

# Utilities Sales Tax Rates and Taxability

## Welcome to Utilities Sales Tax Rates and Taxability

This bulletin provides important information about the November 2023 release of Utilities Sales Tax Rates and Taxability. Please review this bulletin carefully. If you have any questions, additional information is available on CCH [Support Online](#).

## Advance Release Note of Legislative Changes Effective December 2023

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Change to the Billing Rules Associated with the Rhode Island Gross Earnings Tax

Among the taxes covered in our database is the Rhode Island Gross Earnings Tax, as alternatively captured by Tax Types 28/83 & 28/84.

The distinction between these two variations is that Tax Type 28/83 is imposed upon electric utilities at the rate of 4% of a company's gross earnings and applied to Group 5500 (Utilities / Electric) on the Group-level (with the exception of Customer Type 04 = Manufacturing) while Tax Type 28/84 is imposed upon gas utilities at the rate of 3% of a company's gross earnings and applied to Group 5501 (Utilities / Natural Gas) on the Group-level (with the exception of Customer Type 04 = Manufacturing).

The liability of electric and gas utilities is established by a statutory provision which recites as follows:

"The tax imposed will be at the following rates: In the case of every corporation whose principal business is manufacturing, selling, distributing and/or transmitting currents of electricity to be used for light, heat, or motive power, four percent (4%) of its gross earnings, but deductions shall be made of gross earnings from the transmission or sale of electricity to other public utility corporations, non-regulated power producers, or municipal utilities for resale, whether within or outside of this state; provided, that the tax measured by the portion of the utility's gross earnings as is derived from the manufacture and sale of illuminating and heating gas and its by-products and the merchandising of gas appliances shall be computed at the rate of three percent (3%)."<sup>1</sup>

However, pursuant to the enactment of an annual budget bill<sup>2</sup>, the payment of the Rhode Island Gross Earnings Tax by end-user consumers of gas and electric service will be temporarily suspended from the period of December 2023 through March 2024.

To quote the statutory provision that established this temporary moratorium:

"A utility company may be eligible for a rebate payment in the amount of the public service corporation tax due pursuant to § 44-13-4 that would be charged to its electric utility customers or its gas utility customers for the months of December 2023 through March 2024.

For the months of December 2023 through March 2024:

(i) A utility company shall PAY the public service corporation tax pursuant to, and in accordance with, § 44-13-4;

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<sup>1</sup> Rhode Island General Laws § 44-13-4(2).

<sup>2</sup> Rhode Island House Bill 5200 (2023).

(ii) A utility company shall NOT charge any electric utility customer or any gas utility customer the tax due or paid pursuant to § 44-13-4, but shall continue to reflect the amount of the tax due along with an offsetting credit on each bill for each electric utility customer or gas utility customer."3

The term "utility company" is defined within that same statute to mean "any entity that qualifies as a "public service company" pursuant to § 44-13- 2.1 and a "corporation" for the purposes of § 44-13-4(2) or § 44-13-4(6) and sells electricity to an electric utility customer or sells natural gas to a gas utility customer for any of the months between and including December 2023 through March 2024."4

Read collectively, it is our interpretation that the following rules apply from the period beginning December 1, 2023 and ending March, 31 2024:

\* Gas and electric utilities must continue "billing" their end-user customers for the cost of the Gross Earnings Tax.

\* Gas and electric utilities must include a credit on those same billing statements which thus cancels out the cost of the Gross Earnings Tax for such end-users for the period beginning December 1, 2023 and ending March, 31 2024.

\* Gas and electric utilities must continue to pay the Gross Earnings Tax to the state but may qualify for a rebate from the state to either partially or fully offset the tax, subject to the following provisions contained in the statute:

"The rebate amount shall be determined by the division of taxation based on the applicable tax paid by a utility company for electricity consumption by its electric utility customers and/or for gas consumption by its gas utility customers between and including the months of December 2023 and March 2024."5

"The utility company must apply for a rebate on such forms and in such a manner as prescribed by the division of taxation on or before May 31, 2024, and the rebate will be paid by the division of taxation to the utility company."6

"Rebate payments made under this subsection shall not be subject to offset and shall not be considered gross earnings for the purposes of the public service corporation tax under this chapter."7

Please note that given our understanding that utilities must continue to add the Gross Earning Tax to customers billing statements during the period of December 2023 through March 2024 (subject to the equal credit amount provision enumerated above), our database will continue to reflect the applicability of this surcharge to Groups 5500 & 5501 with no changes in data.

At the same time, however, database users are advised to consult with their IT Department to determine how to integrate the credit provision into their billing systems.

GENERAL LEGAL DISCLAIMER:

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3 Rhode Island General Laws § 44-13-37(b)(1).

4 Rhode Island General Laws § 44-13-37(a)(3).

5 Rhode Island General Laws § 44-13-37(b)(2).

6 Rhode Island General Laws § 44-13-37(b)(3).

7 Rhode Island General Laws § 44-13-37(b)(4).

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