

Article 11. Utility Users Tax

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ARTICLE 11. UTILITY USERS TAX

2-4-1101: DEFINITIONS:

Except where the context otherwise requires, the definitions given in this section govern the construction of this article:

A. **PERSON:** Shall mean, 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 nonprofit),

municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

B. **BILLING ADDRESS:** Shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

C. **CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES:** Has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116 and 124) and the regulations thereunder.”

D. **CITY:** Shall mean the City of Burbank.

E. **CITY MANAGER:** Means the City Manager of City, or his or her authorized representative.

F. **COGENERATOR:** Shall mean 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).

G. **ELECTRICAL CORPORATION:** Shall mean a corporation or person as defined in Public Utilities Code Section 218.

H. **EXEMPT WHOLESALE GENERATOR:** Shall have the same meaning as set forth in the Federal Power Act (15 U.S.C.S. 79z-5a) and regulations thereunder.

I. **GAS:** Shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

J. **GAS CORPORATION:** Shall mean a corporation or person as defined in Public Utilities Code Section 222.

K. **GROSS ANNUAL INCOME OF THE HOUSEHOLD:** Shall mean the income of every member of the household received during the year for which the refund is claimed and shall include but not be limited to wages, salaries, bonuses, tips, gross amount of pensions and annuities, retirement benefits, social security payments, disability payments, life insurance

benefits, interests, capital gains and inheritances.

L. HANDICAPPED PERSON: Shall mean a person who is disabled and lacks sufficient annual income to meet the costs of health care and whose other assets are so limited that their application toward the costs of such care would jeopardize such person or such person's family's future minimum self-maintenance and security. For the purposes of this article, the term "handicapped person" shall not include any person who regularly requires the use of an essential life-support device.

M. MOBILE TELECOMMUNICATIONS SERVICE: Has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

N. MONTH: Shall mean a calendar month.

O. NON-UTILITY SUPPLIER: Shall mean:

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-owned 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; and

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.

P. PERSON WHO REGULARLY REQUIRES THE USE OF AN ESSENTIAL LIFESUPPORT DEVICE: Shall mean a person who daily uses, for eight (8) or more hours each day, either a respirator, an iron lung, or a kidney dialysis machine.

Q. PLACE OF PRIMARY USE: Has the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 116 et. seq.) and the regulations thereunder.

R. SERVICE ADDRESS: Means the residential street address or the business street address of the service user, and in the case of mobile telecommunications service, the service user's Place of Primary Use.

S. SERVICE SUPPLIER: Shall mean any entity or person, including the City, that provides telephone communication, electric, or gas service to a user of such services within the City, and includes an entity or person required to collect, or self-collect under Section 14-1104.1 of this article, and remit a tax as imposed by this article, including its billing agent in the case of electric or gas.

T. SERVICE USER: Shall mean a person required to pay a tax imposed under the provisions of this article.

U. STATE: Shall mean the State of California.

V. TAX COLLECTOR: Shall mean the Financial Services Director of the City.

W. TELEPHONE COMMUNICATION SERVICES: Shall mean any telephonic type and quality of communication including that which is interconnected to the public switched network or provided over digital networks which allow people to communicate without the necessity of conversing in person. This definition shall apply irrespective of the type of technology utilized to facilitate such communication, or where the origination and/or termination points of the transmission, conveyance or routing are not fixed. and shall include teletypewriter exchange and similar data services, and any service that is capable of transmitting telephonic quality communications [including the use of Internet Protocol (IP) or other similar means], whether provided by analog, digital, 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 U.S.C.A. Section 332(d)] or over digital networks by which communications with a substantial portion of the public is available (e.g., voice over internet or VoIP), and whether such transmission occurs by wire, teletypewriter, cable, cable modem or digital subscriber line (DSL), internet, fiber-optic, light wave, laser, microwave, switching facilities, satellite, radio wave [including, but not limited to, mobile telecommunications service, cellular service, commercial mobile service and commercial mobile radio service (see 47 U.S.C. Section 332(d)(1) and Part 20.3 of Title 47 of the Code of Federal Regulations), personal communications service (PCS), specialized mobile radio (SMR), and other similar services regardless of radio spectrum used], or any other similar facilities.

Except as otherwise provided herein, 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 U.S.C.A. Section 332(d)(3), which is not interconnected with the public switched network or is not provided over digital networks by which communications with a substantial portion of the public is available (e.g., voice over internet or VoIP).

