

UTILITY BILLS - LATE PAYMENT CHARGES NOT SUBJECT TO SALES TAX

Recent amendments to the Public Service Commission regulations have been promulgated, affecting the basis for sales tax computation on bills for utility services. In general, the change will be reflected in bills sent to customers beginning with the June billing cycles.

The revised regulations provide that the amount billed by any corporation, partnership, municipality or person furnishing gas, electric or steam services represents the charge for services computed on the basis of rates allowed by the commission. Accordingly, vendors of a regulated utility service may impose a late payment charge because of the failure of any customer to pay a bill for such service within a specified period. Since the amount billed is based on the rates allowed by the Public Service Commission, applicable State and local sales taxes will now be computed only on the amount of the bill representing the charge for the utility service (prior to the application of any late payment charge.)

Prior to amendment, the Public Service Commission regulations prohibited imposition of a penalty although they permitted gross-net billing. Under those conditions, the difference between gross and net was, by regulation, considered an early payment discount. As Section 1101(b)(3) of the Tax Law provides that the sales price subject to sales tax is determined without any deduction for early payment discounts, State and local sales taxes were required to be levied on the gross amount billed. Following adoption of the revised regulations, the sales tax becomes applicable only to the amount billed which reflects the charge for the utility service, exclusive of a late payment charge.

Accordingly, the Public Service Commission has directed those utilities and municipalities having gross-net tariffs to file revised schedules. These schedules will replace the present tariffs without any change in the "net" tariff amounts which represent the bill for services. Each tariff must be approved by the Commission before it becomes effective and the effective dates may vary according to the utility involved. Therefore, customers will be individually advised by each utility as to when the change to rate and late payment charge becomes effective.

In some instances, the Public Service Commission has granted individual utilities permission to continue using existing supplies of bills which show "net" and "gross" amounts, if they inform their customers that the charge appearing in the "net" column is the amount actually billed for services and the amount appearing in the "gross" column is the amount that will be due, including the late payment charge, when the late payment charge becomes applicable.