



PENNSYLVANIA DEPARTMENT OF REVENUE

Bureau of Audits

Great American Power LLC
BP: 1000039547
CO: 0000000005000974177

Assignment: STBTH1727264
FEIN/SSN: [REDACTED]
Account: [REDACTED]

Auditor: Jessica Matzen, 9800001596
Audit Suprv: Charles Snyder
Period: 01/01/2015 - 11/30/2017 (35 Mths)

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AUDIT REPORT AND BASIS OF ASSESSMENT

Legal Name: Great American Power LLC
Case No: 100000427264 **BP No:** 1000039547
Assignment No: STBTH1727264
EIN/SSN: [REDACTED] **Acct No.:** [REDACTED]
Audit Period: 01/01/2015 - 11/30/2017

Legal Name Great American Power LLC		Engagement Conducted By Regional Office: Allentown Regional Office 29 North Route 100 Allentown, PA 18106-9210	
Trading/As Name (T/A Name) Great American Power LLC			
Assessment Mailing Address [REDACTED]	Business Address [REDACTED]	Telephone Number	(610) 821-6242
		Lead Auditor Name	Jessica Matzen
		Supervisor	Charles Snyder
		Regional Manager	Matthew Erdman
Address Where Records Located 1001 Village Rd. Orwigsburg, PA 17961-9692		Number of PA Business Locations	
		Type of Ownership	Limited Liability Company
		NAICS Code	221100 Electric Power Generation, Transmission and Distribution
Bankruptcy Information		Waiver Information	
Bankruptcy Type	Proof of Claim (Bar) Date	Waiver From Date	01/01/2015
Bankruptcy Date Filed	Cause Number	Waiver To Date	12/31/2015
		Waiver Expiration	12/31/2019
Taxpayer Representatives Assisting in the Audit			
Name	Title	Telephone Number	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
Principals (Owners/Officers):			
<u>Name</u>	<u>Title</u>	<u>EIN</u>	
Total Tax Amount to be Assessed			[REDACTED]



Narrative Report of Audit Findings

Legal Name: Great American Power LLC
Business Partner No.: 1000039547
Type of Tax: Sales and Use
Account No.: [REDACTED]
EIN/SSN: [REDACTED]
Assignment No.: STBTH1727264
Audit Period: 01/01/2015-11/30/2017

AUDIT SUMMARY:

This audit resulted in a state sales and use tax deficiency of \$ [REDACTED]. The audit findings are documented in the reports section of the final audit package (see References 1 – 16). The Department utilizes Tax Types, Categories, and Codes to segregate the audit findings within this report. The description of the tax types, categories, and related codes used in this audit are listed in the table below and on Reference 1, Distribution Report.

The following recap provides an overview of how the source transaction reports are summarized and accumulated on the final Distribution Report. The Billings reports summarize the total deficiencies for each tax type. The Tax Adj Detail reports summarize the adjustments made on the Tax Adj By Source and Accrual Differences reports directly to tax due for each tax type. The Tax Detail reports calculate the tax due using the additional taxable amounts (Tax Measure) for each tax type from the Combined Schedule Summaries, which summarize the audit findings that are detailed on the source and transaction reports.

Tax Type	Code	Deficiency	Billing Reference	Tax Adj Detail or Tax Detail Reference	Combined Summary or Adj By Source Reference	Source & Transaction References
State Sales - General	S00-G	[REDACTED]	3	4	5	6
Total State Sales Tax:		\$ [REDACTED]	2			
Allegheny Sales - General	S02-G	[REDACTED]	7	8	9	10
Total Allegheny Sales Tax:		\$ [REDACTED]	2			
Philadelphia Sales - General	S51-G	[REDACTED]	11	12	13	14
Total Philadelphia Sales Tax:		[REDACTED]	2			
Total State & Local Sales Tax:		\$ [REDACTED]	2			



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Audit Period 01/01/2015-
11/30/2017

PRE-AUDIT CONFERENCE:

An engagement letter dated December 14, 2017 notified the taxpayer that a routine state and local sales and use tax audit would be conducted (Exhibit A, Engagement Letter). The letter also notified the taxpayer of an examination of employer withholding of Pennsylvania personal income tax.

A pre-audit conference was conducted on January 23, 2018 from the Allentown Regional Office. Representing the taxpayer was [REDACTED]. Representing the Commonwealth of Pennsylvania was Jessica Matzen, CPA, Revenue Tax Auditor.

