TN Department of Revenue

# Utilities Gross Receipts Tax Manual

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# Utilities Gross Receipts Tax

## Introduction and History

Tennessee enacted the utilities gross receipts tax (commonly referred to as the "utilities tax") in 1937. The utilities gross receipts tax law is found in Tenn. Code Ann. § 67-4-405. Laws specific to the administration of Tennessee gross receipts taxes are found in Tenn. Code Ann. §§ 67-4-301 *et seq*. Additionally, the Commissioner of Revenue promulgated general gross receipts tax rules in 1976, which are found in TENN. COMP. R. & REGS. 1320-04-04.

The Department of Revenue (the "Department") administers the utilities gross receipts tax, and all utilities gross receipts tax returns and remittances are filed and paid to the Department. It is a tax that can only be levied by the state.

The initial utilities tax was enacted to "provide for general revenue for the State of Tennessee, and the counties and municipalities thereof."[1] The General Assembly established a privilege tax of 3 per cent on gross receipts of gas, water and electric dealers and distributors. However, this law was amended during the same legislative session, reducing the rate.[2] The public chapter also provided that the "tax shall not apply to cities or other political subdivisions of the State owning and operating gas companies."

Furthermore, the General Assembly made clear that it was their intention to levy the tax only on intrastate commerce, and they established a tax credit in the amount of franchise and excise tax paid during the calendar year.

In 1999, the General Assembly again amended the law by creating a new exemption from the utilities gross receipts tax for persons meeting the criteria of "exempt wholesale generators" or "FERC certified wholesale power marketers" under the Federal Power Act of 1992.[3]

The General Assembly amended the law a final time in 2011 to clarify which entities were exempt from the tax.[4]

## Who is Subject to Utilities Gross Receipts Tax?

Each person engaged in the business of manufacturing, furnishing, or distributing:

- gas or natural gas;
- water; or
- electric current

is subject to tax for the privilege of doing business in this state. The tax applies on gross receipts derived from intrastate sales to dealers, consumers, municipalities, or other customers.[5]

## Who is Exempt from the Utilities Gross Receipts Tax?

The statute imposes the utilities tax on the three types of business mentioned above, however, the following entities are exempt:

- Gas, water, or power companies owned and operated by cities or other political subdivisions of the state.

- Persons having not-for-profit status owning and operating water companies, gas and electric companies are not exempt.

- Persons meeting the criteria of exempt wholesale generators or FERC certified wholesale power marketers under the Federal Power Act of 1992.

- Governmental agency of the United States.

- Interstate pipelines with isolated sales of natural gas.[6]

## What is Subject to Utilities Gross Receipts Tax?

Persons engaged in the business of manufacturing gas or of distributing manufactured gas or natural gas are taxed on their gross receipts on intrastate business. Furthermore, persons engaged in the business of furnishing or distributing water or electric current are taxed on their gross receipts on intrastate business. Only intrastate commerce is subject to tax.

Natural gas generally means hydrocarbon gases found in association with petroleum, primarily methane, along with ethane, butane, and propane in gaseous form, used for industrial and domestic fuel. Manufactured gas is gaseous fuel manufactured from either natural gas itself or other fuels. Sales of gases such as acetylene, argon, carbon dioxide, compressed air, hydrogen, nitrogen, nitrous oxide and mixtures of such gases are not subject to the utilities gross receipts tax. For more information on the taxability of natural gas products, please see Letter Ruling # 12-03.

In addition to sales and direct service generated revenues, meter deposits in excess of refunds should be included in the tax base, however, no credit is given if refunds exceed deposits.

### 1. Electric Vehicle Charging Stations

Businesses engaged in selling or distributing electricity for use in charging electric vehicles via charging stations are not subject to the utilities tax on their gross receipts. Instead, the receipts from selling electricity should be included in gross sales for business tax purposes.

## Taxation

Electric and water: the utilities gross receipts tax is 3% of the taxpayer's gross receipts derived from intrastate sales for furnishing or distributing electric and water on amounts above $5,000.[7] The first $5,000 in gross receipts on furnishing or distributing electric current or water are exempt.[8]

Manufactured and natural gas: the utilities gross receipts tax is 1.5% of the taxpayer's gross receipts derived from intrastate sales for manufacturing gas or distributing manufactured gas or natural gas.[9] The $5,000 exemption that applies to electricity and water does *not* apply to manufactured or natural gas.

For this tax, "gross receipts" means total receipts before anything is deducted, but does not include receipts from incidental business, when such incidental business, if separately carried on, would not be subject to a tax measured by gross receipts under Title 67, Parts two through six.[10] A person cannot deduct any cost from the total gross receipts to arrive at a taxable total.

