Administrator for an exemption; provided however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name, or is a service user of telephone communication services that has received a federal excise tax exemption certificate for such service. Said application shall be

made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all utility service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt status. A service user that fails to comply with this section shall not be entitled to a refund of utility users' taxes collected and remitted to the Tax Administrator from such service user as a result of such noncompliance. Upon request of the Tax Administrator, a service supplier or non-utility service supplier, or its billing agent, shall provide a list of the names and addresses of those customers which, according to its billing records, are deemed exempt from the utility users' tax. With respect to a service user of telephone communication services, a service supplier of such telephone communication services doing business in the City shall, upon request of the Tax Administrator, provide a copy of the federal exemption certificate for each exempt customer within the City that is served by such service supplier.

The decision of the Tax Administrator may be appealed pursuant to Section 8-9.21 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 8-9.21 of this chapter is a prerequisite to a suit thereon.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.04. Telephone users' tax.**

- (a) There is hereby imposed a tax upon every person who uses telephone communication services in the City, including intrastate, interstate, and international telephone communication services, to the extent permitted by Federal and State law. Interstate calls shall be deemed to include calls to the District of Columbia. The telephone users' tax is intended to, and does, apply to all charges within the City's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. Section 116 et seq. The tax imposed by this section shall be at the rate of four and 75/100ths (4.75%) percent of all charges made for such telephone communication services. There is a rebuttable presumption that telephone communication services billed to a billing or service address in the City are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this chapter. There is also a rebuttable presumption that telephone communication services sold within the City that are not billed to a billing address or provided to a primary physical location (such as calling card and other pre-paid services) are used, in whole or in part, within the city's boundaries and that such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax, regardless of where the telephone communication service may originate, terminate, or pass through.

(b) 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.

(c) The Tax Administrator, from time to time, may issue and disseminate to telecommunication service suppliers subject to the tax collection requirements of this chapter administrative rulings, pursuant to Section 8-9.18(b) of this chapter, identifying those telecommunication services that are subject to the tax of subsection (a) of this section and/or the sourcing of such services for tax purposes. Such administrative rulings shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2) and (3) or other law. The Tax Administrator may consider Statewide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this section. To the extent that the Tax Administrator determines that the tax imposed under this section shall not be collected in full for any period of time, such an administrative ruling falls within the Tax Administrator's administrative discretion to enforce this section. The Tax Administrator's exercise of prosecutorial forbearance under this chapter does not constitute a change in taxing methodology for purposes of Government Code Section 53750(h), and the City does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval. An administrative ruling shall not constitute a new tax or an increase in an existing tax if such administrative ruling is:

- (1) Consistent with the existing ordinance language; and
- (2) Merely reflects a change in, clarification to, or new rendition of:
  - (A) The definition, interpretation, or application of substantial nexus by a court of competent jurisdiction or by preemptive State or Federal law, for purposes of taxation,
  - (B) The sourcing of taxable transactions based upon industry custom and practice, which furthers administrative efficiency and minimizes multi-jurisdictional taxation.

(d) The following shall be exempt from the tax imposed under this section:

- (1) Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance telephone service is less than twenty-five cents (25¢); 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) Except with respect to local telephone service, on any charges 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) Charges for services furnished to an international organization designated under the International Organizations Immunities Act and defined in 22 USCA 288 or to the American National Red Cross.
- (4) Charges for any long distance telephone service which originates within a combat zone, as defined in Section 112 of the Internal Revenue Code, 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 of the U.S. Treasury may by regulations prescribe, is furnished to the person receiving such payment.
- (5) Charges for any long distance 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) Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in Internal Revenue Code Section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code Section 501(a).
- (7) Charges for services or facilities furnished to the government of any State, any political subdivision thereof, or the District of Columbia.
- (8) Charges 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 described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code Section 501(a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code Section 501(c)(3) which is exempt from income tax under Internal Revenue Code 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) Internet access charges and content. Nothing in this chapter is intended to tax internet access charges or internet content such as, but not limited to, DSL internet connection fees, internet streamlining of broadcast audio and video programming services and digital downloads such as downloads of books, music, ringtones, games and similar digital products. This exemption does not apply to methods of delivering telephone communication services over the

internet, such as but not limited to, Voice over the Internet Protocol (VoIP) telephone services.

