

# Sales & Use Tax Rules for Electric Cooperatives Kansas Rural Electric Cooperatives Accountant's Association October 28, 2016

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# Sales and Use Tax Basics

- ▶ Sales Tax vs Use Tax
  - ▶ Online purchases
  - ▶ Leases and rentals
  - ▶ Materials on which tax has already been paid
- ▶ Tangible Personal Property (“TPP”)
  - ▶ Kansas: “Personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses”
  - ▶ Electricity defined as TPP by statute
- ▶ Taxable Services
  - ▶ Kansas: Labor to install, apply, repair, service, alter, or maintain tangible personal property

# Sales and Use Tax Basics

- ▶ Sales Tax = Tax Base \* Tax Rate
- ▶ Tax Rate
  - ▶ State, County, City
  - ▶ Destination Sourcing
- ▶ Tax Base = "purchase price"
  - ▶ Consideration paid to the seller for the item/service purchased
  - ▶ Includes cost of transportation from the place where the article was purchased to the buyer
  - ▶ No deduction allowed for the seller's costs, including the cost of any labor or other services necessary to complete the sale
  - ▶ Early payment discounts not included in tax base

# Sales and Use Tax Basics

- ▶ Exemption certificates presented to vendors
- ▶ Exemption certificates presented by customers
  - ▶ Ex: Electricity exemption (Form ST-28B)
  - ▶ Exempt use (manufacturing, agricultural, etc.)
  - ▶ Exempt based on type of entity
  - ▶ Verify identity of person or entity and maintain fully completed certificate for 3 years

# Purchases – Labor

- ▶ General rule: labor to install, apply, repair, service, alter, or maintain TPP is taxable
- ▶ Labor related to the original construction of a building or facility is not taxable
  - ▶ Includes finishing of a previously unfinished portion of a building or facility and adding a room or entire floor to a building or facility

# Purchases – Labor

- ▶ Exemption for “original construction” also includes a disaster provision
- ▶ Restoration or replacement of buildings, facilities, and utility structures damaged by natural disasters and other qualifying causes = Non-Taxable Labor
- ▶ Qualifying causes: fire, flood, tornado, lightning, explosion, windstorm, ice loading and attendant winds, terrorism, or earthquake

# Purchases – Labor

- ▶ How do these rules apply to the buildings and facilities operated by Electric Cooperatives?
  - ▶ “Building”: enclosures housing employees, machinery, equipment, or other property
    - ▶ Generation plants
  - ▶ “Facility”: mills, plants, refineries, wells, feed lots, or any conveyance, transmissions, or distribution line of any cooperative
    - ▶ T & D Lines
  - ▶ “Utility structure”: transmission and distribution lines owned by independent transmission company or cooperative
  - ▶ Substations fall outside the original construction exemptions

# Purchases – Labor

- ▶ Non-taxable labor performed on cooperative property
  - ▶ Original construction of generation plants and transmission and distribution lines
  - ▶ Restoration and replacement of generation plants and transmission and distribution lines *when damaged by qualifying cause*



# Purchases – Labor

- ▶ Taxable labor performed on cooperative property
  - ▶ Repair, restoration, maintenance to all property when not damaged by qualifying cause
  - ▶ Original construction of substations
  - ▶ Line upgrades: reconductoring, single phase to three phase, under build to new line
  - ▶ Pole change-out work
  - ▶ Electric plant removal (e.g., demo of plant)
  - ▶ Application of chemicals for vegetation control
  - ▶ Installation of automated metering equipment

# Purchases – Non-Taxable Services

- ▶ Advertising - Newspaper and Yellow Pages
- ▶ Advertising Services
- ▶ Billing services including postage used
- ▶ Customer service/payment center contracts
- ▶ Excavation
- ▶ Janitorial Services
- ▶ Staking and Engineering Services
- ▶ Testing of Oil Circuit Reclosers
- ▶ Testing of Personal Protective Equipment
- ▶ Training Fees
- ▶ Tree Trimming & Chipping
- ▶ Truck Inspections
- ▶ Underground locating

