



SALES AND USE TAX BULLETIN 2023-01

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Sales of Natural Gas to Nonresidential Customers

This bulletin addresses the taxable purchase price of natural gas for nonresidential use when the invoice includes charges from two companies: the supplier and the distributor.

Sales tax is assessed on the purchase price of each separate "sale at retail," defined as any transfer, for a consideration, of the ownership, custody, or possession of tangible personal property. 72 P.S. §§ 7201(k)(1), 7202(a). Both natural gas and electricity for nonresidential use are tangible personal property. 72 P.S. § 7201(m). "Purchase price" is the total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail. 72 P.S. § 7201(g)(1).

Because the Natural Gas Choice and Competition Act, 66 Pa. C. S. §§ 2201-2212 ("Gas Act"), deregulated the natural gas industry in a manner similar to the way the Electric Act deregulated the electric industry, the Department of Revenue ("department") applies statutes, case law, regulations and statements of policy addressing electricity sales to rulings and policy statements on sales of natural gas.

In *Spectrum Arena Ltd. Partnership v. Commonwealth*, 983 A.2d 641 (Pa. 2009) (*Spectrum Arena*), the Pennsylvania Supreme Court ("Court") clarified the effect that the Electric Act had on the taxation of sales of electricity:

In unbundling generation and delivery, the legislature did not fundamentally alter what characterizes a "sale" of electricity for the purposes of taxation. To the contrary, the legislature simply provided a means whereby two companies together could take steps to create one sale. The desire to increase competition in the marketplace changed nothing about the fundamental mechanics of the actual sale of electricity.

Id. at 647-49.

The Court went on to explain that raw electricity generation is not an end consumer product and that the "total value" of the electricity purchased was not just the cost of the generation of the electricity but all the costs required for a "complete performance of a sale at retail." *Id.* at 648. To that end, the Court decided that the taxable sale at retail of electricity does not occur until the electricity reaches the consumer. *Id.* at 648. Further, the Court concluded that the unbundling of generation and delivery did not exempt the delivery charges from sales tax, and that the overall purchase price of electricity includes the costs of the electricity itself and the delivery of that electricity to the consumer, as well as other associated costs. *Id.* at 648-49.



In *Spectrum Arena* the Court also addressed the non-taxability for delivery charges made or billed by a party other than the producer set forth in Section 54.1(c) of Title 61 of the Pennsylvania Code¹, clarifying that the section “addresses a situation where a finished consumer good is delivered by a carrier who had no involvement in the production of the good but merely conveys the good from the producer to the consumer.” *Spectrum Arena* at 650-51. Expounding on that idea, the Court stated:

Contrary to Spectrum's argument, PECO is not a mere delivery carrier. Indeed, PECO and Exelon together are the "vendor." PECO not only delivers electricity to Spectrum but would be required to generate and produce any electricity that Exelon cannot provide. (citation omitted). Exelon's electricity cannot be provided to a consumer if PECO does not deliver it, and a consumer, even under the [Electric Act], is unable to select any entity other than its local utility as the delivering entity. There is no truly independent electricity delivery company, as is contemplated in Section 54.1 of the [Code]. As such the Disputed Charges are subsumed within the total purchase price of the electricity which is subject to sales tax.

Id.

With its ruling, the Court reaffirmed the department’s statement of policy on Electric Utility Services. Section 60.23 (d) of the Pennsylvania Code provides that sales tax is to be assessed on the total purchase price charged upon each separate charge for the generation, transmission, or distribution in connection with providing nonresidential electric utility services as well as all related charges, services, or costs for the generation, production, transmission, or distribution of electricity whether or not the total amount charged is billed as the single charge by one vendor or billed separately by one or more vendors. *Spectrum Arena* at 643; 61 Pa. Code § 60.23(d).

Applying the reasoning in *Spectrum Arena* to sales of natural gas, sales tax is due on the total value for the complete performance of a sale at retail, which occurs when the natural gas (“supply”) reaches the consumer. Further, under the *Spectrum Arena* analysis, the natural gas distributor cannot be an uninvolved distributor or collection agent under Section 54.1(c) of the Pennsylvania Code. 61 Pa. Code § 54.1(c). Notwithstanding obligations to serve imposed on a natural gas distributor under the Gas Act similar to those relied upon by the Court in its decision², the distributor also has the right, title, and interest to the charges on the consolidated bill issued by the distributor under the agreement. Upon issuing the bill, the distributor alone is entitled to the purchase price of the sale at retail, which includes natural gas and transportation charges.

Accordingly, when the nonresidential customer receives an invoice with separately stated supply and distribution charges, both charges are included in the taxable purchase price. Likewise, when the supply and distribution charges are invoiced separately, both charges are subject to tax.

¹ 61 Pa. Code § 54.1(c)

² See 66 Pa.C.S. § 2207; *c.f.* 66 Pa.C.S. § 2807(e)(3.1).