

CHAPTER 3.70

UTILITIES OCCUPATION TAX

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3.70.010: Definitions: In construing the provisions of this Chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

(1) “Cable Service” means: (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and b) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(2) “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) any facilities of any electric utility used solely for operating its electric utility system.

(3) “Cellular Telephone Service” is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of “cellular mobile service” includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service. Transmission of communication through cellular telephones is classified as “telephone business” rather than “competitive telephone service.”

(4) “Gross income” means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged whether received or not), by reason of the investment of capital in the business engaged in, including rentals, royalties, fees or other emoluments, however designated, derived from business

activities conducted within the City limits (excluding receipts or proceeds from the use or sale of real property or any interest therein and proceeds from the sale of notes, bonds, mortgages, or other evidence of indebtedness or stocks and the like) and without any deduction on account of the cost of the property sold, and the cost of materials used, labor costs, interest, or any expenses whatsoever; provided, however, that only the gross income attributable to those taxable services or commodities as are specifically set forth in Section 3.70.020 shall be subject to the tax provided herein, and any taxpayer deriving income from the sale of any other tangible property or services and receipts not so specifically set forth in Section 3.70.020 may exclude said income from “gross income” as defined in this subsection. Gross income of any public utility district subject to this tax shall be the total gross revenues from sales of electricity and power inside the City by the public utility district, exclusive of any revenues derived from the sale of electricity for the purpose of resale.

(5) “Telephone Business” means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone services, coin telephone services, telephonic, video, data, or similar communication, or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes cooperative or farmer line telephone companies or associations operating exchanges.

(6) “Video Programming” means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

(7) “Voluntary Payment” means a payment made to the City of Kennewick without written protest setting forth the reasons the payment is made in protest. (Ord. 5531 Sec. 1, 2013; Ord. 3588 Sec. 1, 1994; Ord. 3501 Sec. 1, 1994; Ord. 3322 Sec. 1 (part) 1991; Ord. 2825 Sec. 1, 1984; Ord. 2650 Sec. 1 (part), 1982; Ord. 1272 Sec. 2 1964)

3.70.020: Tax – Computation:

(1) On and after the first day of January, 1969, for the purpose of raising revenue, there is levied upon and shall be collected from and paid as hereinafter provided by every person on account of and for the privilege of engaging in business activities, an occupation tax, sometimes referred to in this Chapter as “tax,” against the gross income of businesses as defined in this Chapter for each calendar month.

(2) The tax herein provided shall be computed at the rate of eight and one-half percent (8.5%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of the tax herein at said rate are as follows:

- (a) All persons engaged in or carrying on the business of selling or furnishing electric light and power;
- (b) All persons engaged in or carrying on the business of selling or furnishing natural gas; and
- (c) All persons engaged in or carrying on the business of selling or furnishing steam energy.

(3) The tax herein provided shall be computed at the rate of eight and one-half percent (8.5%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of the tax herein at said rate are as follows: All persons engaged in or carrying on a telegraph or telephone business, excluding competitive telephone service and that portion of network telephone service, as defined in RCW 82.04.065 which represents charges to another telecommunications company, as defined in RCW 80.04.010 for connecting fees, switching

charges or carrier access charges relating to intrastate toll telephone services or for access to or charges for intrastate services, to the fullest extent authorized by law.

(4) The tax herein provided shall be computed at the rate of seven percent (7%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of the tax herein at said rate are as follows:

(a) All persons engaged in the business of constructing, operating and maintaining a cable system or selling cable service in the City; and

(b) All persons engaged in or carrying on the business of collecting, handling or processing solid waste as defined by KMC 9.04.010.

(5) The tax herein provided shall be computed at the rate of fifteen and one-half percent (15.5%) of gross income derived from each of the following occupations or business activities conducted within or outside the City limits. Those persons subject to the payment of the tax herein at said rate are as follows: All persons engaged in or carrying on the business of selling or supplying domestic water or providing sanitary sewer services.

(6) Any person engaged in or carrying on more than one such business, occupation, pursuit or privilege shall pay the tax so imposed for each respective business, trade or privilege. Any taxpayer who is engaged in, or carries on, any business subject to the tax hereunder, and who fails or refuses to pay the tax or any part thereof on or before the due date shall be operating in violation of this Chapter.

