

The Gas Revenue Tax is imposed upon persons engaged in this State in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale. See 86 Ill. Adm. Code 470110. (This is a GIL.)

December 19, 2011

Dear Xxxxx:

This letter is in response to your letter dated December 7, 2011, in which you request 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:

ABC, a tax research compliance software company, is in the process of researching taxes and fees imposed on utility services, specifically gas and electric. Illinois is a deregulated state in which consumers may purchase their gas and electricity from alternative suppliers.

Regarding gas the Statute **65 ILCS 5/8-11-2** on Municipal Tax on Utilities states: The corporate authorities of any municipality may tax any or all of the following occupations or privileges: **Persons** engaged in the business of distributing, supplying, furnishing or selling gas for use or consumption within the corporate limits of a municipality of 500,000 or fewer population, and not for resale, at a rate not to exceed 5% of the gross receipts there from [sic]. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of a municipality of over 500,000 population, and not for resale, at a rate not to exceed 8% of the gross receipts there from [sic]. If imposed, this tax shall be paid in monthly payments. 'Person' as used in this Section means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, guardian or other representative appointed by order of any court.

Per **86 Ill. Adm. Code 470.110**: There is imposed upon persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale, a tax at the rate of 5% of the gross receipts from any such business, 2.4 cents per therm of all gas which is so distributed, supplied, furnished or 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. This tax is an occupation tax. It is imposed upon taxpayers, as defined in the Act, and is not imposed upon persons for whom services within the Act are rendered by such taxpayers, nor is it imposed upon the act of rendering such services. The amount of tax payable by a taxpayer is to be measured by, or to [sic] computed upon a basis of, the gross receipts of the taxpayer from the business of distributing, supplying, furnishing or selling gas for use or consumption.

Per **86 Ill. Adm. Code 471.105**: A purchase of out-of-State gas occurs when a purchaser enters into a contract outside of this State with a supplier to purchase gas at a wellhead located in Oklahoma. The purchaser then contracts with an Illinois utility for the delivery of that gas to the purchaser's place of business in Illinois. The sale of that gas occurs outside of this State and the seller is not liable for Gas Revenue Tax on the sale of that gas. Unless otherwise exempt under this Part, the purchaser incurs Gas Use Tax liability at the rate or rates set forth in Section 471.110 of this Part on the purchase of the out-of-State gas. **86 Ill. Adm. Code 471.110 states**: Alternate tax rate. Purchasers of out-of-State gas may elect an alternative tax rate of 2.4 cents per therm. This rate is referred to as the 'alternate tax rate'. Those purchasers of out-of-State gas who elect the alternative tax rate do not file returns or pay the tax directly to the Department. [35 ILCS 173/5-10] Such purchasers pay tax to their delivering suppliers who are registered to collect the tax under Section 471.120.

Based on the above:

1. Is the 5% (or 8%) imposed on alternative suppliers, or is it only imposed on Public Utilities?
2. Why is the 2.4 cents per therm option not mentioned in the statutes?
3. How does the collector determine which to apply – the 5% rate or the 2.4 cents rate? On the Form RG-1 it seems as if both are applied.

The CITY Municipal Code Section 82-441 regarding the Municipal Natural Gas Use Tax states: A tax is imposed on the privilege of using or consuming natural gas in the city that is purchased in a sale at retail at the rate of five cents .05 (\$.05) per therm. The ultimate incidence of and liability for payment of the tax is on the retail purchaser and nothing in this section shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting natural gas. To prevent multiple taxation, the use of natural gas in the city by a retail purchaser shall be exempt from the tax imposed by this section if the gross receipts from the sale at retail of such natural gas to the retail purchaser are properly subject to a tax imposed upon the seller of such natural gas pursuant to the city's municipal utility tax, as amended from time to time...authorized pursuant to section 82-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2). The mayor and city finance director are each authorized to enter into a contract for the collection of the tax imposed by this section with any public utility providing natural gas service in the city. The contract shall include and substantially conform with the following provisions: The public utility will collect the tax from retail purchasers as an independent contractor.

Based on the above:

1. Am I interpreting the local municipal code correctly in that only one tax is imposed – either the Gas Revenue Tax or the local imposition?
2. If so, how does the public utility determine whether or not to collect the 5% under 65 ILCS 5/8-11-2 (or the 2.4 cents per therm rate) or the .05 cent per therm rate set at the local level?

Thank you in advance for all your help.

DEPARTMENT'S RESPONSE:

It appears you may be getting confused between the State-imposed gas taxes and locally-imposed taxes. Section 470.110 of the Illinois Administrative Code (86 Ill. Adm. Code 470.110) implements the Gas Revenue Tax Act. 35 ILCS 615/. Section 2 of the Act imposes 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 or 5% of the gross receipts received from each customer from such business, whichever is the lower rate. 35 ILCS 615/2. The Gas Revenue Tax Act is State-wide tax administered by the Department. Tax revenues received by the Department are deposited into the State General Revenue Fund.

The Gas Use Tax Law imposes a State-wide tax on the privilege of using in this State gas obtained in a purchase of out-of-state gas at the rate of 2.4 cents per therm or 5% of the purchase price for the billing period, whichever is the lower rate. 35 ILCS 173/5-10; 86 Ill. Adm. Code 471.105.

Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2) is not administered by the Department of Revenue; it is administered by municipalities that elect to impose a gas occupation tax. The Department has no authority or jurisdiction to provide guidance in regards to municipally-administered taxes imposed under this section of the Illinois Municipal Code. The local tax is in addition to any tax imposed by the State.

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:msk