

June 12, 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 619 Northeast First Street LLC, , 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

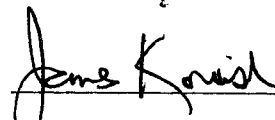
As with electricity, the gas Customer Charge is impermissibly subjected to the §166.231 Local Utility Tax. The same §166.231 provisions apply as with the

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,



James Konish
Fla. Bar No 029287
Post Office Box 6020
Gainesville, Florida 32627
Attorney/Manager For
619 Northeast First St. LLC,

Account #	Name	Date	Electric on bill	Corrected Electric	Electric Overcharge	Gas on bill	Corrected Gas	Gas Overcharge	Water on bill	Corrected Water	Water Overcharge	Total Overcharge
2000-1326-6941	619 Northeast First St LLC	5/5/2014	\$ 203.61		\$ 3.45	\$ 27.40		\$ 2.00	\$ 27.78		\$ 0.90	
2000-1326-6941	619 Northeast First St LLC	4/3/2014	\$ 200.26		\$ 3.44	\$ 37.89		\$ 2.00	\$ 27.78		\$ 0.90	
2000-1326-6941	619 Northeast First St LLC	3/5/2014	\$ 148.45		\$ 3.33	\$ 48.37		\$ 2.00	\$ 27.78		\$ 0.90	
2000-1326-6941	619 Northeast First St LLC	2/5/2014	\$ 169.41		\$ 3.37	\$ 166.93		\$ 2.00	\$ 47.87		\$ 0.90	
2000-1326-6941	619 Northeast First St LLC	1/6/2014	\$ 160.09		\$ 3.35	\$ 43.13		\$ 2.00	\$ 17.75		\$ 0.90	
2000-1326-6941	619 Northeast First St LLC	12/4/2013	\$ 144.43		\$ 3.32	\$ 30.53		\$ 2.00	\$ 27.78		\$ 0.90	
2000-1326-6941	619 Northeast First St LLC	11/5/2013	\$ 164.02		\$ 3.36	\$ 28.45		\$ 2.00	\$ 27.78		\$ 0.90	
2000-1326-6941	619 Northeast First St LLC	10/3/2013	\$ 330.99		\$ 3.32	\$ 43.33		\$ 3.50	\$ (66.54)		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	9/5/2013	\$ 205.11		\$ 3.05	\$ 45.15		\$ 3.50	\$ 16.97		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	8/5/2013	\$ 226.34		\$ 3.10	\$ 46.95		\$ 3.50	\$ 16.97		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	7/3/2013	\$ 262.15		\$ 3.18	\$ 46.04		\$ 3.50	\$ 130.27		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	6/5/2013	\$ 206.12		\$ 3.05	\$ 46.96		\$ 3.50	\$ 26.90		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	5/3/2013	\$ 154.25		\$ 2.94	\$ 48.77		\$ 3.50	\$ 26.90		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	4/3/2013	\$ 118.21		\$ 2.86	\$ 63.32		\$ 3.50	\$ 26.90		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	3/5/2013	\$ 227.42		\$ 3.10	\$ 90.60		\$ 3.50	\$ 36.82		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	2/5/2013	\$ 219.35		\$ 3.08	\$ 115.12		\$ 3.50	\$ 36.82		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	1/4/2013	\$ 190.00		\$ 3.02	\$ 76.95		\$ 3.50	\$ 26.90		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	12/4/2012	\$ 207.94		\$ 3.06	\$ 70.59		\$ 3.50	\$ 36.82		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	11/2/2012	\$ 180.57		\$ 3.00	\$ 46.96		\$ 3.50	\$ 26.90		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	10/3/2012	\$ 191.81		\$ 3.02	\$ 43.43		\$ 3.50	\$ 26.43		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	9/5/2012	\$ 256.46		\$ 3.16	\$ 46.43		\$ 3.50	\$ 26.43		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	8/3/2012	\$ 299.28		\$ 3.26	\$ 46.43		\$ 3.50	\$ 26.43		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	7/5/2012	\$ 200.33		\$ 3.04	\$ 46.42		\$ 3.50	\$ 35.95		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	6/5/2012	\$ 232.74		\$ 3.11	\$ 51.27		\$ 3.50	\$ 35.95		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	5/3/2012	\$ 160.64		\$ 2.95	\$ 49.13		\$ 3.50	\$ 45.46		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	4/4/2012	\$ 147.72		\$ 2.92	\$ 50.19		\$ 3.50	\$ 83.52		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	3/5/2012	\$ 120.96		\$ 2.86	\$ 84.33		\$ 3.50	\$ 112.07		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	2/3/2012	\$ 144.37		\$ 2.92	\$ 121.68		\$ 3.50	\$ (68.71)		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	1/5/2012	\$ 139.05		\$ 2.90	\$ 114.46		\$ 3.50	\$ 102.55		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	12/5/2011	\$ 122.73		\$ 2.87	\$ 59.93		\$ 3.50	\$ 45.46		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	11/3/2011	\$ 148.49		\$ 2.92	\$ 51.38		\$ 3.50	\$ 35.95		\$ 0.87	
2000-1326-6941	619 Northeast First St LLC	10/5/2011	\$ 217.35		\$ 3.08	\$ 47.29		\$ 3.50	\$ 15.03		\$ 0.78	
2000-1326-6941	619 Northeast First St LLC	9/2/2011	\$ 183.11		\$ 3.00	\$ 53.93		\$ 3.50	\$ 42.12		\$ 0.78	
2000-1326-6941	619 Northeast First St LLC	8/3/2011	\$ 123.87		\$ 2.87	\$ 53.93		\$ 3.50	\$ 33.09		\$ 0.78	
2000-1326-6941	619 Northeast First St LLC	7/6/2011	\$ 115.10		\$ 2.85	\$ 51.82		\$ 3.50	\$ 33.09		\$ 0.78	
2000-1326-6941	619 Northeast First St LLC	6/3/2011	\$ 119.69		\$ 2.86	\$ 56.28		\$ 3.50	\$ 96.30		\$ 0.78	
2000-1326-6941	619 Northeast First St LLC	5/4/2011	\$ 71.34		\$ 2.76	\$ 51.82		\$ 3.50	\$ 33.09		\$ 0.78	
					\$ 113.73			\$ 119.00			\$ 31.86	\$ 264.59

