

ST 14-0011-GIL 04/03/2014 ELECTRICITY EXCISE TAX

The purchase price on which a self assessing purchaser must pay tax under the Electricity Excise Tax Law includes charges for transmission or any other service related to the sale or delivery of the electricity. See 35 ILCS 640/2-4(a) and 86 Ill. Adm. Code 511.110(c). (This is a GIL.)

April 3, 2014

Dear Xxxx:

This letter is in response to your letter dated November 8, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter seeks clarification and a binding opinion from the Illinois Department of Revenue regarding certain provisions of The Electricity Excise Tax Law 35 ILCS 640. More specifically, the following questions are in reference to 35 ILCS 640/2-2(3), a provision to “Allow non-residential consumers of electricity to elect to register with the Department of Revenue as self-assessing purchasers and to pay the electricity excise tax directly to the Department at a rate which is established as a percentage of such consumer’s purchase price for electricity distributed, supplied, furnished, sold, transmitted or delivered to the purchaser”.

- a) Specifically, which charges on a customer’s investor owned utility bill are used to calculate the consumer’s purchase price, as noted above?
- b) What effect does taking service with bundled power have on the purchase price? i.e. is the electric supply portion of the bill counted towards the purchase price?
- c) Do 3rd party Retail Electric Suppliers (RES) include this tax wrapped into their standard rate?
 - a. If so, can a consumer elect to self assess their tax and not pay the RES this tax as well? How would one calculate the purchase price for this?
- d) How often can the self assessed tax rate, currently at 5.1%, legally be changed?
 - a. What date will the next opportunity for this rate to change occur?

DEPARTMENT'S RESPONSE:

The Electricity Excise Tax Law ("Law") (35 ILCS 640/1 *et seq.*) imposes a tax upon the privilege of using in this State electricity purchased for use or consumption and not for resale. 35 ILCS 640/2-4. Electricity Excise Tax is imposed on self-assessing purchasers at the rate of 5.1% of the self-assessing purchaser's purchase price for all electricity distributed, supplied, furnished, sold, transmitted and delivered to the self-assessing purchaser in a month. 35 ILCS 640/2-4(a).

(d) "Purchase price" means the consideration paid for the distribution, supply, furnishing, sale, transmission or delivery of electricity to a person for non-residential use or consumption (and for both residential and non-residential use or consumption in the case of electricity purchased from a municipal system or electric cooperative described in subsection (b) of Section 2-4) and not for resale, and for all services directly related to the production, transmission or distribution of electricity distributed, supplied, furnished, sold, transmitted or delivered for non-residential use or consumption, and includes transition charges imposed in accordance with Article XVI of the Public Utilities Act and instrument funding charges imposed in accordance with Article XVIII of the Public Utilities Act, as well as cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever." 35 ILCS 640/2-3(d).

The definition of "purchase price" does not include dishonored check charges, finance or credit charges, penalties or charges for delayed payment, or discounts for prompt payment; reconnection, replacement or relocation charges; advances or contributions in aid of construction; charges for equipment repair, inspection or servicing; equipment rental or leasing charges; charges for leasing or rental of equipment; any purchase by a purchaser if the supplier is prohibited by federal or State constitution, treaty, convention, statute or court decision from recovering the related tax liability from such purchaser; and any amounts added to purchasers' bills because of charges made pursuant to the tax imposed by the Law. In case credit is extended, the amount thereof shall be included only as and when payments are made. "Purchase price" generally does not include consideration received from business enterprises certified under Section 9-222.1 or 9-222.1A of the Public Utilities Act by the Department of Commerce and Economic Opportunity. See Section 2-3(d).

A "self-assessing purchaser" is a purchaser for non-residential electric use who elects to register with the Department and to pay tax directly to the Department in accordance with Sections 2-10 and 2-11 of the Law. 35 ILCS 640/2-3(h). Upon proper application and payment of a non-refundable \$200 biennial fee, a self-assessing purchaser is issued a certificate of registration that permits the person to whom it is issued to pay the tax incurred under the Electricity Excise Tax Law directly to the Department for a period of 2 years. The Department will notify the delivering supplier or suppliers that the applicant has been registered as a self-assessing purchaser for the accounts listed by the self-assessing purchaser. Upon receiving notification from the Department that an applicant has been registered as a self-assessing purchaser, the delivering supplier is no longer required to collect the tax imposed by the Law for the accounts specifically listed by the self-assessing purchaser, until the delivering supplier is notified by the Department that the self-assessing purchaser's certificate of registration has expired, or been revoked or denied. 35 ILCS 640/2-10.

When electricity is used or consumed by a self-assessing purchaser, the self-assessing purchaser must, on or before the 15th day of each month, make a return to the Department for the preceding calendar month, stating all of the following:

- (1) The self-assessing purchaser's name and principal address.
- (2) The aggregate purchase price paid by the self-assessing purchaser for the distribution, supply, furnishing, sale, transmission and delivery of such electricity to or for the purchaser during the preceding calendar month, including budget plan and other purchaser-owned amounts applied during such month in payment of charges includible in the purchase price, and upon the basis of which the tax is imposed.
- (3) Amount of tax, computed upon item (2) at the rate stated in Section 2-4.
- (4) Such other information as the Department reasonably may require.

In making such return the self-assessing purchaser may use any reasonable method to derive reportable "purchase price" from the self-assessing purchaser's records. The self-assessing purchaser making the return shall, at the time of making such return, pay to the Department the amount of tax imposed by the Law. 35 ILCS 640/2-11.

If the average monthly tax liability of the self-assessing purchaser to the Department does not exceed \$2500 or \$1000, the Department may authorize the self-assessing purchaser to file returns on a quarter-annual or annual basis, respectively. The term "average monthly tax liability" shall be the sum of the self-assessing purchaser's liabilities under this Law for the immediately preceding calendar year divided by 12. 35 ILCS 640/2-11. In order for the filing status to be changed, the taxpayer must have filed returns for a minimum of 12 months at the time the review is performed. The Department annually reviews returns filed by the taxpayer to determine if any changes have occurred that require the taxpayer to file returns on other than the current basis. If the Department determines that a change is required in filing frequency, it will notify the taxpayer of its determination.

The definition of "purchase price" is very broad. The return requires a self-assessing purchaser to report the "aggregate" purchase price. Generally, unless specifically excluded in the definition of "purchase price," all consideration or payments made by the self-assessing purchaser to the supplier of the gas and to the transporter, if the transporter is different from the supplier, for the distribution, supply, furnishing, sale, transmission and delivery of such electricity, and made to them for any services directly related to the production, transmission or distribution of electricity distributed, supplied, furnished, sold, transmitted or delivered for non-residential use or consumption, are taxed at the 5.1% rate. Moreover, "purchase price" must be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever.

The 5.1% rate was established by the General Assembly, and it has not been changed since Section 2-4 was enacted in 1997.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Page 4
April 3, 2014

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:ikm