

**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2009-01 URT**  
**August 17, 2009**

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**ISSUES**

Utility Receipts Tax – Sale of Utility Assets

An entity ("Taxpayer") is seeking a Revenue Ruling ("Ruling") as to whether the sale of certain assets is subject to the Utility Receipts Tax.

**Authority:** [IC 6-2.3-1-4](#); [IC 6-2.3-2-1](#); [IC 6-2.3-3-2](#); [IC 6-2.3-3-5\(a\)](#).

**STATEMENT OF FACTS**

Taxpayer provides the following facts regarding its request for a Ruling. Taxpayer, which is a subsidiary agency of an Indiana city, provides water utility services to Indiana citizens. As part of a contractual agreement ("Agreement") entered into with another entity ("Buyer"), Taxpayer has agreed to sell particular utility assets. More specifically, Taxpayer provides, in pertinent part, the following details related to the Agreement:

In summary, the Agreement provides generally that [Taxpayer] sells and the Buyer buys certain Water Line Assets, Easements, [Customers], various permits, rate project contracts and maps showing valve and hydrant locations....

The Purchase Price was to and has been paid via two (2) methods... First, from time to time, a cash payment resulting in a dollar for dollar credit equal to the wholesale sale invoice amount due to [Taxpayer] from the Buyer for treated water provided to [Customers] on behalf of [Buyer]... This credit is available during the time frame throughout which the Buyer... is completing the necessary infrastructure to connect [Customers] to the existing waterworks of [Buyer]. The second method is a cash payment without any type of credit.

The dollar for dollar credit is available only during the first sixty (60) months following the effective date of the Agreement and is limited to [a particular amount] for any twelve (12) month period. After sixty (60) months or an aggregate credit for a twelve (12) month period of [a particular amount], the invoiced amounts for wholesale treated water are to be paid in cash.

...

The agreement includes a temporary wholesale... relationship whereby the Taxpayer is providing [Buyer] with treated water while [Buyer] is connecting [Customers] to its own existing waterworks. The Taxpayer invoices [Buyer] (based upon the meter readings provided by [Buyer] to the Taxpayer) and [Buyer] collects the revenue from the water utility services directly from [Customers]. In turn, [Buyer] pays the Taxpayer, simultaneously receiving a dollar for dollar credit against the Purchase Price... The Agreement provides that the Buyer... ". . . shall bear all cost and collect all revenue from [Customers] for the water utility service provided to [Customers] after the [Agreement] date . . . and all such revenue billed and collected shall be the Buyer's."

Taxpayer requests that the Department rule whether its receipts attributable to the Agreement are subject to the Utility Receipts Tax.

**DISCUSSION**

The imposition of the utility receipts tax is found in [IC 6-2.3-2-1](#), which provides:

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; and
- (2) the taxable gross receipts derived from activities or businesses or any other sources within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana.

The definition of "gross receipts" is provided in [IC 6-2.3-1-4](#), which states:

"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.

As further definition, [IC 6-2.3-3-5\(a\)](#) provides that "gross receipts" do not include wholesale sales "to another generator or reseller of utility services." However, [IC 6-2.3-3-2](#) provides the following caveat regarding non-taxable receipts:

Notwithstanding any other provisions of this article, receipts that would otherwise not be taxable under this article are taxable gross receipts under this article to the extent that the amount of the nontaxable receipts are not separated from the taxable receipts on the records or returns of the taxpayer.

In the instant case, Taxpayer's receipts attributable to the Agreement are not received in consideration for the retail sale of utility services for consumption. For purposes of the Utility Receipts Tax, Taxpayer's receipts attributable to the Agreement are neither received in consideration for a retail sale, nor are the receipts for the sale of utility services for consumption. Taxpayer's receipts attributable to furnishing Buyer with water are the product of a wholesale arrangement, not a retail sale. Taxpayer invoices Buyer for the water and other property Taxpayer provides to Buyer. In turn, Buyer invoices Customers for the water. Therefore, Taxpayer sells the water to Buyer as part of a sale for resale or wholesale sale. Since the Utility Receipts Tax applies only to retail sales, Taxpayer's receipts attributable to the Agreement are not subject to the tax. Moreover, assuming arguendo that Taxpayer's sales of water line assets, easements, [Customers], various permits, rate project contracts and maps showing valve and hydrant locations qualified as retail sales, they would not be sales of utility services for consumption. The water and items Taxpayer sells to Buyer are not for consumption on the part of Buyer. Accordingly, because Taxpayer's sales to Buyer are neither retail sales nor sales made for consumption, such sales are not subject to the Utility Receipts Tax.

#### **RULING**

Taxpayer's receipts attributable to the Agreement are not "gross receipts" as defined by [IC 6-2.3-1-4](#). Accordingly, Taxpayer's receipts attributable to the Agreement are not subject to the Utility Receipts Tax imposed by [IC 6-2.3-2-1](#).

#### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

#### **Department of State Revenue**

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