Item 1

Bill Definitions

Utilities

Customer Charge - Each utility service has a fixed customer charge to recover those costs that GRU must incur to provide service whether or not any consumption is used. Meter repair and replacement expenses, monthly meter reading expenses and the costs of producing and mailing the utility bill are examples of such costs.

Electric and Gas Energy Charges - Electric and gas energy charges vary in amount with the level of utility service the customer actually uses. These charges recover those costs that GRU incurs in delivering the utility service to the customer such as costs associated with operating and maintaining the respective transmission and distribution systems—the electric and gas lines. Also included in each energy charge is a taxable portion of fuel costs (see fuel Adjustment Charge below).

Manufactured Gas Plant Cost Recovery Factor: When GRU purchased the privately owned Gainesville Gas Company in 1990, the utility assumed responsibility for cleanup of residual coal tar contamination at the former site of the gas plant on Depot Avenue. To recover a portion of the cost of this remediation, a per-therm fee is charged for natural gas. This fee is reassessed each year based on the changing costs of the cleanup.

Fuel or Purchased Gas Adjustment Charges - The electric and gas adjustment charges vary in amount with the level of electricity or gas the customer actually uses. For electric service, this charge recovers the cost of the fuel used to generate electricity. For gas service, fuel costs are those paid by GRU to natural gas and liquid propane gas suppliers. In 1973, the Florida legislature "froze" the amount of fuel costs subject to utility taxes or surcharges. GRU's fuel adjustment charges are the difference between what fuel costs today and what it cost on October 1, 1973, and are exempt from utility taxes and surcharges [Sec. 166-231, Florida Statutes].