X. TELEPHONE CORPORATION: Shall mean a corporation or person as defined in Public Utilities Code Section 234.

Y. WATER CORPORATION: Shall mean a corporation or person as defined in Public Utilities Code Section 241. [Added by Ord. No. 2177; Formerly numbered Section 14-152; renumbered by Ord. No. 3058, eff. 2/21/87; Amended by Ord. No. 3703, eff. 9/16/06; 3699, 3638, 3553, 3506, 3095, 3058, 3028, 2461, 2348.]

2-4-1102: TELEPHONE USERS TAX:

A. There is hereby 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 of seven (7) percent of all charges made for such telephone communication services. There is a rebuttable presumption that telephone communication services, which are 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 Article. If the billing address of the service user is different from the service address, the service address shall be used for purposes of imposing the tax. Charges for mobile telecommunications services are subject to taxation under this article if the customer's place of primary use is in the City, regardless of where the mobile telecommunications service may originate, terminate, or pass through.

B. The following types of telephone communication services shall be exempt from the tax imposed by this section:

1. Services paid for by inserting coins in coin-operated telephones for local telephone service or, if it is for a toll service, the toll charge is less than 25 cents. Where coin operated service is furnished for a guaranteed or flat amount, the amounts paid under such guarantee/flat rate, plus any fixed monthly or other periodic charge shall not be exempt and shall be subject to the tax;
2. Payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person;
3. Payment received for services furnished to an international organization, or to the American National Red Cross;
4. Payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment;
5. The amount paid for any toll telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such;
6. The amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital which is exempt from federal and state income tax under section 501(a) of the Internal Revenue Code or any successor section;
7. Any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia;
8. Any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit

educational organization" means an educational organization which is exempt from income tax under section 501 (a) of the Internal Revenue Code. The term also includes a school operated as an activity of an organization which is exempt from income tax under section 501 (a) if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;

9. Private mobile radio service. For purposes of this chapter "private mobile radio service" is a radio communication service which is not a commercial mobile service. A "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes

(A) both one-way and two-way radio communication services,

(B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and

(C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

A "commercial mobile service" is a "mobile service" that is provided for profit and makes interconnected service available

(A) to the public or

(B) to such classes of eligible users as to be effectively available to a substantial portion of the public.

C. 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. The term "charges" shall also include charges to a service user by a hotel or motel for telephone communication services used in the City when such charges are incidental to the right of occupancy in such hotel or motel. The collection of the tax from the service user shall be the responsibility of the hotel or motel owner.

D. The Tax Collector, from time to time, may issue and disseminate to telecommunication service suppliers which are subject to the tax collection requirements of this Article, an administrative ruling that identifies those telecommunication services subject to the tax of subsection (a) above and identifies the sourcing of such services for tax administration purposes. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Article, or increase an existing tax. An administrative ruling shall not constitute a new tax or an increase in an existing tax if such administrative ruling:

1. is consistent with the existing language of this Article 11; and,

2. merely reflects a change in, clarification to, or new rendition of:

a. the definition, interpretation, or application of "substantial nexus" or "minimum contacts" requirements 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, and which furthers administrative efficiency and minimizes multi-jurisdictional taxation.

E. To prevent multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the Tax Collector that the service user has previously paid the same tax in another state or city on such telephone communication service, 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 on Telephone Communication Services imposed by this section shall be collected from the service user by the service supplier. The amount of the tax collected in one (1) month shall be remitted to the Tax Collector and must be received by the Tax Collector on or before the twentieth (20th) day of the following month. [Added by Ord. No. 2177; Formerly numbered Section 14-153; Amended by Ord. No. 3703, eff. 9/16/06; 3699, 3638, 3553, 3506, 3258, 3058, 2351.]

2-4-1103: 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 seven percent (7%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end user, which are provided by a service supplier or nonutility supplier to a service user. The tax shall be collected from the service user by the service supplier or nonutility 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: 1) necessary or common to the receipt, use and enjoyment of electric service; or 2) 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 and transmission charges;
3. Metering charges;
4. Standby, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;
5. Customer 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 fee, franchise surcharge, 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 Collector, 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 Collector, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: 1) necessary or common to the receipt, use or enjoyment of electric service; or 2) 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. Charges for such components and items shall be subject to the tax of subsection A of this section.