- (e) 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.
- (f) The tax imposed by this section shall be collected from the service user by service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month.
- (g) This section 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. Any telephone communication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the City to be obligated to collect and remit the tax imposed by this chapter if it does any of the following: maintains or has within the City, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City by means of advertising that is broadcast or relayed from a transmitter within the City or distributed from a location within the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005 as amended by Ord. 3031 c.s., eff. April 3, 2009)

#### **§ 8-9.05. Electricity users' tax.**

- (a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this section shall be at the rate of four and 75/100ths (4.75%) percent of the charges made for such electricity and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or nonutility service supplier to a service user.
- (b) As used in this section, the term "charges" shall apply to all services, components and items that are: (i) necessary or common to the receipt, use and enjoyment of electric service; or, (ii) currently, or historically have been, included in a single or

bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) Energy charges;
- (2) Distribution or transmission charges;
- (3) Metering charges;
- (4) Stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for supplemental services to an electric service user that produces electricity for self-use and is subject to Section 8-9.07 of this chapter;
- (5) Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and
- (6) Charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) 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 electricity or services related to the provision of such electricity.

(d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: (i) necessary or common to the receipt, use or enjoyment of electric service; or, (ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above.

(e) As used in this section, the term "using electricity" shall not be construed to include:

- (1) The mere receiving of such electricity by an electric public utility or

governmental agency at a point within the City for resale; or,

- (2) The use of an electricity product of which a significant portion is derived from high-quality, new renewable resources. The Tax Administrator shall adopt rules and regulations not inconsistent with this section to establish definitions and criteria for electricity products that qualify under this paragraph. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.
- (f) The tax on electricity provided by self-production or by a nonutility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 8-9.07 of this chapter. All other taxes imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.06. Gas users' tax.**

- (a) There is hereby imposed a tax upon every person using gas in the City which is delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of four and 75/100ths (4.75%) percent of the charges made for such gas including all services related to the storage, transportation and delivery of such gas.
- (b) As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: (i) necessary or common to the receipt, use and enjoyment of gas service; or, (ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:
  - (1) The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
  - (2) Gas transportation charges (including interstate charges to the extent not included in commodity charges);

- (3) Storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
- (4) Capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and,
- (5) Charges, fees or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

- (c) 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 gas or services related to the delivery of such gas.
- (d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: (i) necessary or common to the receipt, use or enjoyment of gas service; or, (ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) above.
- (e) There shall be excluded from the base on which the tax imposed by this section is computed charges made for gas which is to be resold and delivered through a pipeline distribution system.
- (f) The tax on gas provided by self-production or by a nonutility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 8-9.07 of this chapter. All other taxes imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the

twentieth day of the following month, provided that the service user shall submit an adjusted payment or request or credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

**§ 8-9.07. Collection of tax from service users receiving direct purchase of gas or electricity.**

- (a) Any service user subject to the tax imposed by Section 8-9.05 or by Section 8-9.06 of this chapter, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a nonutility service supplier not under the jurisdiction of this chapter; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a nonutility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within 30 days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within 30 days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within 60 days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.
- (b) The Tax Administrator may require said service user to identify its nonutility service supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence; or, if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

**§ 8-9.08. Water users' tax.**

- (a) There is hereby imposed a tax upon every person using water in the City which is delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of four and 75/100ths (4.75%) percent of the charges made for such water and shall be collected by the water service supplier or its billing agent.
- (b) As used in this section, the term "charges" shall apply to all services, components and items that are: (i) necessary or common to the receipt, use and enjoyment of

water service; or, (ii) currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

- (1) Water commodity charges (potable and non-potable);
- (2) Distribution or transmission charges;
- (3) Metering charges;
- (4) Customer charges, late charges, service establishment or reestablishment charges, franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary for or common to the receipt, use and enjoyment of water service; and,
- (5) Charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

(c) 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 water services.

(d) The Tax Administrator, from time to time, may survey the water service suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are: (i) necessary or common to the receipt, use or enjoyment of water service; or, (ii) currently, or historically have been, included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Unbundled charges for such components and items shall be subject to the tax of subsection (a) of this section.

(e) There shall be excluded from the base on which the tax imposed by this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system.