(7) The tax herein provided shall be computed at the rate of one percent (1%) of gross income derived from each of the following occupations or business activities conducted within the City limits. Those persons subject to the payment of tax herein at said rate are as follows:

(a) All persons engaged in or carrying on the business of providing emergency medical and ambulance service to be operated as a public utility of the City of Kennewick.

(b) All persons engaged in or carrying on the business of constructing, operating and maintaining a storm drainage system and related facilities as a public utility of the City of Kennewick. (Ord. 5400 Sec. 1, 2012: Ord. 5260 Sec. 2, 2009: Ord. 5245 Sec. 2, 2009: Ord. 5211 Sec. 2, 2008: Ord. 3746 Sec. 1, 1997: Ord. 3612 Sec. 1, 1995: Ord. 3588 Sec. 1, 1995: Ord. 3501 Sec. 2, 1994: Ord. 3322 Sec. 1 (part), 1991: Ord. 3303 Sec. 1, 1991: Ord. 3019 Sec. 1, 1986: Ord. 2710 Sec. 1, 1982: Ord. 2638 Sec. 1, 1981: Ord. 2303 Sec. 1, 1979: Ord. 1896 Sec. 1, 1975: Ord. 1421 Sec. 1, 1968: Ord. 1272 Sec. 3, 1964)

3.70.030: Tax – Payment:

(1) The tax imposed by this Chapter, except the annual license fee required to accompany the application for the license, shall be due and payable in monthly installments, and remittance shall be made on or before the thirtieth day of the next month. The remittance shall be made as hereinafter provided and shall be accompanied by a return on a form to be provided and prescribed by the Treasurer. To the return the taxpayer shall be required to swear or affirm that the information therein given is full and true and that the taxpayer knows the same to be so.

(2) Whenever a taxpayer commences to engage in business during any monthly period, his first return and tax shall be based upon and cover the portion of the monthly period during which he engaged in business. (Ord. 3322 Sec. 1 (part), 1991: Ord. 3303 Sec. 2, 1991: Ord. 2650 Sec. 1 (part), 1982: Ord. 1272 Sec. 5, 1964)

3.70.040: Exceptions – Deductions:

(1) There shall be excepted and deducted from the total gross income upon which the tax is computed so much thereof as is derived from transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents.

(2) There shall be excepted and deducted from the total gross income upon which the tax is computed, all bad debts and credit losses actually sustained by the taxpayer for services incurred, rendered or charged for during the tax year. Debts shall be deemed bad and uncollectible when the same have been written off the books of the taxpayer. In the event debts are subsequently collected, said income shall be reported in the return for the month in which the debts are collected and at the rate prevailing in the tax year when collected.

(3) There shall be excepted and deducted from the total gross income upon which the tax is computed, all cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

(4) There shall be exempted and deducted from total gross income upon which the taxes computed for the engaging in or carrying on of the business of selling or furnishing electric light or power, all gross income based upon agricultural irrigation of five (5) acres or more by a single utility customer.

(5) Nothing in this Chapter shall be construed as requiring a license, or the payment of a tax, or the doing of any act, which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States or which would not be consistent with the Constitution or laws of the State. (Ord. 5059 Sec. 1, 2004: Ord 3588 Sec. 1, 1994: Ord. 3415 Sec. 1, 1993: Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 6, 1964)

3.70.045: Allocation of Income – Cellular Telephone Service:

(1) Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

(2) There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

(3) When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

(4) If there is a dispute among one or more other cities, and/or the taxpayer, as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the City and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC. (Ord 3588 Sec. 2, 1994)

3.70.050: Business License Required: No person shall engage in any business or activity in the City for which a tax is imposed by this Chapter without first having obtained and being the holder of a valid and existing business license and such other licenses as may be required in accord with Title 6 of this Code. (Ord. 3322 Sec. 1 (part), 1991: Ord. 2650 Sec. 1 (part), 1982: Ord. 1294 Sec. 1, 1965: Ord. 1272 Sec. 7, 1964)

3.70.060: Tax – Payment – Records: The tax payable hereunder shall at the time of the return being required to be filed hereunder, be paid to the City Treasurer by bank draft, certified check, cashier’s check, personal check or money order or in cash. If payment is made by draft or check, the tax or fee shall not be deemed paid until the check or draft is honored in the usual course of business; nor shall the acceptance of any sum by the Treasurer be an acquittance or discharge of the tax or fee due unless the amount of payment is in full, and the actual amount due.

