

ISSUED: October 5, 2005

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 499

In the Matter of the Adoption of Permanent)	
Rules Implementing SB 408 Relating to)	MEMORANDUM
Utility Taxes.)	

The first workshop was held on September 28, 2005. Commission counsel Paul Graham confirmed that the SB 408 legislative history was being prepared by his office, and would be available on October 7, 2005. A copy of the legislative history should be filed with the Commission by October 7, 2005, and sent electronically to the participants.

The participants also agreed to brief specific questions based on the legislative history. Based on subsequent conversations with Mr. Graham, I have revised the list by removing two of the questions that Mr. Graham has concluded present no legal dispute. I have also added a new question to address an issue relating to payment of quarterly estimated taxes. The questions are:

1. How should the Commission apply the “properly attributed” standard as it appears in the individual sections of the bill?
2. What did the legislature intend in adoption of section 3(13)(f)(B)?
3. May the Commission terminate the automatic adjustment clause upon showing by a utility that the automatic adjustment clause has a material adverse effect on the utility?
4. Section 3 of SB 408 requires the Commission to establish an automatic adjustment clause within 30 days (or later date, established by rule, not to exceed 60 days) once a determination is made regarding the \$100,000 trigger amount. Section 4 states that if an automatic adjustment clause is established, it applies only to taxes paid to units of government and collected from ratepayers on or after January 1, 2006. If a utility pays quarterly estimated taxes, must the automatic adjustment clause be applied quarterly, or does the law allow it to be applied yearly?

There may have been some confusion about the scope of the briefing regarding these questions. The purpose of the briefing is to assist in developing the *legal* parameters of the bill. Once the briefing is completed, the Department of Justice will issue a legal opinion as to what is, or is not, legally permissible under the statute. After this determination is made, the participants will be able to focus on the rule language, and submit comments about policy direction. The Commission can then establish the new rule.

Participants are not required to submit opening and reply legal comments. However, all comments filed must be received by the due dates set forth below.

Previously, a workshop had been set for October 14, 2005. Participants agreed that a workshop held shortly after the issuance of the legislative history would not be beneficial, and asked for it to be cancelled. Participants also agreed on a schedule for filing legal comments. The new schedule is as follows:

ACTION	DATE
Workshop 2	November 2, 2005 – Main Hearing Room
Opening Legal Comments due	October 28, 2005
Reply Legal Comments due	November 10, 2005
Legal Opinion circulated	Mid-December 2005 (to be determined)
Additional Workshops	To be determined.

One remaining issue is whether the temporary rule can lapse without a complete permanent rule in effect. This answer is dependent on the legal response to Question 4, above. Therefore, this issue will be addressed after the legal opinion is issued and circulated.

Finally, I indicated in my August 25, 2005 memorandum that mailings occurring after the first workshop will be sent only to participants on the service list. If others become aware of this docket and wish to be on the participant list, please notify Annette Taylor at 503-378-3943 or annette.m.taylor@state.or.us.

Dated at Salem, Oregon, this 5th day of October, 2005.

Kathryn A. Logan
Administrative Law Judge