

**Illinois Department of Revenue
Regulations**

Title 86 Part 470 Section 470.171 Exclusion for Charges Made to Customers Who Acquired Contractual Rights to Purchase Out-of-State Gas or Gas Services Prior to March 1, 1995
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**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 470
GAS REVENUE TAX ACT**

Section 470.171 Exclusion for Charges Made to Customers Who Acquired Contractual Rights to Purchase Out-of-State Gas or Gas Services Prior to March 1, 1995

- a) Charges billed on January 1, 1996 through September 30, 2003 for gas or gas services to a customer who acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995, except for those charges solely related to the local distribution of gas by a public utility, are not subject to the tax imposed by the Gas Revenue Tax Act [35 ILCS 615]. The exemption provided in this Section shall no longer be available beginning on and after October 1, 2003.
- b) For the purposes of this exclusion, the following terms have the following meanings:

"Charges solely related to the local distribution of gas by a public utility" means all charges subject to the Gas Revenue Tax Act, other than charges for gas and those charges that are reflected in the purchased gas adjustment clauses described in Section 9-220 of the Public Utilities Act [220 ILCS 5/9-220].

"Customer" means a person or legal entity identified on a taxpayer's books and records as being responsible for the payment of charges for gas or gas services provided by that taxpayer.

"Direct purchase of gas or gas services originating from an out-of-State source" means the direct purchase by a customer located in Illinois of gas or gas services from a source, such as a well head, located outside of this State.

"Direct purchase of gas or gas services originating from an out-of-State supplier" means the direct purchase by a customer located in Illinois of gas or gas services from a supplier with an out-of-State physical presence.

"Public utility" means every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the conveyance

of gas by pipeline.

"Supplier" means a person or entity that sells gas and has taken title to, or will take title to, the gas that is sold.

"Transportation account" means an account maintained by a public utility for the transportation of gas for a customer who has purchased the gas from a source other than the public utility.

- c) It is incumbent upon a taxpayer to establish that the exclusion described in this Section is available. Except as provided in subsection (d), if a taxpayer maintains in its books and records the certification described in subsection (e), that certification will be prima facie proof that the exclusion is available to the taxpayer in reference to the customer listed on the certification. The obtaining of such a certification does not preclude the Department from going behind it and disregarding it if, in examining such customer's records, the Department finds that the certification was not true as to some fact or facts which show that the exclusion was not available or the customer refuses or is unable to provide proper documentation evidencing that the exclusion was available.
- d) If an Illinois public utility (as defined in Section 3-105 of the Public Utilities Act) establishes through its books and records that a customer maintained a transportation account with that public utility on or before March 1, 1995, that documentation will be sufficient evidence that the exclusion described in this Section is available to that public utility in reference to that customer.
- e) The certification described in subsection (c) must be a written certification signed by the customer stating:
 - 1) the customer's name and address;
 - 2) that the customer is purchasing the gas or gas services for its own use and that the gas or gas services will not be transferred to another entity;
 - 3) that the customer had acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995;
 - 4) the name and address of the out-of-State supplier or source; and
 - 5) the name and address of the public utility in Illinois with whom the customer had a transportation account for the transportation of such gas or gas services.
- f) The exclusion is available only with respect to the customer that acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995. A qualifying customer must be the same legal entity which acquired the qualifying contractual rights. Related entities, such as subsidiaries, affiliates, or holding companies, may not claim the exclusion based upon the qualifying contract of a separate legal entity. However, legal entities that have merely changed form, such as a partnership electing to become a corporation, that retain the exact same ownership are still considered the same legal entity for purposes of this exclusion. A legal

entity that had acquired a qualifying contract and has merged with another legal entity or entities will still be considered the same legal entity if the surviving entity is the entity that had acquired the qualifying contractual rights.

- g) If a customer that acquired qualifying contractual rights on or before March 1, 1995 has multiple gas or gas service accounts, then the exclusion is available to all of that customer's gas and gas service accounts.
- h) If the exclusion is claimed by a taxpayer, then that taxpayer will be liable for tax, penalty, and interest if it is later determined that the exclusion was not available. For example, if a taxpayer claims the exclusion based on an invalid certification from a customer, then the Department will recover the tax and any applicable penalty and interest from the taxpayer. The Department is unable to assess a customer who has given an invalid certification because customers do not incur Gas Revenue Tax liability. Consequently, when the exclusion has been improperly claimed and is disallowed, the Department will assess the taxpayer and the taxpayer is authorized to make an additional charge to the customer under Section 9-222 of the Public Utilities Act [220 ILCS 5/9-222].

(Source: Amended at 28 Ill. Reg. _____, effective _____)