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ATTORNEY GENERAL'S OFFICE
Solicitor General's Division

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STATE OF WASHINGTON
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Bob Ferguson
Attorney General
State of Washington
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Re: Attorney General Opinion Request

I would appreciate your opinion on a matter of statutory interpretation.

Title 54 of the Revised Code of Washington (RCW) generally applies to Public Utility Districts (PUDs). Chapter 54.28 RCW specifies how the State taxes the privilege of engaging within the state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy applies to PUDs. City and town authority to impose utility taxes is under licensing authority of RCW 35.22.280(32).¹ Our question is whether definitions and any other provisions in Chapter 54.28 limit the authority of First Class cities to levy a public utility tax using its authority under RCW 35.22.280(32)?

City electric utility taxes are imposed upon "the total gross revenue derived from the sale of electricity within the city limits" and is applicable to "every person, firm, corporation and municipal corporation, including any public utility district, which operates in the city a plant or system of facilities for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others". (Vancouver Municipal Code [VMC] Section 5.96.020). A city in my district contends that according to relevant case law², utility taxes collected from the utility district's customers should be included in the gross revenues subject to the electrical tax. With respect to private utilities that often call out utility taxes separately on customer's bills, Division I of the Washington Court of Appeals held that revenue from state and local utility taxes collected from customers should be included in gross revenues as defined for the application of the municipal electrical tax on gross revenues of the utility and, as such, be subject to the utility tax.

¹ A Revenue Guide for Washington Cities and Towns, footnote 95, page 24, Municipal Research Services Center, 2601 4th Ave, suite 800, Seattle, WA 98121. www.MRSC.org (2017).

² Puget Sound Energy v. City of Bellingham, 163 Wn. App. 329, 259 P. 2d 345 (2011).

Chapter RCW 54.28 outlines laws specific to the State tax for the privilege of engaging within the state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. RCW 54.28.11 defines "gross revenue" subject to state's taxation as "'Gross revenue" "...the amount received from the sale of electric energy, which also includes any regularly recurring charge billed to consumers as a condition of receiving electric energy, and excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070." The city in my district contends that the definition of gross revenue in chapter RCW 54.28.011 only applies for purposes of state taxation and does not impact the definition of gross revenue subject to the application of the municipal utility tax. Does the Attorney General agree with that city's contention?

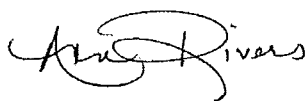
A City's authority to collect utility taxes is derived from the same source as its authority for business licenses, or RCW 35.22.280(32) not from a separate RCW chapter only applicable to PUD taxation . Stated differently, reading RCW 54.28.011 in context suggests that it only applies to taxes imposed by the state against a PUD and that the calculation of gross revenue for the state tax must be reduced by the city tax and does not show any intent to limit the broad of the authority of the City to impose taxes under RCW 35.22.280 (32). By this section, operationally, a public utility would simply have an additional expense/deduction as a result of the local utility tax.

Utilities are proprietary activities which means that they account on a full cost recovery basis. To appropriately set their rates, they must consider all costs such as operating expenditures, taxes payable, debt service, and future capital needs. RCW 54.28.020 and RCW 54.28.070 allow utilities to pass on municipal utility taxes to the customers but revenue received related to such taxes is not subject to state taxes because 54.28.011 excludes the taxes from the definition of "gross revenue" only for state tax purposes. However, reading 54.28.011 out of context ignores the authority granted by RCW 35.22.280. Section 54.28.011 reads in context only as a confirmation that any city or town may levy a tax and thus the intent appears not to provide for the authority of the levy itself but instructs the public utility district it shall have the power to add the amount to the rates.

I would appreciate the Attorney General's opinion on the matter of whether Section 54.28.011 limits the authority of First Class cities to levy a public utility tax, because read out of context, it arguably impacts the definition of "gross revenue" for application of the municipal electrical tax. Does the Attorney General agree that 54.28.011 should be read in context to apply solely to state taxation and does not limit the authority of local governments to tax public utilities?

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Rivers". The signature is fluid and cursive, with the first name "Ann" and last name "Rivers" clearly distinguishable.

Senator Ann Rivers
Washington's 18th District