

Tax Issues for Direct Customers

Presentation to BIC

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Agenda 09

Tax Issues for Direct Customers

- Some consultants are encouraging large retail customers to become Direct Customers of the NYISO as a way to apparently avoid taxes on the commodity charges
 - Allows the customer to procure their electricity (energy, capacity and ancillary services) directly from the NYISO
- The NYISO is presently not a collecting agent, and thus does not differentiate between Market Participants that purchase electricity for their own use from those that purchase for resale to other customers.
 - Treats all transactions as wholesale sales and does not collect Gross Receipts or Sales Tax.

Adverse Impact on Markets

- Any tax avoidance would be harmful to Retail Markets as it would give Direct Customers an artificial advantage over traditional LSEs that are collecting and remitting taxes on the retail sale of electricity.
- Because the seller is obligated to collect the GRT, any tax avoidance by Direct Customers could create a potential liability for the NYISO or for the sellers into the NYISO markets.

Possible Resolutions

- Have the NYISO or wholesale sellers into the NYISO collect GRT on purchases by Direct Customers
 - But tax rates vary by municipality and/or locality.
 - NYISO would have to disaggregate the Direct Customer's charges by individual end-use facility in order to identify the applicable taxes.
 - May not be practical without changes to Billing and Accounting software and structural changes to how TOs report M-Load to NYISO.
- Require Direct Customers to assume responsibility for remitting Gross Receipts Taxes. Arguably they are already responsible for remitting Sales Tax.
 - E.G. submit Sale for Resale certificate

Need a speedy resolution