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TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #02-316(E)

DIGEST

Temporarily adds provisions to explain the contents of IC 6-2.3 concerning the utility receipts tax, which is effective January 1, 2003. Authority: HEA 1001ss SECTION 196(b). Effective July 1, 2002.

SECTION 1. (a) In addition to the definitions in IC 6-2.3, the definitions in this SECTION apply throughout this document.

(b) “Affiliated group” means an affiliated group of corporations described in IC 6-2.3-6-5.

(c) “Department” means the department of state revenue.

(d) “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.

(e) “Hazardous waste” has the meaning set forth in IC 13-11-2-99(a) and includes a waste determined to be a hazardous waste under IC 13-22-2-3(b).

(f) “Receives”, as applied to a taxpayer, means:

- (1) the actual coming into possession of, or the crediting to, the taxpayer, of gross receipts; or**
- (2) the payment of a taxpayer’s expenses, debts, or other obligations by a third party for the taxpayer’s direct benefit.**

(g) “Resource recovery system” means tangible property directly used to dispose of solid waste or hazardous waste by converting it into energy or other useful products.

(h) “Solid waste” has the meaning set forth in IC 13-11-2-205(a). The term does not include dead animals or any animal solid or semisolid wastes.

(i) “Taxable gross receipts” means the remainder of:

- (1) all gross receipts that are not exempt from tax under IC 6-2.3-4; less**
- (2) all deductions that are allowed under IC 6-2.3-5.**

(j) “Taxable period” means a calendar year, a fiscal year, any of the quarterly periods of either a calendar or fiscal year, or any other period specified by the department under this document.

(k) “Taxable year” means the year that a taxpayer uses for purposes of filing the taxpayer’s federal income tax return. If a taxpayer does not file a federal income tax return, the term means a calendar year.

(l) “Taxpayer” means any:

- (1) assignee;**
- (2) receiver;**
- (3) commissioner;**
- (4) fiduciary;**

- (5) trustee;
- (6) institution;
- (7) consignee;
- (8) firm;
- (9) partnership;
- (10) limited liability partnership;
- (11) joint venture;
- (12) pool;
- (13) syndicate;
- (14) bureau;
- (15) association;
- (16) cooperative association;
- (17) corporation;
- (18) political subdivision (as defined in IC 36-1-2-13) or the state of Indiana, to the extent engaged in private or proprietary activities or business. Proprietary activities include the furnishing of electrical energy, natural gas, water, steam, and telecommunication services;
- (19) trust;
- (20) limited liability company; or
- (21) other group or combination acting as a unit; regardless of whether the entity is exempt for state adjusted gross income tax purposes under IC 6-3 or for federal income tax purposes under the Internal Revenue Code.

(m) “Telecommunication services” means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include any of the following:

- (1) Value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.
- (2) Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.
- (3) The transmission of video programming or other programming:
 - (A) provided by; or
 - (B) generally considered comparable to programming provided by; a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite (DBS/DISH), and digital television (DTV).

(n) “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. Natural gas does not include propane gas or liquefied petroleum gas.
- (3) Water.
- (4) Steam.
- (5) Sewage services (as defined in IC 13-11-2-200).
- (6) Telecommunication services.

SECTION 2. (a) 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.

(b) The receipt of taxable gross receipts from transactions is subject to a tax rate of one and four-tenths percent (1.4%).

(c) A stockholder who receives a distribution of the assets of a corporation, a joint stock association, or other organization in which the stockholder holds stock is liable, to the extent of the assets the stockholder receives from the organization, for a certain percentage of the unpaid gross receipts taxes that the organization owes after dissolution. That percentage equals the percentage of the total outstanding stock of the organization held by the

stockholder before dissolution.

(d) Any other owner of a utility receipts taxpayer who receives a distribution of the assets of a taxpayer in which the owner holds an ownership interest is liable, to the extent of the assets the owner receives from the taxpayer, for a certain percentage of the unpaid utility receipts taxes that the taxpayer owes after dissolution. That percentage equals the percentage of ownership interest the owner held in the taxpayer before dissolution.

(e) Every S corporation or other entity exempt from federal income taxation under Section 1361 of the Internal Revenue Code, partnership, limited liability company, and limited liability partnership, is liable for the utility receipts tax. No utility receipts tax liability is imposed under this document on a partner's, member's, beneficiary's, or shareholder's distributive share of the entity's gross income.

