

PUBLIC UTILITIES COMMISSION GROSS RECEIPTS TAX FUND



South Dakota Legislative Research Council

Frequently Asked Questions

The purpose of this FAQ sheet is to provide information to the Joint Committee on Appropriations regarding *informational budgets* in the South Dakota budgetary system. The information was compiled by the Legislative Research Council with assistance from the Department of Legislative Audit and the Government Operations and Audit Committee.

When and why was this fund created?

The South Dakota Public Utilities Commission (PUC) Gross Receipts Tax Fund was created by the 1975 Legislature through SB216 (SDCL 49-1A); however, the original name of this fund was the "Special Hearing Fund". The original purpose for the fund was to permit full and adequate hearings of controversies to be heard before the PUC involving public utilities. The fund was financed by assessing a tax on the total gross receipts received from retail customers within the state of South Dakota by these public utilities. The tax collected was to be used to defray the expense of hearings involving matters relating to telephones, electricity or natural gas. The original tax rate was levied on each public utility subject to the regulation of the PUC and was a direct rate of .001 to be levied upon the annual gross receipts derived by its customers within the state of South Dakota during the preceding calendar year. Each utility company was required to file with PUC by July 1st, information regarding the amount of its gross receipts derived from customers the preceding calendar year. The tax levied was required to be paid by August 1st. Late penalties were assessed at 5% per month on the amount of tax due to the PUC. If still not paid PUC was allowed the sale of personal property of the company owing the tax. Amounts deposited in the fund were appropriated to the use of the PUC and expenses were hereby authorized to be expended, making this fund continuously appropriated.

Has the original purpose of the fund changed?

The original purpose of the fund was changed by the 1991 Legislature through SB238. The use of the fund was expanded in order to permit full and adequate regulation of public utilities as defined in SDCL chapter 49-34A and telephone companies was changed to telecommunications companies as defined by SDCL 49-31-1(28). The name of the fund was changed to the South Dakota Public Utilities Commission Gross Receipts Tax Fund and was made participating in the state's interest proration. The penalty for late payments was also increase to 10% of the amount of the tax due. Over the years changes have been made for the tax rate levied on each public utility as defined in SDCL 49-34A-1(12), which is subject to the rate regulation of PUC and all telecommunications companies as defined in SDCL 49-31-1(26). Currently SDCL 49-1A-3 allows PUC to levy a tax of not more than .0015 (or .15%) or two hundred fifty dollars, which ever is greater upon the annual intrastate gross receipts derived by the public utility or telecommunications company from its customers within the State of South Dakota during the preceding

calendar year. The 2003 Legislature through HB1231 changed the filing date for the annual reports of gross receipts to April 1st. The bill also added a date of May 1st for PUC to establish a rate and assess the tax to fund the commission's budget for the next fiscal year and provide a contingency reserve in an amount not to exceed the prior year's budget. The date of collection of this tax was also changed to July 15th. HB1231 added language that these funds may not be expended for any other operation of state government.

Where does the revenue come from?

As stated, SDCL 49-1A-3 allows PUC to levy a tax of not more than .0015 (or .15%) or two hundred fifty dollars, whichever is greater upon the annual intrastate gross receipts derived by a public utility (as defined in SDCL 49-34A-1(12)) or telecommunications company (as defined by SDCL 49-31-1(26)), from its customers within the State of South Dakota during the preceding calendar year.

What spending restrictions exist on the fund?

Per SDCL 49-1A-7 all amounts deposited in this fund are appropriated to the use of the PUC for its expenses in regulating public utilities as defined in SDCL chapter 49-34A and telecommunications companies as defined in SDCL 49-31-1(26). Expenses may be paid out of the fund on warrants drawn by the state auditor upon duly itemized vouchers. Expenses are authorized to be expended and funds may not be expended for any other operations of state government.

The 2001 Legislature through HB 1297 transferred \$500,000 out of the PUC Gross Receipts Tax Fund to the public welfare assistance fund administered by the Department of Social Services to provide grants to qualifying individuals for home heating assistance pursuant to the low income energy assistance program. This transfer was prior to the passage of HB1231 in the 2003 Legislature, which added restrictive language in statute regarding the use of funds in the PUC Gross Receipts Tax Fund.

Also, the 2003 Legislature through SB41 allowed PUC to use money from the Gross Receipts Tax Fund to implement the no solicitation calls list (register). This money was required to be returned to the Gross Receipts Tax Fund within three years of implementation of the register. PUC did not use money from the Gross Receipts Tax Fund for the creation of the register. According to PUC they were able to piggy back with the feds instead of developing their own.

It should also be noted that the cash balance of this fund has consistently declined over the past 4 fiscal years, from \$2,070,222.18 in FY 2004 to \$1,374,811.20 in FY 2007. This is based on expenditures being higher than revenues. Also, the FY 2008 cash balance is projected to decrease again to \$1,307,108.18. According to PUC the maximum rate allowed by statute has been billed and the fund balance has always been well below the max allowed by statute.