(f) The tax imposed by this section shall be collected from the service user by the service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.09. Video users' tax.**

- (a) There is hereby imposed a tax upon every person using video services in the City from a video service supplier. The tax imposed by this section shall be at the rate of four and 75/100ths (4.75%) percent of the charges made for such service and shall be collected from the service user by the video service supplier, or its billing agent
- (b) As used in this section, the term "charges" shall apply to all services, components and items that are: (i) necessary or common to the receipt, use and enjoyment of video service; or, (ii) currently, or historically have been, included in a single or bundled rate for video service by a local video service supplier to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:
  - (1) Franchise fees and access fees (PEC), whether designated on the customer's bill or not;
  - (2) Initial installation of equipment necessary for provision and receipt of video services;
  - (3) Late fees, collection fees, bad debt recoveries, and return check fees;
  - (4) Activation fees, reactivation fees, and reconnection fees;
  - (5) All programming services (e.g., basic services, premium services, audio services, video games, pay-per-view services, video on demand, and electronic program guide services);
  - (6) Equipment leases (e.g., converters, remote devices);
  - (7) Service calls, service protection plans, name changes, changes of services, and special services (e.g., no promotional mail); and
  - (8) The leasing of channel.
- (c) 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 video services.
- (d) The Tax Administrator, from time to time, may survey the video service suppliers in the City to identify the various components of video service that are being offered to customers within the City, and the charges therefor. The Tax Administrator, thereafter, may issue and disseminate to such video service suppliers an administrative ruling identifying those components: (i) that are necessary or common to the receipt, use or enjoyment of video service; or, (ii) which currently are, or historically have been, included in a bundled rate for video service by a local distribution company. Charges for such components shall be subject to the tax of subsection (a) above.
- (e) The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users,

in which case the service user shall be the ultimate purchaser of the video service. The amount collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth day of the following month.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.10. Bundling taxable items with nontaxable items.**

Except as otherwise provided by state or federal law, or as approved in writing by the Tax Administrator, if one or more nontaxable items are bundled or aggregated together with one or more taxable items (as provided for by this chapter) under a single charge on a service user's bill, the entire single charge shall be deemed taxable (e.g., aggregating internet access service with voice service under a single charge).

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.11. Substantial nexus/minimum contacts.**

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.12. Exemptions.**

- (a) There shall be excluded from the tax imposed by the provisions of this chapter taxes on utilities used in conducting the business of a utility.
- (b) The tax imposed by this chapter shall not apply to the following:
  - (1) Heads of households. Any head of household in which the combined gross income, including Social Security, for the most recently completed calendar year for all members of the household residing in the principal place of residence does not exceed Fifteen Thousand and no/100ths (\$15,000.00) Dollars and the head of household is at least 62 years of age or permanently disabled. Proof of permanent disability shall be deemed sufficient if the applicant produces evidence of the receipt of benefits under the Social Security Administration's Supplemental Security Income Program for the Aged, Blind, and Disabled or by the possession of the Medi-Cal insurance card appropriately coded to indicate permanent disability;
  - (2) Individuals: Sixty-two years or older. An individual whose total gross income, including Social Security, for the most recently completed calendar year does not exceed Twelve Thousand and no/100ths (\$12,000.00) Dollars and the taxpayer is 62 years of age or permanently disabled. Proof of permanent disability shall be established as set forth in subsection (b)(1) of this section; and

(3) Individuals: Sixty years or older. An individual whose income for the year in which such taxes were due was no more than Three Thousand Three Hundred Fifty and no/100ths (\$3,350.00) Dollars provided the taxpayer was at least 60 years of age at the time the taxes were accrued.

(c) The exemptions granted by this section shall not eliminate the duty of the service supplier from collecting such taxes from such exempt individuals or the duty of such exempt individuals from paying such taxes to the service supplier, unless an exemption is applied for by the service user and granted in accordance with the provisions of this section.

(d) Any service user exempt from the taxes imposed by this chapter because of the provisions of subsection (b) may file an application with the Tax Administrator for an exemption. Such application shall be made upon a form supplied by the Tax Administrator and shall state those facts, declared under the penalty of perjury, which qualify the applicant for an exemption.

(e) The Tax Administrator shall review all such applications and shall certify as exempt those applicants determined to qualify therefor and shall notify all service suppliers affected that such exemptions have been approved. For each exemption, the following information shall be transmitted to the service supplier:

- (1) The name of the exempt applicant;
- (2) The account number shown on the utility bill;
- (3) The address to which exempt service is being supplied; and
- (4) Any other information which may be necessary for the service supplier to remove the exempt service user from its tax billing procedure.

