

ST 25-0059-GIL 11/04/2025 PUBLIC UTILITY TAXES

This letter discusses the Electricity Excise Tax Law, the Public Utilities Revenue Tax Law, and the Gas Revenue Tax Act in relation to solar panels and power purchase agreements. See 35 ILCS 620, 35 ILCS 640, and 35 ILCS 615. (This is a GIL).

November 4, 2025

NAME
COMPANY
EMAIL

Dear NAME:

This letter is in response to your letter dated October 1, 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 am looking for some guidance around a few of the utility’s taxes.

For a business that installs solar systems on residential homes either through power purchase agreements or leases, are they responsible for the Electricity Excise Tax and the Electricity Distribution Tax? In this case, I believe we would be considered the delivering supplier and subject to the Electricity Excise Tax. Seems possible that we would be subject to the Electricity Distribution Tax as well, but not sure how we would charge both to the customers.

For a business that is considered a supplier (electric and gas marketer) of gas and electric, are they subject to the Gas Revenue Tax for gas sales? We are the supplier and do not deliver it as the utility companies do that. We own gas in Illinois and outside of Illinois and both are sold to customers in Illinois. Then

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for electric sales, are they subject to either the Electricity Excise Tax or Electricity Distribution Tax? It appears that we wouldn't be since we are the delivering supplier and we don't own, lease, or control the infrastructure to deliver the electricity.

For the Invested Capital Tax for gas, I don't think we would be subject since we aren't regulated by the Illinois Commerce Commission.

For the Invested Capital Tax for electric, I don't think we would be subject since we don't own, lease, or control the infrastructure to deliver the electricity.

I really appreciate any guidance you can provide.

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.

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.

Electricity Excise Tax Law

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

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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 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.

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

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Section 2a.1 of the Public Utilities Revenue Act imposes a tax on invested capital and on 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. See 35 ILCS 620/2a.1(a). 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 of electric power or energy to such retail customers, and shall include, without limitation, resellers, aggregators and power marketers, but shall not include . . . (v) the entity that owns, operates, sells, or arranges for the installation of a customer's own cogeneration or self-generation facilities, 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).

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If a 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.

Gas Revenue Tax Act

Section 2 of the Gas Revenue Tax Act imposes a tax upon persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale at the rate of 2.4 cents per therm of all gas which is so distributed, supplied, furnished, sold or transported to or for each customer in the course of such business, or 5% of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period. 35 ILCS 615/2; 86 Ill. Adm. Code 470.110(a). The Act also states that "such taxes are not imposed with respect to any business in interstate commerce, or otherwise to the extent to which such business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State." 35 ILCS 615/2.

Under the Gase Use Tax Law, gas use tax is imposed on the privilege of using in Illinois gas obtained in a purchase of out-of-State gas. A "purchase of out-of-State gas" is specifically defined to mean a transaction for the purchase of gas from any supplier in a manner that does not subject the seller of that gas to liability under the Gas Revenue Tax Act. See 35 ILCS 175/5-1. Section 5-50 of the Gas Use Tax Law lists the only uses of gas that not subject to gas use tax liability. 86 Ill. Adm. Code 471.101.

"Delivering supplier" means any person engaged in the business of delivering gas to persons for use or consumption and not for resale, and who, in any case where more than one person participates in the delivery of gas to a specific purchaser, is the last of the suppliers engaged in delivering the gas prior to its receipt by the purchaser. A person, such as a gas utility, that provides for the delivery of customer owned gas through gas lines that are connected to the

customer's residence or place of business is considered a delivering supplier. A person who transports gas through an interstate pipeline directly to a customer in this State who uses that gas for its own use or consumption and not for resale is considered a delivering supplier. A person who sells gas to an end user, but does not provide for delivery of the gas to such end user, is not considered a delivering supplier.

EXAMPLE: A customer purchases gas for use in its business from a gas marketer and has the customer's local utility company deliver the gas to that customer's place of business. In that instance, the customer's local utility company is the delivering supplier.

35 ILCS 173/5-5; 86 Ill. Adm. Code 471.101

The Gas Revenue Tax is not a tax or fee imposed on the consumer of the gas; it is an occupation tax. The tax is imposed upon persons engaged in the business of distributing, supplying, furnishing, or selling gas to persons for use or consumption. However, distributors or suppliers of gas are authorized, but not required, under the Public Utilities Act to collect a "reimbursement" from purchasers of gas. 220 ILCS 5/9-222.

Section 2a.1 of the Gas Revenue Tax Act imposes upon persons engaged in the business of distributing, supplying, furnishing, or selling gas and subject to the tax imposed by Section 2 of the Act, an additional tax in an amount equal to 0.8% of such persons' invested capital for the taxable period. The invested capital tax is not imposed upon persons who are not regulated by the Illinois Commerce Commission. 35 ILCS 615/2a.1

"Invested capital" means: "that amount equal to (i) the average of the balances at the beginning and end of each taxable period of the taxpayer's total stockholder's equity and total long-term debt, less investments in and advances to all corporations, as set forth on the balance sheets included in the taxpayer's annual report to the Illinois Commerce Commission for the taxable period; (ii) multiplied by a fraction determined under Sections 301 and 304(a) of the "Illinois Income Tax Act".... .

35 ILCS 615/1.

The taxpayer must file a return for invested capital tax purposes that provides, among other things, the "total proprietary capital and total long-term debt as of the beginning and end of the taxable period as set forth on the balance sheets included in the taxpayer's annual report to the Illinois Commerce Commission for the taxable period." 35 ILCS 615/2a.2.

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The Alternative Gas Supplier Law was enacted by the General Assembly effective February 8, 2002. 220 ILCS 5/19-100 et seq. The new law amended the Public Utilities Act and created a new category of gas suppliers known as “alternative gas suppliers.” An “alternative gas supplier” includes any person “that offers gas for sale, lease or in exchange for other value received to one or more customers, or that engages in furnishing of gas to one or more customers ...” but excludes gas public utilities as defined by Section 3-105 of the Public Utilities Act. 220 ILCS 5/19-105.

The Department has reviewed the legislative history and language of the Gas Revenue Tax Act, the Alternative Gas Supplier Law, and related legislation. It is the Department’s conclusion that alternative gas suppliers as defined by the Alternative Gas Supplier Law (220 ILCS 5/19-105) are not liable for the invested capital tax imposed by Section 2a.1 of the Gas Revenue Tax 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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