



Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: April 2, 2007

FROM: CITY ATTORNEY

SUBJECT: AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE ("UTILITY USERS TAX") TO CLARIFY ITS ORIGINAL INTENT AND TO REMOVE OBSOLETE REFERENCES IN THE TELEPHONE USERS TAX

TITLE OF PROPOSED ORDINANCE: AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE ("UTILITY USERS TAX") TO CLARIFY ITS ORIGINAL INTENT AND TO REMOVE OBSOLETE REFERENCES IN THE TELEPHONE USERS TAX

BACKGROUND

In conformity with the model Utility Users Tax ("UUT") ordinance developed by the League of California Cities, § 4.56.030 of the Pasadena Municipal Code limits the UUT tax base to that portion of a customer's telephone bill that is subject to the federal excise tax (the "FET") under 26 USC § 4251. It is generally understood that this limitation was adopted to ease administration of the UUT by allowing telephone carriers to use a single rate base for both local and federal taxation. Recent developments in both federal case law and Internal Revenue Service regulations and policies make it prudent to eliminate the FET references so as to eliminate ambiguity as to the intended meaning and scope of the UUT ordinance and tax base. This is consistent with the position of the Internal Revenue Service with respect to this change which is that it does not affect the ability of state or local governments to impose or collect telecommunication taxes under the respective statutes of those governments.

The proposed ordinance to eliminate references to the FET from Pasadena's tax reorganizes the provisions of the ordinance, deletes references to the FET, and adds into the text of the local ordinance the language of the FET that listed types of telephone

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charges that were "not subject to" or "exempt from" the federal tax. Thus, instead of using citations to the FET as a short-hand way of referring to these listed exemptions, the proposed ordinance calls out those exemptions verbatim. The effect of the new ordinance is to restate the language and intent of the existing ordinance without cross-referencing the FET.

The ordinance also expressly states that it is not intended to increase taxes or to constitute a change in methodology or otherwise constitute a tax increase for the purposes of Proposition 218.

The City Council directed preparation of this ordinance at its meeting of March 26, 2007.

FISCAL IMPACT

There is no fiscal impact associated with this ordinance.

Respectfully submitted,

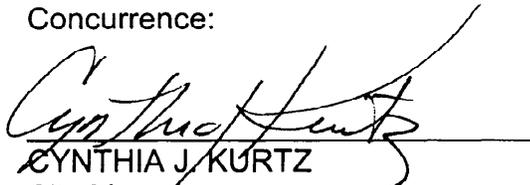

MICHELE BEAL BAGNERIS
City Attorney

Prepared by:

 3/23/07

NICHOLAS GEORGE RODRIGUEZ
Assistant City Attorney

Concurrence:


CYNTHIA J. KURTZ
City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 4.56 OF THE PASADENA MUNICIPAL CODE ("UTILITY USERS TAX") TO CLARIFY ITS ORIGINAL INTENT AND TO REMOVE OBSOLETE REFERENCES IN THE TELEPHONE USERS TAX

WHEREAS, Chapter 4.56 of the Pasadena Municipal Code imposes a tax on telephone communications services by referring to definitions in the federal excise tax on telephone services administered by the Internal Revenue Service (IRS). The common understanding of those definitions when the City gave the tax its current scope upon the adoption of Ordinance No. 4932 in 1969 was subsequently confirmed by IRS Revenue Ruling 79-404;

WHEREAS, on May 25, 2006, the IRS announced in Notice 2006-50 that it has now changed its interpretation of the definitions in the federal excise tax and specifically revoked notices adopted in 2005 which had reaffirmed Revenue Ruling 79-404;

WHEREAS, subsequent to the issuance of Notice 2006-50, the IRS issued Notice 2007-11, announcing that Notice 2006-50 does not affect the ability of state or local governments to impose or collect telecommunication taxes under the respective statutes of those governments;

WHEREAS, the City Council does not wish to adopt the Internal Revenue Service's new understanding of the definitions of the federal excise tax in implementing the City's tax, but rather wishes to continue to impose the City's telephone users tax as it has been historically imposed;

WHEREAS, the amendments made under this Ordinance are not intended to make any change in the way in which the utility users tax on telephone services is

calculated, imposed or administered. Therefore the changes made by this ordinance describing the base of the telephone users tax, and clarifying certain administrative requirements, are not intended to constitute a change in methodology or otherwise constitute a tax increase for purposes of Proposition 218 and this ordinance shall be interpreted in light of that intent;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PASADENA ORDAIN AS FOLLOWS:

Section 1. Subdivision N of Section 4.56.020 of the Pasadena Municipal Code is hereby amended to read as follows:

“N. ‘Telephone communication services’ ~~means ‘communications services’ as defined in Sections 4251 and 4252 of the Internal Revenue Code, and the regulations thereunder,~~ and includes any telephonic quality communication for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or similar means through ‘interconnected service’ with the ‘public switched network’ (as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission - see 47 USCA Section 332(d)), whether such transmission 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 similar facilities.”

