
DEPARTMENT OF STATE REVENUE
Revenue Ruling # 2009-02URT
September 18, 2009

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ISSUES

Utility Receipts Tax – Wholesale Sale of Water

An entity ("Taxpayer") is seeking a Revenue Ruling ("Ruling") as to whether the wholesale sale of water from one water utility company to another water utility company 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 sells water to Buyer. More specifically, Taxpayer provides, in pertinent part, the following details related to the sales at issue:

From time to time [Taxpayer] sells treated water to [Buyer], which is then provided to [Buyer's] retail customers. Buyer pays to [Taxpayer], in cash, the full monthly invoiced amounts for the wholesale treated water.... At all times, Buyer is responsible for water utility functions, such as operations and maintenance, meter readings and recordkeeping, past the point of purchase. The Buyer solely and exclusively bears all costs and collects all revenue received from Buyer's retail customers for water utility services provided to Buyer's customers and such revenue billed and collected is and remains the sole and exclusive property of Buyer....

Taxpayer requests that the Department rule whether Taxpayer's wholesale sale of water to Buyer is 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 sale of water to Buyer 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 sale of water to Buyer are neither received in consideration for a retail sale, nor are such 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. In turn, Buyer invoices its 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 such transactions are not subject to the tax.

Moreover, assuming arguendo that Taxpayer's sales of water to Buyer qualified as retail sales, they would not be sales of utility services for consumption. The water Taxpayer sells to Buyer is not for consumption on the part of Buyer. Instead, Buyer purchases the water to resell to its own customers. Accordingly, because Taxpayer's sales to Buyer are neither retail sales nor sales made for consumption, such transactions are not subject to the Utility Receipts Tax.

RULING

Taxpayer's receipts attributable to the wholesale sale of water to Buyer are not "gross receipts" as defined by [IC 6-2.3-1-4](#). Accordingly, Taxpayer's receipts attributable to the wholesale sale of water to Buyer 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.

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