

OFFICE OF THE CITY ATTORNEY

JUN 11 2014

June 11, 2014

RECEIVED

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 for Lloyd W. Bailey Jr., 3405 NW 97<sup>th</sup> Blvd, Gainesville, Florida 32606 and 3112 SW 101<sup>st</sup> Terrace, Gainesville, Florida 32607 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 OUTSIDE GAINESVILLE CITY LIMITS: RESIDENTIAL AND  
NON-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. WATER OUTSIDE GAINESVILLE CITY LIMITS: RESIDENTIAL  
AND NON-RESIDENTIAL**

As with electricity 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.

**C. ELECTRIC OUTSIDE THE CITY OF GAINESVILLE: RESIDENTIAL  
AND NON-RESIDENTIAL SURCHARGES**

In addition to the violations outlined under Paragraph A, pages 1 and 2, additionally, GRU commits further violations as follows:

Additional Violation #1a. After pre-pyramiding the §203.01 Gross Receipts Tax to achieve a basis of 2.5641%, GRU applies a City of Gainesville “surcharge” to this state tax and then applies to §203.01 Gross Receipts Tax to this amount.

There is no legal authority for a surcharge on the §203.01 State Gross Receipts Tax, and the subsequent §203.01 State Gross Receipts taxation of this amount is likewise impermissible.

As before, the applicability of the §203.01 Gross Receipts Tax to the “fuel adjustment charge” means that 2.5641 of the “fuel adjustment charge” is subject to a City of Gainesville surcharge and §203.01 Gross Receipts taxation for a third time after surcharge inflation of the basis. All of these monies would be the property of the State of Florida – not GRU or the City of Gainesville. Local utility taxes and surcharges are expressly prohibited by §166.231 (1) (b) on the “fuel adjustment charge” and “all increases in cost of utility services to the ultimate customer”.

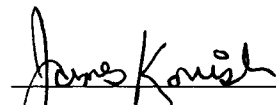
Violation 2a. Florida Public Service Commission Rule 25-9.052 (1) provides for a "...surcharge equal to the public service tax charge...". Misapplication of the §166.231 local 10% utility tax to the electric "customer charge" results in additional misapplication of the City of Gainesville surcharge outside the city limits. Accordingly, the application of the local (county) §166.231 "utility tax" to the surcharge on the customer charge is impermissible.

**D. WATER OUTSIDE CITY OF GAINESVILLE LIMITS: RESIDENTIAL  
'AND NON-RESIDENTIAL SURCHARGES**

§166.231 local "utility tax" on the surcharge applied to the customer charge is impermissible for the same reasons given before – the customer charge is not a "purchase" or consumable.

Respectfully Submitted,

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James Konish  
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Attorney For  
Lloyd W. Bailey Jr.

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
2000-1822-5863	Lloyd W Bailey Jr	5/21/2014	\$ 142.59		\$ 3.23							
2000-1822-5863	Lloyd W Bailey Jr	4/21/2014	\$ 117.98		\$ 3.11							
2000-1822-5863	Lloyd W Bailey Jr	3/21/2014	\$ 117.60		\$ 3.11							
2000-1822-5863	Lloyd W Bailey Jr	2/21/2014	\$ 256.96		\$ 3.79							
2000-1822-5863	Lloyd W Bailey Jr	1/22/2014	\$ 200.21		\$ 3.51							
2000-1822-5863	Lloyd W Bailey Jr	12/19/2013	\$ 143.93		\$ 3.24							
2000-1822-5863	Lloyd W Bailey Jr	11/20/2013	\$ 123.77		\$ 3.13							
2000-1822-5863	Lloyd W Bailey Jr	10/21/2013	\$ 147.08		\$ 3.24							
2000-1822-5863	Lloyd W Bailey Jr	9/23/2013	\$ 230.84		\$ 2.95							
2000-1822-5863	Lloyd W Bailey Jr	8/21/2013	\$ 232.33		\$ 2.83							
2000-1822-5863	Lloyd W Bailey Jr	7/22/2013	\$ 205.21		\$ 2.92							
2000-1822-5863	Lloyd W Bailey Jr	6/21/2013	\$ 223.17		\$ 2.32							
2000-1822-5863	Lloyd W Bailey Jr	5/21/2013	\$ 97.46		\$ 2.54							
2000-1822-5863	Lloyd W Bailey Jr	4/25/2013	\$ 144.71		\$ 2.60							
2000-1822-5863	Lloyd W Bailey Jr	3/21/2013	\$ 156.21		\$ 2.77							
2000-1822-5863	Lloyd W Bailey Jr	2/21/2013	\$ 191.37		\$ 2.62							
2000-1822-5863	Lloyd W Bailey Jr	1/22/2013	\$ 160.88		\$ 2.45							
2000-1822-5863	Lloyd W Bailey Jr	12/19/2012	\$ 125.34		\$ 2.41							
2000-1822-5863	Lloyd W Bailey Jr	11/20/2012	\$ 116.01		\$ 2.62							
2000-1822-5863	Lloyd W Bailey Jr	10/19/2012	\$ 160.70		\$ 2.91							
2000-1822-5863	Lloyd W Bailey Jr	9/21/2012	\$ 221.53		\$ 3.07							
2000-1822-5863	Lloyd W Bailey Jr	8/21/2012	\$ 254.93		\$ 3.24							
2000-1822-5863	Lloyd W Bailey Jr	7/23/2012	\$ 290.27		\$ 2.66							
2000-1822-5863	Lloyd W Bailey Jr	6/21/2012	\$ 257.80		\$ 2.39							
2000-1822-5863	Lloyd W Bailey Jr	5/21/2012	\$ 168.23		\$ 2.48							
2000-1822-5863	Lloyd W Bailey Jr	4/20/2012	\$ 130.92		\$ 3.00							
2000-1822-5863	Lloyd W Bailey Jr	3/21/2012	\$ 113.51		\$ 2.62							
2000-1822-5863	Lloyd W Bailey Jr	2/21/2012	\$ 161.42		\$ 2.38							
2000-1822-5863	Lloyd W Bailey Jr	1/20/2012	\$ 239.49		\$ 2.48							
2000-1822-5863	Lloyd W Bailey Jr	12/20/2011	\$ 110.27		\$ 3.30							
2000-1822-5863	Lloyd W Bailey Jr	11/21/2011	\$ 130.55		\$ 3.42							
2000-1822-5863	Lloyd W Bailey Jr	10/21/2011	\$ 182.06		\$ 2.60							
2000-1822-5863	Lloyd W Bailey Jr	9/21/2011	\$ 311.10		\$ 3.11							
2000-1822-5863	Lloyd W Bailey Jr	8/19/2011	\$ 328.77		\$ 3.11							
2000-1822-5863	Lloyd W Bailey Jr	7/22/2011	\$ 335.99		\$ 3.11							
2000-1822-5863	Lloyd W Bailey Jr	6/21/2011	\$ 272.09		\$ 2.60							
2000-1822-5863	Lloyd W Bailey Jr	5/20/2011	\$ 165.06		\$ 107.19							
	Total				\$ 107.19							

