

NYS Tax Issues

S&P Working Group

NYISO Management

10/08/04

Introduction

NYISO is faced with two basic issues:

- Fulfilling its legal obligation as NYS sales tax collection agent
- Moderating market participants' concerns about the possible imposition of GRTs and sales to “direct customers”

Today's Agenda

- Discuss proposed tariff changes that would resolve NYISO's sales tax issue
- Explore market participants' concerns about possible GRT liabilities and direct sales

Sales Tax: How the Problem Arose

- Tariff permits sales directly to end-use customers
- There are end-use customers today that have sales tax liability
- NYS Department of Taxation and Finance notified NYISO in Fall 2003 that NYISO is required to register as a collection agent for sales tax on electricity sold in spot market and consumed by direct customers

As Collection Agent - NYISO

- Could be liable for MPs (purchasers) who fail to remit sales tax
- Would have to implement changes to billing and settlement system involving \$1 million up front expenditure and \$100 – \$150K annual recurring expense
- Expenses would be borne by the entire market to administer the sales tax liability of a handful of “direct customers”

NYISO's Activities Subsequent to Notice by NYS Department of Taxation and Finance

- Unsuccessfully attempted to convince NYS Tax Department to reconsider and reverse its determination that NYISO should register as collection agent
- Began dialogue with NYS Tax Department about market changes that (i) would culminate in NYISO's registration as sales tax collection agent, (ii) eliminate transactions that pose in sales tax liability upon NYISO

NYISO Proposed Tariff Solution

- Require direct customers to provide exemption certificate, or direct pay certificate as condition of direct service
- Allows NYISO to fulfill legal obligation to register as collection agent but avoid expenditure of MP funds to administer sales tax function
- Should minimize disruption or elimination of existing “direct” purchases; less draconian than simply eliminating “direct customer” entirely

Other Approaches ?

- NYISO has a legal obligation that must be satisfied, i.e., registration as sales tax collection agent
- NYS Department of Taxation and Finance expects compliance by early 1st quarter 2005
- MP consensus is most desirable

Gross Receipts Tax Background

- Imposed on sellers of utility services
- May be applicable to certain commodity (i.e., electricity sales)
- State GRT on commodity sales expires 1/1/05
- Over 350 local GRTs also exist

NYISO's Legal Status Under GRT

- In 2000, NYISO petitioned for and received from NYS Tax Department an advisory opinion stating that NYISO is not a business taxable under the GRT
- Also, in contrast to the sales tax requirements, NYISO is not legally obligated to collect GRTs.

Tax Department Communications

- In a September 2004 meeting, NYS Tax Department suggested that it may seek to impute on sellers into NYISO spot market transactions taxable under GRT
- Tax Department apparently contemplates taxing revenues attributable to sales to “direct customers”
- Tax Department indicated it would request NYISO’s assistance in quantifying revenues and identifying sellers

NYISO's Posture with NY Department of Taxation and Finance

- As an entity subject to NYS Tax Department jurisdiction, NYISO must cooperate with Tax Department within the bounds of the Tax Law and in accordance with NYISO's Code of Conduct
- NYISO has taken no position with regard to the taxability of any spot market sales for GRT purposes

At Least Four Competing/Conflicting Interests

- Generators
- “Direct Customers”
- Competing LSEs
- Bidding/scheduling entities

NYISO Role

- Will facilitate collaborative effort to explore potential “level playing field” issues
- Will facilitate dialogue with NYS Tax Department and potentially affected parties
- Will not collect or administer any tax for which it is not legally responsible
- Will not provide tax or legal advice to individual market participants or sectors