

**IN THE COUNTY OF EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

201 East University Avenue  
Gainesville, Florida 32601  
(352) 374-3636

One Stop Chevron #5  
1024 W University Avenue  
Gainesville, FL 32601

Case No.: 2014-SC-4234

Division: Small Claims

PLAINTIFF

IV

v.

City of Gainesville and  
Gainesville Regional Utilities (GRU)

DEFENDANTS

**STATEMENT OF CLAIM**

Plaintiff, sues Defendants, City of Gainesville and Gainesville Regional Utilities (hereinafter referred to as GRU), and alleges:

A. Factual Matters:

1. This is an action for monetary damages in an amount less than \$5,000.
2. Defendants provide nonresidential electric, and water utility services through one account to Plaintiff at the following address located within City of Gainesville boundaries:

- a) 1024 W University Avenue  
Gainesville, FL 32601

3. The City of Gainesville, by and through its municipally-owned regional utility GRU imposed a municipal utility tax on Plaintiff's electric, and water services pursuant to § 166.231, Fla. Stat and Section 25-17 (a) of the Gainesville, Florida Code of Ordinances.

4. GRU prepared and provided Plaintiff's attorney upon request handouts explaining the calculation of Plaintiff's GRU electric, and water bills (See Exhibit 1).

5. The City of Gainesville, by and through GRU, imposed its §166.231 municipal utility tax as follows:

- a) 10% on the "Customer Charges" for electric, and water, and
- b) 10% on the State of Florida §203.01 Gross Receipts Tax on GRU electric but not gas service.

6. On August 1st, 2014, Plaintiff's Attorney e-mailed to Defendants a §166.235 (1), Fla. Stat Request For "Refund of or Credit" assailing the legality of the Defendant's municipal utility tax scheme (See Exhibit 2).

7. On September 9, 2014, Defendant GRU denied Plaintiff's Request For "Refund of or Credit" in writing via e-mail and US mail on all accounts (See Exhibit 3).

8. Defendants' denial letter referenced as Exhibit 3 provides no reason, justification or response to the Plaintiff's Request for "Refund of or Credit" as required by §166.231 (1)(d) Fla. Stat., and merely ascertains that the Plaintiff's accounts are located within the City of Gainesville municipal boundaries.

9. Accordingly, Plaintiff has exhausted all available administrative remedies as required by §166.235 (2), Fla. Stat.

### B. Legal Conclusions

10. Procedurally, Plaintiff disputes the sufficiency of Defendants' September 9, 2014 denial letter as follows:

The Defendants' denial letter fails to state reasons for such denial in violation of §166.235 (1)(d), Fla. Stat.


14. Substantively, Plaintiff disputes the amount of §166.231 utility tax imposed on his aforementioned GRU accounts as not owed on the following grounds.

- a) §166.231 (1)(a), Fla. Stat. expressly limits the municipal utility tax to "purchases" of electric, and water, and the "purchase" of electricity is expressly defined.
- b) The GRU "Customer Charge" does not constitute a "purchase".
- c) Likewise, the State of Florida §203.01 Gross Receipts Tax is not a "purchase".

- d) Therefore, the Defendants' application of the §166.231 (1)(a) municipal utility tax to the Plaintiff's "Customer Charges" for its electric, and water service is unlawful.
- e) Likewise, the Defendant's application of the §166.231 (1)(a) municipal utility tax to the State Gross Receipts Tax on its electric but not gas service is also unlawful.
- f) Additionally, §166.231 (1)(a), Fla. Stat. expressly prohibits application of the municipal utility tax to the electric "fuel adjustment charge", which is expressly and broadly defined.
- g) Since that State §203.01 Gross Receipt Tax expressly applies to the Defendants' electric fuel adjustment charge, the Defendants' assailed municipal utility tax scheme additionally and impermissibly taxes 2.5641% of Plaintiff's electric fuel adjustment charge – but not for gas despite identical taxing provisions.
- h) Since the Defendants' apply the §166.231 municipal utility tax at the statutory maximum "shall not exceed" rate of 10%, the effective rate after the aforementioned misapplications and pyramiding yields a nonlinear effective municipal utility tax rate well in excess of 10%, and variable according to the amount of underlying charges.


WHEREFORE, Plaintiff demands judgment for damages against Defendants in the amount of \$398.87, court costs and other such relief that this court deems just and proper.

By:

  
James J. Konish  
Attorney For Plaintiff  
Florida Bar No. 0296287  
Post Office Box 6020  
Gainesville, FL 32627  
(352) 871-4747 (voice)  
(352) 371-9061 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above STATEMENT CLAIM has been furnished by U.S. Certified Mail to the defendant, CITY OF GAINESVILLE, c/o City Attorney, 200 East University Ave, Room 425, Gainesville, FL 32601 and GAINESVILLE REGIONAL UTILITIES, c/o Utilities Attorney, 301 S.E. 4<sup>th</sup> Avenue, Gainesville, Florida 32601 on the 25<sup>th</sup> day of December, 2014.

By:   
James J. Koush, Attorney  
Florida Bar No. 0296287  
Post Office Box 6020  
Gainesville, FL 32627  
(352) 871-4747 (voice)  
(352) 371-9061 (fax)

IN THE COUNTY COURT, IN AND FOR THE EIGHTH JUDICIAL CIRCUIT  
ALACHUA COUNTY COURTHOUSE - 201 E. UNIVERSITY AVE  
GAINESVILLE, FLORIDA 32601—PHONE: (352) 374-3618

One Stop Chevron #5  
Plaintiff  
vs  
City of Gainesville &  
Gainesville Regional Utilities  
Defendant(s).