The nature of the business, records to be examined, and the scope of the audit were discussed. The taxpayer's representative was also informed that penalties and interest would be added to any tax deficiency established by the audit. The audit period was set to be from January 1, 2015 through November 30, 2017. Due to time constraints, a Consent to Extend Time Limit for Assessment/Determination of Tax and to Extend Period of Time for Record Retention (waiver) which extended the time of assessment until June 30, 2019 was executed by the taxpayer. A second waiver was later signed extending the statute for 1/1/15 – 12/31/15 until December 31, 2019.

The Department of Revenue, Bureau of Audits, Registration Update form was e-mailed to the taxpayer to be filled out in order to update its business information. Also, the auditor verified the taxpayer received the REV-554, Department of Revenue Disclosure Statement of the Department's and Taxpayers' Rights and Obligations, with the engagement letter. The taxpayer did not complete the Registration Update form. The auditor completed the Registration Update form. The length of the conference was 30 minutes.



Narrative Report of Audit Findings

Legal Name:	Great American Power LLC
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Assignment No.:	STBTH1727264
Audit Period	01/01/2015- 11/30/2017

BUSINESS ACTIVITIES:

The taxpayer is a Pennsylvania Limited Liability Company that began business in Pennsylvania on January 1, 2015 and is headquartered in Kennesaw, Georgia.

The taxpayer is engaged in the business of delivering electricity to customers as a result of the deregulation of the utility industry. The taxpayer bills its supplied electricity and natural gas on the same bill as the charges for the distribution charges of the utilities. The distribution charges for the taxpayer's customers are made from PPL. The taxpayer's taxable sales consist of electricity and natural gas sales to Pennsylvania customers that are not made for residential use (61 Pa. Code §32.25 – Steam, Gas, Electricity, Fuel Oil, and Kerosene). Sales of electricity and natural gas to customers whose meters register the service within a taxable county are also subject to the additional one percent local tax (61 Pa. Code §60.16(d) – Local Sales, Use, and Hotel Occupancy Tax). Nontaxable sales consist of electricity and natural gas sales that are for residential use (61 Pa. Code §32.25). The taxpayer's non-taxable sales also consist of utilities sold to customer's presenting a valid sales tax exemption certificate (61 Pa. Code §32.2 – Exemption Certificates). In addition, the taxpayer's nontaxable sales also consist of utilities sold to customers outside of Pennsylvania.

The taxpayer does not maintain any physical locations or employees within Pennsylvania and does not have any tax exposure within Pennsylvania on its purchases.

SYSTEM SURVEY:

The auditor requested detailed general ledgers, sales journals, financial returns, and all other materials and invoices deemed necessary to complete the audit. The taxpayer furnished a portion of the requested records.



Narrative Report of Audit Findings

Legal Name: Great American
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The taxpayer is on an accrual basis of accounting and operates within a calendar year. The taxpayer uses a computerized accounting system and filed its returns monthly under sales tax license number [REDACTED].

All sales transactions are invoiced and summarized in monthly reports. The monthly report figures are then posted to the general ledger in the appropriate sales account. Sales tax collected on taxable sales is also recorded in the monthly reports and posted to the general ledger. The monthly figures of gross sales, taxable sales and sales tax collected shown on the Pennsylvania sales and use tax returns are derived from these general ledger figures. The taxpayer does not accrue any use tax.

Purchase invoices are maintained for all purchase transactions. The taxpayer records each purchase in a purchases journal according to the date of the purchase. The taxpayer assigns each purchase an account number from the chart of accounts and posts the purchase to the general ledger in the appropriate expense account. The purchase invoices are filed alphabetically by vendor for each year. As previously noted, the taxpayer does not have any locations within Pennsylvania and does not have any tax exposure on its purchases.

Explanation of Delay in Audit:

During the pre-audit conference, the taxpayer explained to the auditor that all billing of customers is conducted through the distributor of the utilities, PPL. Over the course of the next several months, the taxpayer provided the auditor with spreadsheets containing sales activity for the period 1/1/15 – 11/30/17. The taxpayer had multiple representative changes throughout the audit period. The auditor provided multiple requests for records to the representatives requesting documentation for the untaxed sales on the spreadsheets that the taxpayer provided.