(f) Any election by a taxpayer under federal regulation 26 CFR 301.7701-3 (check-the-box) to change its entity classification for federal adjusted gross income tax purposes, therefore for state adjusted gross income tax purposes under IC 6-3, is not recognized for utility receipts tax purposes, i.e., a partnership that elects to be classified for federal adjusted gross income tax purposes as a corporation remains a partnership for utility receipts tax purposes.

(g) Any election by a taxpayer under Internal Revenue Code Section 1361(b)(3) for federal adjusted gross income tax purposes, therefore for state adjusted gross income tax purposes under IC 6-3, to participate in a Qualified Subchapter S Subsidiary (QSSS) filing is not recognized for utility receipts tax purposes with each taxpayer remaining a separate taxable entity.

SECTION 3. (a) Determinations concerning whether the receipts of a taxpayer are taxable gross receipts shall be made in conformity with this document.

(b) Notwithstanding any other provisions of this document, receipts that would otherwise not be taxable under this document are taxable gross receipts under this document 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.

(c) Gross receipts include the amount of any legal settlement or judgment received to compensate the taxpayer for lost retail sales of utility services.

(d) Gross receipts do not include collections by a taxpayer of a tax, fee, or surcharge imposed by a state, a political subdivision, or the United States if:

- (1) the tax, fee, or surcharge is imposed solely on the sale at retail of utility services;
- (2) the tax, fee, or surcharge is remitted to the appropriate taxing authority; and
- (3) the taxpayer collects the tax, fee, or surcharge separately as an addition to the price of the utility service sold.

(e) Gross receipts do not include collections by a taxpayer of a tax, fee, or surcharge that is:

- (1) approved by the Federal Communications Commission or the utility regulatory commission; and
- (2) stated separately as an addition to the price of telecommunication services sold at retail.

(f) Gross receipts do not include a wholesale sale to another generator or reseller of utility services.

(g) A sale is a retail sale if the taxpayer sells utility services to a buyer that subsequently makes a sale described in IC 6-2.3-4-5.

(h) A sale shall be treated as a retail sale if the taxpayer sells water or gas to another individual or entity that bottles and resells the water or gas.

(i) Gross receipts do not include amounts received by a corporation or a division of a corporation owned, operated, or controlled by its member electric cooperatives as payment from the electric cooperatives for

electrical energy to be resold to their member-owner consumers.

(j) Gross receipts do not include amounts received by a joint agency established under IC 8-1-2.2 that constitutes a payment by a municipality that is a member of the joint agency for electrical energy that will be sold by the municipality to retail customers.

(k) Gross receipts do not include a deposit of cash made with a taxpayer to the extent that the deposit is refundable.

(l) 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. "Directly related to the delivery of utility services" means any services or equipment that is provided to a consumer that permits the consumer to receive and use utility services.

SECTION 4. (a) Gross receipts derived from sales to the United States government are exempt from the utility receipts tax to the extent the state is prohibited by the Constitution of the United States from taxing the gross receipts.

(b) Gross receipts derived from business conducted in commerce between Indiana and either another state or territory or a foreign country are exempt from utility receipts tax to the extent the state is prohibited from taxing the gross receipts by the Constitution of the United States.

(c) Gross receipts received by:

(1) a conservancy district established under IC 14-33-20 or IC 13-3-4 (before its repeal);

(2) a regional water, sewage, or solid waste district established under IC 13-26 or IC 13-3-2 (before its repeal);

(3) a nonprofit corporation formed solely for the purpose of supplying water to the public. For a political subdivision to qualify for this exemption, the political subdivision must be both a nonprofit corporation and have been formed solely for the purpose of supplying water to the public;

(4) a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal);

(5) a nonprofit corporation formed solely for the purpose of providing a combination of:

(A) water; and

(B) sewer and sewage service;

to the public. For a political subdivision to qualify for this exemption, the political subdivision must be both a nonprofit corporation and have been formed solely for the purpose of providing a combination of water, and sewer and sewage service to the public; or

(6) a county onsite waste management district established under IC 36-11;

are exempt from the utility receipts tax.

(d) An occasional sale of utility services by a taxpayer that is not regularly engaged in the trade or business of selling utility services is exempt from the utility receipts tax.

(e) This section applies to the sale of utility services by the owner or operator of any of the following facilities:

(1) A commercial hotel, motel, inn, or campground.