Case Number: 01 - 2014-SC-4234  
Division: IV

NOTICE TO APPEAR FOR PRE-TRIAL CONFERENCE / MEDIATION  
NOTICE TO PLAINTIFF(S) AND DEFENDANT(S)

City of Gainesville  
200 East University Ave Room 425  
Gainesville, Florida 32601

YOU ARE HEREBY NOTIFIED that you are required to appear in person or by attorney at the Alachua County Family/Civil Justice Center, Courtroom 2-C, 201 East University Avenue, Gainesville, Florida, on:

(Day of Week) FRIDAY, (mo/day/year) JANUARY 30, 2015, at 9:00 a.m

for a Pre-trial Conference/Mediation and for hearing as to reasonable attorney fees in the event of default.

You must advise the Clerk, in writing, of any change in your mailing address.

Under the American with Disabilities Act, if you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator at (352) 337-6237, at least 7 days before your scheduled court appearance. If you are hearing or voice impaired, please call 711.

If you are deaf or hard of hearing and require an ASL interpreter or an assisted listening device to participate in a proceeding, please contact Court Interpreting at [interpreter@circuit8.org](mailto:interpreter@circuit8.org).

**IMPORTANT—READ CAREFULLY—THE CASE WILL NOT BE TRIED AT THAT TIME, BUT MAY BE MEDIATED. DO NOT BRING WITNESSES—APPEAR IN PERSON OR BY ATTORNEY.**

**WHOEVER APPEARS FOR A PARTY MUST HAVE FULL AUTHORITY TO SETTLE FOR ALL AMOUNTS FROM ZERO TO THE AMOUNT OF THE CLAIM WITHOUT FURTHER CONSULTATION. FAILURE TO COMPLY MAY RESULT IN THE IMPOSITION OF SANCTIONS, INCLUDING COSTS, ATTORNEY FEES, ENTRY OF JUDGMENT, OR DISMISSAL.**

*The defendant(s) must appear in court on the date specified in order to avoid a default judgment. The plaintiff(s) must appear to avoid having the case dismissed for lack of prosecution. A written MOTION or ANSWER to the court by the plaintiff(s) or the defendant(s) shall not excuse the personal appearance of a party or its attorney at the PRE-TRIAL CONFERENCE /MEDIATION. The date and time of the pre-trial conference CANNOT be rescheduled without good cause and prior court approval.*

A corporation may be represented at any stage of the trial court proceedings by an officer of the corporation or any employee authorized in writing by an officer of the corporation. Written authorization must be brought to the Pretrial Conference /Mediation.

The purpose of the pre-trial conference is to record your appearance, to determine if you admit all or part of the claim, to enable the court to determine the nature of the case, and to set the case for trial if the case cannot be resolved at the pretrial conference. You or your attorney should be prepared to confer with the court and to explain briefly the nature of your dispute; state what efforts have been made to settle the dispute; exhibit any documents necessary to prove the case; state the names and addresses of your witnesses; stipulate to the facts that will require no proof and will expedite the trial; and estimate how long it will take to try the case.

### Mediation

Mediation may take place at the pretrial conference. Whoever appears for a party must have full authority to settle. Failure to have full authority to settle at this pretrial conference may result in the imposition of costs and attorney fees incurred by the opposing party. Mediation is a process whereby an impartial and neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties, without prescribing what the resolution should be. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement.

In mediation, decision making rests with the parties. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required. If a full agreement is not reached at mediation, the remaining issues of the case will be set for trial. Mediation communications are confidential and privileged except where disclosures are required or permitted by law.

If you admit the claim, but desire additional time to pay, you must come and state the circumstances. The court may or may not approve a payment plan and withhold judgment or execution or levy.

If you desire to file any counterclaim or set-off to plaintiff's claim it must be filed in this court by you or your attorney in writing at least 5 days prior to the above date. Filing a counterclaim, set-off, motion or answer will not relieve you of your obligation to appear in court on the above date.

**RIGHT TO VENUE.** The law gives the person or company who has sued you the right to file suit in any one of several places as listed below. However, if you have been sued in any place other than one of these places, you, as the defendant(s) have the right to request that the case be moved to a proper location or venue. A proper location or venue may be one of the following: (1) where the contract was entered into; (2) if the suit is to recover property or on an unsecured promissory note, where the note is signed or where the maker resides; (3) if the suit is to foreclose a lien, where the property is located; (4) where the event giving rise to the suit occurred; (5) where any one or more of the defendant(s) sued resides; (6) any location agreed to in a contract; and (7) in an action for money due, if there is no agreement as to where the suit may be filed, where payment is to be made.

If you as the defendant(s), believe the plaintiff(s) has/have not sued in one of these correct places, you must appear on your court date and orally request a transfer, or you must file a WRITTEN request for transfer in affidavit form (sworn to under oath) with the court 7 days prior to your first court date and send a copy to the plaintiff(s) or plaintiff(s)' attorney, if any.

A copy of the statement of claim shall be served with this summons.

Dated on DECEMBER 19, 2014



J.K. IRBY  
CLERK OF COURT

By:

*Alvin M. Vayda*  
Deputy Clerk