It shall be the duty of every person liable for the payment of any fee or tax imposed by this Chapter to keep and preserve for the period of five (5) years such books and records as will accurately reflect the amount of his “gross income” as defined herein and from which can be determined the amount of any fee or tax for which he may be liable under the provisions of this Chapter and all books as provided therein shall be open for examination at all reasonable times by the Treasurer or his duly authorized agent. (Ord. 3322 Sec. 1 (part), 1991: Ord. 1272 Sec. 8, 1964)

3.70.070: Transfer of Business – Responsibility: Upon the sale or transfer during a monthly period of a business or account of which a tax is required, the purchaser or transferee shall, if the tax has not been paid in full for said monthly period, be responsible for the payment of the tax for that portion of the monthly period during which he carries on such business. (Ord. 3322 Sec. 1 (part), 1991: Ord. 3303 Sec. 4, 1991: Ord. 1272 Sec. 9, 1964)

3.70.080: Time Limitation on Corrections, Adjustments, and Refunds: Except as provided for herein, in all cases of the voluntary payment of any tax imposed by this Chapter, resulting in an overpayment of the true amount due, whether or not the result of mistake of law, mistake of fact, inadvertence or error, such payments may be adjusted or corrected only within one year (365 days) of payment. The correction, adjustment or refund of all or any portion of such payment is barred one year (365 days) following payment to the City. (Ord. 5531 Sec. 2, 2013)

3.70.095: Administrative Appeal: Any person seeking correction, adjustment, refund or reimbursement for any payment of any tax imposed by this Chapter, shall, prior to any judicial action, present to the City Treasurer, a written protest stating the basis upon which such correction, adjustment or refund is requested. The City Treasurer shall make a written determination on the protest within sixty (60) days of the date of its filing with the City Clerk. All taxes must be remitted prior to the filing of an appeal. (Ord. 5531 Sec. 3, 2013)

3.70.100: Delinquent Payment: If any taxpayer fails, neglects or refuses to make his return as and when required herein, the Treasurer is authorized to determine the amount of tax payable and by mail to notify such taxpayer of the amount as so determined. The amount so fixed shall thereupon become the tax and be immediately due and payable. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 12, 1964)

3.70.105: Interest and Penalty:

(1) Should a person fail to pay the tax due in the time prescribed, he shall become liable for interest on the tax due at the rate of one percent per month or fraction thereof.

(2) Should a person fail to pay the tax due within thirty days after it is due, he shall become liable for a penalty of ten percent of the amount of the tax due, in addition to the interest provided for in 3.70.105(1). (Ord. 5531 Sec. 4, 2013)

3.70.110: Compliance Required – False Statements Unlawful: It is unlawful for any person liable for a tax hereunder to fail or refuse to make the returns when required or to pay the fee or tax when due, or for any person to make any false or fraudulent application or return, or any false statement or return or any false statement or representation in, or in connection with, any such application or return, or to aid or abet another in an attempt to evade payment of the fee or tax, or any part thereof, or for any person to fail to appear or testify in response to subpoena issued pursuant hereto, or to testify falsely upon any investigation of the correctness of a return, or upon the hearing of any appeal, or in any manner to hinder or delay the City or any of its officers in carrying out the provisions of this Chapter. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 13, 1964)

3.70.120: Tax Additional to Other Fees: The tax herein levied shall be additional to any license or tax imposed or levied under any law or any other ordinance of the City. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 14, 1964)

3.70.130: Unpaid Fee Deemed Debt to City: Any tax due and unpaid under this Chapter, and all penalties thereon, shall constitute a debt to the City and may be collected by court proceedings in the same manner as any other debt in like amount which remedy shall be in addition to all other existing remedies. (Ord. 3322 Sec. 1 (part) 1991: Ord. 1272 Sec. 15, 1964)

3.70.140: City Payment of Tax – Exception: Whenever the City, through any department or division, engages in any business activity which, if engaged in by any person, would under this Chapter require the payment of a tax by such person, the City department or division engaging in such business activity shall, as to such business activity at the same time and in the same manner as persons are required hereunder, make returns and from the funds of such department or division pay the taxes imposed hereunder. Each of said departments or divisions of the City shall transfer or pass on to its consumers the tax herein provided. (Ord. 3322 Sec. 1 (part), 1991: Ord. 1272 Sec. 16, 1964)