(2) A park for mobile homes, manufactured homes, trailers, or recreational vehicles.

(3) Marinas.

(f) Gross receipts derived from the sale of utility services by an owner or operator described in subsection (a) to a user of a facility described in subsection (a) are exempt from the utility receipts tax.

SECTION 5. (a) Each taxable year a taxpayer is entitled to deduct from the taxpayer's gross receipts an amount equal to the product of:

(1) one thousand dollars (\$1,000); multiplied by

(2) a fraction.

The numerator of the fraction is the number of days in the taxpayer's taxable year for which the taxpayer is subject to the utility receipts tax, and the denominator of the fraction is the number of days in the taxpayer's taxable year.

(b) If a taxpayer files quarterly gross receipts tax returns the taxpayer may use a proportionate part of the deduction provided by subsection (a) for each return filed.

(c) A taxpayer is entitled to only one (1) deduction under this SECTION each taxable year, regardless of the number of partners or participants in the organization.

(d) An affiliated group that files a consolidated return under IC 6-2.3-6-5 is entitled to only one (1) deduction under this SECTION on that consolidated return.

(e) Each taxable year, a taxpayer that reports the taxpayer's gross receipts on an accrual basis is entitled to deduct bad debts from the taxpayer's gross receipts in the same manner provided in IC 6-2.5-6-9.

(f) Except as provided in subsection (g), if:

(1) for federal income tax purposes a taxpayer is allowed a depreciation deduction for a particular taxable year with respect to a resource recovery system; and

(2) the resource recovery system processes solid waste or hazardous waste;

the taxpayer is entitled to a deduction from the taxpayer's gross receipts for that same taxable year. The amount of the deduction equals the total depreciation deductions that the taxpayer is allowed, with respect to an Indiana resource recovery system, for that taxable year under Sections 167 and 179 of the Internal Revenue Code.

(g) A taxpayer is not entitled to the deduction provided by subsection (f) for a particular taxable year with respect to a resource recovery system that is directly used to dispose of hazardous waste if during that taxable year the taxpayer:

(1) is convicted of any violation under IC 13-7-13-3 (before its repeal), IC 13-7-13-4 (before its repeal), or IC 13-30-6; or

(2) is subject to an order or consent decree based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous wastes that had a major or moderate potential for harm.

(h) As used in subsection (g)(2), "major or moderate potential for harm" means a violation that was injurious or threatened to:

(1) be injurious to:

(A) human health;

(B) plant or animal life; or

(C) property; or

(2) interfere unreasonable with the enjoyment of life or property.

(i) Each taxable year a taxpayer is entitled to deduct from the taxpayer's gross receipts the amount paid by the taxpayer during that taxable year for the return of an empty container of the type customarily returned by the buyer of the contents for reuse as a container if the taxpayer originally included such deposits in its gross receipts.

(j) If a taxpayer is required to file quarterly gross receipts tax returns, the taxpayer may claim the deduction provided by subsection (i) on those returns.

(k) A taxpayer is entitled to a deduction for gross receipts exempt from taxation under IC 6-8.1-15 and the Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.).

(l) A taxpayer is entitled to a deduction for retail sales of bottled water or gas to the extent that the purchase

of the water or gas was treated as a retail transaction under IC 6-2.3-3-6.

SECTION 6. (a) Except as provided in subsections (d) through (f), 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%) of the estimated or the exact amount of utility receipts tax that is due.

(c) 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 (a), (b), or (e) of this SECTION. However, no penalty shall be assessed as to any estimated payments of utility receipts tax which equal or exceed twenty percent (20%) of the final tax liability for such taxable year. In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the taxpayer on such estimated return and twenty-five percent (25%) of the taxpayer's final utility receipts tax liability for such taxable year.

(d) If a taxpayer's estimated annual utility receipts tax liability does not exceed one thousand dollars (\$1,000), the taxpayer is not required to file an estimated utility receipts tax return.

(e) 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 ten thousand dollars (\$10,000), 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.

(f) 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.

(g) Every taxpayer who receives more than one thousand dollars (\$1,000) in gross receipts during a particular taxable year shall file with the department an annual utility receipts tax return. At the time of filing an annual return, a taxpayer shall pay to the department an amount equal to the remainder of:

(1) the total utility receipts tax liability incurred by the taxpayer for that particular taxable year; minus

(2) the total amount of utility receipts taxes that was previously paid to the department for any quarter of that same taxable year.