Section 2. Section 4.56.030 of the Pasadena Municipal Code is hereby amended to read as follows:

“4.56.030 Telephone tax.

A. There is imposed a tax upon every person, other than a telephone corporation, who uses telephone communication services in the city, including intrastate, interstate, and international telephone communication services. The tax imposed by this section shall be at the rate established under Section 4.56.180(A). The tax shall apply to all charges made for such telephone communication services and shall be collected from the service user by the telephone communication services supplier or its billing agent. To the extent allowed by law, the tax on telephone communication services shall apply to a service user if the billing or service address of the service user is within the city’s boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used.

B. 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. ~~As used in this section, the term “charges” shall not include charges for services paid for by inserting coins in coin-operated telephones 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 included in the base for computing the amount of tax due; nor shall the term “telephone communication services” include telephone channel facilities used by a cable television corporation in~~

~~supplying cable television service to its customers.~~

—C. The tax administrator, from time to time, may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those telecommunication services that are subject to the tax of subsection A of this section. This administrative ruling shall be consistent with legal nexus ~~and the federal excise tax rules, regulations,~~ and laws pertaining to 'communications services' and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as allowed by California Government Code Section 53750(h) (2) (A).

D. The following shall be exempt from the tax imposed by 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 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

(2) 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 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, or 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) Charges for telephone channel facilities used by a cable television corporation in supplying cable television service to its customers

(10) Charges for 'private mobile radio service' (as defined in Part 20 of Title 47 of the Code of Federal Regulations) or 'private mobile service' (as defined in 47 USCA Section 332(d)) which is not interconnected to the public switched network.

~~— D. As used in this section, the term “telephone communication services” shall not include “private mobile radio service” (as defined in Part 20 of Title 47 of the Code of Federal Regulations) or “private mobile service” (as defined in 47 USCA Section 332(d)) which is not interconnected to the public switched network. The tax imposed under subsection (a), above, shall not be imposed upon any person for using telephone communication services to the extent that, pursuant to Sections 4252 and 4253 of the Internal Revenue Code, the amounts paid for such communication services are not subject to or are exempt from the tax imposed under Section 4251 of the Internal Revenue Code. In the event that the federal excise tax on communication services as provided in Sections 4251, 4252 and 4253 of the Internal Revenue Code is subsequently repealed, any reference in this Section 4.56.030 and in Section 4.56.020(N) to such law, including any related federal regulations, private letter rulings, case law, and other opinions interpreting these sections, shall refer to that body of law that existed immediately prior to the date of repeal, as well as to any judicial or~~

~~administrative decision interpreting such federal excise tax law which is published or rendered after the date of repeal.~~

——E. To prevent actual multijurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another state or city on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the city under this section. For purposes of establishing sufficient legal nexus for the imposition and collection of utility users tax on charges for telephone communication services pursuant to this chapter, 'minimum contacts' shall be construed broadly in favor of the imposition and collection of the utility users tax to the fullest extent permitted by California and federal law, and as it may change from time to time.

F. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the twentieth (20th) day of the following month.”

The following provisions are hereby adopted as uncodified sections of this Ordinance:

Section 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this

Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 4. Construction. Sections 1 and 2 of this Ordinance are declaratory of existing law and express the intent of the City in the adoption of the utility users tax on telephones by Ordinance No. 4932 in 1969. The adoption of this Ordinance, therefore, does not constitute a revision in the methodology by which the City calculates the tax or otherwise constitute a tax increase for which voter approval is required, and this Ordinance shall be interpreted in light of that intent.

Section 5. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published in full text.

Section 6. This ordinance shall take effect upon publication.

Signed and approved this day of _____, 2007.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held the ____ day of _____, 2007, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Published:

Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM: *3/26/07*

for 

Michele Beal Bagneris
City Attorney