(f) Upon the receipt of such notice, the service supplier shall not be required to continue to bill any further tax imposed by this chapter on such exempt service user until further notice by the Tax Administrator is given. The service supplier shall eliminate such exempt service user from its tax billing procedure no later than 60 days after the receipt of such notice from the Tax Administrator.

(g) All exemptions shall continue and be renewed automatically by the Tax Administrator so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; and provided, further, such individual may nevertheless apply for a new exemption with each change of address or residence.

(h) The Tax Administrator shall have the power and right to demand evidence of the continued eligibility of a service user for an exemption under the provisions of this section. Such evidence may include, but need not be limited to, copies of business records, letters, statements from the Social Security Administration, copies of income tax returns, and such other evidence, concerning the service user or other members of his household which may tend to prove or disapprove such eligibility.

Failure to provide such evidence, when such evidence is requested from the service user in writing by the Tax Administrator, shall be grounds for the immediate discontinuance of the service user's eligibility for exemption under the provisions of this subsection.

- (i) Any individual exempt from the tax shall notify the Tax Administrator within 10 days of any change in fact or circumstance which might disqualify such individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this subsection when the basis for such exemption either does not exist or ceases to exist.
- (j) Notwithstanding any of the provisions of this section, any service supplier who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection shall immediately notify the Tax Administrator of such fact, and the Tax Administrator shall conduct an investigation to ascertain whether or not the provisions of this subsection have been complied with and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.
- (k) If the Tax Administrator determines that an application for exemption is faulty, or that the applicant has failed to truthfully set forth such facts, the application for the exemption shall be denied in writing to the applicant. The applicant shall thereafter have a right to file an amended application for an exemption or to appeal the Tax Administrator's decision to the City Manager within a 10 day period after the mailing date of the Tax Administrator's rejection. In the case of an appeal, the City Manager shall review the facts in consultation with the City Attorney and shall render a final determination on such appeal.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

### **§ 8-9.13. Duty to collect—Procedures.**

- (a) Collection by service suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:
  - (1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 8-9.17 shall apply.
  - (2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. 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.

(b) Filing return and payment. Each person required by this chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.14. Collection penalties—Service suppliers and self-collectors.**

(a) Taxes collected from a service user, or owed by a service user subject to Section 8-9.07 of this chapter, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.

(b) If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, or, in the case of a service user that fails to properly self-collect and remit the tax under Section 8-9.07 of this chapter on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of 15% of the total tax that is delinquent or deficient in the remittance, and shall pay interest at the rate of zero and 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

(c) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of 15% of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

**§ 8-9.15. 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 tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. 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, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the City as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorneys fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C).

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

**§ 8-9.16. Deficiency determination and assessment—Tax application errors.**

- (a) The Tax Administrator shall make deficiency determination if he or she determines that any person required to pay, collect or self-collect taxes pursuant to the provisions of this chapter has failed to pay, collect, self-collect and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.
- (b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed plus interest at the rate of zero and 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within 14 calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter.
- (c) If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within 30 days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least 10 calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.
- (d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy

of such final assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 8-9.21 of this chapter. Filing an application with the Tax Administrator and appeal to the City Manager pursuant to Section 8-9.21 of this chapter is a prerequisite to a suit thereon.

- (e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be 15% on the total amount of the assessment, along with interest at the rate of zero and 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection (e).
- (f) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.16.1. Applicability of Ordinance 2952.**

The provisions of this Title 8 of Chapter 9 of the Redondo Beach Municipal Code as they existed prior to February 3, 2005, the effective date of City of Redondo Beach Ordinance No. 2952-04, shall be and are hereby reinstated and shall continue in full force and effect for the following purpose and no other purpose: The procedures and provisions of said ordinance shall govern and apply to the assessment and collection of taxes on the use of utilities which occurred prior to February 3, 2005 and all related matters, including the conduct of administrative proceedings, court actions and other proceedings involving the assessment, confirmation, modification or enforcement of any taxes on utilities used prior to the effective date of Ordinance No. 2952-04.

