

AUDITOR OF STATE BULLETIN 2001-011

NOVEMBER 8, 2001

Also see related
guidance and audit
tests in OCS Step
1-22

TO: ALL COUNTY AUDITORS/TREASURERS
ALL CITY AUDITORS, FINANCE DIRECTORS & TREASURERS
ALL VILLAGE FISCAL OFFICERS
ALL TOWNSHIP CLERKS
ALL INDEPENDENT PUBLIC ACCOUNTANTS
ALL SCHOOL DISTRICT TREASURERS
ALL JOINT VOCATIONAL SCHOOL DISTRICT TREASURERS
ALL LIBRARY CLERKS/TREASURERS

SUBJECT: ELECTRIC DEREGULATION KILOWATT-HOUR (kWh) TAX
Senate Bill 3, as amended by Senate Bill 287, both 123rd General Assembly
Also amended by House Bill 94, 124th General Assembly

Electric Deregulation

Electric deregulation took place January 1, 2001. Under prior law, an electric company's taxable production equipment was assessed at 100% of true value, while all of its other taxable property was assessed at 88% of true value. This legislation provides the assessment rate for the taxable transmission and distribution property of an electric company remains at 88% of true value, but all other taxable property of the electric company is now assessed at 25% of true value.

Prior law assessed all taxable property of a rural electric company¹ at 50% of true value. This legislation provides the assessment rate for taxable transmission and distribution property of a rural electric company remains at 50% of true value, but all other taxable property of a rural electric company is now assessed at 25% of true value.

To help offset loss of revenue, for the purpose of raising revenue for public education and state and local government operations, an excise tax was levied and imposed on electric distribution companies² for all electricity distributed by such company beginning with the measurement period that includes May 1, 2001, at the following rates per kilowatt hour (kWh) of electricity distributed in a thirty-day period by the company through a “meter of an end user in this state”³

¹“Rural electric company” is defined as any nonprofit corporation, organization, association, or cooperative engaged in the business of supplying electricity to its members or persons owning an interest therein in an area the major portion of which is rural.

²“Electric distribution company” is defined by the act as either 1)a person, **including a political subdivision of the state**, that distributes electricity through a meter of an end user in this state or to an unmetered location in this state (this includes a municipal electric utility), or 2)the end user of electricity in Ohio, if the end user obtains electricity that is not distributed or transmitted to an end user by an electric distribution company that is required to remit the kWh tax. An electric distribution company does not include the end user of electricity in Ohio who self-generates electricity that is used directly by the end user on the same site that the electricity is generated.

³ The “meter of an end user in this state” means the last meter used to measure the kWh distributed by an electric distribution company to a location in this state, or the last meter located outside of this state that is used to measure the kWh consumed at a location in this state.

Kilowatt Hours (kWh) Consumed	Rate per kWh
0-2000	\$0.00465
2001-15,000	\$0.00419
15,000 +	\$0.00363

The tax for distribution for other than a 30-day period is calculated by dividing the days in the measurement period into the total kWh measured during the measurement period to obtain a daily average usage. The tax must be determined by obtaining the sum of (1), (2), and (3) below and multiplying that amount by the number of days in the measurement period:

- (1) Multiplying \$0.00465 per kWh for the first 67 kWh distributed using a daily average
- (2) Multiplying \$0.00419 for the next 68 to 500 kWh distributed using a daily average
- (3) Multiplying \$0.00363 for the remaining kWh distributed using a daily average.

Example A

For example, assume A. J. Twain used 200,000 kWh during May 2001. To calculate the tax owed by the electric distribution company, divide the usage by the number of days to obtain daily average use. (200,000/31=6451.61/day) Follow the chart above and assess \$.00465 on the first 67 kWh (2000/30=67), \$.00419 on the next 433 kWh (15000/30 minus 67=433), and \$.00363 on the remaining 5951.61 kWh.

kWh/ 30 days	kWh/day	Rate	Tax
First 2000	67	\$0.00465	\$0.31155
2001-15,000	433	\$0.00419	\$1.81427
+15,000	5951.61	\$0.00363	\$21.60434
Total	6451.61	N/A	\$23.73016

Daily tax \$23.73016*31 days=\$735.63 kWh tax paid based on A. J. Twain's usage for May 2001.

Large Users

A self-assessing option exists for large users consuming more than 45 million kWh annually, allowing for a rate of \$.00075 per kWh (capped at 504 million kWh) plus 4% of the total price of electricity delivered. These self-assessing customers must annually register with the Department of Taxation and pay a five hundred-dollar annual fee to the State. A self-assessing customer in a municipal electric community is required to remit the kWh tax directly to the community.

According to Ohio Rev. Code Section 5727.81(C)(2) the rate of this self-assessed tax is now \$.00257 per kWh for the first 500 million kWh and \$.001832 per kWh for each kWh in excess of 500 million kWh.

