



June 24, 2009

Michelle Hershel
Florida Electric Cooperatives Association, Inc.
2916 Apalachee Parkway
Tallahassee, FL 32301

Re: Technical Assistance Advisement 09A-029
Sales and Use Tax/Gross Receipts Tax – Net Metering
Sections: 203.01, 212.05, 212.08, 212.06, Florida Statutes (F.S.)
Rule: 12A-1.039, Florida Administrative Code (F.A.C.)
Petitioner: Florida Electric Cooperatives Association, Inc. (“Taxpayer”)

Dear Ms. Hershel:

This letter is a response to your petition dated March 14, 2008, for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced party and matter. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

FACTS

Taxpayer is the trade association for seventeen electric cooperatives (2-wholesale and 15-distribution) who provide energy and electricity in Florida. Taxpayer members are distribution cooperatives who sell electricity at retail to their members and buy their power from wholesale cooperative providers or other utilities. Two co-ops buy their power from other utilities and would directly buy back any excess power from a renewable generator. The wholesale cooperative provider buys the excess power from the customer under their arrangement with the other 13 co-ops. For this reason, Taxpayer request will consist of issues which apply to all 15 cooperatives; issues which apply only to the 13 cooperatives who buy power from wholesale cooperative providers; and issues which apply only to the 2 cooperatives who buy power from other utilities.

Some of Taxpayer's members own and operate small renewable generators. To date, most of these are (less than 10kW) photovoltaic (solar) energy systems. Several of Taxpayer's members offer a net billing option, which allows customers to receive credits for excess electricity generated by their renewable generator. "Excess" electricity is the electricity that is generated by the customer that exceeds the customer's needs at that moment.

The metering/billing process is a multi-step transaction. Generally, after a customer notifies the distribution cooperative that he or she would like to interconnect a renewable generator to the

cooperative's facilities, the cooperative sends the customer a third-party interconnection agreement and request for verification of insurance. Under the terms of the interconnection agreement, any excess electricity generated by the customer is sold to the **wholesale** cooperative provider. [your emphasis] Once the distribution cooperative receives the executed documents, the customer's meter is changed out for a special meter (unless the customer's meter is already capable of measuring electricity in both directions) that measures both the amount of electricity supplied by the distribution cooperative to the customer and the excess electricity generated by the customer that is delivered to the wholesale cooperative.

The customer's account is set up to reflect the tariffed retail rate paid by the customer to the distribution cooperative and the rate paid by the wholesale cooperative to the customer (these rates may not be the same) for the excess electricity. The excess power delivered from the customer to the wholesale cooperative is then resold to the distribution cooperative. The resale of excess electricity generated by the customer to the wholesale cooperative is shown as a credit on the distribution cooperative's wholesale power bill. In turn, the distribution cooperative reflects the credit on the customer's bill.

REQUESTED ADVISEMENTS

I. For all 15 cooperatives, Taxpayer has asked advice regarding the following:

Issue 1: Is the electricity sold to a residential customer that has provided an exemption certificate to the cooperative still exempt from sales tax on electricity under the household fuel exemption in Section 212.08(7)(j), F.S., even though the customer is now in the business of selling electricity?

Issue 2: Most renewable generators require the use of inverters on their systems. The utility supplies a small amount of electricity to these inverters. When the utility sells electricity that is used directly by the renewable generation system, is the residential customer's status changed to commercial for tax purposes?

Issue 3: Does the cooperative have any sales tax liability for power generated and consumed by the customer that does not register on the cooperative's meter (i.e., that is not excess power)?

Issue 4: Does the cooperative have any gross receipts tax liability for power generated and consumed by the customer that does not register on the cooperative's meter (i.e., that is not excess power)?

Issue 5: What is the proper method to calculate sales and gross receipts taxes for residential and commercial customers utilizing net billing (Can the distribution cooperative apply the Net Billing Credit before the sales taxes are calculated and should it offset the distribution cooperative's revenues for calculating its gross receipts tax)?

II. For the 13 cooperatives, with wholesale cooperative power contracts, Taxpayer has asked advice regarding the following:

Issue 1: Is the sale of customer's excess electricity to the wholesale cooperative exempt from sales taxes as a sale for resale?

Issue 2: Is the sale of excess electricity from customer to the wholesale cooperative exempt from gross receipts tax as a sale for resale?

III. For the 2 cooperatives, with power contracts with other utilities, Taxpayer has asked advice regarding the following:

Issue 1: Is the sale of customer's excess electricity directly to the distribution cooperative exempt from sales taxes as a sale for resale?

Issue 2: Is the sale of excess electricity directly from the customer to the distribution cooperative exempt from gross receipts tax as a sale for resale?

ANALYSIS and DISCUSSION

Gross Receipts Tax

Section 203.01, F.S., imposes the gross receipts tax on the total amount of gross receipts **received** by a distribution company for utility services. [Emphasis supplied] The rate applied to utility services is 2.5 percent. Assuming the electric utility is a distribution company, it would be required to pay gross receipts tax on its total receipts from **charges** for utility service sold to a retail consumer. If the customer pays \$100 on the net electricity that the consumer purchased, the distribution company is taxed on the \$100 received.

Taxpayer's members should remit the gross receipt tax based on the amount of money that they receive from its customers for charges for utility services. This would be the net amount of electricity billed to the customer after allowing a credit for the excess electricity generated by the customer and returned to the utility.

