



**FLORIDA**

Executive

Director

Leon M. Biegalski

August 31, 2017

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

Re: Technical Assistance Advisement 17A-019  
Florida Electric Cooperatives Association, Inc. ("Taxpayer")  
Florida Sales and Use Tax - Exemptions  
Sections 203.01, 212.02(16), 212.05, 212.08(7)(j), Florida Statute (F.S.)  
BP#: 285927

Dear Ms. Hershel:

This letter is in response to your request dated June 20, 2017, for issuance of a Technical Assistance Advisement ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning manufacturing exemptions. An examination of your request has established you complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

### **FACTS PRESENTED**

Taxpayer is the trade association for electric cooperatives (2-wholesale and 15-distribution) that sell energy and electricity at retail in Florida. Taxpayer members include distribution co-ops that provide electricity at retail, and the consumers of the electricity are member-owners ("ratepayer" or "end-use consumer") of the distribution cooperative. Several member-owners have requested that their co-op offer a solar power option, even if the electricity costs more than other power options. The co-ops want to accommodate those members as long as they are willing to compensate the co-op for the more expensive solar generated electricity. Several co-ops already offer solar power as an option, and other co-ops are planning to add a solar option in the very near future.

The billing methods for the community solar power may vary slightly among co-ops, but the essence of the transaction is that the member-owners who want solar power will pay the co-op a fixed fee for the right to have a fixed percentage of the output of a solar facility, and in return the member-owner will receive a credit on their electric bill for the number of kilowatt-hours (KWH) generated by their allotment of the solar facility during the billing period. The fixed fee may be billed periodically (monthly, yearly, or

Child Support – Ann Coffin, Director • General Tax Administration – Maria Johnson, Director  
Property Tax Oversight – Dr. Maurice Gogarty, Director • Information Services – Damu Kuttikrishnan, Director

[www.floridarevenue.com](http://www.floridarevenue.com)  
**Florida Department of Revenue**  
Tallahassee, Florida 32399-0100

for longer terms) or as a single lump sum payment. The periodic fixed fee will be the same amount regardless of how much solar power is generated in a given billing cycle. The co-ops will offer the solar power in "Blocks." A "Block" represents a fixed percentage of the electricity generated by the solar generator each month. The number of kilowatt-hours (KWH) in the Block will vary each billing cycle depending upon the amount of electricity the solar generator produces in that time period. The number of KWHs credited to the Block during the billing cycle will be credited to the end-use consumer's electric bill by deducting the number of KWH in the Block from the total number of KWH the co-op delivers to the member-owner. If the Block produces more KWH than a consumer uses during the billing period, the consumer will receive a credit in accordance with the co-op's net metering rate/policy. Due to the laws of physics and the fact that electrons follow the path of least resistance, you cannot measure whether some or all of the power in the Block is actually included in the power that the distribution co-op delivers to the member-owner, but it will be accounted for in the same method that is used for net metering.

The solar generator may be leased or owned by the distribution co-op or its wholesale power provider, and the solar generator will be operated and controlled by the co-op. A participating member-owner has a right to their percentage of the power generated by the solar generator, but does not have any other property rights regarding the solar generator. In fact, the participating end-use consumers may never even see the solar generator.

On behalf of the above-mentioned member-cooperatives, Taxpayer requests guidance for the hypothetical billing scenarios listed below. For demonstration purposes and recognizing that actual bills may have minor variations, the first hypothetical bill below shows the billing calculations for consumers that do not participate in the voluntary community solar program, and the second hypothetical is for a consumer participating in the community solar program, which includes a solar Block fixed charge that is assessed each billing period and credits the solar KWH credits as an offset of the total KWH delivered by the co-op. The hypothetical bills assume total electric usage of 1,000 KWH and, for program participants, a solar credit of 180 KWH for a net sale of 820 KWH. Taxpayer has used a hypothetical charge for electric power of \$.10 per KWH.

#### **Sample Bills Before Taxes**

	<u>Bill without solar</u>	<u>Bill with solar and fixed fee</u>
Fixed Charges		
Customer charge:	\$25.00	\$25.00
Solar block charge:	\$ 0.00	<u>\$30.00</u>
Total fixed charges:	\$25.00	\$55.00
Variable charges <sup>1</sup>		
\$.10/KWH:	<u>\$100.00</u>	<u>\$82.00</u>
Total variable:	\$100.00	\$82.00
Total charges before taxes	\$125.00	\$137.00

---

<sup>1</sup> Variable charges are based on 1,000 KWH for non-solar and a net of 820 KWH for those with solar

## APPLICABLE LAW

### Sales and Use Tax

Unless a specific exemption applies<sup>2</sup>, s. 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<sup>3</sup> 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 4.35 percent. *See* Section 212.05(1)(e)1.c, F.S.

