

**Letter of Findings Number: 10-0579P
Utility Receipts Tax-Penalty
For the Period 2008**

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ISSUE

I. Tax Administration—Estimated Tax Penalty.

Authority: IC § 6-2.3-6-1.

Taxpayer protests the imposition of a penalty for failure to pay sufficient estimated taxes.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. Taxpayer filed its original 2008 Utility Receipts Tax (URT) return reporting a \$54,700 liability. In August 2010, Taxpayer filed an amended URT return reporting a \$76,800 liability. Taxpayer paid an amount equal to the base tax and a ten percent penalty. However, the Department assessed another penalty for failure to make sufficient estimated tax payments. Taxpayer protested the estimated tax penalty.

The Department sent Taxpayer a letter indicating that Taxpayer had twenty (20) days to submit additional information in support of its protest or to request a hearing. Taxpayer did not submit additional information or request a hearing. As a result, this Letter of Findings is written based on Taxpayer's previously-submitted information and Department records relating to Taxpayer.

I. Tax Administration—Estimated Tax Penalty.

DISCUSSION

Taxpayer protests the imposition of a ten-percent penalty for failure to make sufficient estimated utility receipts tax payments. IC § 6-2.3-6-1 provides:

(a) Except as provided in subsections (c) through (e), a taxpayer shall file utility receipts tax returns with, and pay the taxpayer's utility receipts tax liability to, the department by the due date of the estimated return. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year which does not end on December 31, the due dates for filing estimated utility receipts tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

(b) With each return filed, with each payment by cashier's check, certified check, or money order delivered in person or by overnight courier, and with each electronic funds transfer made, a taxpayer shall pay to the department twenty-five percent (25[percent]) of the estimated or the exact amount of utility receipts tax that is due.

(c) If a taxpayer's estimated annual utility receipts tax liability does not exceed two thousand five hundred dollars (\$2,500) the taxpayer is not required to file an estimated utility receipts tax return.

(d) If the department determines that a taxpayer's:

(1) estimated quarterly utility receipts tax liability for the current year; or

(2) average estimated quarterly utility receipts tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), the taxpayer shall pay the estimated utility receipts taxes due by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(e) If a taxpayer's utility receipts tax payment is made by electronic funds transfer, the taxpayer is not required to file an estimated utility receipts tax return.

(f) The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on taxpayers failing to make payments as required in subsection (b) or (d). However, a penalty may not be assessed as to any estimated payments of utility receipts tax that equal or exceed:

(1) twenty percent (20[percent]) of the final tax liability for the taxable year; or

(2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall be assessed only on the difference between the actual amount paid by the taxpayer on the estimated return and twenty-five percent (25[percent]) of the taxpayers' [sic.] final utility receipts tax liability for the taxable year.

In Taxpayer's case, Taxpayer was required to make quarterly payments of roughly \$15,360—the lower of twenty percent of Taxpayer's 2008 URT liability and twenty-five percent of Taxpayer's 2007 URT liability (\$16,530 per quarter). IC § 6-2.3-6-1 provides that the failure to make a sufficient estimated payment—particularly an

estimated payment of an amount known to Taxpayer as of the date the estimated payment is due—is subject to penalty if that payment is not made on or before the statutory deadline. IC § 6-2.3-6-1 provides no exception for reasonable cause. As such, Taxpayer's request for penalty waiver is denied.

FINDING

Taxpayer's protest is denied.

Posted: 02/23/2011 by Legislative Services Agency

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