

ST 25-0058-GIL 11/04/2025 PUBLIC UTILITY TAXES

This letter discusses the Electricity Excise Tax Law and the Public Utilities Revenue Tax Law as it relates to solar panels and power purchase agreements. See 35 ILCS 620 and 35 ILCS 640. (This is a GIL).

November 4, 2025

NAME
TITLE
COMPANY
EMAIL

Dear NAME:

This letter is in response to your letter dated September 28, 2025, 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 <https://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:

I was provided this email from the Excise Tax department regarding a sales/excise tax question we have.

We own the project (for commercial and residential properties) and have a Power Purchase Agreement (PPA) with the end user to purchase power for monthly usage in exchange for a set amount.

I was reading a bit about this online and was curious if we would be responsible for collecting sales/excise tax for the monthly PPA? We aren't leasing a tangible good, so I didn't think so? It seems like this type of agreement may fall under the Electricity Excise Tax, however, I didn't see solar mentioned in any of the legislation.

NAME
Page 2
November 4, 2025

Is there any guidance that you would be able to provide? Let me know if you would like to set up a call as well.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Effective January 1, 2025, in accordance with the provisions of Article 75 of Public Act 103-592, persons engaged in the business of leasing tangible personal property at retail ("lessors") in Illinois are subject to State and local retailers' occupation tax on the gross receipts from leases of tangible personal property made in the course of business. See 35 ILCS 120/2.

A "lease" is defined as a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called, but does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee.

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.

Solar Panels

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. A contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure is considered a construction contract (even if the cost of installation is separately stated in the contract). A construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a

NAME

Page 3

November 4, 2025

structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075.

For purposes of the Illinois sales tax laws, the Department uses an intention test to determine whether items remain tangible personal property after installation or become part of realty. The Department has invoked the intention test in letter rulings concerning construction contractors.

ST 00-0156-GIL sets forth the intention test as follows:

In determining whether an item is permanently affixed to real estate, a very fact-specific inquiry must be made regarding whether the item is intended to remain with the realty. In order to make a finding that the item is permanently affixed, at least three factors must generally be examined. First, the item must be affixed to the realty. The item must also be applied to the use or purpose to which the realty is put. Finally, the intent of the person affixing the item must be examined. Another factor often examined is whether the item is essential to the use to which the real estate has been put.

In ST 01-0093-GIL, the Department also discusses the intention test:

If circumstances indicate that the parties obviously intended that the item remain with the realty, we give effect to that intention. If an obvious intent is not apparent, we look to the extent to which the item has been affixed. If the item can be removed without damage to the item or to the real estate, that is an indication that the parties intended that the item remain tangible personal property. . . . In addition, the Department looks to externals to determine intent. So, for example, if a contract for sale indicates that the seller can repossess the item in the event of non-payment, we think that is an indication that the parties intended that the item remain tangible personal property.

The Department has determined that solar panels permanently affixed to a rooftop or using a ground-mounted system are considered real property. As such, solar panels that are affixed to realty are not subject to the lease tax. Rather, construction contractors who incorporate solar panels into the real estate are considered the end users of the property. As the end user of such tangible personal property, the contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075.

Electricity Excise Tax Law

NAME
Page 4
November 4, 2025

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.

“Use” means the exercise by any person of any right or power over electricity incident to the ownership of that electricity, except that it does not include the generation, production, transmission, distribution, delivery or sale of electricity in the regular course of business or the use of electricity for such purposes.

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

NAME
Page 5
November 4, 2025

ILCS 640/2-9. If your Company is not delivering electricity as that term is defined in the Law, 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.

To the extent Company is delivering electricity to an end user or consumer for purchase, such Company is the delivering supplier and is required to collect the electricity excise tax from the purchaser and remit to the Department.

Public Utilities Revenue Act

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.

“Taxpayer” for purposes of the Public Utilities Revenue Tax means a person engaged in the business of distributing, supplying, furnishing or selling electricity for use of consumption and not for resale.

35 ILCS 620/1.

“Alternative retail electric supplier” means every person, cooperative, corporation, municipal corporation, company, association, joint stock company or association, firm, partnership, individual, or other entity, their lessees, trustees, or receivers appointed by any court whatsoever, that offers electric power or energy for sale, lease or in exchange for other value received to one or more retail customers, or that engages in the delivery or furnishing

NAME
Page 6
November 4, 2025

of electric power or energy to such retail customers, and shall include, without limitation, resellers, aggregators and power marketers, but shall not include . . . (v) an entity that owns, operates, sells, or arranges for the installation of a customer's own cogeneration or self-generation facilities, but only to the extent the entity is engaged in owning, selling or arranging for the installation of such facility, or operating the facility on behalf of such customer, provided however that any such third party owner or operator of a facility built after January 1, 1999, complies with the labor provision of Section 16-128(a) as though such third party were an alternative retail electric supplier,

220 ILCS 5/1602. See also 220 ILCS 5/16-128(a).

If your Company is not distributing electricity or is not a taxpayer as those terms are defined in the Public Utilities Revenue Act, then it will not incur electricity distribution tax. The Illinois utility would incur the tax under the Public Utilities Revenue Act on the distribution of that electricity.

For example, a company originates a contract with a customer to install a solar facility on the customer's residential home. Customer does not pay for the materials or installation of the solar panels but agrees to buy all electricity generated from the solar facility from the company for 10 years. The company delivers the electricity to the customer for use or consumption and not for resale. The company owns, operates, and maintains the solar facility and collects electricity excise tax from the customer. In this example, the company is not an "alternative retail electric supplier" (or "taxpayer") because it is excluded under item (v) of the definition of "alternative retail electric supplier" in the Public Utilities Revenue Act (incorporating the definition from the Public Utilities Act), and, as such, is not subject to the electricity distribution tax under the Public Utilities Revenue Act.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

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KAR:slc