

Letter of Findings Number: 40-20110109
Utility Receipts Tax
For Tax Years 2007-09

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ISSUE

I. Utility Receipts Tax–Taxable Receipts.

Authority: IC § 6-2.3-2-1; IC § 6-2.3-1-4; IC § 6-2.3-3-10; IC § 6-8.1-5-1.

Taxpayer protests the inclusion of certain receipts as subject to the utility receipts tax.

STATEMENT OF FACTS

Taxpayer is an Indiana electricity provider. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not charged utility receipts tax ("URT") on the full amount of taxable transactions. The Department therefore issued proposed assessments for uncollected and unremitted URT and interest for the tax years 2007, 2008, and 2009. Taxpayer protests that the Department included receipts which were not subject to URT. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Utility Receipts Tax–Taxable Receipts.

DISCUSSION

Taxpayer protests the Department's inclusion of certain receipts as subject to the URT for the tax years 2007-09. Taxpayer states that those receipts do not meet the definition of utility receipts subject to the URT. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department, in determining that the receipts in question were subject to URT, referred to IC § 6-2.3-3-10, which provides:

Gross receipts include receipts received for installation, maintenance, repair, equipment, or leasing services provided to a commercial or domestic consumer that are directly related to the delivery of utility services to the commercial or domestic consumer or the removal of equipment from a commercial or domestic consumer upon the termination of service.

(Emphasis added).

Also of relevance is IC § 6-2.3-2-1, which states:

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.

Additionally, IC § 6-2.3-1-4 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.

Therefore, the term "gross receipts" refers to anything a taxpayer receives in consideration for the retail sale of utility services (IC § 6-2.3-1-4) and receipts received by a taxpayer for repairs provided to a commercial or domestic consumer that are directly related to the delivery of utility services to the commercial or domestic consumer (IC § 6-2.3-3-10).

Taxpayer agrees that if one of its customers damaged Taxpayer's equipment through which that very customer received electrical service, then payment from that customer would constitute receipts subject to URT. In fact, Taxpayer did remit URT on such receipts, as described in the Department's audit report. However, Taxpayer asserts that the receipts described in IC § 6-2.3-3-10 must be received from the specific commercial or domestic consumer served by the equipment or property being repaired.

For example, Taxpayer states that if a third party were to damage Taxpayer's equipment which delivered electrical services to one of Taxpayer's customers and the third party then paid Taxpayer for repairs to the equipment, then the payment would not constitute receipts subject to URT since it did not come from the customer who was receiving service from that equipment. Also, if one of Taxpayer's customers damaged Taxpayer's equipment through which Taxpayer provided service to another customer, Taxpayer believes that payment for repairs to that equipment by the customer who damaged the equipment would not constitute receipts subject to URT since the customer who received service through that equipment did not pay for the repairs.

Taxpayer is correct that IC § 6-2.3-3-10 provides that receipts received by Taxpayer for repairs to Taxpayer's equipment from a commercial or domestic consumer that are directly related to the delivery of utility services to

the commercial or domestic consumer who makes such a payment. Therefore, Taxpayer correctly remitted URT on receipts from its customers who paid for repairs to equipment which provided electrical service to those customers. Repair payments received from anyone other than the customer who receives electrical service via the repaired equipment is not subject to URT, as provided by IC § 6-2.3-3-10. Taxpayer has met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

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