

A person that operates a EV charging station selling electricity is a delivering supplier, must register with the Department, and collect and remit the Electricity Excise Tax based on kilowatt-hours used or consumed by customers. 35 ILCS 640. (This is a GIL.)

September 17, 2021

Dear NAME:

This letter is in response to your inquiry dated September 1, 2021, in which you requested 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:

My name is NAME and I am a tax analyst with BUSINESS. We track sales/use taxes and a variety of other taxes for a variety of clients. I am wondering about the taxability of electric vehicle charging service sold by a non-public utility.

I understand that such sales are not subject to sales and use tax, but wanted to confirm whether they are subject to either of the below taxes:

- Electricity Excise Tax - Per 35 ILCS 640/2-4, any person selling electricity for end use and not for resale is subject to the tax.
- Electricity Distribution Tax - Per 35 ILCS 620, a "taxpayer" is liable for the electricity distribution tax, but is defined as "for purposes of the tax on the distribution of electricity" an "electric cooperative, an electric utility, or an alternative retail electric supplier (other than a person that is an alternative retail electric supplier solely pursuant to subsection (e) of Section 16-115 of the Public Utilities Act)." The Public Utilities Act specifically excludes owners of EV charging stations from its definition of a public utility or alternative retail electric supplier under 220 ILCS 5/3-105 and 220 ILCS 5/16-102. However, 35 ILCS 620 also defines "Taxpayer" as "a person engaged in the business of distributing, supplying, furnishing or selling

electricity for use or consumption and not for resale” for purposes of the Public Utilities Revenue Tax.

I'm wanting to understand whether a private owner of an EV charging station who sells electricity by both time and by kWh are subject to either or both the electricity excise tax levied under 35 ILCS 640/2-4 and the electricity distribution tax levied under 35 ILCS 620/2a.1, or just the excise tax listed in 35 ILCS 640/2-4.

Can you advise?

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as “sales tax” in Illinois. Sales of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under these Acts. 35 ILCS 120/2; 35 ILCS 105/3.

The Electricity Excise Tax imposes a tax on the privilege of using in Illinois electricity purchased for use or consumption and not for resale. 35 ILCS 640/2-4. The tax is imposed on the user or consumer of electricity and is collected and remitted to the Department by the delivering supplier. 35 ILCS 640/2-9. The delivering supplier must register with the Department. 35 ILCS 640/2-7.5.

“Delivering supplier” is defined broadly and “means any person engaged in the business of delivering electricity to persons for use or consumption and not for resale, . . . “Use” is also broadly defined and “means the exercise by any person of any right or power over electricity incident to the ownership of that electricity, . . . “ 35 ILCS 640/2-3.

It is the Department's position that a person that operates a EV charging station selling electricity is a delivering supplier, must register with the Department, and collect and remit the Electricity Excise Tax based on kilowatt-hours used or consumed by customers.

As discussed below, the Public Utilities Act states that an entity that furnishes the service of charging electric vehicles does not and shall not be deemed to sell electricity and is not and shall not be deemed a public utility or alternative retail electric supplier notwithstanding the basis on which the service is provided or billed. However, this language is not included in the Electricity Excise Tax Act and therefore does not exempt

a person selling electricity through a EV charging station from collecting and remitting the tax.

Section 2a.1 of the Public Utilities Revenue Act imposes a tax on invested capital and the distribution of electricity.

"Taxpayer" for purposes of the tax on the distribution of electricity imposed by this Act means an electric cooperative, an electric utility, or an alternative retail electric supplier (other than a person that is an alternative retail electric supplier solely pursuant to subsection (e) of Section 16-115 of the Public Utilities Act), as those terms are defined in the Public Utilities Act, engaged in the business of distributing electricity in this State for use or consumption and not for resale. (35 ILCS 620/1; emphasis added.)

The Public Utilities Act provides that an entity that furnishes the service of charging electric vehicles does not and shall not be deemed to sell electricity and is not and shall not be deemed a public utility or alternative retail electric supplier notwithstanding the basis on which the service is provided or billed (220 ILCS 5/3-105(c) and 220 ILCS 16-102), however, if the person is otherwise deemed a public utility or alternative retail electric supplier under the Act, or is otherwise subject to regulation under the Act, then that entity is not exempt from and remains subject to the otherwise applicable provisions of the Public Utilities Act.

Sec. 3.4. "Electric Cooperative" means (a) any not-for-profit corporation or other person that owns, controls, operates or manages, directly or indirectly, within this State, any plant, equipment or property for the production, transmission, sale, delivery or furnishing of electricity and (b) that either is or has been financed in whole or in part under the federal "Rural Electrification Act of 1936" and the Acts amendatory thereof and supplementary thereto, or is directly or indirectly caused to be formed by any one or more such not-for-profit corporations or other persons that is or has been so financed. 220 ILCS 30/3.4.

"Electric utility" is not explicitly defined in Section 3-105 but is generally considered to be incorporated within the definition of "public utility." See Electric Service Customer Choice and Rate Relief Law of 1997, 220 ILCS 5/16-102. ("Electric utility" means a public utility, as defined in Section 3-105 of this Act, that has a franchise, license, permit or right to furnish or sell electricity to retail customers within a service area.)

To incur invested capital tax, a person must meet the definition of "taxpayer" (be an electric cooperative, an electric utility, or an alternative retail electric supplier as defined by the Public Utilities Act). The Public Utilities Act excludes electric utilities and alternative retail electric suppliers, unless the person is otherwise deemed a public utility

NAME
Page 4
September 17, 2021

alternative retail electric supplier under the Act or is otherwise subject to regulation under this Act.

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.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:rkn