



QUESTIONS:

1. Whether Taxpayer's sales of electricity directly to electric vehicle owners are subject to sales tax.
2. Whether Taxpayer's sales of electricity directly to electric vehicle owners are subject to gross receipts tax.
3. Whether Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to sales tax:
 - a. when the company charges vehicle owners on a kilowatt basis,
 - b. when the company charges vehicle owners on a time basis, and/or
 - c. when the company charges vehicle owners on a flat fee basis.
4. Whether Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to gross receipts tax:
 - a. when the company charges vehicle owners on a kilowatt basis,
 - b. when the company charges vehicle owners on a time basis, and/or
 - c. when the company charges vehicle owners on a flat fee basis.

RESPONSES:

1. Taxpayer's sales of electricity directly to electric vehicle owners are subject to sales tax.
2. Taxpayer's sales of electricity directly to electric vehicle owners are subject to gross receipts tax.
3. Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to sales tax:
 - a. when the company charges vehicle owners on a kilowatt basis,
 - b. when the company charges vehicle owners on a time basis, and
 - c. when the company charges vehicle owners on a flat fee basis.

4. Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to gross receipts tax:
- a. when the company charges vehicle owners on a kilowatt basis,
 - b. when the company charges vehicle owners on a time basis, and
 - c. when the company charges vehicle owners on a flat fee basis.

February 5, 2021

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Re: Technical Assistance Advisement No. -- 21A-003
Sales and Use Tax – Electric Vehicle Charging Stations
XXXXXX ("Taxpayer")
FEI No. XXXXXX
BP No. XXXXXX
Sections 212.02, 212.05, 212.06, 203.01, 366.02, and 366.94, Florida Statutes ("F.S.")
Rules 12A-1.039, 12A-1.053, and 12B-6.0015, Florida Administrative Code ("F.A.C.")

Dear XXXXXX:

This letter is a response to your petition on behalf of XXXXXX ("Taxpayer"), dated XXXXXX for the Florida Department of Revenue's (the "Department's") issuance of a Technical Assistance Advisement ("TAA") with regards to the taxability of Taxpayer's sales of electricity directly to electric vehicle owners and Taxpayer's sales of electricity to third-party companies providing electric vehicle charging services to vehicle owners pursuant to Section 212.04(1)(d), F.S. 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, Florida Administrative Code. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

Requested Advisement

1. Whether Taxpayer's sales of electricity directly to electric vehicle owners are subject to sales tax.
2. Whether Taxpayer's sales of electricity directly to electric vehicle owners are subject to gross receipts tax.
3. Whether Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to sales tax:
 - d. when the company charges vehicle owners on a kilowatt basis,
 - e. when the company charges vehicle owners on a time basis, and/or
 - f. when the company charges vehicle owners on a flat fee basis.
4. Whether Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to gross receipts tax:
 - d. when the company charges vehicle owners on a kilowatt basis,
 - e. when the company charges vehicle owners on a time basis, and/or
 - f. when the company charges vehicle owners on a flat fee basis.

Brief Answer

5. Taxpayer's sales of electricity directly to electric vehicle owners are subject to sales tax.
6. Taxpayer's sales of electricity directly to electric vehicle owners are subject to gross receipts tax.
7. Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to sales tax:
 - d. when the company charges vehicle owners on a kilowatt basis,
 - e. when the company charges vehicle owners on a time basis, and
 - f. when the company charges vehicle owners on a flat fee basis.
8. Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to gross receipts tax:
 - d. when the company charges vehicle owners on a kilowatt basis,
 - e. when the company charges vehicle owners on a time basis, and

- f. when the company charges vehicle owners on a flat fee basis.

Facts As Provided

Taxpayer's letter provides the following in part:

XXXXXX ("Taxpayer"), a Florida utility, generates and supplies electrical power to customers across its service territory. XXXXXX

The XXXXXX tariff provides the vehicle charging stations may be accessed by any person ("User") at Taxpayer-owned stations installed at Taxpayer or Host locations. Any User must register an account with the Taxpayer's mobile application or network provider, including payment information, prior to charging the electronic vehicle.

The proposed rate for the sale of electricity is \$ XXXXXX/kWh. Charging network fees as determined by the charging station network provider may apply at certain stations. Vehicle idling fees at a rate up to of \$ XXXXXX per minute following a ten-minute grace period may apply at certain stations located in close proximity to highway corridors or other highly trafficked areas. The rates applicable to the specific station including the rate per kWh, taxes and charging network provider and idle fees will be visible to the users via the app and/or display. Users will be notified when the charging session is complete via the display located at the charging dispenser and through the Company's mobile application and will have the ability to obtain a detailed receipt of the charge session.

Additionally, Taxpayer sells electricity to third-party companies that operate electric vehicle charging stations located across Taxpayer's service territory. These vehicle charging companies may charge customers for their usage on a kilowatt basis (directly related to the electricity consumed), time basis, flat fee, or other method.

Taxpayer included with its request the following documentation:

1. XXXXXX,
2. Form DR-835, and
3. Statement of Deletions.

Taxpayer's Argument

It is Taxpayer's position that:

1. The charges for Taxpayer's sales of electricity directly to electric vehicle owners, including any applicable network provider and idle fees, provided pursuant to the pilot program tariff are subject to sales tax.
2. The charges for Taxpayer's sales of electricity directly to electric vehicle owners, including any applicable network provider and idle fees, provided pursuant to the pilot program tariff are subject to gross receipts tax.
3. The charges for Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to sales tax regardless of the methodology used to calculate the charges to the electric vehicle owners.
4. The charges for Taxpayer's sales of electricity to non-utility companies providing vehicle charging services are subject to gross receipts tax regardless of the methodology used to calculate the charges to the electric vehicle owners.

