



**Texas Comptroller of
Public Accounts**

TEXAS TAX INFORMATION FOR RETAIL SELLERS OF ELECTRICITY

This publication is intended to assist electric companies with meeting their state and local tax obligations, in addition to providing their customers with specific information regarding the tax-related charges listed on their electric bills.

In Texas, companies that sell electricity in the retail market are subject to the Public Utility Gross Receipts Assessment (PUCA), and possibly the Miscellaneous Gross Receipts Tax (MGRT), on their gross receipts from the sale of electricity. These companies must collect from their customers, and remit to the Texas Comptroller of Public Accounts, any applicable state or local sales tax that is due on their retail transactions. To ensure compliance with the various tax laws, electric companies should be aware of certain billing issues relating to their payment and collection of taxes in this state.

MISCELLANEOUS GROSS RECEIPTS TAX ON ELECTRICITY

(TEXAS TAX CODE, CHAPTER 182)

An MGRT is imposed on each utility company in Texas that makes local sales of electricity within an incorporated city or town having a population of more than 1,000, according to the last federal census. The rate at which the tax is imposed depends on the population of the city within which the electricity is delivered. The tax rates are:

- 0.581 percent (0.00581) of gross receipts from business done in an incorporated city or town with a population of more than 1,000 but less than 2,500;
- 1.07 percent (0.0107) of gross receipts from business done in an incorporated city or town



with a population of 2,500 or more but less than 10,000; and

- 1.997 percent (0.01997) of gross receipts from business done in an incorporated city or town with a population of 10,000 or more.

With regard to electricity, Tax Code Section 182.021 defines a “utility company” as a person that owns or operates an electric light or electric power works, or a light plant used for local sale and distribution located within an incorporated city or town in this state, or that is a retail electric provider (REP), as that term is defined in Utilities Code Section 31.002 that makes local sales within an incorporated city or town in this state. For MGRT purposes, a retail electric provider includes a REP that is owned, operated or controlled by an electric cooperative.

Gross receipts taxes are paid by the electric retailer; sales taxes are paid by the electric consumer.

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.

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PUBLIC UTILITY GROSS RECEIPTS ASSESSMENT ON ELECTRICITY

(TEXAS UTILITIES CODE, CHAPTER 16)

The PUCA is imposed on each electric utility, retail electric provider and electric cooperative that serves the ultimate consumer in Texas. The assessment is equal to one-sixth of 1 percent (0.001667) of the electric utility's, REP's or electric cooperative's gross receipts from rates charged to the ultimate consumer in this state.

Utilities Code Section 31.002(6) defines an "electric utility" as a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electricity in this state. The term includes a lessee, trustee or receiver of an electric utility and a recreational vehicle park owner who does not comply with Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park.

Under Section 31.002(17), a "retail electric provider" is defined as a person who sells electric energy to retail customers in Texas. A retail electric provider may not own or operate generation assets.

Utilities Code Section 11.003(9) defines an "electric cooperative" as a corporation organized under Utilities Code, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in Texas.

CHARGES NOT SUBJECT TO MGRT OR PUCA

Nonbypassable delivery charges such as system benefit fund fees, nuclear decommission fees and transition charges are not subject to MGRT or PUCA.

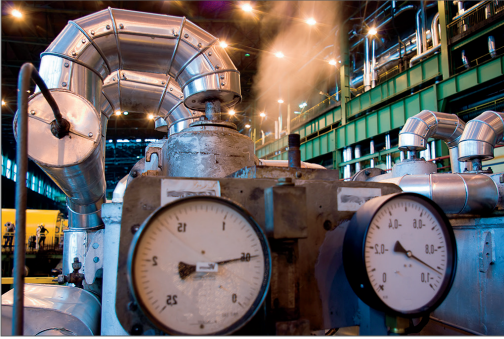
CALCULATING AND IDENTIFYING MGRT OR PUCA PASS-THROUGH CHARGES

The following guidelines apply to electric utilities, REPs and electric cooperatives (i.e., electric companies) that choose to identify separate pass-through charges on their customers' retail electric bills. Pass-through charges are gross receipts taxes or assessments imposed on utility companies that are passed through to their customers as a line-item charge separate from the charge for the electricity itself. These guidelines supplement any other billing requirements established by the Public Utility Commission of Texas.

