

HERMAN G. BODEWES
R. MARK MIFFLIN
DAVID A. HERMAN
CREIGHTON R. CASTLE
CHRISTOPHER E. SHERER
KERRI A. DOLL

STEVEN A. MILBURN
MATTHEW R. TRAPP
JASON E. BROKAW
ABBY L. ALLGIRE

OF COUNSEL:
ROBERT S. COHEN
JOHN L. SWARTZ
RONALD W. PERIARD

GIFFIN WINNING COHEN & BODEWES, P.C.

A T T O R N E Y S A T L A W

Please reply to:
POST OFFICE BOX 2117
SPRINGFIELD, ILLINOIS 62705-2117

TELEPHONE (217) 525-1571
FACSIMILE (217) 525-1710

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ESTABLISHED 1911

D. LOGAN GIFFIN
(1890-1980)

MONTGOMERY S. WINNING
(1892-1966)

C. TERRY LINDNER
(1903-1987)

ALFRED F. NEWKIRK
(1904-1980)

JAMES M. WINNING
(1921-2013)

Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

**Re: Can a Municipality Impose a Tax on the Utility Bills
of Other Units of Local Government?**

Dear Mike:

Question:

Can a municipality impose a tax on the utility bills of other units of local government?

Analysis:

We have received a request for an opinion related to counties that have noted that several utility bills have included charges for taxes imposed by a municipality, or a municipal utility tax. These taxes are authorized by the Illinois Municipal Code¹ and Illinois courts have held that:

“[A] tax imposed or expressly authorized by the General Assembly, such as the municipal utility tax, is presumptively and validly applied to local government units, unless the General Assembly has expressly exempted such units by statute or by preemptive legislation.”²

¹ 65 ILCS 5/1 *et seq.*

² *Waukegan Community Unit Sch. Dist. v. Waukegan*, 95 Ill. 2d 244, 257, 447 N.E.2d 345, 351 (1983) citing *People v. Deep Rock Oil Corp.*, 343 Ill. 388 (1931); See *Board of Education v. City of McHenry*, 71 Ill. App. 3d 904 (2nd Dist. 1979); *cf. Board of Education v. City of Peoria*, 76 Ill. 2d 469 (1979).

Section 8-11-2 of the Illinois Municipal Code provides:

The corporate authorities of any municipality may tax any or all of the following occupations or privileges:

2. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of 500,000 or fewer population, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.

2a. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of over 500,000 population, and not for resale, at a rate not to exceed 8% of the gross receipts therefrom. If imposed, this tax shall be paid in monthly payments.

3. The privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the municipality...

4. Persons engaged in the business of distributing, supplying, furnishing, or selling water for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom.³

Consequently, a municipality may impose taxes on natural gas, electricity, and water. The Public Utilities Act⁴ authorizes a public utility to pass the costs of these taxes to the utility's respective customers. The Section 9-221 of the Act provides that:

Whenever a municipality pursuant to Section 8-11-2 of the Illinois Municipal Code ... imposes a tax on any public utility, such utility may charge its customers, other than customers who are certified business enterprises under paragraph (e) of Section 8-11-2 of the Illinois Municipal Code or are exempted from those taxes under paragraph (f) of that Section, ... in addition to any rate authorized by this Act, an additional charge equal to the sum of (1) an amount equal to such municipal tax, or any part thereof, (2) 3% of such tax, or any part thereof, as the case may be, to cover costs of accounting, **and** (3) an amount equal to the increase in taxes and other payments to governmental bodies resulting from the amount of such additional charge.⁵

³ 65 ILCS 5/8-11-2.

⁴ 220 ILCS 5/1 *et seq.*

⁵ 220 ILCS 5/9-221 (emphasis added).

Additionally, the Illinois Supreme Court has acknowledged a public utility's ability to pass on the cost of such taxes to customers, including units of local government, who in other scenarios may be exempt from the payment of certain taxes. In holding so, the Illinois Supreme Court stated:

[T]axes passed on to exempt bodies in the form of higher prices are not necessarily invalid... It is clear that the incidence of the tax rests on the utilities, even if its burden does not, since if the tax is not paid by the utility, it is the only one from whom the city may seek to collect. It is the legal incidence of the tax that controls. Accordingly, it is the utility not the [unit of local government] which is the taxpayer. The fact that the utility, while not required to, may as a general practice pass the tax on to the purchaser does not change the character of the tax. Nor does the fact that the subscribers must inevitably provide the money for the payment of the tax through a special charge.⁶

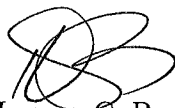
However, a municipality may decide to exempt another unit of local government or school district from these taxes. Section 8-11-2 of the Illinois Municipal Code provides that "A municipality that imposes taxes upon public utilities or upon the privilege of using or consuming electricity under this Section and whose territory includes part of another unit of local government or a school district may by ordinance exempt the other unit of local government or school district from those taxes."⁷

Conclusion:

Municipal taxes upon public utilities may be lawfully passed on to counties where such taxable uses take place within the corporate limits of the municipality. Further, municipal taxes upon the privilege of using or consuming electricity are applicable to counties where such taxable uses take place within the corporate limits of the municipality. However, counties should verify with their respective municipalities whether the county has been exempted from such taxes by ordinance.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Jason E. Brokaw

HGB:JEB:pa

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⁶ *Waukegan Community Unit Sch. Dist. v. Waukegan*, 95 Ill. 2d 244, 256-57 (1983) (citations omitted) citing *Commonwealth Edison Co. v. Community Unit School Dist.*, 44 Ill. App. 3d 665 (2nd Dist. 1976).

⁷ 65 ILCS 5/8-11-2(f)

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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.