

TAXATION:  
SALES TAX:  
PUBLIC SERVICE COMMISSION:  
PUBLIC UTILITIES:

A consumer of services sold by utilities is responsible for paying sales tax upon the total amount charged. This obligation is not changed by the utility billing its customers with a basic charge plus a charge for defraying a local license tax-- the two charges equalling the total amount paid for the service.

Opin. No. 56 ('62)  
" " 465 ('61)

April 12, 1962

Mr. M. E. Morris  
Director of Revenue  
Department of Revenue  
State of Missouri  
Jefferson City, Missouri

FILED  
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Dear Mr. Morris:

This is in response to Mr. Stapleton's letter dated December 27, 1961, in which he requests an official opinion for you from this office. In his letter he states:

"When the Public Service Commission of Missouri orders a utility company to add to the monthly bill of the customer, as separate items, a surcharge equal to the proportionate part of any license, occupation or other similar fee or tax applicable to service by the company to the customer, which fee or tax is imposed upon the company by local taxing authorities on the basis of the gross receipts, net receipts, or revenues from sales by the company; the question raised is whether or not Missouri sales tax should be collected on the total amount paid by the customer, which includes the surcharge, even though the surcharge is set out as a separate item."

Your opinion request is based upon a recent policy decision of the Public Service Commission concerning license or occupational tax levied by cities against utilities for the privilege of conducting business within the city. The Public Service Commission, in establishing rate schedules

for utilities, has been and will continue to include within its order the provision whereby these local gross receipts taxes will be passed on to the consumers residing within the taxing municipality. The Commission has ordered the utilities to treat these city license taxes as an item apart from their system operating expenses. As stated in your letter, the utility company adds to the monthly bill of the customer a separate item reflecting the proportionate part of the tax.

It should be remembered at all times that the local city gross receipts tax is a tax upon the privilege of the utility to do business within the city. It is not a sales tax. In fact, Section 144.460, RSMo 1959, specifically prohibits any city, town or village from directly or indirectly levying, imposing or collecting any sales tax. This entire problem was discussed in State ex rel. Hotel Continental et al. v. Burton, et al., Mo. Sup., 334 SW 2d 75. In that case the Missouri Supreme Court upheld an order of the Public Service Commission which, besides establishing a rate increase for a utility, included a tax adjustment clause whereby monthly bills to customers would reflect a surcharge measured in the manner set forth in your request. At page 83, the Court said:

"Appellants contend further that city is prohibited by law from enacting a sales tax on the consumer and, we suppose, the argument is (although not developed in the brief) that the city by changing the rate of the present gross receipts tax or by enacting a new tax based on company customer revenue, would be levying and collecting a tax in the guise of a tax on the utility, which would be in reality a tax on the customer. It is true that Section 144.460 prohibits the city from directly or indirectly imposing or collecting a tax on the sale of any service which has been taxed by the state under the sales tax law; and it is also true that the

state does tax the sale of service by utilities, e.g., the sale of steam in the instant case. This court has held that a city may lawfully levy a gross receipts tax upon a utility. Thus, if the present tax is lawful because imposed on the company, any new tax (covered by the tax clause) levied by city would be imposed on the utility to the same extent and thus, like the present tax, would be lawful. Under the present tax as well as under any new tax the money with which the company pays or would pay the tax is and always would be paid by the customers; and that is true irrespective of what billing system was used or of how many hearings were held. Thus, if the city changed the rate of the present tax or levied any new tax covered by the tax adjustment clause, there would be no change in the nature of such new or additional tax, no change in the payer of that tax, and no change in the source of the money with which that tax would be paid. The tax adjustment clause does not purport to, and by its operation could not, change the incidence of the present gross receipts tax or the incidence of any new tax based on steam customer revenue. (Emphasis added.)

The question of whether the Public Service Commission's order illegally interferes with a city's power to tax was discussed in State ex rel. City of West Plains, et al. v. Public Service Commission, et al., Mo. Sup., 310 SW 2d 925. The appellants in that case contended that the order converted the tax from a levy against a utility into one against the subscribers of the utility's service. The Court stated that this reasoning was fallacious. It went on to state, at page 934:

"The utility remains the party taxed and the utility still pays the tax -- the only effect of the commission's order in that respect is to permit the utility to collect the money with which to pay the tax from the tax beneficiaries rather than from all subscribers. It must be apparent that a utility's subscribers will always provide the money for payment of all taxes -- the utility has no other source of revenue -- the only question is which subscribers should pay which tax. Under the commission's order, Western receives no more money and no higher rate of return than it would receive under its prior practice of collecting occupation taxes systemwide." (Emphasis added.)

Section 144.020, RSMo 1959, establishes the Missouri sales tax rate at two per cent of the amount paid by customers for services sold by utilities. The above cited cases uphold the theory that an order of the Public Service Commission requiring utilities to pass a local tax on to the inhabitants of the taxing authority changes nothing. The incidence of the local tax is still upon the utility. However, city customers of the utilities' service will be paying both the basic charge plus an amount equal to their proportionate share of the local tax. The result of this new procedure means that city customers will be paying a sales tax upon the basic charge plus the local tax, the combined amount being the total paid for a utility's services.

#### CONCLUSION

Regardless of whether a utility bills its customers with a single figure showing the total amount charged for services rendered, or if the billing displays a basic charge plus a proportionate charge based upon a local license tax, the customer is still liable for the payment of Missouri sales tax upon the total amount charged.

Mr. M. E. Morris

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This opinion, which I hereby approve, was prepared by my assistant, Eugene G. Bushmann.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

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