E. As used in this section, the term "using electricity" shall not include electricity used in water pumping by water corporations; nor shall the term include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.

F. The tax on electricity provided by self-production or by a nonutility supplier or an electric utility not under the jurisdiction of this article shall be collected and remitted in the manner set forth in Section 2-4-1105 of this article. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of the tax collected in one month shall be remitted to the Tax Collector on or before the twentieth day of the following month or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of the 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 Collector 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 sixty (60) days following each calendar quarter. The credit, if approved by the Tax Collector, may be applied against any subsequent tax bill that becomes due. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058, 2351.]

2-4-1104: GAS USERS TAX:

A. There is hereby imposed a tax upon every person using gas in the City, which is transported through a pipeline distribution system. The tax imposed by this section shall be at the rate of seven percent (7%) 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: 1) necessary or common to the receipt, use and enjoyment of gas service; or 2) 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, service establishment or reestablishment charges, transition charges, customer charges, administrative charges, marketing fees, brokers fees, 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 Collector, 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 Collector, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: 1) necessary or common to the receipt, use or enjoyment of gas service; or 2) 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. Charges for such components and items shall be subject to the tax of subsection A of this section.

E. The following shall be excluded from the base on which the tax imposed in this section is computed:

1. Charges made for gas which is to be resold and delivered through a pipeline distribution system;

2. Charges made for gas to be used in the generation of electricity by an electrical corporation; and

3. Charges made by a gas corporation for gas used and consumed in the conduct of the business of gas corporations.

F. The tax on gas provided by self-production or by a nonutility supplier not under the jurisdiction of this article shall be collected and remitted in the manner set forth in Section 2-4-1105 of this article. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount

of tax collected in one month shall be remitted to the Tax Collector, and must be received by the Tax Collector on or before the twentieth day of the following month; or, at the option of the person required to collect 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 Collector 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 sixty (60) days following each calendar quarter. The credit, if approved by the Tax Collector, may be applied against any subsequent tax bill that becomes due. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058, 2351.]

2-4-1105: COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY:

A. Any service user subject to the tax imposed by Section 2-4-1103 or 2-4-1104 of this article, which produces gas or electricity for self-use, or which receives gas or electricity directly from a nonutility supplier not under the jurisdiction of this article, or which otherwise is not having the full tax due on the use of gas or electricity in the City that is directly billed and collected by the service supplier or its billing agent, shall report said fact to the Tax Collector and shall remit the tax due directly to the Tax Collector within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Collector within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment 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 sixty (60) days following each calendar quarter. The credit, if approved by the Tax Collector, may be applied against any subsequent tax bill that becomes due.

B. The Tax Collector may require said service user to identify its nonutility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used 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 City, is excessive, the City 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 had been provided by the service supplier, which is the primary supplier of gas or electricity within the City. [Added by Ord. No. 3506; Amended by Ord. No. 3638, eff. 6/19/04; 3553.]

2-4-1106: SUBSTANTIAL NEXUS/BUNDLING:

A. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this article, "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.

B. Except as otherwise provided by state or federal law, if one or more nontaxable items are bundled or billed together with one or more taxable items (as provided for by this chapter) under a single charge on a customer's bill, the entire single charge shall be

deemed taxable. [Added by Ord. No. 3638, eff. 6/19/04.]

2-4-1107: CONSTITUTIONAL AND STATUTORY EXEMPTIONS:

A. The taxes imposed by this article shall not apply to:

1. Any person or service if imposition of such tax upon that person or service would be in violation of a federal or state statute or the Constitution of the United States or the Constitution of the State of California; or

2. The City.

B. Any service user that is exempt from the tax imposed by this article pursuant to subsection A of this section shall file an application with the Tax Collector 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 Collector 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 Collector, such service user shall give the Tax Collector timely written notice of any change in utility service suppliers so that the Tax Collector 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 Collector from such service user as a result of such noncompliance. Upon request of the Tax Collector, a service supplier or nonutility supplier, or their billing agents, shall provide a list of names and addresses of those customers which, according to their 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 Collector, provide a copy of the federal exemption certificate for each exempt customer within the City that is served by such service supplier.

C. The decision of the Tax Collector may be appealed pursuant to Section 2-4-1120 of this article. Filing an application with the Tax Collector and appeal to the City Manager pursuant to Section 2-4-1120 of this article is a prerequisite to a suit thereon. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058, 2524.]

