

# STATEMENTS OF POLICY

## Title 61—REVENUE

### DEPARTMENT OF REVENUE

#### [61 PA. CODE CH. 60]

#### Electric Utility Services

The Department of Revenue (Department) has adopted a statement of policy in accordance with § 3.2(a)(1)(i) and (b) (relating to statements of policy) regarding taxation of unbundled nonresidential electric utility services, to read as set forth in Annex A.

This statement of policy adds § 60.23 (relating to electric utility services) and will take effect upon publication in the *Pennsylvania Bulletin*.

Chapter 28 of 66 Pa.C.S. (act) (relating to Electricity Generation Choice for Customers of Electric Cooperatives Act) became effective on January 1, 1997. The act includes two major changes. First, section 2804 of the act gives the retail customer the choice of an electric generation supplier. Second, section 2804 of the act gives the Pennsylvania Public Utility Commission (Commission) the authority to require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. The Commission may require the unbundling of other services. This statement of policy is being issued to set forth the policy of the Department in taxing unbundled charges relating to the sale or use of electricity for nonresidential use under Article II of the Tax Reform Code (TRC) (72 P. S. §§ 7201—7201-A).

Subsection (b) of § 60.23 provides information regarding applicable provisions of Article II of the TRC. Subsection (c) details the revenue-neutral reconciliation.

Subsection (d) of § 60.23 provides that to fulfill its responsibilities under Article II of the TRC as well as the recognition of the specific provisions of section 2810 of the act, the Department is required to impose Sales and Use Tax upon the total purchase price for each separate charge. The separate charges include charges for the generation, transmission or distribution in connection with providing electric utility services, as well as, all related charges, services or costs for the generation, production, transmission or distribution of electricity whether or not the total amount charged is billed as a single charge by one vendor or billed separately by one or more vendors.

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Dept. 281061, Harrisburg, PA 17128-1061.

ROBERT A. JUDGE, Sr.,  
*Secretary*

**Fiscal Note:** 15-403. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 61. REVENUE

#### PART I. DEPARTMENT OF REVENUE

#### Subpart B. GENERAL FUND REVENUES

#### ARTICLE II. SALES AND USE TAX

#### CHAPTER 60. SALES AND USE TAX

#### PRONOUNCEMENTS—STATEMENTS OF POLICY

#### § 60.23. Electric utility services.

(a) *General.* Chapter 28 of 66 Pa.C.S. (relating to The Electricity Generation Choice for Customers of Electric

Cooperatives Act) (act) became effective on January 1, 1997. The act includes two major changes. First, section 2804 of the act (relating to standards for restructuring of electric industry) gives the retail customer the choice of an electric generation supplier. Second, section 2804 of the act gives the Pennsylvania Public Utility Commission the authority to require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. This statement of policy sets forth the policy of the Department in taxing unbundled charges relating to the sale to or use of electricity by nonresidential users under Article II of the TRC (72 P. S. §§ 7201—7201-A).

(b) *Article II of the TRC.*

(1) The TRC became effective on March 4, 1971. Article II of the TRC imposes Sales and Use Tax upon certain tangible personal property and selected services.

(i) Section 201(m) of the TRC (72 P. S. § 7201(m)) defines tangible personal property to include “electricity for nonresidential use.”

(ii) Section 202 of the TRC (72 P. S. § 7202) imposes Sales or Use Tax upon the “purchase price” of each “sale at retail” or “purchase at retail” of tangible personal property within this Commonwealth.

(iii) The term “sale at retail” is defined in section 201(k) of the TRC as any transfer for a consideration, of the ownership, custody or possession of tangible personal property.

(iv) The term “purchase at retail,” is defined in section 201(f) of the TRC as the acquisition for a consideration of the ownership, custody or possession of tangible personal property when the acquisition is made for the purpose of consumption or use.

(v) Section 201(g) of the TRC defines “purchase price” as the total value of anything paid or delivered or promised to be paid or delivered in the complete performance of a “sale at retail” or a “purchase at retail.”

(2) Since the enactment of the TRC, the bundled charges for the generation, transmission and distribution of “electricity for nonresidential use,” together with other charges representing reimbursements to the seller for taxes, fuel adjustment costs and similar charges, have been subject to tax.

(c) *Revenue-neutral reconciliation.* Section 2810 of the act (relating to revenue-neutral reconciliation) provides: “It is the intention of the General Assembly that the restructuring of the electric industry be accomplished in a manner that allows Pennsylvania to enjoy the benefits of competition, promotes the competitiveness of Pennsylvania’s electric utilities and maintains revenue neutrality to the Commonwealth.” In maintaining revenue neutrality, section 2810 of the act further provides that it is the intention of the General Assembly not “to cause a shift in proportional tax obligations among customer classes or individual electric distribution companies” but “to establish this revenue replacement at a level necessary to recoup losses that may result from the restructuring of the electric industry and the transition thereto.” Among the taxes to which the General Assembly makes reference are the sales and use taxes collected under Article II of the TRC. To maintain revenue neutrality, both bundled and unbundled charges relating to the sale or use of “electricity for nonresidential use” will continue to be

subject to Sales and Use Tax under Article II of the TRC to the same extent as receipts from bundled charges for "electricity for nonresidential use" were taxable during the Fiscal Year 1995—1996.

(d) *Taxability of unbundled charges.* To fulfill its responsibilities under Article II of the TRC, as well as, the recognition of the intention of the General Assembly, as provided under the act, the Department is required to impose Sales and Use Tax upon the total purchase price charged upon each separate charge for the generation,

transmission or distribution in connection with providing nonresidential electric utility services as well as all related charges, services or costs for the generation, production, transmission or distribution of electricity whether or not the total amount charged is billed as a single charge by one vendor or billed separately by one or more vendors.

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