



FYI Sales 66

Sales Tax Exemption on Residential Energy Usage

GENERAL INFORMATION

Gas, electricity, coal, fuel oil and other energy sources sold to occupants of residences for residential use are exempt from state, Regional Transportation District/Cultural and Scientific Facilities District (RTD/CD), Rural Transportation Authority (RTA) and certain local sales taxes. [§39-26-715.1(a)(II) C.R.S., and Sales and Use Tax Regulation 39-26-715.1(a)(II)]

The definition of "residential use" is: the use of gas, electricity, etc., by the individual customer exclusively for domestic purposes such as lighting, refrigeration, cooking, water heating, space heating and air conditioning in a private home or individual living unit served through a single meter or a master-metered, multi-unit apartment building, condominium, townhome or mobile home.

Residential use includes service to parking areas, outdoor walkways, and buildings associated with the residence such as garages, barns and other minor buildings for use of the residents, served through the residential meter. Residential use does **not** include short-term occupancy (units which are rented for less than 30 consecutive days.)

Residents in a private home or individual living unit such as an apartment, condominium, townhome or mobile home, who are served through a single meter and whose utility rate has been classified by Public Utilities Commission statute or regulation as residential are automatically exempt. These users need not use the application procedures described in this FYI.

Residents in multi-unit apartments, mobile home parks, condominiums or townhomes who are billed through a master meter and who are receiving service at commercial rates may nevertheless qualify for this exemption, providing the gas and electricity are used for residential purposes as defined above. In multi-unit residential complexes, exempt usage would include heating and/or lighting for such areas as common hallways, parking garages, outdoor parking areas and walkways. Such complexes must have a preponderance of occupants who reside there for 30 consecutive days or longer. The portion of such a complex that is used for short-term occupancy may be subject to use tax liability, even if no sales tax is charged on the utility bill.

NONEXEMPT USAGE

Nonexempt usage includes space in an apartment, condominium, etc., that is used for commercial offices, commercial rental space, short-term occupancy (less than 30 consecutive days), or any other non-residential purpose. In essence, any utility usage that can be deducted as an expense on an income tax return is non-exempt. An example of nonexempt usage would be energy usage for a building manager's office. The user should compute the percentage of non-exempt usage and remit the applicable sales tax on that portion directly to the Department of Revenue annually, on line 10 of the December Retail Sales Tax Return (DR 0100), due January 20. If you do not have a sales tax account, remit the tax annually on a Combined Annual Retail Sales Tax Return (DR 0100A). This form is available from the Department of Revenue.

COMPUTING NONEXEMPT PERCENTAGE OF UTILITIES

There are two common ways of computing your percentage of nonexempt usage. You may calculate the actual energy usage in the exempt and nonexempt areas, or calculate the percentage of square footage in each area.

APPLICATION PROCEDURE FOR TAX EXEMPTION

Complete and submit to your utility company (**not** to the Department of Revenue) a Sales Tax Exempt Certificate Electricity and Gas for Domestic Consumption (DR 1260). Keep a copy for your records. The utility company will exempt the account from sales taxes, except for the taxes of those local jurisdictions which do not allow this exemption. **Note: If your utility bills show that you are not being invoiced for sales tax, you do not need to file this application.**

REFUNDS FOR TAX PAID

You may obtain a refund of sales taxes you paid to your utility company prior to applying for and receiving this exemption. The refund may be claimed for sales taxes paid up to a maximum of three years prior to the date you are filing the claim.

However, for refund claims of utilities paid on apartment buildings, the claim may go back for only 18 months. The basis for this ruling is that the benefits derived from the exemption should belong to the residential tenants currently living in each unit. Therefore, the portion of the refund allowable must reflect the amounts of tax paid by the tenants still residing in the apartment. It has been determined that the average tenancy of current residents in an apartment building is 18 months.

Complete and return to the Department of Revenue a separate Claim for Refund (DR 0137) for **each** tax for which you are requesting a refund (state, RTD/CD, RTA, city, county, etc.). These tax rates may be obtained from Colorado Sales/Use Tax Rates (DR 1002). Prepare a worksheet listing each tax paid by month. Also include copies of the billings for the first and last months of the period claimed, and a copy of your DR 1260 exemption certificate.

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.