It should be noted, that sales of electricity to residential customers is specifically exempt from sales and use tax under the provisions of s. 212.08(7)(j), F.S.

### 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<sup>4</sup> for utility services<sup>5</sup>. The rate applied to utility services is 2.5 percent. [Emphasis supplied]

## REQUESTED ADVISEMENT & DETERMINATION

1. Are the Block charges subject to sales tax, and if so is it the general sales tax at a rate of 6% or the 4.35% sales tax on electricity.

The Block charge is a part of a utility bill, and is a component, which represents a charge for electrical power or energy to a customer. The sales tax rate for charges for electrical power or energy is 4.35%. For the sample bills, presented, Florida sales and use tax should be charged at the rate of 4.35%. *See* s. 212.05(1)(e)1.c, F.S.

<sup>2</sup> The Department must point out that while taxing statutes are strictly construed against the taxing authority, statutes that grant an exemption are strictly construed against the taxpayer. *See Asphalt Pavers v. Dept. of Revenue*, 584 So.2d 55 (Fla. 1<sup>st</sup> DCA 1991), at 57 (citing the rule that exemptions from tax are strictly construed against the taxpayer, with any ambiguity resolved in favor of the administrative agency); *State ex rel. Szabo Food Services Inc. v. Dickinson*, 286 So.2d 529 (Fla. 1973) ("Exemptions to taxing statutes are special favors granted by the Legislature and are to be strictly construed against the taxpayer."). *See also, United States Gypsum Co. v. Green*, 110 So.2d 409 (Fla. 1959) (also stating that exemptions from tax are strictly construed against the taxpayer) and *Wanda Marine Corp. v. Dep't of Revenue*, 305 So.2d 65, 69 (Fla. 1<sup>st</sup> DCA 1975).

<sup>3</sup> Tangible personal property means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy. *See* s. 212.02(19), F.S.

<sup>4</sup> "Distribution company" means "any person owning or operating local electric or natural or manufactured gas utility distribution facilities within this state for the transmission, delivery, and sale of electricity or natural or manufactured gas. The term does not include natural gas transmission companies that are subject to the jurisdiction of the Federal Energy Regulatory Commission." *See* s. 203.012(1), F.S.

<sup>5</sup> "Utility service" means "electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas. This subsection does not broaden the definition of utility service to include separately stated charges for tangible personal property or services which are not charges for the electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas." *See* s. 203.012(3), F.S.

2. Are the Block charges subject to the gross receipts taxes?

Yes. The Block charges are subject to Florida gross receipts tax for utility services. The gross receipts tax is imposed on the total amount of gross receipts received by the utility provider for electrical power or energy; therefore, the Block charge referenced in the above sample bills is subject to the gross receipts tax. *See* s. 203.01, F.S.

3. Whether the KWH credits for the solar electricity reduce the tax base for purposes of the sales and gross receipts taxes?

The KWH credits, for the solar electricity, identified on sample bill do reduce the tax base for both gross receipts tax and sales tax.

The calculation of the gross receipts tax is based on the total amount received by the utility provider for the electrical power or energy. *See* s. 203.01(1)(c)1., F.S.

The calculation for sales tax is based upon the sales price<sup>6</sup> charged, by the utility provider to the customer, for the electrical power or energy, absent any specific exemptions. *See* s. 212.05, F.S.

For more information concerning all of the taxes administered by the Department of Revenue, please refer to the Department's Internet site at:

[www.floridarevenue.com](http://www.floridarevenue.com)

This response constitutes a Technical Assistance Advisement under s. 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 s. 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.

---

<sup>6</sup> "Sales price" means, in part, the total amount paid for tangible personal property, including any services that are a part of the sale. *See* s. 212.02(16), F.S.

You are further advised that this response and 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 s. 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 15 days of the date of this letter.

Kind Regards,

*Alan R. Fulton*

Alan R. Fulton  
Tax Law Specialist  
Technical Assistance & Dispute Resolution  
850-717-6735

ARF\tadrstaff  
Record ID: 13751