# Purchases – Taxable TPP

- ▶ Materials and Supplies
- ▶ Explosives
- ▶ Meals and Incidentals
- ▶ Motor Vehicles
- ▶ Newspapers, Magazines, and other Publications

# Purchases – Equipment Rentals

- ▶ Generally, equipment rentals/leases are taxable as full purchases
  - ▶ Tax base = periodic rental payment
  - ▶ Includes setup, inspection, or maintenance services that are performed on the leased equipment itself by the lessor or other party
- ▶ Equipment with Operator
  - ▶ Rental of equipment that includes an operator is treated as a service if operator uses the equipment to perform services
  - ▶ Follow taxability rule for whatever service is provided by operator

# Purchases – Machinery & Equipment

- ▶ M&E used in generation of electricity = Exempt
  - ▶ Generation plant M&E
- ▶ M&E used in transmission and distribution of electricity = Taxable
  - ▶ Materials and Supplies = Taxable

# Sales – Introduction

- ▶ Concepts to keep in mind
  - ▶ Agricultural Use vs Consumed in Production
  - ▶ Intracompany transactions
  - ▶ Non-exempt use by otherwise exempt customers
  - ▶ Management of Exemption Certificates

# Sales – Electricity

- ▶ Generally, sales of electricity to commercial customers are taxable
- ▶ Some charges billed to customer are taxed at same rate as the underlying service electric service:
  - ▶ Late payment penalties
  - ▶ Facility/customer charges
  - ▶ Franchise fees
  - ▶ Collection, connection, disconnection, reconnection and meter reconciliation fees
  - ▶ Credit card fees
  - ▶ Idle service charges
- ▶ Non-taxable charges billed to customer:
  - ▶ Returned check charge
  - ▶ Medical insurance premiums included on electric bill

# Sales – Exempt Uses for Electricity

- ▶ Manufacturing Use: complete exemption
  - ▶ Includes facility control rooms of manufacturing facilities
  - ▶ Commercial grain handling (e.g., elevators)
  - ▶ Irrigation pumping motors
  - ▶ Irrigation pivot drive motors
- ▶ Residential Use: exempt from state tax only
  - ▶ Landlord's name vs Tenant's name
- ▶ Agricultural Use: exempt from state tax only
  - ▶ Pumping animal waste sludge (feed lot)
  - ▶ Sprinkler for dust control
  - ▶ Stock tank water heaters



# Sales – Exempt Uses for Electricity

- ▶ Severance of Oil and Gas: complete exemption
  - ▶ Saltwater injection and removal pumps
  - ▶ Cathodic protection
  - ▶ Compressor stations
    - ▶ Except office use (exempt % shown on certificate)

# Sales – Taxable Uses for Electricity

- ▶ Generally, all commercial uses are taxable
  - ▶ Facility office
  - ▶ Grocery store cooler/freezer
  - ▶ Veterinarian facilities at feedlot

# Sales – Exempt Entities

- ▶ Electric service (and otherwise taxable charges related to such service) are not taxable if an entity provides a valid exemption certificate
  - ▶ U.S. Government
  - ▶ Kansas and its political subdivisions
  - ▶ Schools
  - ▶ Nonprofit hospitals
  - ▶ 501(c)(3) organizations specifically listed by law

# Sales – Other Taxable Charges

- ▶ Equipment rental or leasing (Internet CPE, surge protection)
- ▶ Scrap and salvage sales
  - ▶ Unless to dealer who will resell
- ▶ Service calls to perform repair or maintenance of internet service

# Sales – Other Non-Taxable Charges

- ▶ Customer service/payment center for other companies
- ▶ Line clearance for house moves

# Mutual Aid

- ▶ Remember: most likely non-taxable because the purpose is to repair or restore damage to T & D lines by qualifying causes
- ▶ If providing mutual aid outside Kansas, consult the local DOR for requirements for out-of-state contractors before performing work or issuing an invoice

# Questions?

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