

ELECTRIC UTILITY TAX RESTRUCTURING



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Public Utility Franchise and Gross Receipts Tax

- | | |
|---------------------------------|--------------------------|
| ❖ 7.5% on Gross Receipts Base | \$685M to municipalities |
| ❖ 5% on Franchise Base | |
| ❖ .9375% on Gross Receipts Base | \$245M to State |
| ❖ .625% on Franchise Base | |
| ❖ Excess of: | \$930M to municipalities |



Public Utility Franchise and Gross Receipts Tax

1940 – 1991 Problems

- ❖ Constant growth of the levy – good from the State side, less good from the taxpayers' perspective.
- ❖ Inequity of application – Not all electricity sellers are identified as utilities for taxation.
- ❖ Bears little relationship to commodity



Public Utility Franchise and Gross Receipts Tax

1992 – 1998

- ❖ Each Unit of Electrical power taxed based on its class and category of delivery. Rates determined by the BPU to return the value of the 1991 assessment.
- ❖ Loss in State's revenue balanced against uniformity of base.



Electric Utility Taxes 1991 – 1998 Taxed on Units of Energy

❖ Plus side

- ✓ Driven by commodity volume**

❖ Negative side

- ✓ Still only applies to identified utilities in an increasingly entrepreneurial environment**



1997: Energy Deregulation prompted Energy Tax Reform

- ❖ Federal deregulation led to State deregulation**
- ❖ State deregulation of electricity – consumers could choose to buy energy from O.O.S. utilities**
- ❖ State needed to protect the tax base from erosion**
- ❖ NJ Legislature replaced Gross Receipts Tax with broad based sales tax and corp. tax**



New Jersey Energy Tax Reform Act

- ❖ **Passed in 1997**
- ❖ **Effective January 1, 1998**
- ❖ **Eliminated Franchise and Gross Receipts Tax for energy utilities and telecommunications providers**
- ❖ **Taxed utilities same as other corporations . . .**



NJ Energy Tax Reform Act Component Taxes

- ❖ **Corporation Business Tax – CBT**
- ❖ **Sales and Use Tax Energy – S&U-EN**
- ❖ **Transitional Energy Facility Assessment –TEFA**
- ❖ **Uniform Transitional Utility Assessment –UTUA**



Corporation Business Tax

- ❖ Utilities pay 9% on corporate Income
- ❖ Utilities can take advantage of corporate tax credits as allowed by law
- ❖ CBT liability apportionable between states
- ❖ Stranded investment issues addressed via CBT credits
- ❖ Lengthened depreciation schedules for



Sales and Use Tax

- ❖ Electricity and Natural Gas = TPP
- ❖ Transmission of Energy = Service
- ❖ Sales and Use Tax imposed on both TPP and service of transmission
- ❖ “Vendor” is redefined in Sales and Use Tax Act to include energy utilities



Sales and Use Tax

- ❖ **Broad Based. Applies to otherwise exempt purchasers:**
 - ✓ manufacturers, research & development facilities, farmers
 - ✓ nursing homes, churches and other 501c(3) organizations
 - ✓ schools and other state and local gov't entities



Sales and Use Tax

- ❖ **Does not apply to:**
 - ✓ purchases of electricity and gas by a utility for its own use and consumption
 - ✓ purchases by Federal Gov't
 - ✓ purchases by a few specific groups like cemetery companies and limited dividend housing corps



Sales and Use Tax

- ❖ Sales tax required to be included in price charged for electricity, gas and utility service, unlike the general sales tax provision that sales tax be separately stated. . .
- ❖ Energy vendors file a special sales tax return – gross receipts are divided by 1.06 to arrive at actual receipts and tax collected



Sales and Use Tax: Nexus

- ❖ One of the most significant accomplishments of the Electric Energy deregulation was the imposition of a responsibility for out-of-state suppliers to maintain an in-state office to “protect the interest of the consumers”
- ❖ Done through Title 48 – Public Utilities rather than through Title 54–Taxation
- ❖ Has, thus far, withstood legal scrutiny!

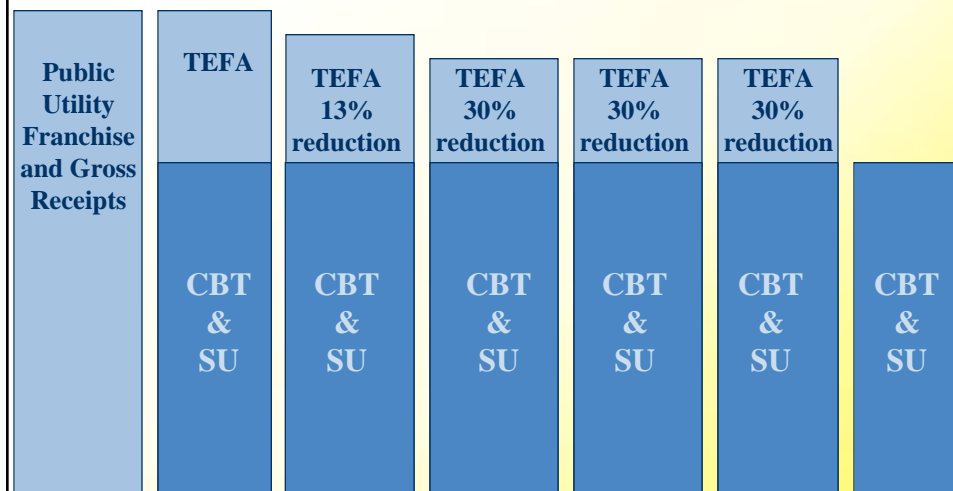


Transitional Energy Facility Assessment (TEFA)

- ❖ TEFA = difference between what utility paid under F&GRT and its total annual tax liability under CBT and S&U
- ❖ Assessed only on energy utilities previously subject to F&GRT
- ❖ Phases out in five years



TEFA





Uniform Transitional Utility Assessment (UTUA)

- ❖ The energy utilities were paying their F&GRT in full on April 1st of each year. The UTUA was designed to provide tax revenue to the State from these companies in the same half of the fiscal year it previously received the F&GRT.
- ❖ 50% of estimated CBT and S&U liability for calendar year is due by April 20 as UTUA
- ❖ UTUA paid is then taken as



UTUA– Nonrefundable Credit

April 20	Utilities report estimated liabilities for CBT & S&U
May 10	Division of Taxation reviews and certifies estimates and notifies utilities
May 15	Payment due (EFT)



Summary

- ❖ **Tax levy no longer connected to commodity cost or volume but to corporate earnings and sales of energy**
- ❖ **Protects tax base – and ability to make disbursements to municipalities, while leveling the playing field for in-state and out of state energy suppliers**
- ❖ **Supports competition among energy providers with result of cheaper**