(h) Except as provided in subsection (i), a taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's annual utility receipts tax return and pay the tax, if any, for that taxable year on or before April 15 of the immediately succeeding tax year.

(i) If a taxpayer uses a taxable year that does not end on December 31, the taxpayer shall file its annual utility receipts tax return and pay the tax, if any, for that taxable year on or before the fifteenth day of the fourth month of the immediately succeeding tax year.

(j) Any taxpayer who does not file an annual utility receipts tax return for a taxable year may be required to execute and file with the department a sworn statement that the taxpayer did not receive more than one thousand dollars (\$1,000) of taxable gross receipts during that taxable year.

(k) Any forms prescribed by the department under IC 6-8.1-3-4 that concern the collection of the utility receipts tax may not require a taxpayer to show the corporate name or title of any stock or the name of the obligor of any other security from which the taxpayer derives gross receipts.

(l) The department may require a taxpayer who receives gross receipts at two (2) or more business locations within the state to file with each quarterly and annual utility receipts tax return an information return that shows the allocation of gross receipts to each business location at which the gross receipts were received.

SECTION 7. (a) Corporations are affiliated if at least eighty percent (80%) of the voting stock of one (1) corporation (exclusive of directors' qualifying shares) is owned by the other corporation. Every corporation affiliated with another corporation is affiliated with every corporation that is affiliated with such other corporation. All corporations so affiliated constitute an affiliated group. This definition does not include S corporations.

(b) Corporate members of an affiliated group that are incorporated in Indiana or are authorized to do business in Indiana may file a consolidated utility receipts tax return on or before the due date of the annual return, including valid extensions.

(c) As used in subsection (b), "authorized to do business in Indiana" means:

- (1) a foreign corporation has applied for and been granted a certificate of authority to transact business in Indiana under the appropriate statute; and
- (2) the authority has not been withdrawn or revoked.

(d) An affiliated group may only eliminate intercompany wholesale sales. Sales may not be deducted as both wholesale sales and interstate sales.

(e) Each corporate member of an affiliated group that files a consolidated utility receipts tax return is jointly and severally liable for the utility receipts tax imposed on the affiliated group and on each member of that group.

(f) An affiliated group must elect at the time it files its first annual return whether or not it will file a consolidated utility receipts tax return or whether each corporate member of the group will file a separate utility receipts tax return. After the taxpayer's election is made, the group must file utility receipts tax returns in the same manner as the group's first annual return is filed, unless the department allows the group to change the manner in which it files utility receipts tax returns.

(g) The first consolidated utility receipts tax return filed by an affiliated group may be filed by any member of the group incorporated in Indiana or authorized to do business in Indiana. Subsequent consolidated returns shall be filed by the member who filed the first consolidated return for the group, unless the department allows another member to file the group's consolidated returns.

(h) An affiliated group filing a consolidated annual return shall file its quarterly returns on a consolidated basis by the same member required to file the annual return. If consolidated quarterly returns have not been filed by the affiliated group, the members of the group will be required to segregate their receipts and verify the proper credit to be taken on the annual return for quarterly payments made.

SECTION 8. (a) A receiver, a trustee in dissolution, a trustee in bankruptcy, or an assignee operating the property or business of a taxpayer shall file a utility receipts tax return for that taxpayer and pay any tax due on gross receipts reported in the return in the same manner that the taxpayer would be required to file a return and pay the tax under this document if the taxpayer had control of the business or property.

(b) Any fiduciary filing a return under subsection (a) shall report all previously unreported income derived from property or business controlled by the fiduciary.

(c) The utility receipts tax liability imposed upon any property held by a fiduciary described in subsection (a) is a

lien upon the property from which the gross receipts were derived.

(d) If any utility receipts tax is due and unpaid after a fiduciary described in subsection (a) is discharged, each distributee is liable for the utility receipts tax due in an amount equal to the quotient of:

- (1) the distributee's share of the business or property sold; divided by
- (2) the total distribution made by the fiduciary.

(e) Any resident of Indiana who is a fiduciary described in subsection (a), and who receives gross receipts for a distributee who is not an Indiana resident, must file a utility receipts tax return and pay the utility receipts tax due with that return before making a distribution to the distributee.

