

PMEA March 2020

Sale for Resale Exemption/Gross Receipts Tax

- Generally, borough electrics purchase wholesale power from electric suppliers and then resell that power to borough retail customers. This structure allows boroughs to negotiate favorable, long-term power purchase agreements with suppliers and in turn to provide service to borough residents at favorable rates.
- The Department of Revenue has recently concluded that Energy Power Investment Company, LLC (“EPIC”), a wholesale electric supplier to a PMEA member borough, Chambersburg, must pay Gross Receipts Tax (“GRT”) on its sales of electricity to that borough for resale and should have paid that tax all along.
- GRT is a tax imposed upon an electric light company’s gross receipts derived from its sale of power to boroughs, among others. The Tax Code says that GRT does not apply to a power supplier’s sales for resale of electric energy to certain entities, including political subdivisions, that are “subject to [GRT].” This is commonly called the “sales for resale exemption.” The Tax Code also provides that boroughs are exempt from paying GRT on sales to their retail customers within their borders.
- Until recently, boroughs and their wholesale suppliers understood that their transactions were subject to the sales for resale exemption from GRT, meaning that neither boroughs nor their suppliers would incur costs related to that tax.
- From 2006 through 2015, the Department of Revenue routinely concluded that sales to municipality owned electric distribution systems were exempt sales for resale.
- Beginning in 2015, however, the Department’s views apparently changed. The Department began to assess GRT on a few wholesale suppliers. Its theory was ostensibly that the sales were no longer exempt because the municipalities that bought and resold the power did not actually pay the tax in the end. In short, the Department’s view is that one of the parties must pay GRT on the power when it is sold. Suppliers were not successful in appealing those assessments.
- We believe that assessing GRT on wholesale sales for resale is against the express language of the Tax Code, is contrary to the policy behind the exemption, and will damage borough electrics and ratepayers. This is particularly true because many boroughs executed long term power purchase agreements with the understanding that GRT would not apply. It is therefore critical to oppose any Department effort to assess GRT on wholesale suppliers in these transactions.
- The cost of the GRT that a wholesaler like EPIC will be required to pay will undoubtedly be passed onto the boroughs and their ratepayers either by: (1) increased rates; or (2) demands for reimbursement of the tax by the wholesale supplier. Such demands have already occurred.

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- The Department's actions will interfere with innumerable wholesale power purchase agreements and related pricing negotiated by municipalities. Many PMEA members have only recently renegotiated long term purchasing deals to keep rates in check.
- There are complex issues that must be addressed with respect to GRT. But, stated simply, the Department's renewed efforts to assess GRT against wholesale electric suppliers to boroughs is an issue of critical importance for PMEA members. PMEA members rely heavily on sales for resale by wholesale suppliers. We believe that the Department will ultimately assess this tax against many wholesale suppliers to PMEA members. Those assessments will be for prior tax years and the amounts owed will be substantial.
- EPIC has appealed the position of the Department of Revenue within the required administrative channels and with Chambersburg's full support. This pending litigation may drag on for some time and immediate action is needed to stop the Department's attempts to assess GRT. Accordingly, the best remedy to protect each and all borough electrics in the Commonwealth is a legislative amendment that will clarify, once and for all, that the sale for resale exemption for GRT applies to all parts of the transaction involving wholesale purchase by a borough from a power supplier. The proposals put forth by Senator Mastriano and Representative Kauffman accomplish this goal and should be supported.