- Pass-through charges must be itemized and labeled on the customer's bill as a "reimbursement" of the tax or assessment. The billing must not expressly indicate that the charge is for a tax (that is, the term "tax" should not be used) because of the implication that the tax is imposed on the consumer.
- A customer may not be billed for reimbursement of a tax or assessment unless the company actually owes the tax or assessment as the result of its transaction with that customer. A company that collects a reimbursement in error should refund the amount of the reimbursement to its customer. Failure to do so may subject the utility company to a liability equal to the full amount of the reimbursement collected plus any accrued penalties and interest on the amount collected.
- The amount of the reimbursement charge must be calculated using the exact rate at which the tax

A company that collects a tax reimbursement in error should **refund the amount** to its customer.

A customer may not be billed for reimbursement of a tax or assessment unless the company actually owes the tax or assessment as the result of its transaction with that customer.



or assessment is imposed on the utility company; any amount charged above that rate must be paid to the state unless it is refunded to the customer. Only the utility company that paid the tax or assessment directly to the state may request a refund from the Comptroller.

- Any sales tax due on the sales price of the electricity must be excluded from the calculation of the reimbursement charge.
- When the MGRT or PUCA is passed through to the retail customer as a reimbursement charge, the charge becomes a part of the sales price for the electricity for sales tax purposes and is subject to state sales and use tax in the same manner as the charge for the electricity itself. (Refer to the “Collection, Billing and Refund of State or Local Sales Tax on Retail Sales of Electricity” section of this publication.)

A detailed example showing the correct calculation of MGRT and PUCA reimbursement charges, as well as state and local sales tax, is provided at the end of this publication.

CALCULATING A COMPANY’S MGRT OR PUCA LIABILITY

The following guidelines apply to the calculation of a company’s MGRT or PUCA liability when the company lists separate pass-through charges on its customers’ retail electric bills.

- If the MGRT or PUCA is passed through to the retail customer as a reimbursement charge, the amount of the reimbursement must be included in the company’s gross receipts that are subject to

the tax or assessment. The fact that collection of reimbursement charges increases the company’s tax or assessment liability does not mean that the company may overbill the reimbursement charge at a rate that is higher than the actual tax or assessment rate imposed on the company.

- When calculating the company’s MGRT or PUCA liability, any sales tax collected from customers on behalf of the state must be excluded from the company’s gross receipts.

MGRT AND PUCA REFUNDS

When a company collects a reimbursement of the MGRT or PUCA in error, the company must refund the amount of the reimbursement to its customer before it may receive a refund of the tax or assessment from the Comptroller. A customer may not file a refund claim directly with the Comptroller to recover such a reimbursement, nor may the company assign its refund by issuing an Assignment of Right to Refund (Form 00-985) to the customer since the customer is not liable for the payment of the actual MGRT or PUCA.

COLLECTION, BILLING AND REFUND OF STATE AND LOCAL SALES TAX ON RETAIL SALES OF ELECTRICITY

GENERAL INFORMATION

The following guidelines apply to electric utilities, REPs, electric cooperatives and municipally owned utility companies that sell electricity to end-use consumers in Texas. These guidelines supplement any other billing requirements established by the Public Utility Commission of Texas.

Sales tax is imposed on the end-use consumer, not on the REP providing the electricity. The tax is collected by the REP on behalf of the state and remitted to the Comptroller. The total combined rate for state and local sales tax may not exceed 8.25 percent. Sales tax charges must be separately stated on the customer’s electric bill and clearly identified as Texas state/local sales tax.

Retail electric customers **may not** recover MGRT or PUCA pass-through charges directly from the Comptroller.

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For sales tax purposes, electricity is a taxable item; however, its taxability is determined by the manner in which the electricity is used. (See the “Sales Tax Exemptions for Electricity” section of this publication.) When sold for commercial use, electricity is subject to state and local sales tax.

STATE SALES TAX

(TEXAS TAX CODE, CHAPTER 151)

State sales tax is imposed on each sale of taxable electricity at a rate of 6.25 percent of the sales price of the electricity. Residential use of electricity is exempt from the 6.25 percent state sales tax.

LOCAL SALES TAX

Commercial use of electricity is subject to state and local sales tax (comptroller.texas.gov/taxes/sales/). Local tax rates vary, but the maximum combination of local taxes cannot exceed 2 percent. The combined state and local sales tax rate for any location in Texas is 8.25 percent. City, Metropolitan Transit Authorities (MTA), City Transit Departments (CTD), Special Purpose Districts (SPD) and county sales taxes are imposed under Texas Tax Code Chapters 321-323. Other related tax code statutes affecting local taxes include Tax Code Chapters 324, 325 and 327, and Texas Transportation Code Chapters 451-453 and 460.