Water Use Charges - The water use charge varies in amount with the level of water the customer actually uses. It recovers the operating and maintenance costs associated with drawing the water out of the Floridan Aquifer, treating it to drinking water standards, and pumping it through underground water pipes to your home.

Wastewater Billing Charges - Wastewater billing charges recover the operating and maintenance costs of pumping wastewater from your home to one of our two wastewater reclamation facilities, processing and treating the wastewater so that the residual wastewater meets drinking standards, and disposing of the wastewater and wastewater by-products. Since wastewater usage cannot be metered, GRU uses the metered amount of water used by residential customers to determine how much water is returned to the wastewater system. During the January and February billing periods (typically months in which customers do not water lawns), the metered water amount is the billed wastewater use. During the remaining 10 months of the year, your maximum average daily consumption used in January and February times 30.4 (the average days in a month) is compared with the metered water consumption and the usage billed is the lesser of the two values.

City of Gainesville

Refuse (Solid Waste Fee) - Section 27-236 of the Gainesville Code of Ordinances authorizes the City to collect a monthly fee for garbage, yard waste, and recycling services. GRU is only the billing agent and revenues collected are passed directly to the City.

Stormwater Fee - Section 27-236 of the Gainesville Code of Ordinances authorizes the City to levy a fee to fund the Stormwater Management Utility Program. GRU is only the billing agent and revenues are passed directly to the City. The basic measurement is 1 ERU (equivalent residential unit of 2300 sq. ft.).

Taxes and Surcharges

Electric Surcharge - The Florida Public Service Commission has authorized an electric surcharge be levied on electric charges to customers receiving electric service outside the city limits and equal to the utility tax (10%) levied on electric charges to customers receiving electric service inside the city limits. [Sec. 27-27(c), Gainesville Code of Ordinances]

Natural Gas Surcharge - Section 27-272.1 of chapter 27 of the Gainesville Code of Ordinances authorizes the City to levy a natural gas surcharge on customers receiving natural gas service outside the city limits equal to the utility tax (10%) levied on customers receiving natural gas service inside the city limits. [Sec. 27-27(c), Gainesville Code of Ordinances]

Water and Wastewater Surcharges - Section 180.191 of the Florida Statutes authorizes the city to levy a 25% surcharge on water and wastewater charges to customers receiving such services outside the city limits. [Sec. 27-128(b) and 27-169(b), Gainesville Code of Ordinances]

Utility Tax - Section 166.231 of the Florida Statutes authorizes cities and "charter" counties to levy a utility tax. The City of Gainesville, Alachua County, and the City of Alachua all levy a 10% utility tax on electric, gas, and water charges. These tax revenues are passed directly to the levying authority.

Florida Gross Receipts Tax - Chapter 12B-6 of the Florida Administrative Code levies a 2.5% tax on the gross receipts of electric and gas industries in the State of Florida and allows this amount to be recovered from all customers regardless of tax-exempt status. These tax revenues are passed directly to the State and are used for Public Education Capital Outlay funding. The DOR factor for the Florida Gross Receipts Tax for natural gas is determined by the Department of Revenue.

Franchise Fee - A fee levied by cities on electric and gas charges for services provided by GRU in their respective jurisdictions.