2-4-1108: SENIOR CITIZEN EXEMPTION:

A. Eligibility: Any service user who is sixty two (62) years of age or older shall be eligible for an exemption from the taxes imposed by this article if the gross annual income of the household in which such individual resides is less than the amount established by Council and designated in the Burbank Fee Resolution.

B. Application: Applications for exemption shall be filed with the Tax Collector on such forms as he/she may provide.

C. Time to File: Applications may be filed at any time.

D. Contents of Application: Applications shall be verified by declaration under penalty of perjury and shall contain such information as may be required by the Tax Collector. An

application must be accompanied by a copy of the applicant's federal income tax return for the most recent year. However, if no federal income tax return was filed in the previous year, the applicant shall provide any other taxpayer return or return information requested by the Tax Collector. An application will not be considered complete and will not be processed without a copy of the applicant's federal income tax return or if no federal income tax return was filed, such other taxpayer return or return information requested by the Tax Collector.

E. Review And Certification: The Tax Collector shall review each application and shall certify the applicant as exempt if the eligibility requirements of subsection A of this section are met, except that no exemption shall be granted to an applicant who is receiving service from a service supplier through a master meter, or who is sharing or prorating service with other service users even though such service users qualify under the provisions of subsection A of this section and no exemption shall be granted with respect to any tax imposed by this article which is or has been paid by a public agency or where the applicant receives funds from a public agency specifically for the payment of such tax.

F. Notice To Service Supplier: If an applicant is certified as exempt, the Tax Collector shall promptly notify applicant's service suppliers, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure.

G. Discontinuance Of Billing: Upon receipt of such notice, the service supplier shall within sixty (60) days discontinue billing applicant for taxes imposed by this article, except as otherwise provided in subsection H of this section.

H. Prior Taxes To Be Collected: Taxes billed by the service supplier to the service user prior to removing the service user from its tax billing procedure, shall be collected from the service user and the service user shall pay such taxes to the service supplier. Taxes billed to and paid by the service user between the time that the application for exemption is filed and the service supplier removes the service user from its taxing procedure will not be refunded to the service user.

I. Duration Of Exemption: Exemptions certified by the Tax Collector shall continue so long as the facts supporting the qualification for exemption shall exist; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual, or assignment of a different account number by the service supplier because of discontinuance or suspension of service at the request of the service user; and provided further, that such individual may nevertheless apply for a new exemption with each change of address or residence.

The Tax Collector shall have the right to request a copy of an exempt service user's most recent federal income tax return and/or any other taxpayer return or return information at any time. The exemption shall terminate if this information shows that the exempt service user is no longer eligible for the exemption or if the exempt service user refuses or fails to provide the Tax Collector with the requested documents or information.

J. Duty to Disclose Disqualification: Any service user who has been exempted under this section shall notify the Tax Collector within ten (10) days of any change in fact or

circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption does not exist or ceases to exist.

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 Collector of such fact and the Tax Collector shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

K. Adjustments: Income levels as designated in the Burbank Fee Resolution and referred to in subsection A of this section shall be updated and changed annually, if necessary, by an adjustment as set forth in Section 2-4-1110 of this article. [Added by Ord. No. 2524; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3308, 3161, 3058, 3036, 2794, 2650.]

2-4-1109: DISABILITY EXEMPTION:

A. Eligibility: Any service user who is a handicapped person or the head of the household supporting a handicapped person shall be exempt from the taxes imposed by this article if the gross annual income of the household in which such individual resides is less than the amount established by Council and designated in the Burbank Fee Resolution. Any person who regularly requires the use of an essential life support device, or the head of any household who supports such a person, shall be exempt from the taxes imposed by this article regardless of gross annual income.

B. Application: Application for exemption shall be filed with the Tax Collector on such forms as he/she may provide.

C. Time to File: Applications may be filed at any time.

D. Contents of Application: Applications shall be verified by declaration under penalty of perjury and shall contain such information as may be required by the Tax Collector. An application must be accompanied by a copy of the applicant's federal income tax return for the most recent year. However, if no federal income tax return was filed in the previous year, the applicant shall provide any other taxpayer return or return information requested by the Tax Collector. An application will not be considered complete and will not be processed without a copy of the applicant's federal income tax return or if no federal income tax return was filed, such other taxpayer return or return information requested by the Tax Collector. However, if the applicant is a person who regularly requires the use of an essential life support device, or the head of any household who supports such a person, such application need not be accompanied by the applicant's federal income tax return or any other taxpayer return or return information and may be considered complete and processed without such documents or information if the application is otherwise complete.