City, county, transit and SPD sales taxes are due based on where the customer receives the service. The location of the meter where the electricity is delivered determines the local taxes that apply. For example, city sales tax is applicable if the electricity is delivered to a meter that is located within the boundaries of an incorporated city. To determine or verify that a customer’s location is within a particular jurisdiction, please contact the local taxing jurisdiction that has drawn the boundary’s lines. Residential use of electricity is exempt from all county and transit Advanced Transportation Districts (ATD)MTA/CTD local sales taxes. It is also exempt from the sales tax imposed by most SPDs, as well as many cities.

City, county, transit and SPD sales taxes are due **based on** where the customer receives the service.

Only certain cities that adopted local sales tax before Oct. 1, 1979, and two specific types of SPDs associated with those municipalities – fire control, prevention and emergency medical services districts organized under Chapter 344, Local Government Code and crime control and prevention district organized under Chapter 363, Local Government Code – can opt to impose local tax on the residential use of electricity.

A list of cities and SPDs that impose sales tax on residential use of electricity, as well as a list of those jurisdictions eligible to impose the tax, is provided on the Comptroller’s website. (comptroller.texas.gov/taxes/sales/utility/)

SALES TAX EXEMPTIONS FOR ELECTRICITY

Tax Code Section 151.317 provides that electricity is exempt from sales tax when sold for:

- residential use, except in certain cities and SPDs as noted above;
- use in powering equipment exempt under Tax Code Sections 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
- use in lighting, cooling and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
- use directly in exploring for, producing or transporting a material extracted from the earth;

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- use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;
- use directly in electrical processes, such as electroplating, electrolysis and cathodic protection;
- use directly in the off-wing processing, overhaul or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;
- use directly in providing, under contracts with or on behalf of the United States government or foreign governments; defense or national security-related electronics; classified intelligence data processing and handling systems; or defense-related platform modifications or upgrades;
- a direct or indirect use, consumption or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or
- use in timber operations, including pumping for irrigation of timberland.

Other than residential customers, purchasers claiming an exemption from tax on electricity used in one of the activities identified above must provide a properly completed exemption certificate to the service provider. The exemption certificates will be good until the customer revokes the certificate in writing to the retailer or the retailer is notified that the registration number associated



with the blanket exemption certificate has expired, or been canceled or suspended.

New Requirements for Agricultural and Timber Exemption Claims – Beginning Jan. 1, 2012, a person claiming an agricultural exemption on sales tax used in the production of agricultural and timber products must provide to the service provider a registration number issued by the Comptroller of Public Accounts on a new exemption certificate. Purchasers claiming a sales tax exemption on electricity used in agriculture will need to issue the new Texas Agricultural Sales and Use Tax Exemption Certificate (Form 01-924). Purchasers claiming the exemption on electricity used in timber operations must issue the new Texas Timber Operations Sales and Use Tax Exemption Certificate (Form 01-925). This affects billing cycles beginning on and after Jan. 1, 2012. For more information, see “Texas Taxes for Agriculture and Timber Industries.” (comptroller.texas.gov/taxinfo/agriculture/)

Government agencies – In addition to the usage exemptions listed above, Tax Code Section 151.309 exempts from the payment of sales tax the state of Texas and any of its agencies or instrumentalities; any county, city, special district or other political subdivision of the state of Texas; any college or university created or authorized by the state of Texas; and the United States or an agency or instrumentality of the United States. Texas public schools, as well as any organizations listed under Tax Code Section 151.310, are also exempt from the payment of sales tax. A purchase order or voucher issued by a government agency is sufficient proof of the entity’s exempt status and an exemption certificate is not required.

EXEMPT AND TAXABLE USAGE – PREDOMINANT USE

Electricity that is measured by a single meter and used by one entity for both exempt and taxable purposes during a regular monthly billing period is either totally exempt or totally taxable based on

Other than residential customers, purchasers claiming an exemption from tax on electricity used in one of the activities identified above must provide a properly completed **exemption certificate** to the service provider.

