

06-09-14	J. Caravella	<p>Upon review of the Florida Attorney General’s Advisory Legal Opinion to Leesburg, FL dated June 7, 2013 the undersigned is sufficiently confident that the Opinion is credible and useful to this case file.</p> <p>Leesburg’s request for Opinion from the FL AG asks whether or not the City can tax by way of FS 166.231 (Public Service Tax) its transport cost to city residents for delivery of natural gas through the city’s system. The Opinion in pertinent parts states: http://www.myfloridalegal.com/ago.nsf/Opinions/6E9A008EE3DCEB5585257B83005501EB</p>
----------	--------------	---

The statutory provision authorizes a municipality to levy the public service tax only "upon purchases within the municipality" and in the absence of any ambiguity in this language, it must be construed to mean exactly what it says.[6] The power to tax by municipalities is limited by the Florida Constitution and section 166.231, Florida Statutes, provides an explicit limitation upon the public service tax.

You suggest that "[s]ince transportation of the gas is a service inseparable from the purchase of the gas," section 166.231, Florida Statutes, should be read to include the transportation service as an element of purchase. To read the statute in this fashion would make the language of the statute requiring levies "only upon purchase within the municipality" meaningless as each of the services in section 166.231(1), Florida Statutes, requires transportation or delivery, whether that takes place within or outside the municipal limits.[10]

		<p>Documentation received by this office from the comp allows a county to apply the Public Service Tax (PST) in the same manner as a municipality (see Memo in file). Alachua County so applies the PST.</p> <p>The cited FLORIDA STATUTE 166.231(1) reads: http://www.leg.state.fl.us/Statutes/</p>
--	--	--

166.231 Municipalities; public service tax.—

(1)(a) A municipality may levy a tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service. Except for those municipalities in which paragraph (c) applies, the tax shall be levied only upon purchases within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates which were issued prior to May 4, 1977. Purchase of electricity means the purchase of electric power by a person who will consume it within the municipality.

(b) The tax imposed by paragraph (a) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term “fuel adjustment charge” means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

(c) The tax in paragraph (a) on water service may be applied outside municipal boundaries to property included in a development of regional impact approved pursuant to s. [380.06](#), if agreed to in writing by the developer ...

		<p>The City of Gainesville adopts a 10% PST by city ordinance:</p>
<p>Gainesville, Florida - Code of Ordinances</p> <p>Part II Code of Ordinances, Chapter 25 Taxation, Article II Public Service Tax, Sec. 25-17. Levy.</p> <p>(a) There is hereby levied by the city on each and every purchase in the city of electricity, metered or bottled gas (natural, liquefied petroleum gas, or manufactured), and water service, a tax of ten percent of the charge made by the seller of such service or commodity. There is hereby levied by the city on each and every purchase in the city of fuel oil a tax of four cents per gallon. These taxes shall in each case be paid by the purchaser thereof for the use of the city to the seller of such electricity, metered or bottled gas (natural, liquefied petroleum gas, or manufactured), water service, and fuel oil at the time of paying the charge therefor, but not less than monthly.</p> <p>(b) The tax hereby levied on purchases of utility service shall be collected only once upon the same commodity or service and after the commodity or service has lost its interstate character.</p>		
		<p>(The city's 4-cent PST upon fuel oil is allowed by FS 166.231(2). The city exempts from its PST the "fuel cost adjustment" specified in FS 166.231(1)(b) by ordinance Sec. 25(18).)</p> <p>Alachua County adopts a 10% PST by county ordinance, which reads in pertinent part:</p>
<p>ALACHUA COUNTY CODE PART II - ADMINISTRATIVE CODE Title 3 - REVENUE AND FINANCE CHAPTER 39.6. - PUBLIC SERVICE TAX Sec. 39.6.02. Imposition of tax.</p> <p>Sec. 39.6.02. Imposition of tax.</p> <p>There is hereby levied by the county, within the unincorporated area of Alachua County, a public service tax upon each purchase of electricity, metered or bottled gas (natural, liquified petroleum gas or manufactured), telecommunications service as provided herein, and water service. The tax upon each purchase of electricity, metered or bottled gas (natural, liquified petroleum or manufactured), and water service shall be in an amount equal to ten percent of the payments received by the seller of the tangible item or service from the purchaser for the purchase of such item or service. Effective October 1, 1996, there is hereby levied by the county, within the unincorporated area of Alachua County, a public service tax upon each purchase of fuel oil. The tax on fuel oil shall be in the amount of \$0.04 per gallon. The tax shall not be applied against any fuel adjustment charge, which shall be stated separately on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from the increase in cost of fuel to the utility subsequent to October 1, 1973.</p>		
		<p>Therefore, both the city and county adopt and essentially mirror FS 166.231(1). An ordinance cannot expand/alter a controlling state statute, but an ordinance could further restrict a state statute. As an example; an ordinance could not charge a PST</p>

upon sewer service because sewer service is not included as a taxable item in FS 166.231(1). However, an ordinance could decide not to tax natural gas consumption even though FS 166.231(1) allows it.

In light of the above, Gainesville Regional Utility (GRU) collects a 10% PST upon the following:

1. Electric Customer Charge (city & county customers)
2. Electric Gross Receipts Tax (city & county customers)
3. Electric Surcharge (county customers)

4. Natural Gas Customer Charge (city & county customers)
5. Natural Gas Surcharge (county customers)

6. Water Customer Charge (city & county customers)
7. Water Surcharge (county customers)

8. Irrigation Water Customer Charge

GRU defines a Customer Charge:

<http://www.gru.com/MyHome/Content/BillDefinitionsforResidentialCustomers.aspx#>

“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.”

