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**From:** Jeremy Walker <[jeremywalker@utah.gov](mailto:jeremywalker@utah.gov)>

**Sent:** Friday, June 23, 2017 8:25 AM

**To:** Gary T. Forbush

**Subject:** Re: Obtaining A Copy Of Letters Recently Sent To Sandy City Mayor & City Council As It Relates To Water Fund Transfers & Franchise Fees

Gary, I have attached a copy of the letter that you requested. I am not aware of any other letters to other cities on this issue.

*Jeremy*

Jeremy A. Walker, CPA  
Manager, [Local Governments Division](#)

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OFFICE OF THE  
**UTAH STATE AUDITOR**

February 22, 2016

Mayor Tom Dolan  
Sandy City  
10000 Centennial Parkway  
Sandy, UT 84070-1799

Dear Mr. Dolan,

It has come to our attention that Sandy City may not be abiding by State Code with regards to inter-fund transfers between the Water Fund and the General Fund for what are called franchise fees. Please review the attached Auditor Alert 2014-01 to determine which type of transfer the City performs in this situation.

After reviewing the Auditor Alert any other authoritative resources, please provide us with the City's determination as to which type of transfer is being performed and any documentation that demonstrates that any required public hearing and/or notifications have been performed.

Finally, if the City determines that it has not complied with hearing and/or notification requirements, please outline the City's corrective action plan to come into compliance. This corrective action plan should contain the name(s) of the contact person(s) responsible for the corrective action, the corrective action planned to ensure future compliance, and the anticipated completion date. Please reply within 60 days of this letter or contact me if more time is needed.

Sincerely,

Jeremy A. Walker, CPA  
Manager, Local Government Division  
(801) 538-1040  
jeremywalker@utah.gov

cc: Brian Kelley, Finance Director  
Helen Kurtz, Treasurer  
Byron Jorgensen, City Administrator



OFFICE OF THE  
UTAH STATE AUDITOR

April 3, 2017

Mayor Tom Dolan and City Council  
Sandy City  
10000 Centennial Parkway  
Sandy, UT 84070-1799

Dear Mayor Dolan and Councilmembers:

In a previous letter dated Feb 22, 2016 we expressed a concern that Sandy City may not be abiding by State Code with regards to transfers between the Water Fund and the General Fund. Since that letter we have engaged with City staff members concerning this issue. City staff has asserted the following:

1. Sandy City is collecting and remitting a franchise tax collected from City Water Fund customers for use of the right-of-way provided by the City.
2. Sandy City is not effecting a subsidy transfer between funds

We have researched the following sections of the Utah State Code regarding these assertions:

- A. Franchise taxes may only be levied on telecommunications and energy utilities as specifically identified by law (*Utah Code 11-26-1*).
- B. A municipality may not impose a local charge not otherwise provided for by law (*Utah Code 11-26-1(4)(b)*).
- C. Franchise taxes may only be levied via an ordinance of a taxing entity (*Utah Code 10-1-203*).
- D. All license fees and taxes shall be uniform in respect to the class upon which they are imposed (*Utah Code 10-1-203(6)*).
- E. The (municipality) may recover from a utility service provider, only those management costs caused by the utility service provider's activities in the right-of-way (*Utah Code 72-7-102-(4)(b)*).
- F. If a (municipality's) management costs cannot be attributed to only one entity, the management costs shall be allocated among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the (municipality) itself. The allocation shall reflect proportionately the management costs incurred by the (municipality) as a result of the various utility uses of the highway. (*Utah Code 72-7-102(4)(c)(2)*)

Our research of Utah State Code in conjunction with correspondence and documentation provided by City staff, we have determined the following:

**Assertion 1:** Sandy City has imposed a franchise tax on its Water Utility Fund for use of the right-of-way provided by the City.

Franchise Tax

- A. There is no provision in Utah Code that allows for a franchise tax on a water utility service provider.
- B. There is no provision in Utah Code that allows for a tax on a water utility service provider.
- C. Sandy City has failed to adopt an ordinance to impose a franchise tax on water services.
- D. Sandy City has only applied the water franchise tax to Sandy City Water Fund, while not applying the same tax to other water service providers within City boundaries (e.g. White City Water Improvement District and Metro Water District of Salt Lake and Sandy).

Right-of-way

- E. Sandy City appears to have inappropriately charged a tax/fee based upon the volume of services provided by the Sandy City Water Fund, rather than measuring the costs incurred by the City due to Sandy City Water Fund's use of the right-of-way as required by law.
- F. Sandy City appears to have failed to measure and impose charges to the users of the right-of-way that "reflect proportionately the management costs incurred by the (municipality) as a result of the various utility uses of the highway" among all of the City departments and other governmental entities that use the right-of-way within the City (e.g. energy utilities, telecommunication utilities, water districts and sewer districts).

- Assertion 2:** The transfer from the water fund to the general fund is not a subsidy transfer.
- i. The Sandy City transfer from the Water Fund to the General Fund has the form and function of a subsidy transfer.
  - ii. Explanations and documents provided by City staff has failed to provide a satisfactory rationalization as to why the City's transfer of funds from the water fund to the general fund is not a subsidy transfer.

We recommend that Sandy City comply with the laws regarding a subsidy transfer from an enterprise fund to another fund as found in *Utah Code* 10-6-135(f) and as outlined in Auditor Alert 2014-01.

Sincerely,

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