

Letter of Findings Number: 06-0140
Utility Receipts Tax
Tax Period 2003-2004

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ISSUE

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.

STATEMENT OF FACTS

The taxpayer is a rural telephone cooperative corporation providing telephone and internet services to several Indiana counties. 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 requested that the Letter of Findings be based upon the documentation in the file 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 provision 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, assume 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 receipt of the access fees paid by the long distance carriers.

FINDING

The taxpayer's protest is sustained.

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