Gross receipts do not include state and local sales and other taxes collected from customers and remitted to the respective taxing authorities by utilities.[11]

### 2. Exemption – Out-of-State Sales

The utilities tax applies to the privilege of engaging in intrastate commerce carried on wholly within this state and not a part of interstate commerce.[12] Therefore, sales in interstate commerce are not subject to utilities gross receipts tax.

### 3. Exempt from Business Tax

There is a business tax exemption for receipts subject to the utilities gross receipts tax provisions.[13] Therefore, taxpayers that pay the utilities gross receipts tax may exclude the amount on which utilities tax was paid from their business tax base.

### 4. Credit – Franchise and Excise Taxes

Taxpayers are allowed a credit against the utilities tax for any franchise and excise taxes paid on their utilities receipts.[14] Only franchise and excise taxes paid on the receipts from the business that is taxable for utilities tax is allowed to be credited.

Additionally, the credit is for taxes only. No credit is allowed for penalty and interest.[15] The entity taxed for utilities tax may only receive a credit for franchise and excise taxes paid by the same entity. Furthermore, the credit is allowed only for franchise and excise taxes paid during the period in which the utilities tax was paid. For an entity to take a credit for franchise and excise taxes, the entity:

- must be required to pay franchise and excise tax; and
- must have filed a franchise and excise tax return for the same fiscal or calendar year period as the utilities tax return.

The steps for calculating the credit for franchise and excise tax paid can be found in the instructions to GRO 209 . All the information needed to calculate the credit can be found on the taxpayer's franchise and excise return and utilities gross receipts tax return.

Any taxpayer that is granted an extension of time in which to file its franchise and excise tax return to a date after the August 1st utilities tax return due date will not be allowed the credit for franchise and excise tax until payment has been made.[16]

## Return

The return for the utilities gross receipts tax is due annually on or before August 1. The tax is imposed on the privilege of doing business during the period beginning with July 1 (immediately preceding the August 1 due date) through the next June 30, but it is measured by the taxpayer's total receipts from sales of utilities during its most recent fiscal or calendar year ending before that July 1.[17] For example:

- A calendar year taxpayer with a reporting period of January 1, 2019 through December 31, 2019 would have a filing due date of August 1, 2020 for the taxable period of July 1, 2020 through June 30, 2021.

- A fiscal year taxpayer with a reporting period of July 1, 2019 through June 30, 2020 also would have a filing due date of August 1, 2020 for the taxable period of July 1, 2020 through June 30, 2021.

See the chart below for guidance:

| **Utilities Tax Reporting Period and Taxable Period** | | | | | |
|---|---|---|---|---|---|
| If taxpayer's Utilities Tax **Reporting Period** is: | | | If taxpayer's Utilities Tax **Reporting Period** is: | | |
| 8/1/2019 | through | 7/31/2020 | 8/1/2018 | through | 7/31/2019 |
| 9/1/2019 | through | 8/31/2020 | 9/1/2018 | through | 8/31/2019 |
| 10/1/2019 | through | 9/30/2020 | 10/1/2018 | through | 9/30/2019 |
| 11/1/2019 | through | 10/31/2020 | 11/1/2018 | through | 10/31/2019 |
| 12/1/2019 | through | 11/30/2020 | 12/1/2018 | through | 11/30/2019 |
| 1/1/2020 | through | 12/31/2020 | 1/1/2019 | through | 12/31/2019 |
| 2/1/2020 | through | 1/31/2021 | 2/1/2019 | through | 1/31/2020 |
| 3/1/2020 | through | 2/28/2021 | 3/1/2019 | through | 2/29/2020 |
| 4/1/2020 | through | 3/31/2021 | 4/1/2019 | through | 3/31/2020 |
| 5/1/2020 | through | 4/30/2021 | 5/1/2019 | through | 4/30/2020 |
| 6/1/2020 | through | 5/31/2021 | 6/1/2019 | through | 5/31/2020 |
| 7/1/2020 | through | 6/30/2021 | 7/1/2019 | through | 6/30/2020 |
| Then the **Tax Period** is: | | | Then the **Tax Period** is: | | |
| 7/1/2021 | through | 6/30/2022 | 7/1/2020 | through | 6/30/2021 |
| Return **Due Date** is: | | | Return **Due Date** is: | | |
| 8/1/2021 | | | 8/1/2020 | | |

When a taxpayer begins business on or after July 1, monthly returns must be filed through the next June 30. The due date for these monthly returns is the 10th of the following month. Beginning the next July 1, the taxpayer will begin filing and paying the tax on an annual basis.

