

# Texas Tax Information for Retail Sellers of Electricity

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## General Information

This notice 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 Comptroller 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 §182.021 defines a “utility company” as a company 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 §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.

## 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 one percent (0.001667) of the electric utility’s, retail electric provider’s or electric cooperative’s gross receipts from rates charged to the ultimate consumer in this state.

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

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Utilities Code §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 §31.002(17), a “retail electric provider” is defined as a company that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

Utilities Code §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 business in the state of 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, retail electric providers 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 “reim-

bursement” of the tax or assessment. 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 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

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

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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 Refund 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, retail electric providers, 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 retail electric customer, not on the company providing the electricity. The tax is collected by the company on behalf of the State and remitted to the Texas

Comptroller of Public Accounts. The total combined rate for state and local sales tax may not exceed 8.25 percent. Sales tax charges should be separately stated on the customer's electric bill.

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 state sales tax. Complete state sales tax information is available at: <http://window.state.tx.us/taxinfo/sales/>.

### Local Sales Tax

Residential use of electricity is exempt from county, transit (MTA/CTD) and special purpose district (SPD) sales tax, and from city sales tax unless the city has voted to retain or reimpose the tax on residential use. Local tax rates vary, but the maximum combined state and local sales tax rate for any location in the state is 8.25 percent. City, MTA/CTD, SPD and county sales taxes are imposed under Texas Tax Code Chapters 321-323; related statutes include Tax Code Chapters 324, 325 and 327, and Texas Transportation Code Chapters 451-453 and 460.

A list of cities that impose sales tax on residential use of electricity is provided on the Comptroller's Web site at [www.window.state.tx.us/taxinfo/utility/reflist.html](http://www.window.state.tx.us/taxinfo/utility/reflist.html).

City sales tax is applicable only if the electricity is delivered to a meter that is located within

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

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the boundaries of an incorporated city. To determine or verify that a customer's location is within a particular city, the utility company should contact that city.

Local sales tax rate information is available at [www.window.state.tx.us/taxinfo/local/](http://www.window.state.tx.us/taxinfo/local/).

## Sales Tax Exemptions for Electricity

Tax Code §151.317 provides that electricity is exempt from sales tax when sold for these purposes:

- residential use, except in certain cities as noted above;
- use in powering equipment exempt under §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 §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 §151.314(c-2);
- use directly in exploring for, producing or transporting a material extracted from the earth;
- 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.

In addition to the usage exemptions, Tax Code §151.309 exempts the following governmental entities 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 §151.310 are also exempt from the payment of sales tax.

## Taxability of Component Charges For Sales Tax Purposes

When a company sells taxable electricity, the company may bill its customers a lump sum 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 company should collect sales tax, if applicable, 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.

## Predominant Use

When a company sells electricity that is used during a regular monthly billing period for both exempt and taxable purposes and is measured under a single meter, the electricity is either totally exempt or totally taxable based on the predominant use of the electricity measured by that meter. Comptroller administrative rule 34 TAC §3.295 provides the guidelines under which a customer may establish predominant use, and thus the taxability, of such electricity.

*Residential use of electricity is exempt from state sales tax.*

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## 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 Chg		
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	
<b>11 Subtotal Energy Charges</b>	<b>166,594.31</b>	<b>3,698.14</b>
<i>Subtotal for Reimbursement Calculation (Item 11)</i>		
	<i>166,594.31</i>	
12 MGRT Reimb (\$166,594.31 x .01997)	3,326.89	
13 PUCA Reimb (\$166,594.31 x .001667)	277.71	
<b>14 Subtotal Reimbursement Charges</b>	<b>3,604.60</b>	
<i>Subtotal for Sales Tax Calculation (Items 11a + 14)</i>		
	<i>170,198.91</i>	
15 Sales Tax-City (\$170,198.91 x .01)	1,701.99	*1,701.99 <sup>1</sup>
16 Sales Tax-MTA (\$170,198.91 x .01)	1,701.99	Or 0.00 <sup>2</sup>
17 Sales Tax-State (\$170,198.91 x .0625)	10,637.43	Or *0.00 <sup>3</sup>
<b>18 Subtotal State &amp; Local Sales Tax</b>	<b>14,041.41</b>	Or *1,701.99
<b>19 Total Bill (Items 11a + 11b + 14 + 18)</b>	<b>187,938.46</b>	Or *175,599.04
	<i>*(If electricity was sold for residential use)</i>	

*Electricity delivered through a single meter for both taxable and exempt usage is either totally taxable or totally exempt from sales tax based on the predominant use of the electricity.*

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<sup>1</sup> City imposes sales tax on electricity sold for residential use

<sup>2</sup> Not applicable to electricity sold for residential use.

<sup>3</sup> Electricity sold for residential use is exempt from state sales tax

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To qualify for sales tax exemption, the customer must have performed a utility study showing that the predominant use of the electricity was for an exempt purpose.

## Sales Tax Refunds

When a company collects a 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 of Public Accounts, and the company subsequently refunds the error tax to the customer, the company may file a claim for refund with the Comptroller's office 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 Comptroller administrative rule 34 TAC §3.325.

## For More Information

For more information regarding gross receipts tax, the PUC assessment and state and local sales tax, visit the Texas Taxes page of Window on State Government Web site at [www.window.state.tx.us/taxes](http://www.window.state.tx.us/taxes).

*Sales tax collected in error by an electric retailer must either be refunded to the customer or sent to the state.*

## We're Here To Help! *Call Toll-Free!*

If you have questions or need information on a specific tax, please call our toll-free numbers:

### (800) 252-5555

911 Emergency Service/Equalization Surcharge  
Automotive Oil Fee  
Battery Fee  
Boat and Boat Motor Sales Tax  
Customs Broker  
Fireworks Tax  
Mixed Beverage Tax  
Off-Road, Heavy-Duty Diesel Equipment Surcharge  
Oyster Fee  
Sales and Use Taxes  
Telecommunications Infrastructure Fund

### (800) 531-5441

Cement Tax  
Inheritance Tax  
Local Revenue  
Miscellaneous Gross Receipts Taxes  
Oil Well Servicing Tax  
Sulphur Tax

### (800) 531-5441, ext. 3-3630

WebFile Help

### (800) 252-1381

Bank Franchise  
Franchise Tax

### (800) 252-7875

Spanish

### (800) 531-1441

Fax on Demand (Most frequently requested Sales and Franchise tax forms)

### (800) 252-1382

Clean Vehicle Incentive Program  
Manufactured Housing Tax  
Motor Vehicle Sales Surcharge,  
Rental and Seller Financed Sales Tax  
Motor Vehicle Registration Surcharge

### (800) 252-1383

Fuels Tax  
IFTA  
LG Decals  
Petroleum Products Delivery Fee  
School Fund Benefit Fee

### (800) 252-1384

Coastal Protection  
Crude Oil Production Tax  
Natural Gas Production Tax

### (800) 252-1387

Insurance Tax

### (800) 252-1385

Coin Operated Machine Tax  
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### (800) 252-1386

Certificates of Account Status/Good Standing  
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