E. Review And Certification: The Tax Collector shall review each application and shall certify the applicant as exempt if the eligibility requirements of subsection A of this section are met, except that no exemption shall be granted to an applicant who is receiving service from a service supplier through a master meter, or who is sharing or prorating service with other service users even though such service users qualify under the provisions of subsection A of this section and no exemption shall be granted with respect to any tax imposed by this article which is or has been paid by a public agency or where the applicant receives funds from a public agency specifically for the payment of such tax.

F. Notice To Service Supplier: If an applicant is certified as exempt, the Tax Collector shall promptly notify applicant's service suppliers, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure.

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G. Discontinuance Of Billing: Upon receipt of such notice, the service supplier shall within sixty (60) days discontinue billing applicant for taxes imposed by this article, except as otherwise provided in subsection H of this section.

H. Prior Taxes To Be Collected: Taxes billed by the service supplier to the service user prior to removing the service user from its tax billing procedure, shall be collected from the service user and the service user shall pay such taxes to the service supplier. Taxes billed to and paid by the service user between the time that the application for exemption is filed and the service supplier removes the service user from its taxing procedure will not be refunded to the service user.

I. Duration Of Exemption: Exemptions certified by the Tax Collector shall continue so long as the facts supporting the qualification for exemption shall exist; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual, or assignment of a different account number by the service supplier because of discontinuance or suspension of service at the request of the service user, and provided further, that such individual may nevertheless apply for a new exemption with each change of address or residence.

The Tax Collector shall have the right to request a copy of an exempt service user's most recent federal income tax return and/or any other taxpayer return or return information at any time. The exemption shall terminate if this information shows that the exempt service user is no longer eligible for the exemption or if the exempt service user refuses or fails to provide the Tax Collector with the requested documents or information. However, if the service user qualified for the exemption because the service user is a person who regularly requires the use of an essential life support device, or the head of any household who supports such a person, the Tax Collector shall not have the right to request a copy of the service user's federal income tax return or other taxpayer return or return information.

J. Duty to Disclose Disqualification: Any service user who has been exempted under this section shall notify the Tax Collector within ten (10) days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption does not exist or ceases to

exist.

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 Collector of such fact and the Tax Collector shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

K. Adjustments: Income levels as designated in the Burbank Fee Resolution and referred to in subsection A of this section shall be updated and changed annually, if necessary, by an adjustment as set forth in Section 2-4-1110 of this article. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3308, 3161, 3095, 3058, 2794, 2735, 2568.]

2-4-1110: AUTOMATIC ADJUSTMENT OF INCOME LEVELS:

A. Annual Adjustment: An annual adjustment of the income levels mentioned in Sections 2-4-1108 and 2-4-1109 of this article shall be made by replacing, if different, the income level figures appearing in the Burbank Fee Resolution with the most recent figures for "very low family income" households published by the U.S. Department of Housing and Urban Development ("HUD") in its "Income Limits For Public Housing And Section 8 Programs" for the Los Angeles-Long Beach (Los Angeles County) area (hereinafter "HUD Guidelines"). Should the title of the HUD Guidelines change or vary from the foregoing, the document published by HUD most closely approximating the intent and purpose of the HUD Guidelines shall be utilized.

B. Exception: Nothing in this section shall prevent the Burbank City Council from setting income levels greater or less than indicated in the HUD Guidelines. [Added by Ord. No. 3161; Amended by Ord. No. 3638, eff. 6/19/04; 3553.]

2-4-1111: DUTY TO COLLECT; PROCEDURES:

The duty of service suppliers to collect and remit the taxes imposed by the provisions of this article shall be performed as follows:

A. The tax shall be collected 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 2-4-1115 of this article shall apply.

B. 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 article. 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. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058.]

2-4-1112: FILING RETURN AND PAYMENT:

Each person required by this article to remit a tax shall file a return to the Tax Collector, on forms approved by the Tax Collector on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Collector. The Tax Collector is authorized to require such additional information as he/she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this article. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Collector, and its agents, shall maintain such filing returns as confidential information exempt from disclosure provisions of the Public Records Act. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058.]