107.19

ITEM 1

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
2000-1822-4146	Lloyd W. Bailey Jr	5/13/2014	\$ 194.09		\$ 4.56				\$ 34.73		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	4/11/2014	\$ 183.49		\$ 4.50				\$ 34.73		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	3/13/2014	\$ 141.97		\$ 4.27				\$ 22.19		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	2/13/2014	\$ 154.89		\$ 4.34				\$ 22.19		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	1/13/2014	\$ 179.75		\$ 4.47				\$ 34.73		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	12/11/2013	\$ 161.85		\$ 4.37				\$ 22.19		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	11/13/2013	\$ 191.16		\$ 4.59				\$ 22.19		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	10/11/2013	\$ 262.58		\$ 5.01				\$ 34.73		\$ 0.90	
2000-1822-4146	Lloyd W. Bailey Jr	9/13/2013	\$ 367.94		\$ 5.34				\$ 58.43		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	8/13/2013	\$ 380.78		\$ 5.42				\$ 33.62		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	7/12/2013	\$ 389.89		\$ 5.38				\$ 33.62		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	6/13/2013	\$ 278.17		\$ 4.67				\$ 33.62		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	5/13/2013	\$ 210.93		\$ 4.26				\$ 21.22		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	4/12/2013	\$ 181.60		\$ 4.09				\$ 46.03		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	3/13/2013	\$ 157.12		\$ 3.94				\$ 21.22		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	2/13/2013	\$ 157.44		\$ 3.94				\$ 33.62		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	1/11/2013	\$ 177.54		\$ 4.06				\$ 21.22		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	12/11/2012	\$ 149.81		\$ 3.90				\$ 83.24		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	11/9/2012	\$ 209.31		\$ 4.25				\$ 108.06		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	10/11/2012	\$ 266.85		\$ 4.60				\$ 58.43		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	9/13/2012	\$ 366.77		\$ 5.23				\$ 33.05		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	8/13/2012	\$ 367.36		\$ 5.24				\$ 33.05		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	7/13/2012	\$ 358.81		\$ 5.18				\$ 56.83		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	6/13/2012	\$ 278.76		\$ 4.67				\$ 33.05		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	5/11/2012	\$ 252.76		\$ 4.52				\$ 21.14		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	4/12/2012	\$ 202.83		\$ 4.22				\$ 33.05		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	3/13/2012	\$ 151.93		\$ 3.91				\$ 21.14		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	2/13/2012	\$ 160.04		\$ 3.96				\$ 33.05		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	1/12/2012	\$ 168.46		\$ 4.01				\$ 68.72		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	12/12/2011	\$ 157.95		\$ 3.94				\$ 1,140.47		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	11/10/2011	\$ 191.91		\$ 4.15				\$ 33.05		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	10/13/2011	\$ 273.45		\$ 4.64				\$ 21.14		\$ 0.87	
2000-1822-4146	Lloyd W. Bailey Jr	9/13/2011	\$ 371.32		\$ 5.25				\$ 30.07		\$ 0.78	
2000-1822-4146	Lloyd W. Bailey Jr	8/11/2011	\$ 406.66		\$ 5.47				\$ 30.07		\$ 0.78	
2000-1822-4146	Lloyd W. Bailey Jr	7/14/2011	\$ 440.78		\$ 5.69				\$ 30.07		\$ 0.78	
2000-1822-4146	Lloyd W. Bailey Jr	6/13/2011	\$ 324.17		\$ 4.95				\$ 18.79		\$ 0.78	
2000-1822-4146	Lloyd W. Bailey Jr	5/12/2011	\$ 247.77		\$ 4.48				\$ 30.07		\$ 0.78	
	Total				\$ 169.47						\$ 31.98	\$ 201.45

## Definitions

**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.

**Rate of 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 were on 10/1/73 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 GCR 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(f), Gainesville Code of Ordinances]

# ITEM 2