(f) Any taxpayer who is a resident of Indiana, and who receives gross receipts from a fiduciary described in subsection (a) who is not a resident of Indiana, shall file a return reporting the receipt of such gross receipts and shall pay any utility receipts tax due on such gross receipts, as though the gross receipts had been received directly by the taxpayer, unless the nonresident fiduciary has already paid the tax due on the gross receipts.

SECTION 9. (a) A taxpayer shall use either the cash or accrual method of accounting for purposes of determining the taxpayer's utility receipts tax liability. If a taxpayer uses either the cash or accrual method of accounting for federal tax purposes, the taxpayer must also use that same method in determining the taxpayer's utility receipts tax liability. If a taxpayer does not use either the cash or accrual method of accounting for federal tax purposes, the taxpayer shall use the cash method in determining the taxpayer's utility receipts tax liability.

(b) As used in subsection (a), "cash method of accounting" means that receipts are reported in the year that they are actually or constructively received and deductions are generally taken in the year actually paid unless they should be taken in a different period to clearly reflect income. Examples include depreciation allowances and prepaid expenses.

(c) As used in subsection (a), "accrual method of accounting" means that receipts are reported and expenses are deductible when all the events have occurred that determine the right to the receipts or that determine the amount of the expense and the liability of the taxpayer to pay it. The term does not include any method of accounting other than the standard accrual basis method of accounting.

SECTION 10. (a) A taxpayer who fails to keep records of the taxpayer's gross receipts and any other records that may be necessary to determine the amount of utility receipts tax the taxpayer owes for a period of three (3) years, as required by IC 6-8.1-5-4, commits a Class C infraction.

(b) A taxpayer who fails to permit records described in subsection (a) to be examined at any time by the department in accordance with IC 6-8.1-5-4 commits a Class C infraction.

(c) A taxpayer who knowingly fails to produce or permit the department to examine records described in subsection (a) or (b) commits a Class B misdemeanor.

(d) A taxpayer or any officer, employee, or partner of a taxpayer who makes a false entry in the taxpayer's records with the intent to defraud the state or evade payment of the utility receipts tax commits a Class D felony.

(e) A taxpayer or any officer, employee, or partner of a taxpayer who keeps more than one (1) set of records for the taxpayer with the intent to defraud the state or evade the payment of the utility receipts tax commits a Class D felony.

(f) A person who fails to file a return required by this article or who enters false information in such a return with the intent to defraud the state commits a Class B misdemeanor.

(g) A taxpayer who knowingly fails to permit the department to inspect or appraise any property, or who knowingly fails to offer testimony or to produce any record as required in this article, commits a Class B

misdemeanor.

(h) A taxpayer is subject to all applicable provisions of IC 6-8.1, including penalty and interest imposed by IC 6-8.1-10.

SECTION 11. (a) On or before the fifth day of each month, the total amount of utility receipts tax revenues received by the department in the immediately preceding month shall be deposited in the state general fund.

(b) Except as otherwise specifically provided in this article, the tax imposed by this article is in addition to all other licenses and taxes imposed by law as a condition precedent to engaging in any business, privilege, occupation, or activity that is taxable under such other license or tax.

(c) No court may allow or approve any final report of account of a receiver, trustee in dissolution, trustee in bankruptcy, commissioner appointed for the sale of real estate, or any other officer acting under the authority and supervision of a court, unless the account or final report shows, and the court finds, that all utility receipts tax due has been paid, and that all utility receipts tax that may become due is secured by bond, deposit, or otherwise.

(d) A fiduciary described in subsection (c) shall provide proof to a court that all utility receipts tax has been paid, and that any required security has been provided. The fiduciary shall request the department to issue a certificate of clearance certifying that all utility receipts tax which is due and payable has been paid and that any required security has been provided. The certificate shall be issued by the department within thirty (30) days after request. When issued, the certificate is conclusive proof that no utility receipts tax is due and that any required security has been provided.

(e) If the department fails to issue a certificate of clearance under subsection (d) within thirty (30) days after request, a fiduciary may provide evidence to a court that demonstrates that no utility receipts tax is due and that any required security has been provided. Upon approval by the court, such evidence is conclusive proof of payment of the tax imposed by this article [document].

(f) Any utility receipts tax liability owed by a fiduciary is a preferred claim and has priority over all other claims except claims for judicial costs and costs of administration.

SECTION 12. SECTIONS 1 through 11 of this document expire July 1, 2004.

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