2-4-1113: COLLECTION PENALTIES; SERVICE SUPPLIERS OR SELF-COLLECTORS:

A. Taxes collected from a service user, or self-collected by a service user subject to Section 2-4-1105 of this article, are delinquent if not received by the Tax Collector 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 Collector on or before 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 or before the following business day.

B. If a service supplier, or a service user subject to Section 2-4-1105 of this article, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at the rate of fifteen percent (15%) of the total tax that is delinquent in the remittance, and shall pay interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) 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 Collector shall have the power to impose additional penalties upon persons required to collect and/or remit taxes pursuant to the provisions of this article for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Collector.

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. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058.]

2-4-1114: DEFICIENCY DETERMINATION AND ASSESSMENT; TAX APPLICATION ERRORS:

A. The Tax Collector shall make a deficiency determination if he or she determines that any person required to collect or self-collect taxes pursuant to the provisions of this article has failed to collect and 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 Collector 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 three-quarters of one percent ($\frac{3}{4}\%$) 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 fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Collector for a hearing on the matter. 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.

C. If the person requests a hearing, the Tax Collector shall cause the matter to be set for hearing, which shall be held within thirty (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 Collector to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Collector 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 Collector shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Collector, 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 Collector shall issue a final assessment (or nonassessment), 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 Collector may be appealed pursuant to Section 2-4-1120 of this article. Filing a request for a hearing with the Tax Collector and appeal to the City Manager pursuant to Section 2-4-1120 of this article is a prerequisite to a suit thereon.

E. Payment of the final assessment shall become delinquent if not received by the Tax Collector on or before the thirtieth day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) 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 section shall commence from the date of delinquency as provided in this subsection.

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. [Added by Ord. No. 3638, eff. 6/19/04.]

2-4-1115: ADMINISTRATIVE REMEDY; NONPAYING SERVICE USERS:

A. Whenever the Tax Collector determines that a service user has withheld the full 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 Collector 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 article from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two (2) 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 article.

B. In addition to the tax owed, the nonpaying service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. The Tax Collector shall notify the nonpaying service user that the Tax Collector 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 Collector within thirty (30) days from the date of the service of the notice upon him or her, the Tax Collector may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058.]

2-4-1116: ACTIONS TO COLLECT:

Any tax required to be paid by a service user under the provisions of this article 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 Collector 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 article shall be liable in an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this article, along with any collection costs incurred by the City as a result of the person's noncompliance with this article, including, but not limited to, reasonable attorney fees. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058.]

2-4-1117: ADDITIONAL POWERS AND DUTIES OF THE TAX COLLECTOR:

A. The Tax Collector shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this article.

B. The Tax Collector may adopt administrative rules and regulations not inconsistent

with provisions of this article 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 Collector's office.

C. Upon a proper showing of good cause, the Tax Collector may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this article and thereby: 1) conform to the billing procedures of a particular service supplier (or service user subject to Section 2-4-1105 of this article) so long as said agreements result in the collection of the tax in conformance with the intent of this article; 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 Collector's office, and are subject to cancellation by the Tax Collector or the City at any time.

D. The Tax Collector may conduct an audit, to ensure proper compliance with the requirements of this article, of any person required to collect and/or remit a tax pursuant to this article. The Tax Collector 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 (3) years next preceding the date of receipt of the written notice by said person from the Tax Collector. Upon completion of the audit, the Tax Collector may make a deficiency determination pursuant to Section 2-4-1114 of this article for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Collector. If said person is unable or unwilling to provide sufficient records to enable the Tax Collector to verify compliance with this article, the Tax Collector 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 Collector may extend the time for filing any statement required pursuant to this article for a period not to exceed forty five (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 three-quarters of one percent ($\frac{3}{4}\%$) per month, prorated for any portion thereof.

F. The Tax Collector shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this article.

G. The Tax Collector, with the written approval of the City Attorney, may compromise a claim pursuant to this article where the portion of the claim proposed to be released is less than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, and, with the approval of the City Attorney and the City Council, may compromise such a claim where the portion proposed to be released is equal to or greater than the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City.

H. Notwithstanding any provision in this article to the contrary, the Tax Collector 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 article if the noncollection occurred in good faith. In determining whether the noncollection was in good faith, the Tax Collector shall take into

consideration industry practice or other precedence. [Added by Ord. No. 3506; Amended by Ord. No. 3638, eff. 6/19/04; 3553.]