Sales and Use Tax

Section 212.05, F.S., provides it is the legislative intent that every person is exercising a taxable privilege that engages in the business of selling tangible personal property at retail in this state. For exercising such a privilege, a tax is levied on each taxable transaction or incident. The retail sale of electrical power or energy in the State of Florida is subject to sales tax. The incidence of the tax is on "charges for electrical power or energy," and the tax rate for such sales is 7 percent. See Section 212.05(1)(e)1.c, F.S. Therefore, if a customer is charged \$100 on the net electricity that it used during a particular billing cycle, the utility company should collect and remit the 7 percent sales tax on the \$100 amount billed to the customer. Electricity that is provided to the customer before net metering would not be taxed. Although we are sure that you are well aware of this, we note that sales of electricity to residential households are exempt from sales tax pursuant to Section 212.08(7)(j), F.S.

Excess customer-generated electrical power or energy put on the grid is ultimately used by and billed to other customers of Taxpayer's members. Credits allowed by Taxpayer's members for such excess customer-generated electrical power or energy would be treated as exempt sales for resale under the provisions of Rule 12A-1.039, F.A.C.

Under the facts presented in your letter, residential customers are not required to register as dealers with the Department and be responsible for all of the attendant responsibilities that go along with being a "dealer." The residential customer's delivery of excess electricity and the subsequent credit or "net-billing" do not defeat the exemption provided to residential customers. This conclusion also considers: (a) that the delivery of excess electricity is a "sale for resale" that carries out the Legislature's intent of promoting energy conservation and the use of solar energy; and, (b) under the facts presented, Florida sales tax would not be due because the customer to utility "sale" is an exempt "sale for resale," and Florida gross receipts tax would not be due because the "sale" is not to a "retail consumer."

RESPONSE

Section I:

Issue 1: Is the electricity sold to a residential customer that has provided an exemption certificate to the cooperative still exempt from sales tax on electricity under the household fuel exemption in Section 212.08(7)(j), F.S., even though the customer is now in the business of selling electricity?

Response: Yes. The exemption for residential households is not defeated. The Department does not issue "exemption certificates" to residential households.

Issue 2: Most renewable generators require the use of inverters on their systems. The utility supplies a small amount of electricity to these inverters. When the utility sells electricity that is used directly by the renewable generation system, is the residential customer's status changed to commercial for tax purposes?

Response: No. The status of the customer would not change to commercial for tax purposes.

Issue 3: Does the cooperative have any sales tax liability for power generated and consumed by the customer that does not register on the cooperative's meter (i.e., that is not excess power)?

Response: No. The cooperative would not be responsible for tax on power generated and consumed by its customer that is not registered on the cooperative's meter.

Issue 4: Does the cooperative have any gross receipts tax liability for power generated and consumed by the customer that does not register on the cooperative's meter (i.e., that is not excess power)?

Response: No, the cooperative would not be liable.

Issue 5: What is the proper method to calculate sales and gross receipts taxes for residential and commercial customers utilizing net billing (Can the distribution cooperative apply the Net Billing Credit before the sales taxes are calculated and should it offset the distribution cooperative's revenues for calculating its gross receipts tax)?

Response: Florida gross receipts tax is levied against the total amount of gross receipts **received** by a distribution company. [emphasis supplied] See Section 203.01(1)(c), F.S. The cooperatives should remit gross receipts tax based on the gross receipts they actually receive (and bill for what they will actually be receiving). In other words, if the bill from the utility shows electricity consumed by the customer in the amount of \$100 and a credit for excess customer-generated electricity in the amount \$25, resulting in a balance due of \$75, gross receipts tax, for purposes of calculating the gross receipts tax, is calculated on the net amount or \$75. Under the same scenario, Florida sales and use tax would be calculated at the tax rate of 7 percent on the charge of \$75. Electricity that is provided to the customer before net metering would not be taxed. Sales tax would only apply to sales to commercial customers; all sales to residential customers are specifically exempt from sales tax.

Section II:

Issue 1: Is the sale of customer's excess electricity to the wholesale cooperative exempt from sales taxes as a sale for resale?

Response: Yes. The sale of customer's excess electricity to the wholesale cooperative would be exempt from sales taxes as a sale for resale pursuant to Section 212.06(1)(b), F.S.

Issue 2: Is the sale of excess electricity from customer to the wholesale cooperative exempt from gross receipts tax?

Response: Yes. The gross receipts tax is not imposed on the sale or delivery of electricity to cooperatives for resale, pursuant to Section 203.01(3)(a)2., F.S.

Section III:

Issue 1: Is the sale of customer's excess electricity directly to the distribution cooperative exempt from sales taxes as a sale for resale?

Response: Yes. The sale of customer's excess electricity to the wholesale cooperative would be exempt from sales taxes as a sale for resale pursuant to Section 212.06(1)(b), F.S.

Issue 2: Is the sale of excess electricity directly from the customer to the distribution cooperative exempt from gross receipts tax?

Response: Yes. The gross receipts tax is not imposed on gross receipts received from the sale or delivery of electricity to cooperatives for resale, pursuant to Section 203.01(3)(a)2., F.S.

CONCLUDING STATEMENT

This response constitutes a Technical Assistance Advisement under Section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in Section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of Section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 10 days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at 850-488-8026.

Kind Regards,



Alan R. Fulton
Tax Law Specialist
Technical Assistance & Dispute Resolution

ARF\lp
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