

Letter of Findings: 07-0444
Utility Receipts Tax
For the Years 2003, 2004, 2005, and 2006

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ISSUE

I. Municipal Water Utility – Utility Receipts Tax.

Authority: IC § 6-2.3-1-4; IC § 6-2.3-1-12; IC § 6-2.3-1-12(18); IC § 6-2.3-1-14; IC § 6-2.3-2-1; [IC 6-2.3-4-3](#); IC § 6-2.3-4-3(3); IC § 6-8.1-5-1(b); IC § 36-1-2-13.

Taxpayer argues that it is a nonprofit corporation not subject to the Utility Receipts Tax.

STATEMENT OF FACTS

Taxpayer is an Indiana municipality which provides water service to local residents. The Department of Revenue (Department) conducted an audit review of taxpayer's business records. As a result of that review, the Department found that taxpayer had failed to file Utility Receipts Tax returns during the years under review. The Department concluded that taxpayer owed Utility Receipts Tax for 2003, 2004, 2005, and 2006, and issued proposed assessments. Taxpayer disagreed and submitted a protest to that effect. An administrative hearing was conducted by telephone during which taxpayer's representative explained the basis for that protest. This Letter of Findings results.

I. Municipal Water Utility – Utility Receipts Tax.

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. IC § 6-8.1-5-1(b). The taxpayer bears the burden of proving that the assessment is incorrect. *Id.*

The Indiana Utility Receipts Tax is imposed at 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.

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 includes the furnishing of water. IC § 6-2.3-1-14.

Nonetheless, taxpayer cites the exemption provision set out in [IC 6-2.3-4-3](#) which exempts...

Gross receipts received by: (1) a conservancy district established under [IC 14-33-20](#) or [IC 13-3-4](#) (before its repeal); (2) a regional water, sewage, or solid waste district established under [IC 13-26](#) or [IC 13-3-2](#) (before its repeal); (3) a *nonprofit corporation* formed solely for the purpose of supplying water to the public; (4) a county solid waste management district or a joint solid waste management district established under [IC 13-21](#) or [IC 13-9.5-2](#) (before its repeal); (5) a nonprofit corporation formed for the purpose of providing a combination of: (A) water; and (B) sewer and sewage service; to the public; (6) a county onsite waste management district established under [IC 36-11](#); or (7) a political subdivision for sewer and sewage service; are exempt from the utility receipts tax. (*Emphasis added*).

In particular, taxpayer argues that it is a "nonprofit corporation formed solely for the purpose of supplying water to the public." IC § 6-2.3-4-3(3).

However, IC § 6-2.3-1-12 – which defines "taxpayers" for purposes of the Utility Receipts Tax – includes a "political subdivision (as defined in [IC 36-1-2-13](#)) or the state of Indiana, to the extent engaged in private or proprietary activities or business...." IC § 6-2.3-1-12(18). IC § 36-1-2-13 defines a "political subdivision" as including any "municipal corporation or special taxing district."

Taxpayer has provided a copy of its local ordinance entitled "concerning the establishment and construction of a municipal water system, and matters connected therewith" to support its claim that it is a "nonprofit corporation" exempt from the Utility Receipts Tax. The ordinance indeed does provide an indication that the local residents voted to direct taxpayer to "enter upon the policy of constructing, owning, operating, maintaining, and managing a municipal water system...."

However, the Department is unable to agree that taxpayer has met its burden of demonstrating that it is not subject to the Utility Receipts Tax because there is no evidence that taxpayer is a "nonprofit corporation" as defined in IC § 6-2.3-4-3(3). Taxpayer is a local political subdivision which furnishes water to its customers and is subject to the Utilities Receipts Tax pursuant to IC § 6-2.3-1-12(18). The fact that the water utility may or may not

have been a profit center for the municipality is irrelevant in the determination that taxpayer falls within the category of a nonexempt "political subdivision."

FINDING

Taxpayer's protest is respectfully denied.

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