Narrative Report of Audit Findings

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On January 30, 2008, the auditor sent the taxpayer a request for financial records form requesting exemption certificates and other information to verify the taxability of the invoices shown on the original spreadsheets (see Requests for Financial Records and Exhibit C, Request Emails). In the final Request Email, the auditor advised the taxpayer that if the information requested was not provided by May 10, 2019, the audit would be closed at the amounts on the audit schedules. The taxpayer did not provide any of the information requested.

On May 22, 2019, the taxpayer requested that the Department provide a decision on a number of items, which are exhibited in this audit package (see Taxpayer Memo, Exhibit D).

Below are the summarized arguments of the taxpayer:

1. The taxpayer argued in the memo that 5 customers are purchasing electricity for resale.
2. The taxpayer argued that requiring the confirmation of a customer's residential identity is contrary to the Department's guidance in similar situations.
3. The taxpayer argued that requiring confirmation of former customer's residential identity is contrary to industry practice and PUC regulations.

It should be noted that the taxpayer did not provide exemption certificates for the 5 customers mentioned in the memo as purchasing electricity for resale. The full response to items 2 and 3 mentioned above are in the Office of Chief Counsel response exhibited in this audit package (see Office of Chief Counsel Response, Exhibit E). In response to items 2 and 3, the Office of Chief Counsel stated, "requiring Electric Generation Suppliers to confirm whether certain accounts are subject to sales tax is consistent with how other vendors of taxable products are treated and with the Customer Choice Act.



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State Sales Tax Accrual Analysis:

A state sales tax accrual account examination was conducted based on information provided in electronic files supplied by the taxpayer. The figures of sales tax collected were compared to the amounts reported to the sales and use tax returns filed. There were no deficiencies in this area for the audit period (see Reference #16, Accrual Differences).

Local Sales Tax Accrual Analysis:

A Philadelphia County local sales tax accrual account examination was conducted based on information provided in electronic files supplied by the taxpayer. The figures of Philadelphia county sales tax collected were compared to the amounts reported to the PA Dept. of Revenue on the sales and use tax returns. There were no deficiencies in this area for the audit period (see Reference #16, Accrual Differences).

An Allegheny County local sales tax accrual account examination was conducted based on information provided in electronic files supplied by the taxpayer. The figures of Allegheny county sales tax collected were compared to the amounts reported to the PA Dept. of Revenue on the sales and use tax returns. There were no deficiencies in this area for the audit period (see Reference #16, Accrual Differences).

Sales Tax:

A complete sales tax examination was conducted on all records received for the audit period (1/1/15 – 11/30/17). Revenue amounts found on the Pennsylvania Corporate Income Tax returns were compared to gross sales amounts reported on the sales and use tax returns. There were minor discrepancies noted that were attributed to timing differences. Gross sales and taxable sales amounts from the spreadsheets provided were also compared to the sales



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amounts reported on the sales and use tax returns. No changes were noted on Reference #16, Accrual Differences.

The taxpayer was able to provide electronic records through November 30, 2017. An analysis of the records provided showed a potential of non-taxed taxable sales. These fell into five categories: **(1)** those accounts coded residential but may be commercial (as suggested by the account name); **(2)** those coded commercial but not taxed; **(3)** duplicates--names showed up on more than one account and might signify a landlord or commercial relationship; and **(4)** accounts where the service and billing addresses are not the same, again suggesting a possible landlord/tenant or commercial relationship. A Request for Financial Records, along with spreadsheet files supplying account information for the questioned accounts, and a copy of a sample form letter (Exhibit F, Heating Oil Letter) to send to the customer was supplied to the taxpayer. As discussed previously in the audit narrative, no additional records were received and an assessment was made based upon the data provided.

Per 61 Pa. Code §34.2 (a) – Keeping of Records, General Requirements, the act provides that every sale of tangible personal property or services shall be presumed to be at retail and be subject to sales tax. Title 61 Pa. Code §34.2 (a)(2)(i)(A), states that records shall be maintained from which it is possible to ascertain the vendor's compliance with the taxing and exemption features of the act, that is, whether the sales made without collection of tax were in fact nontaxable. Because the above accounts were deemed questionable by the auditor, and because no additional information was forthcoming concerning the accounts in question, the auditor treated these accounts as taxable in nature.



