

Letter of Findings Number: 05-0397
Utility Receipts Tax
Tax Period 2003

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ISSUES

I. Utility Receipts Tax-Imposition on Access Charges

Authority: IC § 6-8.1-5-1(b), IC § 6-2.3-2-1, IC § 6-2.3-1-4; IC § 6-2.3-1-14.

The taxpayer protested the imposition of Indiana Utility Receipts Tax on its receipt of access charges.

II. Utility Receipts Tax-Consolidated Return

Authority: IC § 6-2.3-6-5.

The taxpayer protested the denial of its filing of a consolidated return.

III. Utility Receipts Tax- Calculation Issues

Authority: IC § 6-2.3-5-2; IC § 6-2.3-5-1(a).

The taxpayer protested several calculation issues.

STATEMENT OF FACTS

The taxpayer is a corporation providing telephone service. The taxpayer has a wholly owned subsidiary providing internet service. After an audit, the Indiana Department of Revenue (department) assessed additional Utility Receipts Tax, penalty, and interest. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Utility Receipts Tax-Imposition

DISCUSSION

The taxpayer provides its customers with local phone service. Taxpayer's customers contract with separate long distance carriers for long distance service. When taxpayer's customers make long distance phone calls, the call is first placed with the taxpayer. Then the call is routed to the long distance carrier with whom the caller contracted. After completion of the call, the long distance carrier informs the taxpayer of the charges for the long distance phone call. The taxpayer lists the long distance phone call charge on the customer's phone bill. The taxpayer collects the charge for the long distance phone call and forwards the total amount collected to the long distance carrier. In a separate transaction, the long distance carrier pays the taxpayer a fee for providing the customer with access to the long distance carrier. This fee is the access charge on which the department assessed Utility Receipts Tax. The taxpayer protested this imposition of tax.

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.

"Utility Service" is defined to include telecommunication services at IC § 6-2.3-1-14.

In summary, the utility receipts tax is an income tax imposed on the receipts from retail sales of utility services for consumption by the purchaser. The utility services subject to tax include telecommunication services.

In this case, the income from a retail sale subject to the Utility Receipts Tax is the sale of the service providing the long distance call. The seller of the taxable utility service is the long distance carrier. The purchaser and consumer of the taxable utility service is the taxpayer's customer. The gross receipts subject to the Utility Receipts Tax are the fees which the customer pays to the long distance carrier for the receipt of the long distance service. The total amount of the monies received by the long distance carrier from the taxpayer's customers are subject to the Utility Receipts Tax. There is no deduction available to the long distance carrier for the access fees it pays to the taxpayer related to long distance phone calls.

The taxpayer receives the access fees from another utility provider, the long distance carrier, for connecting the customer to the long distance carrier's phone lines and services. The access fees on which the department imposed Utility Receipts Tax are not income from the retail sale of a utility service to a customer who consumes the service. The taxpayer's access fees are exempt from the Utility Receipts Tax.

For example, suppose one of the taxpayer's customers wishes to call a friend in San Diego, California. The

caller has local telephone service through the taxpayer. The customer also has a contract with a long distance carrier. The caller picks up his phone and dials the numbers to connect with the San Diego friend. The taxpayer processes the customer's phone call through its system to the long distance carrier's system. The call is completed through the long distance carrier's system. The long distance carrier charges the customer \$10 for the call. The long distance carrier communicates the charge to the taxpayer who includes the \$10 long distance phone call fee on its bill to the customer. The caller pays the taxpayer who forwards the \$10 to the long distance carrier. In another transaction, the long distance carrier pays a \$1 access fee to the taxpayer to compensate the taxpayer for connecting the caller to the long distance carrier's phone system.

The Indiana Utility Receipts Tax on the \$10 charge for the long distance phone call is imposed on the long distance carrier because the long distance carrier received income for making the retail sale of a utility service to the customer who used the service. The long distance carrier pays the access fee to the taxpayer for processing the phone call from the customer through the taxpayer's lines to the long distance carrier's phone lines. The long distance carrier does not receive a deduction for the access fees it paid to the taxpayer or other local phone companies. The taxpayer is not subject to the Indiana Utility Receipts Tax on the receipts from the access fees paid by the long distance carriers.

FINDING

The taxpayer's protest is sustained.

II. Utility Receipts Tax- Filing Consolidated Return

DISCUSSION

The taxpayer and its subsidiary filed a consolidated Utility Receipts Tax Return. The department disallowed the consolidated filing. The taxpayer protests the disallowance.

IC § 6-2.3-6-5 provides that corporations which own at least eighty percent of the stock of another corporation are affiliated corporations. Such affiliated corporations can file a consolidated return if they elect to do so with their first annual Utility Receipts Tax Return.

The taxpayer owns all of the voting stock in its subsidiary. The two affiliated corporations elected to file a consolidated on their first annual return. They meet the statutory qualifications to file a consolidated return.

FINDING

The taxpayer's protest is sustained.

III. Utility Receipts Tax- Calculation Issues

DISCUSSION

IC § 6-2.3-5-2 allows for a deduction of bad debts from taxpayer's gross receipts subject to the Utility Receipts Tax. IC § 6-2.3-5-1(a) provides for an annual \$1,000 deductions from a taxpayer's gross receipts subject to the Utility Receipts Tax. The taxpayer protested that the department did not allow these deductions. The taxpayer is entitled to these statutory deductions.

FINDING

The taxpayer's protest is sustained subject to audit verification.

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