The total gross receipts to be reported and used to establish the tax base for this first year's tax must be annualized (i.e., total gross receipts (or purchases, in the case of an importer) from the first year divided by the number of months in business, then multiplied by 12). Tax reported on all subsequent annual returns will be based on actual receipts derived during the previous year's business, as described above. For example, a utility beginning business on April 1, 2020 will report its gross receipts as follows:

| Reporting Period | Taxable Period | Return Due Date | Gross Receipts |
|---|---|---|---|
| Apr-20 | Apr-20 | 5/10/2020 | $4,000 |
| May-20 | May-20 | 6/10/2020 | $5,000 |
| Jun-20 | Jun-20 | 7/10/2020 | $6,000 |
| 3 Month Total | | | $15,000 |
| Annualized receipts for 3 months calculation ($15,000/3)*12 | | | $60,000 |
| | | | |
| 4/1/2020 - 6/30/2020 | 7/1/20-6/30/21 | 8/1/2020 | $60,000 |

## 1. Quarterly Payments

Taxpayers have the option of paying the tax in quarterly installment payments.[18] The initial installment amount will be paid with the return by August 1 and reflected on Line 14. The subsequent installment payments will be due no later than November 1, February 1, and May 1, and will be reflected on Line 14 of the return. However, interest will begin running on August 1, so any payments made after that initial due date must also include interest calculated at the effective rate from August 1 until the date of payment.[19] Anyone electing the installment payment option will receive quarterly installment coupons by separate mailing.

Following is an example of how a taxpayer should calculate quarterly payments:

| Reporting Period | Taxable Period | Return Due Date | Total Tax Due |
|---|---|---|---|
| 01/01/2019-12/31/2019 | 07/01/2020-06/30/2021 | 08/01/2020 | $100,000.00 |

Installment Payments:

| Installment | Payment Due Date | Tax | Penalty | Interest @ 9.50% | Total Due |
|---|---|---|---|---|---|
| 1 | 08/01/20 | $25,000.00 | $0.00 | $0.00 | $25,000.00 |
| 2 | 11/01/20 | $25,000.00 | $0.00 | $598.22 | $25,598.22 |

| | | | | | |
|---|---|---|---|---|---|
| 3 | 02/01/21 | $25,000.00 | $0.00 | $1,196.44 | $26,196.44 |
| 4 | 05/01/21 | $25,000.00 | $0.00 | $1,775.15 | $26,775.15 |
| | | $100,000.00 | $0.00 | **$3,569.82** | **$103,569.82** |

If quarterly installment payments are not paid by the due date, penalty will be assessed for late payments at the rate of 5% of the installment for each 30 days (or portion thereof) that the installment remains unpaid subsequent to the due date, up to a maximum of 25%.[20]

If the ownership of a business is transferred and quarterly payments are due, the new owner is liable for the remaining quarterly payments. However, if the total tax is paid on August 1, no additional tax will be due from the purchaser.[21]

Note that if a fourth of the amount owed is not paid by August 1, the taxpayer will no longer have the option of paying quarterly. The full amount will be due, and penalty and interest will accrue on any unpaid amount until fully paid.[22]

[1] Public Chapter 108 (1937).
[2] Public Chapter 192 (1937).
[3] Public Chapter 407 (1999).
[4] Public Chapter 404 (2011).
[5] Tenn. Code Ann. § 67-4-405(a) (1) and (2).
[6] *Memphis Natural Gas Co. v. McCanless*, 323 U.S. 785, 65 S. Ct. 275, 89 L. Ed. 626 (1944)
[7] Tenn. Code Ann. § 67-4-405(a)(1).
[8] Tenn. Code Ann. § 67-4-405(e).
[9] Tenn. Code Ann. § 67-4-405(a)(2).
[10] Tenn. Code Ann. § 67-4-301(3)(A).
[11] Tenn. Code Ann. § 67-4-301(3)(B).
[12] Tenn. Code Ann. § 67-4-405(c).
[13] Tenn. Code Ann. § 67-4-712(b)(3).
[14] Tenn. Code Ann. § 67-4-305.
[15] Tenn. Code Ann. § 67-4-405(d).
[16] TENN. COMP. R. & REGS. 1320-04-04-.05(2).
[17] Tenn. Code Ann. § 67-4-306(a).
[18] Tenn. Code Ann. § 67-4-308.
[19] Tenn. Code Ann. § 67-4-308(a).
[20] Tenn. Code Ann. § 67-4-308(a)(2).
[21] Tenn. Code Ann. § 67-4-308(b).
[22] TENN. COMP. R. & REGS. 1320-04-04-.02.