Applicable Law and Discussion

Sales Tax

Section 212.05, F.S., provides that the sale of tangible personal property is subject to tax. All sales of tangible personal property in the State of Florida are subject to tax, unless specifically exempt by Chapter 212, F.S. Section 212.02(19), F.S., defines tangible personal property as "personal property which may be seen, weighed, measured, or touched, or is in any manner perceptible to the senses, **including electric power or energy.**" (Emphasis added.) Section 212.05(1)(e)1.c., F.S., provides that the tax rate for sales of electrical power or energy is 4.35 percent."

Accordingly, Rule 12A-1.053(1)(a), F.A.C., indicates that "[t]he sale of electric power or energy **by an electric utility** is taxable. The sale of electric power or energy for use in residential households, to owners of residential models, or to licensed family day care homes by utilities who are required to pay the gross receipts tax imposed by subparagraph 203.01(1)(a)1., F.S., is exempt. Also exempt is electric power or energy sold by such utilities and used in the common areas of apartment houses, cooperatives, and condominiums, in residential facilities" (Emphasis added.)

Section 366.02(2), F.S., defines “electric utility” as “. . . any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.”

Rule 12A-1.039(1), F.A.C., declares that “[i]t is the specific legislative intent that each and every sale, use, storage, consumption, or rental is taxable, unless such sale, use, storage, consumption, or rental is specifically exempt. The exempt nature of the transaction must be established by the selling dealer.” Subparagraph (b) of this same rule provides that a sale for resale is exempt from sales and use tax when the sale complies with the requirements of such rule.

Gross Receipts Taxes

Section 203.01, F.S., imposes a tax on gross receipts from utility services that are delivered to a retail consumer in this state. Section 203.012(3), F.S., defines “utility services” as “. . . electricity for light, heat, or power . . . including transportation, delivery, transmission, and distribution of the electricity . . .” The applicable tax rate to electrical power or energy is 2.6 percent. The gross receipts tax is **levied on charges for, or the use of, electrical power or energy that is subject to sales and use tax** pursuant to ss. 212.05(1)(e)1.c., or 212.06(1), F.S. If a transaction or use is exempt from sales and/or use tax, the transaction or use is also exempt from the gross receipts tax imposed by s. 203.01, F.S. The gross receipts tax applies to charges for electrical power or energy and is due and payable at the same time as the sales and use tax.

Furthermore, s. 203.01(1)(c)1., F.S., declares that this tax “. . . shall be levied against the total amount of gross receipts received by a distribution company for its sale of utility services if the utility service is delivered to the retail consumer by a distribution company and the retail consumer pays the distribution company a charge for utility service which includes a charge for both the electricity and the transportation of electricity to the retail consumer.”

The gross receipt tax does not apply to “[t]he sale or delivery of electricity to a **public or private utility** . . . for **resale**, or as part of an electrical interchange agreement or contract between such utilities for the purpose of transferring more economically generated power . . .” (Emphasis added.) It does not apply to the wholesale sales of electric transmission service, either. Accordingly, Rule 12B-6.0015(5), F.A.C., provides, in pertinent part, that the sale, transportation, or delivery of utility services for resale is only exempt from the gross receipts tax if such sale, transportation, or delivery is documented in strict compliance with the rule. Distribution companies must obtain resale certificates from customers who purchase transportation, delivery, or utility services for resale.

Electric Vehicle Charging Stations

Pursuant to s. 366.94(1), F.S., “[t]he provision of electric vehicle charging to the public by a **nonutility is not the retail sale of electricity** for the purpose of this chapter.”

Taxpayer's sales of electricity directly to electric vehicle owners

Based on the fact provided, Taxpayer, a registered utility, intends to sell electricity directly to electric vehicle owners, through Taxpayer-owned charging stations installed at Taxpayer or Host Locations. Specifically, under the XXXXXX, Taxpayer will provide utility service directly to electric vehicle owners. None of the statutory exemptions applies to these sales; therefore, the charges for such electricity, including any applicable network provider and idle fees, provided pursuant to the pilot program tariff are subject to sales tax at the state rate of 4.35 percent. Consequently, these charges are subject to the gross receipts tax.

Taxpayer's sales of electricity to non-utility companies providing vehicle charging services

Based on the fact provided, Taxpayer, a registered utility, sells electricity to companies providing charging stations to electric vehicle owners. Most of these companies are self-described non-utilities which, pursuant to s. 366.94(1), F.S., are not selling electricity at retail when providing electric vehicle charging stations to the public. These non-utility companies are not selling electricity but providing a license to use their charging stations. None of the statutory exemptions applies to these sales; therefore, Taxpayer's sales of electricity to non-utility companies providing charging stations to vehicle owners, are subject to the sales tax at the state rate of 4.35 percent. Consequently, these sales are subject to gross receipts tax.

Conclusion

Taxpayer's sales of electricity to non-utility companies providing charging stations to electric vehicle owners are subject to both, sales and gross receipts taxes.

Taxpayer's sales of electricity directly to electric vehicle owners through Taxpayer-owned charging stations are subject to both, sales and gross receipts taxes.

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 that 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 15 days of the date of this letter.

Sincerely,

Ivonne De Feria-Molini

Ivonne De Feria-Molini
Tax Law Specialist
Technical Assistance & Dispute Resolution
Record ID: 437532