

Letter of Findings: 40-20120631P
Utility Receipts Tax
For the Tax Years 2004, 2005, 2006

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ISSUE

I. Estimated Tax Penalty – Utility Receipts Tax.

Authority: IC § 6-2.3-6-1; IC § 6-8.1-10-2.1(b); IC § 6-8.1-5-2 (a)

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 was required to file tax returns for 2004, 2005, and 2006. Taxpayer filed the actual returns on August 10, 2012. Taxpayer did make estimated payments for 2004, 2005, and 2006. However, some of the payments were late (i.e. 1st Quarter of 2004 was due April 20, 2004, payment made on April 30, 2004; the 3rd Quarter of 2005 was due September 20, 2005, payment made on October 5, 2005; and the 4th Quarter of 2006 was due September 20, 2006, payment made on September 21, 2006). Taxpayer states that the Department of Revenue ("Department") added penalty for the underpayment of estimated tax penalty to the amount credited to Taxpayer. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest.

I. Estimated Tax Penalty – Utility Receipts Tax.

DISCUSSION

The Department added a ten-percent penalty to the amount of additional tax and interest owed for 2004-2006. Taxpayer believes the penalty should be abated and explains that it paid the tax liability timely along with a URT-Q, the Department's Indiana Utility Receipts Tax Return. Taxpayer contends that they filed the tax return with the payments. However, the URT-Q is not the requisite tax return. The URT-Q is a payment voucher to remit the tax payment. Taxpayer was required to file an actual tax return for the years in question.

IC § 6-2.3-6-1 states:

(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's [sic] final utility receipts tax liability for the taxable year.

(Emphasis added).

Since IC § 6-2.3-6-1(f) refers to IC § 6-8.1-10-2.1(b) regarding the imposition of penalty, it is important to review that statute. Indiana law imposes a penalty for late payment of taxes.

IC § 6-8.1-10-2.1(b) provides for the amount of the penalty and states:

Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10[percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

In this situation, Taxpayer claims it thought that it filed the correct return when Taxpayer sent in the URT-Q Estimated Tax Payment Voucher with the tax payment. However, the URT-Q Estimated Tax Payment Voucher, on its face states that the annual Utility Receipts Tax Return, Form URT, is available as a separate Form. Taxpayers filed the actual tax returns in 2012. Taxpayer also contends that the Department is also precluded from issuing a proposed assessment more than three years after the return is filed or the end of the tax year which contains the taxable period pursuant to IC § 6-8.1-5-2 (a). IC § 6-8.1-5-2 (a) states:

(a) Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or either of the following:

- (1) The due date of the return.
- (2) In the case of a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax, the end of the calendar year which contains the taxable period for which the return is filed.

However, since Taxpayer did not actually file the actual Utility Receipt Tax Returns until 2012, the Department properly issued the proposed assessments within the time prescribed above.

FINDING

Taxpayer's protest is respectfully denied.

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