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State of South Carolina  
Department of Revenue  
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SC REVENUE RULING 10-10

- SUBJECT:** Net Metering Plans in which the Customer Retains Ownership of Electricity as Represented by Excess Renewable Energy (Sales and Use Tax and Electric Power Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-910 (2000, Supp. 2009)  
S. C. Code Ann. Section 12-36-1310 (2000, Supp. 2009)  
S. C. Code Ann. Section 12-36-60 (2000)  
S. C. Code Ann. Section 12-36-2120 (2000, Supp. 2008)  
S. C. Code Ann. Section 12-23-10 (2000)  
S. C. Code Ann. Section 12-23-20 (2000; 2009)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2005)  
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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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:

If, under a "net metering" plan as described in the Facts, a public utility customer retains ownership of the excess renewable energy associated with the electricity generated by that customer, is the value assigned to the excess renewable energy subject to the sales and use tax or the electric power tax when used to offset future electricity usage by the customer?

Conclusions:

If a public utility customer’s renewable energy facility (e.g., solar panels, wind turbine) generates more energy than the customer uses under a ‘net metering’ plan as described in the Facts, the public utility customer retains ownership of the excess renewable energy. The excess renewable energy is “banked” by the customer with its public utility and; therefore, represents the customer’s “ownership” of that electricity. The customer is essentially “using” their own electricity; therefore, the use of the excess renewable energy does not represent a sale of electricity to the customer by the public utility nor does it represent consideration paid by the customer for the public utility’s electricity.

Therefore, the value assigned to the excess renewable energy is not subject to the sales tax or the electric power tax when used to offset future electricity usage by the customer if, under a “net metering” plan as described in the Facts, the public utility customer retains ownership of the excess renewable energy associated with the electricity generated by that customer.

The following example provides guidance:<sup>1</sup>

Scenario A: Customer A is a non-residential customer and operates a small business office that uses the following amount of electricity over a three month period. This customer does not operate a renewable energy facility (e.g., solar panels, wind turbine).

Month	Charge	Electricity Usage	Electricity Generated	Net Billed	Monthly Bill
<b>June</b>	Customer Charge				\$20.65
	Demand Charge (kW)	10	0	10	\$100.00
	Energy Charge (kWh)	1,000	0	1,000	\$83.98
				<b>TOTAL</b>	<b>\$204.63</b>

<sup>1</sup> For purposes of simplicity, the example concerns sales of electricity that are not exempt from the sales and use tax or the electric power tax. If a sale of electricity is entirely exempt from the sales and use tax or the electric power tax, this advisory opinion is not applicable. While “net metering” as described in the Facts will affect the customer’s monthly bill, it has no impact on the tax due if the sale is entirely exempt from the applicable tax. However, if a sale of electricity to a particular customer is partially taxable and partially exempt, then the value assigned the excess renewable energy must be prorated between the taxable portion and the exempt portion of the transaction based on the facts and circumstances and the Department’s longstanding policy. (e.g., See Code Section 12-36-2120(19) and SC Regulation 117-302.4.)

<b>July</b>	Customer Charge				\$20.65
	Demand Charge (kW)	10	0	10	\$100.00
	Energy Charge (kWh)	1,200	0	1,200	\$100.78
<b>TOTAL</b>					<b>\$221.43</b>

<b>August</b>	Customer Charge				\$20.65
	Demand Charge (kW)	10	0	10	\$100.00
	Energy Charge (kWh)	1,600	0	1,600	\$134.37
<b>TOTAL</b>					<b>\$255.02</b>

For sales of electricity to Customer A, the “gross proceeds of sales” upon which the sales tax is calculated are as follows: \$204.63 for June, \$221.43 for July, and \$225.02 for August. The kilowatt hours (“kWh”) upon which the electric power tax is calculated are as follows: 1,000 kWh for June, 1,200 kWh for July, and 1,600 kWh for August.

Scenario B: Customer B is a non-residential customer that operates a small business office that uses the following amount of electricity over a three month period. This customer operates a renewable energy facility (e.g., solar panels, wind turbine) and generates electricity under a “net metering” plan as described in the Facts. Customer B, under the “net metering” plan, retains ownership of the electricity as represented by excess renewable energy associated with the energy that customer generated.

