

Final Order Denying Refund: 40-20160704R; 40-20160705R
Utility Receipts Tax
For the Years 2003 through 2009

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HOLDING

Non-profit Indiana Water Utility was not entitled to a refund of Utility Receipts Tax because the refund was barred by the three-year statute of limitations.

STATEMENT OF FACTS

Taxpayer is an Indiana water utility company supplying water to approximately 300 customers. Taxpayer filed requests for a refund of Utility Receipts Tax (URT) on the ground that URT "returns were filed incorrectly and payments were made." The Indiana Department of Revenue ("Department") denied the refunds in October 2016 letters which both stated that Taxpayer's "claim is barred by the 3-year statute of limitations."

Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

ISSUE

I. Utility Receipts Tax - Statute of Limitations.

Authority: IC § 6-2.3-1-14; IC § 6-2.3-2-1; IC § 6-2.3-3-10; IC § 6-2.3-4-3; IC § 6-8.1-9-1(a); Commissioner's Directive 18 (August 2014).

Taxpayer argues that it is entitled to a refund of the URT paid over a period of seven years because the tax was never owed.

DISCUSSION

Over a seven-year period, Taxpayer explains that it paid URT to the Department, that it never owed the tax, and that it is now entitled to a refund of those amounts. Taxpayer explains that it is "not a Municipal Water Company, not a Municipality, and not a Political Subdivision." Instead, Taxpayer states that "it is a 501(c)(12) entity formed for the purpose of supplying water to [its] members."

The Utility Receipts Tax is imposed pursuant to 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.

IC § 6-2.3-1-14 states that:

"Utility service" means furnishing any of the following:

- (1) Electrical energy.
- (2) Natural gas, either mixed with another substance or pure, used for heat, light, cooling, or power.
- (3) Water.
- (4) Steam.

- (5) Sewage (as defined in [IC 13-11-2-200](#)).
- (6) Telecommunication services.

(Emphasis added).

IC § 6-2.3-3-10 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.

However, IC § 6-2.3-4-3 provides that the gross receipts received by "a nonprofit corporation formed solely for the purpose of supplying water to the public . . . are exempt from the utility receipts tax."

The exemption is reiterated at Commissioner's Directive 18 (August 2014), 20140924 Ind. Reg. 045140372NRA, which states that gross receipts received by "[a] nonprofit corporation formed solely for the purpose of supplying water to the public" are exempt from the URT.

In support of its position that it is exempt from the URT, Taxpayer provided a copy of its Bylaws which states "It is not anticipated that there will be any net income . . ." Taxpayer's own registration with the Department (INBIZ) designates Taxpayer as a "Domestic Nonprofit Corporation."

Taxpayer argues that the URT returns should "never have been filed for the periods [2003 through 2009], because the tax was not owed" and that the person responsible "did not understand the regulations for filing and filed these [URT] forms in error."

Nonetheless, Taxpayer's refund request is barred by the three-year limitations period. IC § 6-8.1-9-1(a) provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

Although ultimately irrelevant, the Department has no reason whatsoever to question whether or not Taxpayer qualifies for the URT exemption. However, IC § 6-8.1-9-1(a) binds both Taxpayer and the Department. Taxpayer is not entitled to receive a refund of tax paid outside the three-year limitations period and the Department is not permitted to issue a refund submitted past that same period. What Taxpayer seeks is clearly precluded by Indiana law.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 04/26/2017 by Legislative Services Agency
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