

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division**

TSB-A-00(27)S
Sales Tax
July 21, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990112B

On January 12, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from New York State Electric & Gas Corporation, 4500 Vestal Parkway East, P.O. Box 3607, Binghamton, New York, 13902-3607.

The issues raised by Petitioner, New York State Electric & Gas Corporation, are:

1. Whether a utility's service of transporting and distributing electricity sold by a third party supplier to the consumer is a taxable "electric service" within the meaning of Section 1105(b) of the Tax Law.
2. Whether a utility's service of transporting and distributing natural gas sold by a third party supplier to the consumer is a taxable "gas service" within the meaning of Section 1105(b) of the Tax Law.

Petitioner submitted the following facts as the basis of this Advisory Opinion.

Petitioner is a regulated utility engaged in transmitting and delivering electricity and transporting and delivering natural gas. Petitioner serves approximately 815,000 electric customers and 240,000 gas customers in its 19,800 square mile service territory in the central, western, and eastern parts of New York State. Thousands of those electric customers purchase their electricity from third party suppliers under a retail access program established in 1998 by Petitioner and approved by the New York State Public Service Commission, and thousands more will likely soon do so as the retail access program expands. Petitioner simply provides a transportation service to those customers, transmitting and distributing electricity furnished by the third party. Likewise, many of Petitioner's gas customers purchase their gas from third parties and Petitioner only provides a transportation service to them.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

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(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, including gas and gas service and electricity and electric service of whatever nature, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery, and, with respect to gas and gas service and electricity and electric service, any charges by the vendor for transportation, transmission or distribution, regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale....

Section 1105(b) of the Tax Law imposes a tax upon:

The receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, and from every sale, other than sales for resale, of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service and from every sale, other than sales for resale, of a telephone answering service.

Chapter 63 of the Laws of 2000, added new Section 1105-C of the Tax Law which provides, in part:

Reduced tax rates with respect to certain gas service and electric service. Notwithstanding any other provisions of this article or article twenty-nine of this chapter:

(a) The rates of taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter on receipts from every sale of gas service or electric service of whatever nature (including the transportation, transmission or distribution of gas or electricity, but not including gas or electricity) shall be reduced each year on September first, beginning in the year two thousand, and each year thereafter, at the rate per year of twenty-five percent of the rates in effect on September first, two thousand, so that the rates of such taxes on such receipts shall be zero percent on and after September first, two thousand three.

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Opinion

Technical Services Bureau Memorandum entitled Application of Sales Tax to Sales of Certain Utility Services, January 29, 1999, TSB-M-99(1)S, announced a change in policy with respect to the imposition of sales tax on charges for transporting and distributing electricity and natural gas. The original effective date of TSB-M-99(1)S was April 1, 1999. This effective date was changed to April 1, 2000, as reflected in TSB-M-99(1.4)S. TSB-M-99(1.4)S, provides, in part:

Historically, electricity or gas, along with (among other things) the service of getting it to the consumer, was provided by one party, the utility, and the entire charge was subject to sales tax. In a restructured environment, one company will be selling electricity or gas and another company will be providing the service of (among other things) getting the electricity or gas to the customer. The phrase "gas, electricity...and gas, [and] electric...service of whatever nature" imposes tax on the services of both parties in the provision of electricity or gas.

Therefore, the Department has determined that the fee a utility charges the customer for getting the electricity or gas to the customer is subject to state and local sales tax as a charge for electric or gas service.

In accordance with the Department's policy as set forth in TSB-M-99(1)S and TSB-M-99(1.4)S, effective April 1, 2000, Petitioner's receipts from charges derived from transporting and distributing electricity and natural gas sold by a third party supplier to the consumer constitute receipts from the sale of electric and gas services, respectively, and are therefore subject to tax under Section 1105(b) of the Tax Law.

However, as provided by Section 1105-C of the Tax Law, the imposition of tax on the transporting and distributing of electricity and natural gas purchased from someone other than the vendor of the gas or electricity will be phased out beginning on September 1, 2000 at yearly intervals so that there will be no tax on such services in such circumstances beginning on and after September 1, 2003. See Technical Services Bureau Memorandum entitled Sales and Use Taxes on Gas and Electricity, June 9, 2000, TSB-M-00(4)S.

DATED: July 21, 2000

/s/

John W. Bartlett
Deputy Director
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.