

SC REVENUE RULING #12-2

SUBJECT: Monthly Fixed Charges Billed by a Natural Gas Utility
(Sales & Use Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

REFERENCES: S. C. Code Ann. Section 12-36-910(A) (2000)
S. C. Code Ann. Section 12-36-1110 (Supp. 2010)
S. C. Code Ann. Section 12-36-90 (2000 and Supp. 2010)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2010)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

Are the monthly fixed charges billed by a natural gas utility to a customer, as described in the facts, subject to the sales tax?

Conclusion:

Since the monthly fixed charges are a part of the overall agreement between the utility and the customer for the sale of natural gas to the customer, the monthly fixed charges billed by a natural gas utility to a customer, as described in the facts, are subject to the sales tax whether or not the customer uses natural gas during a particular billing period, provided the sale of natural gas to the customer is not otherwise exempt under Code Section 12-36-2120.

Note: If the sale of natural gas to the customer is exempt under Code Section 12-36-2120, such as the sale of natural gas that is used for residential purposes (Code Section 12-26-2120(33)), then the monthly fixed charges billed by a natural gas utility to a customer, as described in the facts, are not subject to the sales tax.

Facts:

It is common practice in the natural gas utility industry for the utility, under its rate schedule, to bill a customer a monthly fixed charge component as well as a separate rate that is applied to each unit of gas used by the customer during the billing period.

The costs to maintain and operate an underground network of main and service lines to distribute the natural gas from the interstate natural gas transmission lines to the meters located at each customer's property are substantial. These costs are ongoing and are recovered through the monthly fixed charge as well as the margin component of the rate assessed per unit of natural gas used.

The monthly fixed charge is billed each billing period whether or not the customer uses any natural gas during the billing period. In some cases, a customer, such as a restaurant, will use natural gas all year for cooking purposes. In other cases, a customer, such as an insurance office, will only use natural gas during the winter for heating purposes.

For example, the utility may charge all customers a \$10 monthly fixed service charge. If the customer does not use any natural gas during the month, the bill to the customer will state a total due of \$10. If the customer uses \$100 of natural gas during the month, the bill to the customer will state a total due of \$110 (\$100 charge for the natural gas used + \$10 for the monthly fixed charge).

The issue is whether or not the monthly fixed charge is subject to the sales tax even if a customer does not use any natural gas during a particular billing period.

Discussion:

Code Section 12-36-910(A) imposes "a sales tax, equal to [six]¹ percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail."

Code Section 12-36-90 defines the term "gross proceeds of sales" and reads, in part:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

* * * *

(b) the proceeds from the sale of tangible personal property without any deduction for:

¹ Code Section 12-36-1110 increased the general sales and use tax rate by 1% from 5% to 6%.

- (i) the cost of goods sold;
- (ii) the cost of materials, labor, or service;
- (iii) interest paid;
- (iv) losses;
- (v) transportation costs;
- (vi) manufacturers or importers excise taxes imposed by the United States; or
- (vii) any other expenses.

In *Meyers Arnold v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of “gross proceeds of sales” with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as “the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs.” But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

Based on the above, the monthly fixed charge, as described in the facts, is a part of the measure of the sales tax – “gross proceeds of sales” – and is subject to the sales tax. Using the “but for” test established in the case of *Meyers Arnold v. South Carolina Tax Commission*, “but for” the agreement to sell natural gas to the customer, the utility would not receive the monthly fixed charges. The monthly fixed charges are a part of the overall agreement between the utility and the customer for the sale of natural gas to the customer.

In addition, the monthly fixed charges are part of the sales price the utility has established for natural gas so that it can cover its costs of operations, such as maintaining and operating its underground network of main and service lines to distribute the natural gas from the interstate natural gas transmission lines to the meters located at each customer’s property, and earn a profit.

To paraphrase the Court of Appeals, the monthly fixed charges are obviously rendered in making natural gas sales.

Therefore, since the monthly fixed charges are a part of the overall agreement between the utility and the customer for the sale of natural gas to the customer, the monthly fixed charges billed by a natural gas utility to a customer, as described in the facts, are subject to the sales tax whether or not the customer uses natural gas during a particular billing period, provided the sale of natural gas to the customer is not otherwise exempt under Code Section 12-36-2120.

Note: If the sale of natural gas to the customer is exempt under Code Section 12-36-2120, such as the sale of natural gas that is used for residential purposes (Code Section 12-26-2120(33)), then the monthly fixed charges billed by a natural gas utility to a customer, as described in the facts, are not subject to the sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter

James F. Etter, Director

March 20 _____, 2012
Columbia, South Carolina