

This letter discusses the Electricity Excise Tax Law, the Public Utilities Revenue Law, and the Energy Assistance charge. See 35 ILCS 620, 35 ILCS 640, and 305 ILCS 20. (This is a GIL.)

June 21, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter 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:

We have recently started doing business in the State of Illinois including our first sale and would like to clarify the requirements surrounding sales tax, invested capital tax, excise tax, and any other applicable tax.

We are an ESCO (Energy Supply Company) a retail provider of electric power to commercial and industrial customers who seek an alternate provider besides their current supplier or utility. We do not deliver power nor maintain power lines as those duties remain with the local utility company.

We were formed in the state of STATE1 in MONTH YEAR EIN number ##-##### and our primary offices are in STATE2. We received our certificate of registration for the state of Illinois (ID #####-####) on [sic] MONTH YEAR. Our first customer became active in Illinois in MONTH and we therefore filed our first return with a dollar amount other than \$\$ in MONTH. For the months of MONTH and MONTH we have filed the RPU-

13 and paid \$\$\$\$\$ and \$\$\$\$\$ respectively for the electricity excise tax related to MONTH and MONTH sales activity.

We have read the guidance on what we believe to be the appropriate forms to assess for tax purposes but have questions on our understanding and are asking you to advise on our comprehension. Once confirmed I believe we will need to alter our registration for the applicable tax. Below is our current understanding:

There are no sales taxes related to the sale of power as it is not tangible personal property. Therefore a sales tax return (ST-1) is not applicable.

The RPU-6 Assistance Charges Return for Electricity Distributors is not applicable as we are not a distributor nor do we collect Assistance Charges.

The RPU-13, Electricity Excise Tax Return. We have for the past 2 months filed and paid this tax as it was unclear in speaking with representatives and reading the instructions which state that "if you are in the business of distributing, supplying, furnishing, or selling electricity for use or consumption and not for resale.", the RPU-13 must be filed. We are in the business of supplying electricity however, we do not purchase electricity for our own use but rather we act as a [sic] retailer between the Independent System Operator and the large industrial customer, (the end user). Please can you clarify the requirements here and if the RPU-13, or other form, may be applicable for us.

The ICT-4 Electricity Distribution and Invested Capital Tax Return is applicable to us. We believe this is applicable because we have Invested Capital in our business and a presence in Illinois due to sales activity. We do not have a physical presence or any employees in Illinois and we do not distribute electricity.

Please can you confirm that our understanding agrees to yours or where we might deviate and need to address any requirements for proper tax reporting in Illinois.

DEPARTMENT 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 Law 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 tax upon the user or consumer of electricity is based upon the amount of kilowatt-hours delivered by the delivering supplier to the user in this State. The delivering supplier must register with the Department. 35 ILCS 640/2-7.5.

"Delivering supplier" means any person engaged in the business of delivering electricity to persons for use or consumption and not for resale, but not an entity engaged in the practice of resale and redistribution of electricity within a building prior to January 2, 1957, and who, in any case where more than one person participates in the delivery of electricity to a specific purchaser, is the last of the suppliers engaged in delivering the electricity prior to its receipt by the purchaser.

"Delivering supplier maintaining a place of business in this State", or any like term, means any delivering supplier having or maintaining within this State, directly or by a subsidiary, an office, generation facility, transmission facility, distribution facility, sales office or other place of business, or any employee, agent or other representative operating within this State under the authority of such delivering supplier or such delivering supplier's subsidiary, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such delivering supplier or such delivering supplier's subsidiary is licensed to do business in this State.

"Purchaser" means any person who acquires electricity for use or consumption and not for resale, for a valuable consideration. 35 ILCS 640/2-3.

The tax imposed by the Electricity Excise Tax Law shall be collected from the purchaser by any delivering supplier maintaining a place of business in this State with respect to the electricity delivered by such delivering supplier to or for the purchaser. 35 ILCS 640/2-7. The delivering supplier is also required to file a return and remit the tax. 35 ILCS 640/2-9. If your Company is not delivering electricity as that term is defined in

the Act, then it will not incur Electricity Excise Tax. The Illinois utility delivering the electricity would collect the appropriate amount of Electricity Excise Tax from the persons (other than self-assessing purchasers) to whom the electricity was delivered for use or consumption. See also 35 ILCS 640/2-7. Please note that this analysis may be different if your Company is leasing the transmission or distribution equipment from an Illinois utility or if it controls the facilities over which the electricity is delivered.

Section 2a.1 of the Public Utilities Revenue Act imposes a tax on the distribution of electricity in this State. 35 ILCS 620/2a.1. The tax upon the distributors of electricity is based upon the amount of kilowatt-hours distributed by the taxpayer in this State during the taxable period. Electric cooperatives that are required to file reports with the Rural Utilities Service are taxed at a rate equal to 0.8% of such cooperative's invested capital for the taxable period.

"Distributing electricity" means delivering electric energy to an end user over facilities owned, leased, or controlled by the taxpayer.

"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.

If your Company is not distributing electricity as that term is defined in the Act, then it will not incur electricity distribution tax. The Illinois utility would incur the tax on the distribution of that electricity. Please note, once again, that this analysis may be different if your Company is leasing the transmission or distribution equipment from an Illinois utility or if it controls the facilities over which the electricity is delivered.

Only electric cooperatives are liable for invested capital tax. See Form ICT-4 Electricity Distribution and Invested Capital Return.

The Energy Assistance Charge is a charge collected by each public utility, electric cooperative, as defined in Section 3.4 of the Electric Supplier Act, and municipal utility, as referenced in Section 3-105 of the Public Utilities Act, that is engaged in the delivery of electricity or the distribution of natural gas within the State of Illinois upon each of its customer accounts. The delivering public utility, municipal electric or gas utility, or electric or gas cooperative for a self-assessing purchaser remains subject to the collection of the Energy Assistance Charge. Municipal electric utilities and electric cooperatives may elect not to assess the Energy Assistance Charge. 305 ILCS 20/13.

Alternative retail electric suppliers as defined in Article XVI of the Public Utilities Act are excluded from the definition of “public utility.” 220 ILCS 5/3-105(a). See 220 ILCS 5/16-102 for the definition of “alternative retail electric supplier.”

If your business meets the definition of “alternative retail electric supplier,” is not a public utility, electric cooperative, or municipal utility as those terms are used in 305 ILCS 20/13, or if it is one of these entities, does not engage in the delivery of electricity within the State of Illinois, then it is not required to impose the Energy Assistance Charge.

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

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