Month	Charge	Electricity Usage	Electricity Generated	Net Billed	Monthly Bill
<b>June</b>	Customer Charge				\$20.65
	Demand Charge (kW)	10	5	5	\$50.00
	Energy Charge (kWh)	1,000	1,200	0	\$0.00
<b>TOTAL</b>					<b>\$70.67</b>

<b>July</b>	Customer Charge				\$20.65
	Demand Charge (kW)	10	5	5	\$50.00
	Energy Charge (kWh)	1,200	1,000 + 200 June Excess	0	\$0.00
<b>TOTAL</b>					<b>\$70.67</b>

<b>August</b>	Customer Charge				\$20.65
	Demand Charge (kW)	10	5	5	\$50.00
	Energy Charge (kWh)	1,600	1,200	400	\$33.59
<b>TOTAL</b>					<b>\$104.24</b>

For sales of electricity to Customer B, the “gross proceeds of sales” upon which the sales tax is calculated are as follows: \$70.67 for June, \$70.67 for July, and \$104.24 for August. The kWh upon which the electric power tax is calculated are as follows: 0 kWh for June, 0 kWh for July, and 400 kWh for August.

Since Customer B is “banking” with its public utility the excess renewable energy associated with electricity Customer B generated, the excess renewable energy represents the Customer B’s “ownership” of that electricity. Customer B is essentially “using” electricity Customer B owns; therefore, the use of it does not represent a sale of electricity to Customer B by the public utility nor does it represent consideration paid by the Customer B for the public utility’s electricity.

The value assigned each month to Customer B’s excess renewable energy is not subject to the sales tax when used to offset future electricity usage by the customer. The renewable energy generated and used by Customer B is not subject to the electric power tax when used initially or when banked to offset future electricity usage by the customer. In addition, if a customer’s excess renewable energy that is banked is set to zero at the beginning of each summer season as discussed in the Facts, neither the sales and use tax nor the electric power tax are applicable to such banked renewable energy since no sale occurs because the customer does not receive any consideration for this “lost” excess renewable energy.

Note: This advisory opinion conclusion only applies to “net metering” plans as described in the Facts. It is not applicable to the “net purchase and sale” of electricity or a “buy all, sell all” plan.<sup>2</sup> In addition, it is not applicable to the use of excess renewable energy by any person other than the public utility customer that generated the electricity.

Facts:

Public utilities in the United States are required to make available to customers, upon request, net metering. Specifically, 16 U.S.C. Section 2621(d)(11) states:

Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “net metering service” means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

Under net metering, if a public utility customer generates more electricity from a renewable energy facility (*e.g.*, wind turbines, solar panels, fuel cells) than that customer uses, then the customer receives credit (known as “excess renewable energy”) from the public utility for the amount of excess electricity generated from the customer’s renewable energy facility. The electric meter at the customer’s premise (home or business) can record electricity in both directions. This allows any excess electricity produced by the customer’s renewable energy facility to be carried forward or “banked” and used to offset that customer’s electricity usage in the future.

As described by the U. S. Department of Energy, net metering

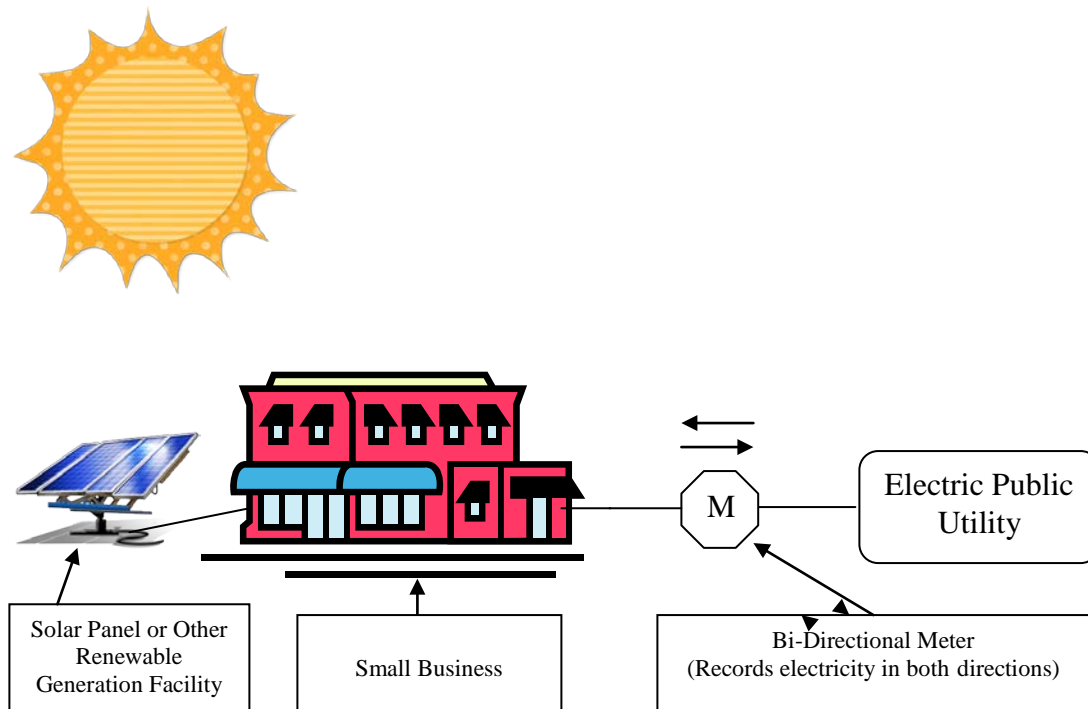
...enables customers to use their own generation to offset their consumption over a billing period by allowing their electric meters to turn backwards when they generate electricity in excess of their demand. This offset means that customers receive retail prices for the excess electricity they generate.

