



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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LETTER RULING 2013-5

LR 2013-5. Taxation of the Low-Income Energy Assistance Fund (LIEAF) Surcharge

You ask whether the Low-Income Energy Assistance Fund (LIEAF) surcharge itemized on the monthly bills of utility customers under MCL 460.9t is subject to tax under the General Sales Tax Act.

The LIEAF surcharge is not subject to sales tax. The LIEAF surcharge is a tax legally imposed directly on the consumer and is separately stated on the utility bill; therefore, it is excluded from "sales price" under MCL 205.51(1)(d)(ix) upon which sales tax is imposed. MCL 205.52(1).

Low-Income Energy Assistance Fund and the Michigan Energy Assistance Act. LIEAF is a fund created by 2013 PA 95. Under PA 95, the Public Service Commission sets a low-income energy assistance funding factor for electric utility companies. The factor is a "nonbypassable surcharge" on retail billing meters and is payable monthly by every electric utility customer. The maximum monthly surcharge is \$1. While electric utility customers must pay the itemized surcharge if it is on their bill, the surcharge will not be billed if an electric utility company opts out of LIEAF. If an electric utility company opts out, it is prohibited from shutting off service from November 1st through April 15th to any residential customer who has a delinquent account.

The surcharge is collected by the electric utility companies and remitted to the Michigan Department of Treasury where it is deposited into a dedicated fund (LIEAF). The legislature then appropriates money from LIEAF to be spent by the Department of Human Services as provided by the Michigan Energy Assistance Act (2012 PA 615).

Relevant sales tax statutes. Tax is imposed under the General Sales Tax Act on "gross proceeds" (MCL 205.52(1)), which is defined as "sales price." MCL 205.51(1)(d). "Sales price" means "the total amount of consideration ... for which tangible personal property or services are sold" "Sales price" includes "charges by the seller for any services necessary to complete the sale" (MCL 205.51(1)(d)(iii)) but excludes "any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser." MCL 205.51(1)(d)(ix).

The LIEAF surcharge is not for a service necessary to complete the sale. If the electric utility company does not opt out of LIEAF, the "nonbypassable" surcharge must be paid by its customers to complete the sale. Although all customers are billed the surcharge, customers do not receive additional services from the electric utility company. Customers with delinquent accounts may receive assistance from the State through a LIEAF contractor but customers do not pay the surcharge in exchange for a service necessary to complete a sale.

The LIEAF surcharge is excluded from the "sales price" because it is a separately-itemized tax. The LIEAF surcharge is a tax legally imposed directly on the consumer that is separately stated on

the utility bill. In *Bolt v City of Lansing*, 459 Mich 152 (1998), the Michigan Supreme Court established three criteria for distinguishing between a fee and a tax.

1) *A fee must serve a regulatory purpose rather than a revenue-raising purpose.*

The purpose of the LIEAF surcharge is to raise money to help low income customers pay delinquent utility bills. There does not appear to be a regulatory purpose.

2) *A fee must be proportionate to the necessary costs of the service.*

Customers pay a flat LIEAF surcharge per meter that is unrelated to the amount of energy used or services consumed. Further, customers see no increase or decrease in services as a result of the surcharge.

3) *A user fee must be voluntary.*

Customers have no choice if the electric utility company does not “opt out,” since the LIEAF surcharge is “nonbypassable” and “payable monthly by every customer.”

The LIEAF surcharge is not paid in exchange for a service necessary for the completion of the sale because customers receive no service from their electric utility company in exchange for the payment. However, the LIEAF surcharge is a tax imposed directly on the consumer and is paid to the State. Because the LIEAF surcharge is a tax legally imposed directly on the consumer that is separately stated on the electric utility bill, it is excluded from “sales price” and is not subject to tax under the General Sales Tax Act.

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