The cash balance at June 30, 2007 is also less than the amount budgeted for FY 2008 which is \$2,002,580. Since the Gross Receipts Tax Fund is billed to utilities and telecommunication companies once a year, by May 1st, and receipts are due by July 15th, it appears this cash balance is needed to fund expenditures budgeted in FY 2008.

Is the fund on the state accounting system? What is the timing of the Fiscal Year?

The fund is on the state accounting system along with all revenues and expenditures. The fiscal year runs the same as the state fiscal year which is from July 1 to June 30.

What Oversight Exists?

The South Dakota Department of Legislative Audit has audited the financial statements of the South Dakota Public Utilities Commission (PUC) Gross Receipts Tax Fund as of June 30, 2001. At that time no written audit findings were issued.

Also, it should be noted that the Appropriations committee has an annual budget hearing for the PUC including the Gross Receipts Tax Fund. The Informational budget of the Gross Receipts Tax Fund is also in the Governor's budget request and the General Appropriations Bill is acted on by the Legislative body.

2007 Government Operations and Audit Committee "Blue Book"

Other Fund Information

Public Utilities Commission
State Accounting System - Other Fund Balances
Company 3128 - Gross Receipts Tax Fund

	FY2004	FY2005	FY2006	FY2007
1 Cash Pooled with State Treasurer	2,070,222.18	1,745,552.49	1,502,212.61	1,374,811.20
2 Total Assets	2,070,222.18	1,745,552.49	1,502,212.61	1,374,811.20
3				
4 Accounts Payable	-	-	-	-
5 Total Liabilities	-	-	-	-
6				
7 Reserve for Encumbrances	-	-	-	11,154.00
8 Unreserved Fund Balance	2,070,222.18	1,745,552.49	1,502,212.61	1,363,657.20
9 Total Fund Equity	2,070,222.18	1,745,552.49	1,502,212.61	1,374,811.20
10 Total Liabilities and Fund Equity	2,070,222.18	1,745,552.49	1,502,212.61	1,374,811.20
11				
12				
13 Taxes	644,990.81	1,227,371.01	1,266,723.89	1,485,906.01
14 Licenses, Permits and Fees	5,750.00	4,500.00	99,572.09	3,750.00
15 Use of Money and Property	96,361.74	67,838.64	57,203.68	65,695.76
16 Other Revenue	50.00	10,870.05	130.00	-
17 Total Operating Revenue	747,152.55	1,310,579.70	1,423,629.66	1,555,351.77
18				
19 Personal Services and Benefits	1,171,680.58	1,237,067.64	1,333,586.83	1,368,996.18
20 Travel	80,324.47	90,160.27	87,814.45	67,412.09
21 Contractual Services	196,669.08	244,676.63	197,074.77	222,013.12
22 Supplies and Materials	29,790.57	41,759.90	32,217.53	15,697.63
23 Capital Outlay	25,561.91	21,584.95	16,275.96	8,634.16
24 Total Operating Expenditures/Expenses	1,504,026.61	1,635,249.39	1,666,969.54	1,682,753.18
25				
26 Transfers In	-	-	-	-
27 Transfers Out	-	-	-	-
28 Net Transfers In (Out)	-	-	-	-
29				
30 Net Change	(756,874.06)	(324,669.69)	(243,339.88)	(127,401.41)
31				
32 Beginning Fund Equity	2,827,096.24	2,070,222.18	1,745,552.49	1,502,212.61
33 Ending Equity	2,070,222.18	1,745,552.49	1,502,212.61	1,374,811.20

Company: 3128

Company Name: PUC Other Funds - Informational

Fund Name: PUC Gross Receipts Tax Fund

Fund Type: Special Revenue

Purpose: SDCL 49-1A-2 created the PUC Gross Receipts Tax Fund. Source: Gross receipts tax on all telecommunications companies, interest earned on fund. Use: Regulation of public utilities.

Budget Information: Included in the General Appropriations Bill.

Condition statement prepared by the Bureau of Finance and Management on 10/15/2007.

**PUBLIC UTILITIES COMMISSION
GROSS RECEIPTS TAX FUND
CONDITION STATEMENT 109033**

	ACTUAL FY2006	ACTUAL FY2007	PROJECTED FY2008
TOTAL RECEIPTS	\$1,423,629.66	\$1,555,351.77	\$1,639,731.64
TOTAL DISBURSEMENTS	\$1,666,969.54	\$1,682,753.18	\$1,707,434.66
NET (Receipts less Disbursements)	(\$243,339.88)	(\$127,401.41)	(\$67,703.02)
BEGINNING CASH BALANCE	\$1,745,552.49	\$1,502,212.61	\$1,374,811.20
ENDING CASH BALANCE	\$1,502,212.61	\$1,374,811.20	\$1,307,108.18