Without net metering, a second meter is usually installed to measure the electricity that flows back to the provider, with the provider purchasing the power at a rate much lower than the retail rate.

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<sup>2</sup> “Net purchase and sale” is an arrangement in which a bi-directional meter is installed. The meter records the electricity sold to the customer by the public utility. The meter also records the excess electricity generated by the customer and sold by the customer to the public utility. This is sometimes known as an “offset/sell” plan. A similar configuration known as a “buy all, sell all” plan is an arrangement in which two single directional meters are installed. One meter records the electricity sold to the customer by the public utility. The other meter records the electricity generated by the customer in which all is sold by the customer to the public utility.

The following graphic illustrates “net metering:”



The South Carolina Energy Office and the South Carolina Office of Regulatory Staff issued a report on net metering on January 1, 2009 – “Net Metering in South Carolina: Current Status and Recommendations.” A copy of this report can be found on the South Carolina Energy Office website (<http://www.energy.sc.gov/>) under “Renewable Energy.”

In this report, it was recommended that if the customer generates renewable energy in excess of the amount of electricity used in that month then the customer should be allowed to retain ownership or “bank” any excess renewable energy associated with the electricity generated by the customer. This banked renewable energy can be used to offset future electricity usage by the customer. The report also recommends that at the beginning of each summer season, any remaining excess renewable energy should be granted to the public utility and the excess renewable energy balance be set to zero.

The purpose of this advisory opinion is to address the application of the sales and use tax and the electric power tax to net metering as described in the Facts above when a public utility customer retains ownership of the excess renewable energy associated with the energy generated by that customer. It is not applicable to the “net purchase and sale” of electricity or a “buy all, sell all” plan.<sup>3</sup> In addition, it is not applicable to the use of excess

<sup>3</sup> “Net purchase and sale” is an arrangement in which a bi-directional meter is installed. The meter records the electricity sold to the customer by the public utility. The meter also records the excess electricity generated by the customer and sold by the customer to the public utility. This is sometimes known as an “offset/sell” plan. A similar configuration known as a “buy all, sell all” plan is an arrangement in which two single directional meters are installed. One meter records the electricity sold to the customer by the public utility. The other meter records the electricity generated by the customer in which all is sold by the customer to the public utility.

renewable energy by any person other than the public utility customer that generated the electricity.

Discussion:

### **Sales and Use Tax**

Code Section 12-36-910(A) states:

A sales tax, equal to [six]<sup>4</sup> percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. (Emphasis added.)

Code Section 12-36-1310(A) reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six]<sup>5</sup> percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State. (Emphasis added.)

Code Section 12-36-60 defines the term "tangible personal property" to mean:

...personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. ... (Emphasis added).

Therefore, the term tangible personal property includes the sale or use of services and intangibles, including sales of electricity, which are subject to South Carolina sales or use taxes under Chapter 36 of Title 12.

Sales of electricity are subject to sales and use taxes under Chapter 36 of Title 12 pursuant to Code Sections 12-36-910(B)(2) and 12-36-1310(B)(2), which impose the tax on the “gross proceeds accruing or proceeding from the sale of electricity.”