Adjustments & Service Charges

Late Fee - A \$1 or 1.5% (whichever is greater) late fee will be charged on any unpaid current balance at the close of business on your due date. Past due balances do not apply and may be subject to disconnection terms. [Sec. 27-14(e), Gainesville Code of Ordinances]

Returned Payment Fee - A fee of \$20 or 5% of the amount of the transaction, whichever is greater, will be charged for any returned payment. Accounts may be placed on a cash only payment basis for two (2) or more returned checks in a 12-month period. [Sec. 27-14.3, Gainesville Code of Ordinances]

ITEM 2

James Konish
Attorney at Law

Post Office Box 6020
Gainesville, FL 32627
(352) 871-4747 phone
(352) 371-9061 fax

RECEIVED
JUN 12 2014
LEGAL SERVICES

June 12, 2014

Shayla McNeill
Gainesville Regional Utilities
Utilities Attorney
301 S.E. 4th Avenue
Gainesville, FL 32601

Dear Ms. McNeill

In order to strictly comply with the §166.235, Fla. Stat. (2013) "Procedure on purchaser's request for refund or credit", I am hand delivering to your office today the following:

1) Request previously Hand-Delivered to the Clerk of the City Commission in the presence of the GRU General Manager and City of Gainesville Attorney pursuant to §166.235 at the televised and recorded Gainesville City Commission meeting of June 5, 2014 during Citizens' comments for:

- a) 625 Northeast First Street LLC (3 accounts)
- b) 120 Southeast Seventh Street LLC (4 accounts)
- c) James Konish (3 accounts)
- d) Deborah Martinez (1 account)

2) Request Hand-Delivered to the Gainesville City Attorney's office and stamped on June 11, 2014 pursuant to §166.235 for:

Lloyd W. Bailey, Jr. (2 accounts)

Further §166.235 requests are forthcoming from me and will be delivered to you as the "seller's" attorney unless you indicate to me otherwise in writing. Today, I am submitting a §166.235 request for 619 Northeast First Street LLC (1 account).

Moreover, I am placing you on notice that the City Attorney is in receipt of an attached §119 Public Records Request for information additionally made available pursuant §166.233 (3).

§166.233 (3) mandates a response to this request that I likewise hand-delivered to the Clerk of the City Commission at the June 5, 2014 City Commission meeting "within 20 days" "in writing".

I urge you to make sure that timely compliance with my aforementioned request governed by §119 and §166.233 (3) is forthcoming.

Additionally, I am notifying you that I likewise demand compliance with the §166.235 (1) (d) mandates for a "written response" "within 90 days" to all refund requests I have or will be submitting.

James Konish
Attorney at Law

Post Office Box 6020
Gainesville, FL 32627
(352) 871-4747 phone
(352) 371-9061 fax

If you will recall, Commissioner Chase requested that you prepare a legal memo explaining GRU §166.231 local utility tax policies during the Regional Utilities Committee (RUC) meeting before last – approximately three (3) months ago.

I am placing you on notice that ignoring our “Requests for Refunds or Credits” or the appurtenant §119 Public Records Request will result in me seeking recourse through all available legal avenues.

I look forward to receiving the GRU written responses to our §166.235 refund requests, and of course, if you find these requests “incomplete”, please advise me immediately in writing.



James Konish
Fla. Bar No. 0296287
(352) 871-4747

James Konish
Attorney at Law

Post Office Box 6020
Gainesville, FL 32627
(352) 871-4747 phone
(352) 371-9061 fax

June 11, 2014

To: Nichole Shalley
Gainesville City Attorney

From: Jim Konish

Re: Public Records Request of June 5, 2014

When might I expect a response?

Sincerely,



James Konish
Fla. Bar No. 0296287
(352) 871-4747

June 5, 2014

§119 PUBLIC RECORDS REQUEST

I, James Konish, pursuant to §119, Fla. Stat. (2013) hereby request a copy of the §166.233(3), Fla. Stat. (2013) “ordinance adopting any levy (of the §166.231 Public Service Tax) and all amendments thereto ...”

I further request the §166.233(3), Fla. Stat. (2013) “... writing of the types of media on which the lists described in this subsection are available, the charges, if any, for supplying the list on each available medium, and the address to which a request for such lists should be transmitted”. I do not at this time request the actual list, only the required statutory notifications.

James Konish
Fla. Bar No. 02987
Post Office Box 6020
Gainesville, Florida 32627