CONSTRUCTION BLOG

Developers Beware

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The Tax Cut and Jobs Act of 2017 has placed a tax on the utility infrastructure that you either install and contribute to investor owned utilities that serve your developments (known as contributions in aid of construction or CIAC) or the cash you pay to the investor owned utility to install that infrastructure (known as advances). Some utilities, in Missouri, are asking the developer to reimburse the utility for the tax, at the time the contribution of facilities or cash is made.

That can add between 35% and 40% to the cost of your infrastructure. The reason the utilities are asking the developers to pay the tax is that the utilities only earn income on what has been allowed in their rate base by the state public utility commission; and the contributed infrastructure and advances are not allowed in their rate base. Thus, the contributed infrastructure and advances are not, actually, income to the utilities; and they are not earning funds to pay the tax. If you receive a request by an investor owned utility to pay this tax, you should contact an attorney who is familiar with utility ratemaking.

Since the tax does not apply to municipal or quasi-public utility serve providers (such as water districts), the tax can have the effect of creating an unfair market advantage for developments served by municipal or quasi-governmental utilities.