2-4-1118: RECORDS:

A. It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this article to keep and preserve, for a period of at least three (3) 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 Collector, which records the Tax Collector, or the Tax Collector's designated representative, 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 Collector, copies of all records deemed necessary by the Tax Collector to establish compliance with this article, 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 Collector 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 Collector, or the Tax Collector's designated representative, is authorized to execute a nondisclosure 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 Collector, or the Tax Collector's designated representative, 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: 1) provide to the Tax Collector 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 2) upon request of the Tax Collector, 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 Collector, 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 Collector, or the Tax Collector's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Collector may impose a penalty of five hundred dollars (\$500.00) on such person for each day following: 1) the initial date that the person refuses to provide such access; or 2) 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 article.

[Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058.]

2-4-1119: 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 Collector under this article, it may be refunded as provided in this section:

A. The Tax Collector 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 Collector under this article, 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 Collector 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. It is the intent of the City Council that the one year written claim requirement of this subsection be given retroactive effect; provided, however, that any claims which arose prior to the commencement of the one year claims period of this subsection, and which are not otherwise barred by a then applicable statute of limitations or claims procedure, must be filed with the Tax Collector as provided in this subsection within ninety (90) days following the effective date hereof.

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 article and actually due from a service user (whether due to overpayment or to 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 Collector, 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 Collector shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

D. 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 article 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 article is repealed, the amounts of any refundable taxes will be borne by the City.

E. Notwithstanding subsections A and B of this section, a service supplier shall be entitled to take any overpayment as a credit against an underpayment whenever such overpayment has been received by the City within the three (3) years next preceding a notice of tax deficiency or assessment by the Tax Collector, or during any year for which the service supplier, at the request of the Tax Collector, has executed a waiver of the defense of the statute of limitations with regard to any claim the City may have for a utility users tax. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one year written claim requirement of this section. [Added by Ord. No. 2177; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3506, 3058, 2348.]

2-4-1120: APPEALS:

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 2-4-1119 of this article), deficiency determination, assessment, or administrative ruling of the Tax Collector. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 2-4-1119 of this article), deficiency determination, assessment, or administrative ruling of the Tax Collector, 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 2-4-1119 of this article), deficiency determination, assessment, or administrative ruling of the Tax Collector; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Collector which aggrieved the service user or service supplier.

C. The matter shall be set for hearing no more than thirty (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 (5) 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 Collector, the City Manager, 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 City Manager 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 fourteen (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 ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6. If the City Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the City Manager on the fourteenth day.

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. [Added by Ord. No. 3093; Amended by Ord. No. 3638, eff. 6/19/04; 3553, 3058.]

2-4-1121: 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 article of any tax or any amount of tax required to be collected and/or remitted. [Added by Ord. No. 3638, eff. 6/19/04.]

2-4-1122: REMEDIES CUMULATIVE:

All remedies and penalties prescribed by this article or which are available under any other provision of law or equity, including, but not limited to, the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this article. [Added by Ord. No. 3638, eff. 6/19/04.]

2-4-1123: NOTICE OF CHANGES TO THIS ARTICLE:

If a tax under this article is added, repealed, increased, reduced, or the tax base is changed, the Tax Collector shall follow the notice requirements of Section 799 of the California Public Utilities Code. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Collector 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 Collector, 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 Collector. [Added by Ord. No. 3506; Amended by Ord. No. 3638, eff. 6/19/04; 3553.]

2-4-1124: SEVERABILITY:

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article or any part thereof is for any reason held to be invalid, unlawful or unconstitutional, such decision, and the decision not to enforce such, shall not affect the validity of the remaining portion of this article or any part thereof. The City Council hereby declares that it would have passed 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. [Added by Ord. No. 3553; Amended by Ord. No. 3638, eff. 6/19/04.]

2-4-1125: PENALTIES:

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, or an infraction at the discretion of the City Attorney. [Added by Ord. No. 3638, eff. 6/19/04.]

2-4-1126: FUTURE AMENDMENT OR RECODIFICATION OF CITED STATUTE OR
REGULATION:

Unless specifically provided otherwise, any reference to a state or federal statute or regulation in this article shall mean such statute as it may be amended or recodified from time to time. [Added by Ord. No. 3638, eff. 6/19/04.]