

June 5, 2014

To: Nichole Shalley
Gainesville City Attorney
200 East University Avenue
Gainesville, Florida 32601

From: Jim Konish, Esquire

§166.235 REFUND REQUEST

I, James Konish, as attorney and/or Manager for James Konish, 625 Northeast First Street LLC, 120 Southeast 7th St. LLC, Deborah L. Martinez, Post Office Box 6020, Gainesville Florida 32627, hereby **DEMAND** a refund of overcharges for the §166.231, Fla. Stat. (2013) “Public Service Tax”, hereinafter referred to as the “Local Utility Tax” for each GRU (Gainesville Regional Utility) Account described in Item 1.

The reasons for these claims that Local Utility Tax amounts were paid that were not due to any municipal or County Government are:

A. ELECTRIC WITHIN GAINESVILLE CITY LIMITS: RESIDENTIAL

§166.231(1)(a), Fla. Stat. (2013) provides: “... The tax shall be levied only upon purchases ...”. “Purchase of electricity means the purchase of electric power by a person who will consume it ...”.

The current GRU Residential Rate Schedule (Item 2) describes the “Customer Charge” as “... a fixed customer charge ... whether or not any consumption is used”.

Violation #1: Since the GRU “Customer Charge” is not a “purchase”, it is not subject to the §166.231 10% Local Utility Tax.

Secondly, GRU has applied the §166.231 10% Local Utility Tax to the State of Florida §203.01, Fla. Stat. (2013) Gross Receipts Tax, which is first applied at a pre-pyramided rate of 2.5641%.

Violation #2: The §203.01 State of Florida Gross Receipts Tax is not a “purchase”. There is no authority in §166.231 for the §166.231 Local Utility Tax to be applied to any other tax. In fact, §203.01(4) and Florida Dept. of Revenue (DOR) Rule 12B-6.001(4) expressly prohibit such pyramiding with the State of Florida Gross Receipts Tax and any other tax.

Moreover, §166.231, Fla. Stat. (2013) expressly prohibits application of the Local Utility Tax to “any fuel adjustment charges”. “The term 'fuel adjustment charge' means all increases in the cost of utility services to the ultimate customer resulting from an increase in the cost of fuel ...”.

Since the §203.01 State of Florida Gross Receipts Tax applies to the “fuel adjustment charge”, GRU application of the §166.231 Local Utility Tax to the §203.01 Gross Receipts Tax results in an expressly prohibited local taxation of 2.5641% of the “Fuel Adjustment Charge”.

Finally, the impermissible local §166.231 taxation of the Customer Charge, the §203.01 Gross Receipts Tax (and 2.5641% of the Fuel Adjustment Charge) yields an effective tax rate between 13.5% & 16% - well above the §166.231(1) (a), Fla. Stat. (2013) “Shall not exceed 10%” rate.

B. GAS WITHIN GAINESVILLE CITY LIMITS: RESIDENTIAL

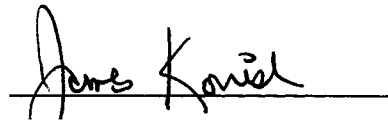
As with electricity, the gas Customer Charge is impermissibly subjected to the §166.231 Local Utility Tax. The same §166.231 provisions apply as with the

electric customer charge. The same problems apply with a significant difference. GRU **DOES NOT** apply the §166.231 Local Utility Tax to the §203.01 Gross Receipts Tax on its gas sales.

C. WATER WITHIN GAINESVILLE CITY LIMITS:
RESIDENTIAL

As with electricity and gas, the water customer charge is impermissibly subjected to the §166.231 Local Utility Tax. The same §166.231 provisions apply. The same problems apply. There is no §203.01 State Gross Receipts Tax on water purchases.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Anne Kovich", is written over a horizontal line.

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C,
LLC