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the predominant use of the electricity. Comptroller Rule 3.295 provides guidelines to determine predominant use of electricity. To be exempt, a utility study must show that the predominant use of the electricity was for an exempt purpose. See Texas Admin. Code, Title 34, Part 1, Ch. 3, Section 3.295 for more information about predominant use studies.

TAXABILITY OF COMPONENT CHARGES FOR SALES TAX PURPOSES

When a REP sells taxable electricity, the REP may bill its customers a lump-sum charge or separate amounts for the commodity, transmission and distribution services, system benefit fund fees, competition transition charges, municipal franchise fees, nuclear decommission fees and transition charges. The REP should collect sales tax on taxable uses of electricity on the amount it bills its customers for these services:

- the electric energy;
- transmission and distribution services;
- competition transition charges; and
- municipal franchise fees.

System benefit fund fees, nuclear decommission fees and transition charges are not subject to sales tax, provided the company gives the customer a separate listing of these fees. The company may send customers yearly statements of these charges or provide a separate listing each month.

A customer may file a sales tax refund claim directly with the Comptroller only if the claim is accompanied by an **Assignment of Right to Refund** (Form 00-985) obtained from the company.

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SALES TAX REFUNDS

When a company collects an MGRT or PUCA reimbursement in error, the amount of the reimbursement is included in the price of the electricity for sales tax purposes, so the customer would have also paid sales tax in error, if applicable, on the reimbursement charge. In such a case, the amount of state and/or local sales tax collected from the customer as a result of the erroneous reimbursement must either be refunded to the customer or remitted to the state as “tax collected in error.” If the company has already remitted the sales tax to the Comptroller and the company subsequently refunds the error tax to the customer, the company may file a claim for refund with the Comptroller or take a corresponding credit on its next sales and use tax return.

To file a refund claim, a company must send the Comptroller a signed refund request stating the company’s name, address and taxpayer number; the amount to be refunded; the basis for the refund; and information that identifies any local taxing authorities for which the tax was remitted. A customer may file a sales tax refund claim directly with the Comptroller only if the claim is accompanied by an Assignment of Right to Refund (Form 00-985) obtained from the company. A sales tax refund claim must be filed in accordance with Texas Admin. Code, Title 34, Part 1, Ch. 3, Section 3.325.

FOR MORE INFORMATION

For more information regarding gross receipts tax, the PUC assessment and state and local sales tax, visit our website at comptroller.texas.gov/taxes.

EXAMPLE:

Proper Calculation of MGRT and PUCA Reimbursement Charges and State and Local Sales Tax Billed to Customers for Retail Electric Service

HYPOTHETICAL FACTS:

Commercial (*or residential customer) located in a city with a population > 10,000

State sales tax rate: 0.0625
 City sales tax rate: 0.01
 MTA rate: 0.01
 MGRT rate: 0.01997
 PUCA rate: 0.001667

Charges for Electric Service	Column A taxable	Column B not taxable
1 Energy	146,164.04	
2 Customer Charge	5.43	
3 Metering Charge	120.35	
4 Distribution System Charge	18,898.22	
5 System Benefit Fund Fee		1,430.48
6 Nuclear Decommission Charge		
7 Excess Mitigation Charge	(6,124.37)	
8 Transition Charge		2,267.66
9 Transmission Service Charge	7,438.34	
10 Transmission Cost Recov Factor	92.30	
11 Subtotal Energy Charges	166,594.31	3,698.14
Subtotal for Reimbursement Calculation (Item 11)		
12 MGRT Reimb (\$166,594.31 x .01997)	3,326.89	
13 PUCA Reimb (\$166,594.31 x .001667)	277.71	
14 Subtotal Reimbursement Charges	3,604.60	
Subtotal for Sales Tax Calculation (Items 11a + 14)		
15 Sales Tax-City (\$170,198.91 x .01)	1,701.99	*1,701.99 ¹
16 Sales Tax-MTA (\$170,198.91 x .01)	1,701.99	Or 0.00 ²
17 Sales Tax-State (\$170,198.91 x .0625)	10,637.43	Or *0.00 ³
18 Subtotal State & Local Sales Tax	14,041.41	Or *1,701.99
19 Total Bill (Items 11a + 11b + 14 + 18)	187,938.46	Or *175,599.04

**(If electricity was sold for residential use)*

¹ City imposes sales tax on electricity sold for residential use

² Not applicable to electricity sold for residential use.

³ Electricity sold for residential use is exempt from state sales tax

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