Black’s Law Dictionary defines a Tax:

<http://thelawdictionary.org/tax/>

[A]ny contribution imposed by government upon individuals,

Florida Consumer Protection law defines a Surcharge:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0501/Sections/0501.0117.html

[A]ny additional amount imposed at the time of a sale or lease transaction by the seller or lessor that increases the charge to the buyer or lessee for the privilege of....

By the above definitions, the eight items listed are not actual purchases of the commodities identified; therefore, application of the PST appears not to be within the limits described in the FL AG’s Advisory Legal Opinion and/or the city and county ordinances.

FS 166.234(6) and 166.235 allow any refund sought for improper tax collected to be made within 3 years.

1. On an individual residential customer basis the

non-consumable Electric Customer Charge (ECC) is a fixed monthly dollar amount. The 10% PST collected on the residential ECC from April 2011 through March 2014 (3 years) equals about \$33.01 per customer. GRU serves 82,000 residential customers. The total PST collected against the residential ECC equals approximately **\$2,706,820.00**.

The non-residential (commercial) non-consumable ECC is also a fixed dollar amount that currently varies at \$30, \$100, or \$350 depending on the type of account. Past commercial ECC amounts beginning April 2011 are not available at this time. GRU serves 10,000 commercial customers. Using the current and lowest monthly commercial ECC amount (\$30), the total 10% PST collected against the commercial ECC could equal \$108.00 per customer. A total 10% PST collected against the commercial ECC could be approximately **\$1,080,000.00**.

2. The residential non-consumable electric Florida Gross Receipts Tax (FGRT) is a variable monthly dollar amount per customer based upon monthly gross sales to the customer, but it includes taxing the full fixed residential non-consumable ECC at the FGRT rate of 2.5%. GRU serves 82,000 residential customers. The total 10% PST collected against the residential non-consumable Florida Gross Receipts Tax upon only the residential ECC equals **\$67,670.50**.

The commercial non-consumable electric Florida Gross Receipts Tax is a variable monthly dollar amount per customer based upon monthly gross sales to the customer, but it includes taxing the full fixed commercial non-consumable ECC at 2.5%. GRU serves 10,000 commercial customers. The total 10% PST collected against the commercial non-consumable Florida Gross Receipts Tax upon commercial customers using the current minimum commercial monthly ECC of \$30 could be **\$270,000.00**.

3. The residential and commercial non-consumable Electric Surcharge is applied to approximately 31,000 non-City of Gainesville residential customers.

([http://en.wikipedia.org/wiki/Gainesville, Florida](http://en.wikipedia.org/wiki/Gainesville,_Florida))

The Electric Surcharge is a variable monthly dollar amount per customer based upon a city customer's bill. Due to lack of data a dollar amount collected by

the **10% PST cannot be determined** for residential and an unknown quantity of commercial customers.

4. On an individual residential customer basis the non-consumable Natural Gas Customer Charge (NGCC) is a fixed monthly dollar amount. The 10% PST collected on the residential NGCC from April 2011 through March 2014 (3 years) equals about \$34.27 per customer. GRU serves 82,000 residential customers. The total 10% PST collected against the residential NGCC equals approximately **\$2,810,140.00**.

The commercial NGCC is also a fixed monthly non-consumable dollar amount that currently varies at \$20, \$100, or \$350 depending on the type of account. Past commercial NGCC amounts beginning April 2011 are not available at this time. GRU serves 10,000 commercial customers. Using the current and lowest commercial monthly NGCC amount (\$20), the total 10% PST collected against the commercial NGCC could equal \$72.00 per customer. A total 10% PST collected against the commercial ECC could, at an approximate minimum, equal **\$720,000.00**.

5. The residential and commercial non-consumable Natural Gas Surcharge is applied to approximately 31,000 non-City of Gainesville residential customers.

([http://en.wikipedia.org/wiki/Gainesville, Florida](http://en.wikipedia.org/wiki/Gainesville,_Florida))

The Natural Gas Surcharge is a variable monthly dollar amount per customer based upon a city customer's bill. Due to lack of data a dollar amount collected by the **10% PST cannot be determined** for residential and an unknown quantity of commercial customers.

6. On an individual residential customer basis the non-consumable Water Customer Charge (WCC) is a fixed monthly dollar amount. The 10% PST collected on the residential WCC from April 2011 through March 2014 (3 years) equals about \$30.87 per customer. GRU serves 82,000 residential customers. The total 10% PST collected against the residential WCC equals approximately **\$2,531,340.00**.

The commercial WCC is also a fixed monthly non-consumable dollar amount that currently is \$9.00. Past and current commercial WCC may be the same as the residential WCC. GRU serves 10,000 commercial

		<p>customers. The total 10% PST collected against the commercial WCC could equal \$30.87 per customer. A total 10% PST collected against the commercial WCC could, at an approximate minimum, equal \$308,700.00.</p> <p>7. The residential and commercial non-consumable Water Surcharge is applied to approximately 31,000 non-City of Gainesville residential customers. (http://en.wikipedia.org/wiki/Gainesville, Florida) The Water Surcharge is a variable monthly dollar amount per customer based upon a city customer's bill. Due to lack of data a dollar amount collected by the 10 % PST cannot be determined for residential and an unknown quantity of commercial customers.</p> <p>8. An Irrigation Water Customer Charge may also be subject to the 10% PST, but no data is available.</p> <p>The above eight items may equal a minimum dollar amount of PST collected over three years sub-totaling approximately \$10,494,670.50. This collection may be outside of the limitations described in the Florida Attorney General's Advisory Legal Opinion dated June 7, 2013.</p> <p>John Caravella Seniors vs. Crime, Office Manager jcaravella@alachuasheriff.org</p>
--	--	--