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An assessment was made based on the information provided. As previously discussed, detail was provided for the period 1/1/15 – 11/30/17. The auditor used the spreadsheets previously provided by the taxpayer as the basis for assessment. The additional taxable state sales in the amount of \$ ██████████ resulted in a state sales tax deficiency in the amount of \$ ██████████ (see Reference #6, Sales by Period). The additional taxable Allegheny county sales in the amount of \$ ██████████ resulted in a Allegheny county sales tax deficiency in the amount of \$ ██████████ (see Reference #10, Sales by Period). The additional taxable Philadelphia county sales in the amount of \$ ██████████ resulted in a Philadelphia county sales tax deficiency of \$ ██████████ (see Reference #14, Sales by Period). Due to the size of the spreadsheet that contained the detail, the sales figures were summarized by month and the monthly totals were entered into the TaxMaster program for assessment purposes. The full detail is included in the audit package (see Copy of GAP skinny sales.xlsx).

Use Tax: (Capital)

A complete use tax audit was performed on all capital purchases. As previously mentioned, the taxpayer does not have any locations within Pennsylvania and does not make any Pennsylvania purchases. The auditor examined the taxpayers PA property factors on the PA Partnership Returns (PA-65) to verify the taxpayer did not have any Pennsylvania property (Exhibit G, PA-65). No further examination was conducted and no use tax deficiency from capital purchases was established.

Expenses:

A complete use tax audit was performed on expense purchases. As previously mentioned, the taxpayer does not have any purchases with any Pennsylvania tax exposure



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during the audit period. The auditor verified this through an examination of the PA Partnership Returns (PA-65). No further examination was conducted and no use tax deficiency from general expenses was established.

THIRD PARTY CREDITS:

The taxpayer was provided with the Requirements for the Audit Review of Third Party Credit form with each Request for Financial Records. The taxpayer never completed the form. The taxpayer did not request any credits and no credits were granted.

GENERAL DISCUSSION:

The auditor verified that the taxpayer did not have any Pennsylvania employees during the audit period. The auditor verified this through an examination of the PA payroll factors shown on the Pennsylvania Partnership Returns (PA-65). This examination revealed that the taxpayer does not have any Pennsylvania employees and no further employer withholding examination was conducted.

The taxpayer was advised to mail letters to their Pennsylvania customers in order to determine the taxability of their accounts and to properly tax those accounts not exempt. The taxpayer was also advised to obtain exemption certificates for all non-taxed commercial accounts.

No collateral mass transit tax audit was conducted as a review of the taxpayer's general ledger and purchase invoices indicated that no tax deficiency would be established. The auditor examined the Bureau's docket system to verify that no duplicate credits were given to the taxpayer during the audit period. It should be noted that the taxpayer did not present any third party credits to the auditor for examination during the audit period.



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POST-AUDIT CONFERENCE:

A post-audit conference was held by mail on September 6, 2019 from the Allentown Regional Office. All audit schedules were previously emailed to the taxpayer's representatives,

[REDACTED] and [REDACTED]

[REDACTED]. A post audit conference letter (Exhibit H, Post Audit Letter) was mailed to the taxpayer on September 6, 2019 along with the post audit conference form and all audit schedules.

A complete review of the audit findings was discussed for the audit period January 1, 2015 through November 30, 2017 on May 22, 2019. The taxpayer's representative was advised that they would be mailed copies of all schedules and worksheets, including a copy of the Taxpayer's Acknowledgement of Post Audit Conference form. A letter was also mailed confirming the post audit was performed over the phone. The taxpayer's representative was informed of the \$ [REDACTED] Pennsylvania state sales tax deficiency, the \$ [REDACTED] Allegheny county local sales tax deficiency and the \$ [REDACTED] Philadelphia local sales tax deficiency for a total tax deficiency of \$ [REDACTED]. The steps taken to obtain the deficiency were explained and the taxpayer's representative said he understood how the numbers were achieved. The taxpayer was advised that penalties and interest would be applied to the deficiency.

The taxpayer's rights of appeal and assessment procedures were explained. The taxpayer was informed that they must submit a petition of reassessment to the Board of Appeals within 60 days of the notice date on the Notice of Assessment letter. The taxpayer was also informed that they will have six months from the mailing date of the assessment to apply for any additional overpayments of sales and/or use tax not granted within the audit period. The



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taxpayer neither agreed nor disagreed with the findings. The auditor e-mailed and mailed a copy of the sales and use tax report and excel file once again so they could begin gathering information for appeals. This concluded the audit.