

STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
601 DELAWARE AVENUE
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 72-21

January 19, 1972

PUBLIC UTILITIES TAX

House Bill 544, as amended by House Amendment No. 1, Special Session, 126th General Assembly, approved by Governor Peterson on July 31, 1971 adds new Chapter 55 to Title 30, Delaware Code.

The bill institutes new taxes on public utilities. The tax is a 5% tax on the distributor of telephone, electricity, gas (except liquified) piped to consumer, intrastate telegraph communication, cable television utilities effective August 1, 1971.

The new tax is imposed on utility services provided or supplied on or after August 1, 1971. The utilities covered are:

- (1) Electricity for any heat, light or power use.
- (2) Gas (except liquified gas) piped from a distribution center to the consumer or user.
- (3) Intrastate telephone and telegraph communications services.
- (4) Cable television communication services.

A distributor is defined as the first person in Delaware who produces, distributes or supplies the commodities or service for sale in Delaware.

Where gas is piped inter-state into Delaware by another company and sold for distribution and sale within Delaware, it is held that the company purchasing the gas for resale is the distributor and responsible to report and pay the tax on their gross receipts from gas distribution within Delaware (Director's Ruling 71-1 dated August 31, 1971).

The tax is 5% of gross receipts received by distributor for utilities supplies. Gross receipts has been defined as total consideration received by a distributor for commodities or services sold, etc. Where the distributor is subject to regulations of the Public Service Commission to adjust the tariff of such distributor so that the tax is passed through pro rata to the distributor's customers and distributor's earnings are neither increased or decreased by such tax, it is held that the tax imposed by Section 5502 (b), Title 30, Delaware, on "Gross receipts" includes only that portion received for utilities commodities and services does not include that amount which represents the pro rata portion of tax passed through to the distributor's customers (Director's Ruling 71-5 dated August 12, 1971).

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The telephone company has been granted permission to show the tax imposed on them as a separate item on their bills.

For other utilities the tax is to be included in total charges for utilities. The distributor can adjust rates and the tax is added pro rata to the charge to the user.

Where utility rates are subject to Federal Power Commission regulation or under written contract, tax will not apply until rates are adjusted, contracts revised, or until January 1, 1974, whichever occurs first. (These are cases where municipalities or cooperatives buy power and resell).

The tax applies to utilities produced even where producer is a municipality - for example, Dover and Lewes for electricity.

The producer or distributor is not passing on a tax to the consumer but rather a rate adjustment because of increased costs which is passed on to the consumer. (Director's Ruling 71-14 dated December 15, 1971).


J. H. Kennedy
Director of Revenue

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DISTRIBUTION: B and C