

## **Business Tax Administrative Rule 500.19-6**

### **Clean Energy Surcharge (CES) - Separate Itemization**

CES is not a sales tax and is not imposed on customers or consumers. The incidence (legal requirement to pay) of the CES is on a Large Retailer, not on its customers. The payment of taxes and fees legally imposed on a Large Retailer is considered a cost of doing business, synonymous in character to any other cost necessary for a Large Retailer to engage in its chosen activity.

A Large Retailer may separately itemize its CES obligations on its invoices to its customers to whatever extent it chooses. A Large Retailer may describe CES on its invoices in whatever manner it chooses. However, since the incidence of CES is on a Large Retailer, any recovery of CES from a Large Retailer's customers is considered Retail Sales and subject to the CES because it is part of the cost to the end user for consumption or use of services.

If separately itemized, the City considers assessable for CES all amounts charged to customers and paid by customers, which includes a base charge plus any add-on for CES. If a lump-sum is billed (not separately itemized), the City considers the full invoice amount subject to CES regardless of whether a Large Retailer considers a portion of this to be comprised of CES.

#### **Example 1**

Company A sells goods or services at retail to a customer for \$10,000 prior to the enactment of CES. Company A is a Large Retailer. After the enactment of CES, Company A elects to separately itemize its CES obligation on invoices to customers. For the same goods or services, Company A now charges its customer \$10,100 ( $\$10,000 * 1.01$ ). CES is due on \$10,100. Company A's CES payment to the City is \$101 ( $\$10,100 * .01$ ).

#### **Example 2**

Company B sells goods or services at retail to a customer for \$10,000 prior to the enactment of CES. Company B is a Large Retailer. After the enactment of CES, Company B elects not to separately itemize its CES obligation on invoices to customers. For the same goods or services, Company B still charges its customers \$10,000. CES is due on \$10,000. Company B's CES payment to the City is \$100 ( $\$10,000 * .01$ ).

#### **Example 3**

Company C sells goods or services at retail to a customer for \$10,000 prior to the enactment of CES. Company B is a Large Retailer. After the enactment of CES, Company C elects not to separately itemize its CES obligation on invoices to customers, and Company C deducts its CES obligation from the base it subjects to CES. For the same goods or services, Company C still charges its customers \$10,000, but Company C only subjects \$9,900 to CES ( $\$10,000 - (\$10,000 * .01)$ ). Company C remits \$99 ( $\$9,900 * .01$ ) to the City and retains \$1 as a rounding charge. This is an incorrect application of CES and is not allowed. The correct CES payment in this situation is \$100 ( $\$10,000 * .01$ ).

#### **Example 4**

Company D sells goods or services at retail to Customer A for \$10,000 prior to the enactment of CES. Company D is a Large Retailer. After the enactment of CES, Company D elects to separately itemize its

CES obligation on invoices to customers. For the same goods or services, Company D now charges Customer A \$10,100 ( $\$10,000 * 1.01$ ). CES is due on \$10,100. Under normal circumstances, Company D's CES payment to the City is \$101 ( $\$10,100 * .01$ ). However, Customer A refuses to pay the separately itemized \$100 CES charge and remits only \$10,000 ( $\$10,100 - \$100$ ). Company D's CES payment to the City is still \$101, because the City expects Large Retailers to operate on the accrual accounting basis. Once Company D has determined that the \$100 separately itemized CES charge is uncollectible, it may deduct \$100 ( $\$10,100 - \$10,000$ ) from future Retail Sales subject to CES.

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