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FILE NO. 93-020

MUNICIPALITIES:  
Public Utilities Tax

Honorable Dennis Hatch  
State's Attorney, Washington County  
Washington County Courthouse  
Nashville, Illinois 62263

Dear Mr. Hatch:

I have your letter wherein you inquire whether a municipality is authorized, pursuant to section 8-11-2 of the Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 8-11-2; 65 ILCS 5/8-11-2 (West 1992)), to tax sellers of propane, kerosene, fuel oil or gasoline, in addition to sellers of natural gas. For the reasons hereinafter stated, it is my opinion that the term "gas", as used in section 8-11-2, refers only to natural gas; therefore, section 8-11-2 of the Code does not constitute authority for municipalities to tax sellers of other petroleum based fuels.

Section 8-11-2 provides, in part:

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

1. Persons engaged in the business of transmitting messages by means of electricity or radio magnetic waves, or fiber optics, at a rate not to exceed 5% of the gross receipts from such business originating within the corporate limits of the municipality.

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, such tax shall be paid in monthly payments.

3. Persons engaged in the business of distributing, supplying, furnishing, or selling electricity 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.

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.

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The primary purpose of statutory construction is to ascertain the intention of the General Assembly in enacting a

law, and to give it effect in accordance with that intent.

(People v. Robinson (1982), 89 Ill. 2d 469.) The best indication of the intent of the drafters of a provision is the language they voted to adopt. (Coryn v. City of Moline (1975), 71 Ill. 2d 194.) Each section of a statute must be reasonably interpreted according to its intent and meaning so as to accomplish its general object. (People ex rel. Roan v. Wilson (1950), 405 Ill. 122.) Where a statute is ambiguous, it is proper to examine the legislative history of the statute to determine the intent behind its enactment. People v. Boykin (1982), 109 Ill. App. 3d 112, aff'd 94 Ill. 2d 138.

Although section 8-11-2 of the Code does not define the term "gas" to mean "natural gas", and does not explicitly refer to the tax authorized therein as being one upon public utilities, there are several references in the section to public utilities and the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, par. 1-101 et seq.; 220 ILCS 5/1-101 et seq. (West 1992)). Indeed, the only other occupations or privileges which are subject to taxation under the section, distribution of electricity and distribution of water, are clearly public utilities. In contrast, the selling or distribution of propane, kerosene, fuel oil or gasoline does not involve any public utility, as that term is defined in the Public Utilities Act. (Ill. Rev. Stat. 1991, ch. 111 2/3, par. 3-105; 220 ILCS 5/3-105 (West 1992).) This is indicative of an intent to limit

the applicability of section 8-11-2 to the sale or distribution of natural gas, which does constitute a "public utility", for purposes of the Public Utilities Act.

Moreover, in other statutes the General Assembly has defined and provided specific designations for other types of petroleum based fuels, and has not referred to them generically as "gas". For example, section 8-11-15 of the Municipal Code (Ill. Rev. Stat. 1991, ch. 24, par. 8-11-15; 65 ILCS 5/8-11-15 (West 1992)) authorizes certain municipalities to tax "motor fuels", as defined in the Motor Fuel Tax Law (Ill. Rev. Stat. 1991, ch. 120, par. 417 et seq.; 35 ILCS 505/1 et seq. (West 1992)), a definition which includes gasoline, kerosene, propane, fuel oil, and most other combustible liquids. (Ill. Rev. Stat. 1991, ch. 120, par. 417.1; 35 ILCS 505/1.1 (West 1992).) Section 8-11-15 of the Municipal Code would be redundant and its limitations would be meaningless if the term "gas", in section 8-11-2, was construed to include "motor fuels", as defined in the Motor Fuel Tax Law. Statutes should not be construed so as to render a section meaningless or superfluous. Niven v. Siqueira (1985), 109 Ill. 2d 357.

Further, the legislative history of section 8-11-2 supports the conclusion that the term "gas" was intended to be limited to natural gas. Public Act 82-94, effective July 20, 1981, amended section 8-11-2 to provide that in municipalities under 500,000 population, the maximum tax rate on gas would be 5%,

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while in municipalities with a population of over 500,000, the maximum rate would be 8%. During debate on the bill, it was repeatedly asserted that the higher tax rate would apply only in Chicago, and only with respect to the sole supplier of natural gas in Chicago, People's Gas, Light and Coal Company. (Remarks of Sen. Nedza, June 18, 1981, Senate Debate on House Bill 70, at 88-91; Remarks of Rep. Jaffe, June 30, 1981, House Debate on House Bill 70, at 100.) There was no suggestion that the measure might be applicable to other types of fuels or to other suppliers. Thus, the General Assembly clearly intended that the section, as amended, would apply only to natural gas.

Based upon the language of the statute, its relationship to other statutes authorizing the taxation of fuels and the stated legislative intent, it is my opinion that section 8-11-2 of the Municipal Code authorizes the taxation of natural gas, but does not authorize the taxation of any other petroleum based fuels.

Respectfully yours,

A handwritten signature in black ink, reading "Roland W. Burris". The signature is written in a cursive style with a large initial "R".

ROLAND W. BURRIS  
ATTORNEY GENERAL