Municipal Electric Systems

Municipal electric systems are required to pay the same new tiered kWh usage tax as other distribution utilities. If the electric distribution company required to pay the tax imposed by section 5727.81 of the Ohio Revised Code is a municipal electric utility, it **may** retain in its General Fund⁴ that portion of the tax on the kilowatt hours distributed to end users located **within** the boundaries of the municipal corporation (including self-assessing customers). However, the amount of the tax associated with inside customers **must** be allocated to the community's general fund and the community **may** retain the money in the General Fund. If a Municipal Electric System fails to allocate the kWh tax to the General Fund, the Auditor of State will issue a Finding for Adjustment against the Electric Fund and in favor of the General Fund.

The municipal electric utility **must** make payment to the state, by the 20th of the next month following billing, on the kilowatt hours distributed to end users located **outside** the boundaries of the municipal corporation. Note: This legislation did not change the rule that municipal electric systems are restricted to making no more than one-third of their total sales outside city or village limits.

The municipal electric utility must levy and impose the tax to all locations except for the facility where the electricity is generated, whether they bill that location or not. For example, a City would levy and impose the tax on other City locations such as the sewer plant, fire station, and even the usage associated with street lights.

Assumptions Made for Examples B, C, and D

These examples illustrate the recommended accounting treatment to account for the kWh tax required to be levied and imposed by a municipal electric distribution company. These examples have been simplified for the purpose of this bulletin. The tax imposed is based on usage by end users and assumes all users have used the same kilowatt hours of electricity, therefore, a uniform percentage allocation can be made between inside and outside customers. Also, the examples assume the municipal electric system passed the tax onto each customer. In practice, the tax imposed will have to be calculated based on the usage from each meter of an end user according to the tiered rate structure, as illustrated in Example A.

Example B

Cash Basis Example-Village

Assume a Village's obligation equals \$10,000 in kWh tax revenue and 80% of the customers are within the Village's boundaries. Therefore, the Village must allocate and may retain 80% or \$8,000 in their general fund and must remit 20% or \$2,000 to the Treasurer of State⁵.

↑
HB 33 (135th GA), effective 10/3/23, modified this requirement from "Treasurer of State" to "electronically."

⁴We interpret community general fund to mean the money should be recorded as revenue in the general fund, but must first be received by the electric fund (enterprise fund type) and allocated to the general fund.

⁵Payment required to be remitted to Treasurer of State. However, beginning January 1, 2003, the electric distribution company shall pay the tax to the Tax Commissioner in accordance with section 5727.82 of the Ohio Revised Code, unless required to remit each tax payment by electronic funds transfer to the Treasurer of State in accordance with section 5727.83 of the Ohio Revised Code.

↑
HB 33 (135th GA), effective 10/3/23, modified this requirement from "Treasurer of State" to "electronically."

Example B (continued)

Fund	Line	Debit	Credit
Utility	Cash	\$10,000	
Utility	Other Local Tax Revenue (Village Code 190)		\$10,000
To record “proceeds” of \$10,000 to the Utility Fund for kWh tax			

General	Cash	\$8,000	
General	Other Local Tax Revenue (Village Code 190)		\$8,000
Utility	Other Local Tax Revenue (Village Code 190)	8,000	
Utility	Excise Tax Expense	2,000	
Utility	Cash		10,000
To allocate the Government's 80% share to the General Fund and remit 20% to the State			

Example C

Generally Accepted Accounting Principles (GAAP) Basis Example-City

Assume a City's billing cycle ends prior to year end and the obligation for kWh tax is \$25,000. The City passes the tax onto its customers and nothing has been collected prior to year end. \$21,000 of the tax is associated with customers within the city limits and \$4,000 associated with customers outside the city limits.

Fund	Line	Debit	Credit
Utility	Excise Taxes Receivable	\$25,000	
Utility	Due to General Fund		\$21,000
Utility	Intergovernmental Payable		\$4,000
To accrue the proceeds of \$25,000 to the Utility Fund for kWh tax billed but not collected at year end and show the obligation to the state.			

General	Due from Utility Fund	\$21,000	
General	Locally Levied Tax Revenue		\$21,000
To accrue the Government's share owed to the general fund.			

Note: A GAAP basis government shall follow the same accounting guidance as described in Example B above to record kWh tax activity for transactions occurring during the year.

Example D

Assume the same facts as the cash basis example above (Example B); however, the Government's kWh tax levied and imposed equals \$10,000, however the government only collects \$9,000 from their customers (\$1,000 is uncollectible as of the 20th). The Government would still be required to remit 20% of the billing or \$2,000 to the State, since there is no credit given for uncollectibles. Additionally, the Government would also be required to allocate \$8,000 to the general fund, since the law requires the kWh tax to be allocated whether collected or not. All electricity delivered is subject to the kWh tax (including streetlights, village hall, water plant) whether or not an electric bill is generated.

