

Letter of Findings Number: 05-0402
Utility Receipts Tax
Tax Period 2003

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ISSUE

I. Utility Receipts Tax-Imposition

Authority: IC § 6-8.1-5-1(b); IC § 6-2.3-2-1; IC § 6-2.3-1-4; Commissioner's Directive #18 December 2002.

The taxpayer protests the imposition of utility receipts tax.

STATEMENT OF FACTS

The taxpayer is a Rural Electric Membership Corporation (REMC). It sells electricity and related products and services to its members. After an audit, the Indiana Department of Revenue (department) assessed additional utility receipts tax, interest, and penalty for 2003. The taxpayer protested this assessment. A hearing was held and this Letter of Findings results.

I. Utility Receipts Tax-Imposition

DISCUSSION

Notices of proposed assessments are prima facie evidence that the department's claim for unpaid taxes is valid. IC § 6-8.1-5-1(b). The taxpayer has the burden of proving that the department incorrectly imposed the assessment. Id.

The utility receipts tax is imposed by IC § 6-2.3-2-1 as follows:

An income tax, known as the utility receipts tax, is imposed upon the receipt of:

(1) the entire taxable gross receipts of a taxpayer that is a resident or a domiciliary of Indiana;...

"Gross receipts" for purposes of the Indiana utility receipts tax is defined at IC § 6-2.3-1-4 as follows:

"Gross receipts" refers to anything of value, including cash or other tangible or intangible property that a taxpayer receives in consideration for the retail sale of utility services for consumption before deducting any costs incurred in providing the utility services.

The department gives further direction as to the meaning of "gross receipts" in Commissioner's Directive #18 as follows:

Gross receipts refers to anything of value, including cash or other tangible or intangible property, that a taxpayer receives in consideration for the **retail** sale of utility services for consumption before deducting any costs incurred in providing the utility services.

"Utility Service" is defined in Commissioner's Directive #18 as follows:

Utility Service. Utility service means the furnishing of any of the following:

1. Electrical energy.
2. Natural gas used for heat, light, cooling or power.
3. Water.
4. Steam.
5. Sewage.
6. Telecommunication services.

In summary, the utility receipts tax is imposed on the receipts from retail sales of utility services for consumption by the purchaser. The utility services subject to tax are specifically listed in the Commissioner's Directive and include electricity. The taxpayer made retail sales of electricity to customers who use the electricity. The gross income from these sales was properly subject to the utility receipts tax. The issue to be determined is whether or not the taxpayer's receipts from four other sources were properly subject to the imposition of the utility receipts tax.

A. Dividend Income

The taxpayer protested the imposition of utility receipts tax on interest and dividend income. The taxpayer collected money from its customers throughout the month. The taxpayer paid its supplier for the electricity monthly. In the period between the collection of the monies and the payment of its suppliers, the taxpayer invested its receipts in short term commercial papers earning interest and dividends. The department assessed utility receipts tax on the interest and dividend income the taxpayer received from these investments. This income is not received from the retail sale of a utility service for consumption. Therefore, it is not subject to the utility receipts tax.

B. Income from Sales of Equipment

The department also assessed utility receipts tax on the receipts the taxpayer received from the sale of a pickup truck and a bill inserter. These receipts were not from the retail sale of a utility service. They were not

subject to the imposition of the utility receipts tax.

C. Income from Labor Services

The taxpayer installs and repairs equipment for its customers. The taxpayer protested the department's assessment of utility receipts tax on the income the taxpayer received from the provision of these services. This income was not derived from the sale of electricity for consumption by the consumers. These receipts were not subject to the utility receipts tax.

D. Cash Patronage Receipts

The taxpayer was a member of a cooperative of REMC's. As a member, the taxpayer paid fees to the cooperative. Sometimes the cooperative reimbursed a portion of the previously paid fees to each of the member REMCs. The taxpayer classified these fees as cash patronage receipts. The department assessed utility receipts tax on these receipts. Since these receipts were not from the retail sale of a utility service, they were not subject to the utility receipts tax.

E. Income from Sales of Merchandise

Finally, the taxpayer protested the assessment of utility receipts tax on the revenues from sales of merchandise. The merchandise included electronic thermal storage units, meter bases, and electric water heaters.

Commissioner's Directive #18 defines another set of receipts as subject to the utility receipts tax as follows:

5. Installation, maintenance, repair, equipment, or leasing services provided to a commercial or domestic consumer that are directly related to the deliver[y] of utility services, and charges for removal of the equipment from such consumer upon termination of service.

The electronic thermal storage units and meter bases were "directly related" to the taxpayer's delivery of electricity. Therefore, receipts from the sales of these items were subject to the imposition of the utility receipts tax.

Although the electric water heaters were powered by electricity, they were not directly related to the taxpayer's provision of electricity to its customers. The taxpayer's receipts from the sale of electric water heaters were not subject to the utility receipts tax.

FINDING

The taxpayer's protest to the imposition of the utility receipts tax on the receipts from the sale of electronic thermal storage units and meter bases is denied. The remainder of the taxpayer's protest is sustained.

Posted: 08/02/2006 by Legislative Services Agency

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