



November 28, 2012
Pennsylvania Sales and Use Tax
No. SUT-12-002
Transfer of Collected Sales Tax to Electric Generators
and Natural Gas Suppliers

ISSUE

Does Taxpayer's remittance to an Electrical Generation Supplier ("EGS") of the entire amount (less any applicable discount that has been approved by the Pennsylvania Public Utility Commission ("PUC")) Taxpayer has billed and collected on behalf of an EGS fully and timely satisfy Taxpayer's sales tax obligations with respect to such EGS charges so that upon submission to the Department of proof that such amounts have been remitted to the EGS, the Department will not assess Taxpayer further with respect to such amounts?

CONCLUSION

Taxpayer's remittance to an EGS of the entire amount (less any applicable discount that has been approved by the PUC) Taxpayer has billed and collected on behalf of an EGS fully and timely satisfies Taxpayer's sales tax obligations with respect to such EGS charges. Upon submission to the Department of proof that such amounts have been remitted to the EGS, the Department will not assess Taxpayer further with respect to such amounts.

FACTS

The facts as you presented them are as follows:

Taxpayer is a Local Distribution Company ("LDC") subject to the regulation of the Pennsylvania PUC. Taxpayer provides electric and gas distribution services to retail customers within its service territory. The Pennsylvania Public Utility Code governs the manner in which Taxpayer provides services to its customers. The Electricity Generation Customer Choice and Competition Act ("Act") (66 Pa.C.S.A. § 2801 et seq.) provides additional details for the manner in which Taxpayer provides service to and interacts with its customers following the deregulation of the electric industry.

The Act permits a customer of an LDC to purchase electricity from an entity other than the LDC. 66 Pa.C.S.A. § 2806(a). In this circumstance, the Act permits a customer to purchase its electricity from an EGS and requires that the EGS be registered with and be licensed by the PUC in order to sell electricity in the Commonwealth. 66 Pa.C.S.A. § 2809. When an EGS supplies electricity to a customer, the Act requires the LDC to continue to distribute that electricity to the customer. 66 Pa.C.S.A. § 2807(a). The Act also provides that unless a customer elects otherwise, an LDC is to bill its customer for both its charges and the charges imposed by an EGS from which the customer purchased its electricity. 66 Pa.C.S.A. § 2807(c). The EGS is required to provide the Taxpayer with individual transactional data sufficient to enable the Taxpayer to bill customers. In this circumstance, the charges that Taxpayer bills and collects on behalf of an EGS may include sales tax. Taxpayer will then forward to the appropriate EGS all monies, including sales tax, collected on behalf of that EGS. The EGS will remit the sales tax to the Department.

DISCUSSION

Section 225 of the Tax Reform Code of 1971 ("TRC") provides that collected sales tax transferred to another party is still a liability of the collecting party. 72 P.S. § 7225. In the case at hand, this means Taxpayer would be liable for any collected sales tax monies transferred to the EGS which the EGS does not properly remit to the Department.



The provisions of the Act, however, contemplate that an LDC will remit to an EGS all of the charges, including sales tax, the LDC bills and collects on behalf of the EGS. Moreover, the General Assembly designed these provisions in a manner that insures that the Commonwealth will receive the proper amount of sales tax due in an efficient manner.

The Act governs the manner in which Taxpayer provides services to its customers. Several provisions of the Act contemplate that the Commonwealth will collect the proper amount of sales tax due from the EGS if an LDC forwards to an EGS all sales and use tax ("SUT") the LDC billed and collected on behalf of the EGS. The Act also provides a number of safeguards to ensure that an EGS will properly remit its sales tax liability. First, the Act provides that an EGS must agree to be "subject to all taxes imposed by the Tax Reform Code." 66 Pa.C.S.A.

§ 2809(c)(1)(iv). Further, to obtain and maintain a license to sell electricity in the Commonwealth, an EGS must certify that it "will pay and in subsequent years has paid the full amount of taxes imposed by Articles II and XI of ... the Tax Reform Code." 66 Pa.C.S.A.

§ 2809(c)(1)(ii). Finally, the failure of an EGS to pay sales tax shall be cause for the PUC to revoke the license of the EGS. 66 Pa.C.S.A. § 2809(c)(1).

All of these provisions of the Act, when read together, indicate that the General Assembly envisioned that the EGS is the party who would be responsible for the remittance of the full amount of sales tax to the Department on the EGS's sale of electricity in the Commonwealth. The Act, therefore, overrides Section 225 of the TRC. The liability of Taxpayer for the sales tax collected on behalf of an EGS shall terminate upon the transfer of the full amount of sales tax collected on behalf of an EGS to the appropriate EGS. The Department reserves the right to verify the accuracy of the amounts remitted to the EGS based on the individual transactional data that the EGS is required by the Act to provide to the Taxpayer. Assuming the Taxpayer remits the amounts described above to the EGS, the Department will not assess the Taxpayer with respect to such amounts.

Because the Natural Gas Choice and Competition Act (66 Pa.C.S.A. § 2201 et seq., "Natural Gas Act") deregulated the natural gas industry in a manner much the same as the manner in which the Act (66 Pa.C.S.A. § 2801 et seq.) deregulated the electric industry, the liability of Taxpayer for the sales collected on behalf of a Natural Gas Supplier ("NGS") shall terminate upon the transfer of the full amount of sales tax collected on behalf of an NGS to the appropriate NGS. The Department reserves the right to verify the accuracy of the amounts transferred based on the individual transactional data that the NGS is required by the Natural Gas Act to provide to the Taxpayer. Assuming the Taxpayer remits the amounts described above to the NGS, the Department will not assess the Taxpayer with respect to such amounts.

This letter ruling shall not affect the taxability, collection or enforcement of any sales tax collected by the Taxpayer not on behalf of an EGS or NGS which may be due on the transmission, distribution or other charges made by the Taxpayer in connection with the sales of electricity or natural gas.