Record-keeping Requirements

Every person liable for the kWh tax must keep complete and accurate records of all electric distributions and other records as required by the Tax Commissioner. The records must be preserved for four years after the return for the taxes for which the records pertain is due or filed, whichever is later. The records must be available for inspection by the Tax Commissioner or the Commissioner's authorized agent, upon request of the Commissioner or agent.

Mandatory Registration with the Tax Commissioner

The act prohibits a person from distributing electricity to a meter of an end user in this state if the person (Municipal Government) is not registered with the Tax Commissioner as an electric distribution company before May 1, 2001. Each person required to register must do so prior to distributing electricity.

Accounting Treatment-State

\$552 million of kilowatt-hour tax is projected to be collected each year by the state from electric distribution companies. 37% of the tax is to be deposited in Property Tax Replacement Funds created by the legislation, to be distributed to school districts and other local governments to replace tax revenues lost due to the reduction in the assessment rate for tangible personal property. A Local Government Property Tax Replacement Fund is to receive 11.1% of the total tax and the School District Property Tax Replacement Fund will receive 25.9% of the total tax.

The remaining 63% of the tax is to be split among the State's General Revenue Fund (GRF-59.976%), the Local Government Fund (LGF-2.646%), and the Local Government Revenue Assistance Fund (LGRAF-.378%). If the \$552 million annual target is not met, in fiscal years 2002 to 2006, the GRF share is reduced in order to credit the LGF and LGRAF their share. Beginning in fiscal year 2007, if the \$552 million annual target is not met, the GRF share is reduced in order to credit all the other funds their proportionate share.

Applicability to County Auditors/Treasurers

Not later than the thirty-first day of December of 2001 through 2005, the tax commissioner shall certify to each county auditor the tax levy loss for each school district, joint vocational school district, and local taxing unit in the county. Not later than thirty-first day of January 2002 through 2011, the county auditor shall determine the administrative fee loss (due to tax value loss) for the county and apportion that loss ratably among the school districts, joint vocational school districts, and local taxing units on the basis of the tax levy losses certified.

For years 2002 to 2006, the administrative fee loss is determined by *multiplying* the fixed-rate levy loss⁶ and fixed-sum levy loss⁷ determined for all taxing districts in the County by .9659%, if total taxes collected in the county in tax year 1999 exceeded \$150,000,000 or 1.1159% if total taxes collected in the county in tax year 1999 were \$150,000,000 or less.

For years 2007 through 2011, the administrative fee loss is determined by *subtracting from* the dollar amount of administrative fees collected in the county in tax year 1999, the dollar amount of administrative fees collected in the county in the current calendar year.

On or before each of the days prescribed for the settlements of property tax replacement payments in the years 2002 through 2011, the county treasurer shall deduct one-half of the amount apportioned to each school district, joint vocational school district, and local taxing unit from the portions of revenue payable to them. Also, on or before each of the days prescribed for the settlements of property tax replacement payments in the years 2002 through 2011, the county auditor shall cause an amount to be deposited equal to an amount equal to one-half of the amount of administrative fee loss in the same funds as if allowed as administrative fees. After payment of the administrative fee losses through August 10, 2011, all such payments end.

Example for Years 2002 to 2006

Assume the tax commissioner certifies to the county auditor the sum of the fixed-rate levy loss and fixed-sum levy loss is \$5,000,000 and total taxes collected by the county in 1999 were \$100,000,000.

Administrative fee loss is $\$5,000,000 \times 1.1159\% = \$55,795$, split between the County Treasurer and the County Auditor (\$27,897.50 each).

Property Tax Replacement Payments

As previously discussed, 37% of the kWh tax is to be collected at the state level for distribution to school districts and other local governments for property tax replacement funds. The Department of Education shall pay to each school district their share of school district property tax replacement funds. The Department of Education shall report to each school district the apportionment of the payments among the school district's funds based on the certifications from the tax commissioner.

The county treasurer shall distribute amounts paid from the tax commissioner to the proper local taxing unit as if they had been levied and collected as taxes, and the local taxing unit shall apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes. Amounts distributed in excess shall be credited to the general fund of the local taxing unit that receives them. To distribute these payments, Counties should establish an undivided agency fund to record and distribute these monies. (Note: No Auditor of State permission is required to establish this fund, just a resolution by the Commissioners.)

GASB 84 eliminated agency funds. Most often existing agency funds will become custodial funds; however, GASB 84 criteria should be evaluated for proper fund classification. Unlike agency funds, GASB 84 requires financial statements to be presented to report custodial fund activity. See AOS Bulletin 2020-003.