(§ 1, Ord. 2963 c.s., eff. May 19, 2005)

#### **§ 8-9.17. Administrative remedy—Non-paying service users.**

- (a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this chapter from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this chapter.
- (b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of 15% of the total tax that is owed, and shall pay interest at the rate of zero

and 75/100ths (0.75%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

- (c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.
- (d) If the service user fails to remit the tax to the Tax Administrator within 30 days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of 15% of the amount of the total tax that is owed.  
(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.18. Additional powers and duties of the 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 may adopt administrative rules and regulations not inconsistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. The adoption of an administrative ruling by Tax Administrator pursuant to this subsection (b) shall not constitute an "extension" or "increase" of the tax imposed by this chapter, provided that the administrative ruling does not cause the percentage rate of the tax to exceed the percentage rates set forth in this chapter (as authorized by California Constitution Chapter XIIIIC, Section 2(d), and California Government Code Section 53750(h)(2)).
- (c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: (1) conform to the billing procedures of a particular service supplier (or service user subject to Section 8-9.07 of this chapter) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.
- (d) The Tax Administrator may conduct an audit to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three years next preceding the date of receipt of the written notice by said person from the Tax

Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 8-9.16 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

- (e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed 45 days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of zero and 75/100ths (0.75%) percent per month, prorated for any portion thereof.
- (f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.
- (g) The City Manager may compromise a claim made pursuant to this chapter in accordance with the authority set forth in Redondo Beach Municipal Code Section 2-11.04.
- (h) Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

### **§ 8-9.19. Records.**

- (a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this chapter to keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of such tax as he/she 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 a reasonable time.
- (b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided

that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

- (c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax Administrator may request from a person providing transportation services of gas or electricity to service users within the City a list of the names and addresses, and other pertinent information, of its transportation customers within the City pursuant to Section 6354(e) of the California Public Utilities Code.
- (d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, (ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.
- (e) If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of Five Hundred and no/100ths (\$500.00) Dollars on such person for each day following: (i) the initial date that the person refuses to provide such access; or, (ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

### **§ 8-9.20. Refunds.**

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, it may be refunded as provided in this section:

- (a) The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers.

- (b) The submission of a written claim, which is acted upon by the City Council, shall be a prerequisite to a suit thereon. (See Section 935 of the California Government Code.) The City Council shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4.
- (c) Notwithstanding the notice provisions of subsection (a) of this section, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user (whether due to overpayment or erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.
- (d) Notwithstanding the notice provisions of subsection (a) of this section, in the event that a service supplier, or a service user subject to Section 8-9.07 of this chapter, remits a tax to City in excess of the amount of tax imposed by this chapter, said service supplier, or service user subject to Section 8-9.07 of this chapter, may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.
- (e) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this ordinance is repealed, the amounts of any refundable taxes will be borne by the City.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

### **§ 8-9.21. Appeals.**

- (a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 8-9.20 of this chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-9.20 of this chapter), deficiency determination, assessment, or

administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. (See Government Code Section 935(b).) Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

- (b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-9.20 of this chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within 14 days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.
- (c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Manager, no more than 30 days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.
- (d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within 14 days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within 90 days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.
- (e) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

### **§ 8-9.22. No injunction/writ of mandate.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected and/or remitted.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

### **§ 8-9.23. Notice of changes to ordinance.**

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of Public Utilities Code Section 799. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures

describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the City's utility users' taxes according to the latest payment records of the Tax Administrator.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.24. Future amendment to cited statute.**

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.25. Violations misdemeanors.**

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable as provided for in Section 1-2.01 of Chapter 2 of Title 1 of this Code.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.26. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter, or any part thereof, is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Mayor and Council hereby declare that they would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid, unlawful or unconstitutional.

(§ 1, Ord. 2952 c.s., eff. February 3, 2005)

#### **§ 8-9.27. Effect of State and Federal authorization.**

To the extent that the City's authority to impose or collect any tax imposed under this chapter is expanded or limited as a result of changes in State or Federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the City's authority up to the full amount of the tax imposed under this chapter.

(Ord. 3031 c.s., eff. April 3, 2009)

#### **§ 8-9.28. Independent audit.**

The City shall annually verify that the taxes owed under this chapter have been applied, exempted, collected, and remitted in accordance with this chapter, and properly expended according to applicable law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall

not be required of as to a service supplier where the cost of the verification is expected to exceed the tax revenues to be reviewed.

(Ord. 3031 c.s., eff. April 3, 2009)