

**LEGISTAR NO.**

**140647**

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

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

OFFICE OF THE CLERK

JAN - 6 2015

FILED

William A Newsom MD d/b/a

Eye Associates of Gainesville, LLC

2521 NW 41<sup>st</sup> St

Gainesville, FL 32606

Case No.:

Division: Small Claims

**PLAINTIFF**

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, natural gas (hereinafter referred to as gas) through one account and water utility services through another account to Plaintiff at the following address located within City of Gainesville boundaries:

a) 2521 NW 41<sup>st</sup> Street  
Gainesville, FL 32606

3. The City of Gainesville, by and through its municipally – owned regional utility GRU imposed a municipal utility tax on Plaintiff's electric, gas 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, gas 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, gas and water, and
- b) 10% on the State of Florida §203.01 Gross Receipts Tax on GRU electric but not gas service.

6. On July 24th, 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:

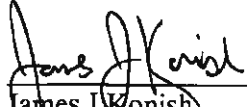
The Defendants’ denial letter fails to state reasons for such denial in violation of §166.235 (1)(d), Fla. Stat.

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, gas 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, gas 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 \$398.23, court costs and other such relief that this court deems just and proper.

By:   
James J. Konish  
Attorney For Plaintiff  
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**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 30<sup>th</sup> day of December, 2014.

By:   
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