Code Section 12-36-2120 exempts various transactions from the sales and use tax. For example, that code section exempts from the sales and use tax (1) sales of tangible personal property (including electricity) to the federal government; (2) sales of electricity for use by manufacturers miners, or quarriers to manufacture, mine, or quarry tangible personal property for sale; and (3) sales of electricity used for residential purposes.<sup>6</sup>

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<sup>4</sup> Code Section 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.

<sup>5</sup> Code Section 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.

<sup>6</sup> See Code Section 12-36-2120 for other exemptions applicable to the sales and use tax and sales of electricity.

Based on the above, persons engaged in the business of selling electricity at retail are subject to the sales tax and person purchasing electricity from a person engaged in the business of selling electricity at retail are subject to the use tax<sup>7</sup> unless the sale is otherwise exempt under Code Section 12-36-2120.

### **Electric Power Tax**

Code Section 12-23-10 imposes an electric power tax and states:

In addition to all other taxes of every kind imposed by law:

(1) every person, except the State, a county, a municipality, or an agency or political subdivision of it, engaged in the business of selling electric power for resale within the State is subject to the payment of an excise, license, or privilege tax of five-tenths of one mill upon each kilowatt hour of electric power sold for resale within the State, except upon such electric power purchased from a vendor, however remote, previously taxed under this subsection. Sales for resale of an electric cooperative to a customer whose sales are taxed under subsection (2) must not be taxed under this subsection; and

(2) except a municipality, every public utility and electric cooperative engaged in the business of selling electric power within the State to the ultimate user of the power is subject to the payment of an excise, license, or privilege tax of five-tenths of one mill upon each kilowatt hour sold within the State to the ultimate user, except such electric power purchased from vendors, however remote, taxed under subsection (1).

Code Section 12-23-20 provides certain exemptions from the electric power tax. For example, that code section exempts from the electric power tax electricity generated by any person owning and operating an electric manufacturing or generating plant of ten horsepower or less; (2) electricity generated by any industrial plant manufacturing or generating power for its own use or for use upon its own premises by its bona fide operatives or employees; and (3) electricity generated by a municipality manufacturing or generating electricity for the use of its customers.<sup>8</sup>

Based on the above, persons engaged in the business of selling electricity for resale (wholesale sales), and public utilities and electric cooperatives (not including municipalities) engaged in the business of selling electricity at retail, are liable for the electric power tax unless the electricity has been previously taxed in South Carolina or the sale is otherwise exempt under Code Section 12-23-20.

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<sup>7</sup> Code Section 12-36-1340 requires an out-of-state seller to collect and remit the use tax if the seller has nexus with South Carolina.

<sup>8</sup> See Code Section 12-23-20 for other exemption applicable to the electric power tax and sales of electricity.



Therefore, when a customer retains ownership of excess renewable energy associated with electricity generated by that customer, the excess renewable energy represents the customer's "ownership" of that electricity. The customer is essentially "using" electricity that customer owns. As such, the use of this electricity does not represent a sale of electricity to the customer by the public utility nor does it represent consideration paid by the customer for the public utility's electricity since the customer retains ownership of the electricity as represented by the excess renewable energy. The value assigned each month to this excess renewable energy is not subject to the sales tax when used to offset future electricity usage by the customer and the kilowatt hours generated and used by the customer are not subject to the electric power tax when used initially or used to offset future electricity usage by the customer.

Note: This advisory opinion conclusion only applies to "net metering" plans as described in the Facts. It is not applicable to the "net purchase and sale" of electricity or a "buy all, sell all" plan.<sup>9</sup> In addition, it is not applicable to the use of excess renewable energy by any person other than the public utility customer that generated the electricity.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
Ray N. Stevens, Director

October 26, 2010  
Columbia, South Carolina

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<sup>9</sup> "Net purchase and sale" is an arrangement in which a bi-directional meter is installed. The meter records the electricity sold to the customer by the public utility. The meter also records the excess electricity generated by the customer and sold by the customer to the public utility. This is sometimes known as an "offset/sell" plan. A similar configuration known as a "buy all, sell all" plan is an arrangement in which two single directional meters are installed. One meter records the electricity sold to the customer by the public utility. The other meter records the electricity generated by the customer in which all is sold by the customer to the public utility