

Copy of August 30, 2001 E-mail Addressing Application of Washington State B&O Tax to Scheduling Coordinator Revenues

Subject: Fw: Application of Washington Taxes to Scheduling Coordinator

Date: Thu, 31 Aug 2000 08:35:15 -0700

From: "Sarah Dennison-Leonard" <sdleonard@earthlink.net>

Organization: Krogh & Leonard

To: <nwrto@pplmt.com>, "Arlena" <ambarnes@bpa.gov>, <sberman@hewm.com>, <kcarlson@do.usbr.gov>, <elchristensen@snopud.com>, "Gary Dahlke" <gdahlke@painehamblen.com>, <sdleonard@earthlink.net>, <michaelearly@earthlink.net>, <pfeldberg@lawsonlundell.com>, "Eric Freedman" <ericf@prestongates.com>, <mhain@enron.com>, <sjarsky@pn.usbr.gov>, <snkripalani@stoel.com> <srlarson@bpa.gov>, <terrym@millcreeklaw.com>, <pmurphy@mbllp.com>, <douglas_nichols@pgn.com>, <lnichols@bpa.gov>, <rkrodewald@bpa.gov>, <tshuba@sheagardner.com>, <dswatkins@bpa.gov>, <cwestadt@sppc.com>, <cindy.wright@ci.seattle.wa.us>, "Malcolm McLellan" <mcm@vnf.com>, <shellyr@teleport.com>, "Will Patton" <will.patton@ci.seattle.wa.us>, "Stephany Watson" <sawatson@bpa.gov>, <johk@critfc.org>, <DSauter@idahopower.com>, <susan@wapa.gov>, <mschaff@worldnet.att.net>, <denise_hill@transalta.com>, <dmpillips@bpa.gov>, <cfi1@tca-us.com>, <deb@aelaw.com>, <mjones@bpa.gov>, <jchristian@lawsonlundell.com>
CC: "Preston Michie" <pdmichie@bpa.gov>, "Marcus Wood" <mwood@stoel.com>, "Barney Speckman" <bmspeckman@aol.com>, "Kristi Wallis" <kristiwallis@SprintMail.com>, "Dave Hackett" <DHackett@kemaconsulting.com>, "John Boucher" <JBoucher@kemaconsulting.com>, "Jon Kaake" <Jon.Kaake@PacifiCorp.com>

FYI from Eric Christensen.

----- Original Message -----

From: "Christensen, Eric" <ELChristensen@SNOPUD.com>

To: "'Sarah Dennison-Leonard'" <sdleonard@earthlink.net>

Cc: "eric freedman" <ericf@prestongates.com>

Sent: Wednesday, August 30, 2000 10:40 AM

Subject: Application of Washington Taxes to Scheduling Coordinator

Sarah,

As promised, I've done a bit of digging (with substantial help from Eric Freedman and his archives) concerning the Washington Public Utilities Tax ("PUT") and Business & Occupancy Tax ("B&O"). As I understand it, we are contemplating a Scheduling Coordinator arrangement in which the SC would receive a bill from the RTO (or the RTO's Payment Agent) and the SC would be responsible for collecting amounts due from clients and reimbursing the RTO. The concern is that the SC could be taxed on the amounts it collects for RTO services

under this billing arrangement. I conclude, however, that such an arrangement would not incur any tax liability under either the Washington PUT or B&O tax.

My conclusion is based upon language added to the tax statutes by the Washington legislature earlier this year which was intended to remove the cost of wholesale power transactions from the PUT and B&O tax. EHB 2755, signed into law by Governor Locke on March 31, 2000, expanded an existing deduction from the PUT for wholesale power transactions so that sales and transfers for resale of electricity are excluded from amounts subject to the PUT even if the transaction involves a party that is not a traditional "light and power business." Specifically, "[a]mounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state or for consumption outside the state" are excluded from gross revenues for PUT purposes. R.C.W. § 82.16.050(9) (as amended).

Since the SC would be handling "amounts derived" from the transfer of electric energy at wholesale, I conclude that such amounts would be excluded from the PUT tax. One possible exception is that amounts derived from sales to DSIs may be taxable, since such sales may not be considered sales for resale.

EHB 2755 applies this same exemption to the B&O tax. Specifically, it provides that the B&O tax does not apply to amounts derived from activities that are exempt from taxation under the PUT tax. R.C.W. § 82.04.310(1) (as amended). Hence, the exemption for wholesale transfers discussed above applies to the B&O tax as well.

Accordingly, the SC arrangement as currently contemplated does not appear likely to trigger either the Washington PUT or B&O taxes. Since I am well outside my area of expertise in rendering this opinion, however, it seems prudent to seek advice from a genuine tax expert before proceeding. Further, it strikes me that the SC arrangement may have consequences under the federal corporate income tax or the income tax laws of other states in the RTO region that should be examined.

Please feel free to circulate this email to other members of the GIA/LIA subgroup. I won't be able to attend tomorrow's meeting, but I could call in if you like. Let me know if you think that would be helpful.

- > Eric Christensen
- > Associate General Counsel
- > Snohomish County PUD No. 1
- > (425) 783-8649
- > Toll free from WA: (877) 783-1000 x8649
- > Cell phone: (425) 344-1938
- > Office fax: (425) 783-8305
- > Direct fax: (425) 267-6071
- > elchristensen@snopud.com <<mailto:elchristensen@snopud.com>>