⁶“Fixed-rate levy loss” is determined by the tax commissioner for each school district, joint vocational school district, and local taxing unit. A fixed-rate levy is defined as any tax levied on property other than a fixed-sum levy.

⁷ “Fixed-sum levy loss” is determined by the tax commissioner for each school district, joint vocational school district, and local taxing unit. A fixed-sum levy is defined as a tax levied on property at whatever rate is required to produce a specified amount of tax money or levied in excess of the ten-mill limitation to pay debt charges, including school district emergency levies.

School Districts and other Governments shall use the following receipt codes to receipt property tax replacement monies into their proper fund (not all entities have a uniform chart of accounts, therefore, use the code that your government has established that most closely resembles these listed below):

Entity Type	Receipt Code	Receipt Description
School District	3190	Other Unrestricted Grants in Aid
Library	221	Unrestricted Grants in Aid
Township	539	Other State Receipts
Villages	290	Other State Shared Taxes and Permits

Governmental Aggregation

Senate Bill 3 allows certain political subdivisions to act as aggregators (in essence, purchasing agents) for groups of consumers within their jurisdictions. Specifically, it authorizes the legislative authority of a municipal corporation through the adoption of an ordinance, or the board of township trustees of a township or the board of county commissioners of a county through the adoption of a resolution, to aggregate, on or after the starting date of competitive retail electric service, the retail electric loads centers⁸ located respectively, within the municipal corporation, township, or unincorporated area of the county, except to the extent such aggregation is otherwise prohibited by the Certified Territories Law or other Ohio law.

A governmental aggregator is **not** a public utility engaging in the wholesale purchase and resale of electricity, and provision of the aggregated service is not a wholesale utility transaction.⁹ A governmental aggregator must be subject to supervision and regulation by the Public Utilities Commission of Ohio (PUCO) only to the extent of any **competitive** retail electric service it provides.

Exemptions to the kWh tax

The law exempts the federal government, end users located at a federal facility that enrich uranium, a qualified regeneration meter, and "qualified end users"¹⁰, an end user if the electricity is generated by an electric generation facility that is primarily dedicated to providing electricity to the electric consuming facilities of the end user¹¹, and electricity generated by a self-generator¹² from paying the kilowatt-hour tax.

Effective Date

The kWh tax is first applicable to electricity distributed by such company beginning with the measurement period that includes May 1, 2001 and is due on or before the 20th of the month following usage (i.e. the first payment was due June 20, 2001) to the State.

⁸"Electric load center" has the same meaning as in the Certified Territories Law: all electric consuming facilities of any type of character owned, occupied, controlled or used by a person at a single location, which facilities have been, are, or will be connected to and served at a metered point of delivery and to which electric service has been, is, or will be rendered

⁹ We interpret this to mean that a Governmental Aggregator is **not** considered an electric distribution company (they are just a purchasing agent), therefore, they are **not** required to pay the kWh tax.

¹⁰ The "qualified end user" exemption provided under 5727.81(D)(1)(d) applies to the manufacturing location where the qualified end user uses electricity in a chlor-alkali manufacturing process or where means an end user of electricity that uses more than three million kilowatt hours of electricity at one manufacturing location in this state for a calendar day for use in a qualifying manufacturing process. Qualifying manufacturing process means the performance of an electrochemical reaction in which electrons from direct current electricity remain a part of the product being manufactured.

¹¹ The exemption provided under 5727.81(D)(1)(e) applies to electric-consuming facilities that are sized so as to not exceed one hundred percent of the customer-generator's annual requirements for electric energy, that is physically interconnected and integrated with the electric consuming facilities of the end user, and that is located on the same property on which the end user's electric-consuming facilities are situated or on property that is contiguous to the property on which the end user's electric-consuming facilities are situated.

Other Considerations

- Distribution utilities are eventually required to remit the tax monthly via electronic fund transfer, unless the state treasurer agrees to allow an exception
- Corporate franchise tax will be imposed on for-profit electric companies effective January 1, 2002
- For-profit electric companies and combined companies are subject to municipal income taxes beginning January 1, 2002
- The gross receipts tax on electric companies has been eliminated
- Sales of electricity will continue to be exempt from the sales and use tax, but changes the exemption to reflect a wider variety of sales of electricity-related personal property and services that qualify for the exemption
- Even if a municipal electric system has no sales outside of your community's boundaries, you are still required to file a monthly report

Audit Considerations

The 2001 AOS Ohio Compliance Supplement (Section ~~7-43~~) has been updated to summarize the major requirements of this bulletin and the suggested audit procedures associated with those requirements.

Questions

Questions regarding the implementation of this Bulletin may be directed to the Accounting and Auditing Support Division of the Auditor of State's Office at (800) 282-0370.

Now included in OCS step 1-22.