

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Sales Tax
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Sales and Use Taxes on Gas and Electricity

Introduction

Chapter 63 of the Laws of 2000 was enacted May 15, 2000. This new legislation, in part, amended the New York State Sales and Use Tax Law to provide for the following.

- Beginning **June 1, 2000**, gas and electricity are subject to State and local compensating use taxes in order to eliminate the disparity in taxation favoring out-of-state sellers of gas or electricity.
- Beginning **June 1, 2000**, an exemption from State and local sales and compensating use taxes is created for certain purchases of gas or electricity used to provide gas or electric service.
- Beginning **September 1, 2000**, a phase-out is created for State and local sales taxes on receipts from sales of transportation, transmission or distribution of gas or electricity when purchased from someone other than the vendor of the gas or electricity.

Compensating Use Tax

Effective June 1, 2000, the Tax Law was amended to add a State compensating use tax for the use of gas or electricity within the State. The State compensating use tax is four percent of the consideration given or contracted to be given for gas or electricity, or for the use of gas or electricity. Consideration includes any charges for tangible personal property transferred in conjunction with gas or electricity and any charges by the vendor of the gas or electricity for the transportation, transmission or distribution of such gas or electricity. There is no use tax on self-produced gas or self-generated electricity where there is no consideration given or contracted to be given for such gas or electricity.

The Tax Law was also amended to provide that if a county or city imposes a sales tax on utility services, a local compensating use tax on any consideration for gas or electricity, as described above, also applies. Likewise, if a county or city elects to exempt residential energy sources and services from local sales tax, or to tax them at a reduced rate, such exemption or reduced rate will also apply to the county's or city's use tax on consideration for gas or electricity.

In addition, the Tax Law was amended to provide that if a school district imposes a sales tax on utility services, a local compensating use tax on any consideration for gas or electricity, as described above, also applies.

The State and local compensating use taxes apply to uses occurring on and after June 1, 2000, although occurring under a contract made prior to June 1, 2000. Where the billing for such

uses is based on meter readings, the use taxes apply to all billing statements based on meters read on or after June 1, 2000, if more than one-half of the number of days included in the billing statement are after May 31, 2000.

Exemption for certain uses of gas or electricity

Effective June 1, 2000, the Tax Law was amended to provide an exemption from State and local sales and compensating use taxes for certain uses of gas or electricity by persons transporting, transmitting, or distributing gas or electricity and persons storing gas in an underground facility. The exemption applies to gas or electricity or gas or electric service used or consumed directly and exclusively to provide gas or electric service consisting of operating a gas pipeline or gas distribution line or an electric transmission or distribution line and ensuring the necessary working pressure in an underground gas storage facility.

This exemption includes, but is not limited to, gas or electricity or gas or electric service used or consumed directly and exclusively to:

- (1) ensure necessary working pressure in a gas pipeline used to transport, transmit or distribute gas;
- (2) operate compressors used to transport, transmit or distribute gas through a gas pipeline or distribution line or used to ensure necessary working pressure in a storage facility;
- (3) operate heaters to prevent gas in a pipeline or distribution line from freezing;
- (4) operate equipment which removes impurities and moisture from gas in a pipeline or distribution line;
- (5) operate substations and equipment related to electric transmission and distribution lines such as transformers, capacitors, meters, switches, communication devices and heating and cooling equipment; and
- (6) ensure the reliability of electricity or electric service transmitted or distributed through such lines, for example, by operating reserve capacity machinery and equipment.

Phase-out of tax on transportation, transmission or distribution of gas or electricity

The Tax Law was amended to phase-out the State and local sales taxes on the transportation, transmission or distribution of gas or electricity when purchased from someone other than the vendor of the gas or electricity. However, when transportation, transmission or distribution of gas or electricity is purchased from the vendor of the gas or electricity, the entire charge is subject to the full State and local sales taxes and the phase-out does not apply. This is the case whether or not the charge for the transportation, transmission or distribution of gas or

electricity is separately stated.

The phase-out is applicable to the sales taxes imposed under Article 28 of the Tax Law (including the taxes imposed for the Municipal Assistance Corporation (MAC) and the Metropolitan Commuter Transportation District (MCTD)) and the local taxes imposed under Article 29 of the Tax Law. On September 1, 2000, and on September 1 of each year following, the tax rates on receipts from these services are reduced by 25 percent of the rates in effect on September 1, 2000. Therefore, beginning September 1, 2003, no tax will be due on receipts from these services when purchased from someone other than the vendor of the gas or electricity.

For purposes of the phase-out of the State and local sales taxes on transportation, transmission or distribution, where the billing is based on meter readings, the reduced rate is applicable to all billing statements based on meters read on or after September 1, 2000, if more than one-half of the number of days included in the billing statement are after August 31, 2000. This rule also applies to the phase-outs for September 1, 2001, September 1, 2002, and September 1, 2003.