

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-M-78 (7) S
November 24, 1978

This memorandum supersedes TSB-M-78(7)S dated April 28, 1978 which should be destroyed

Reduction in Rate on Certain Energy Sources and Services

Chapter 70, Laws of 1978, approved April 14, 1978, added Section 1105-A to Article 28 of the Tax Law, providing for a reduction in the 4% New York State sales and use tax rate on retail sales of certain energy sources and services.

The sales and compensating use tax due shall be paid at the reduced rates on:

- 1) the receipts from retail sales, or
- 2) the consideration given or contracted to be given, excluding transportation charges billed separately to the purchaser, on the purchase for residential purposes of the energy sources and services described below.

These reductions do not affect local sales and use tax rates or the 4% sales and use tax rate applicable in New York City which is pledged for repayment of Municipal Assistance Corporation obligations.

The following are the reduced State rates, their effective dates and the energy sources (when used for residential purposes) to which they apply.

Effective 1/1/79-12/31/79	3%
Effective 1/1/80-12/31/80	2½%
Effective 1/1/81 and thereafter	2%

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Fuel oil (but not diesel motor fuel)
Coal
Propane (except when sold in containers of less than 100 pounds)
Natural gas
Electricity
Steam
Wood for residential heating purposes only
Gas, electric and steam services

Transitional Provisions

All sales of energy sources shall be subject to tax at the rate in effect on the date of delivery or transfer of possession, even if made or rendered under a contract entered into prior to the effective date of the tax rate reduction.

Where energy sources are sold on a monthly, quarterly or other term basis and the bills for such sales are based on meter readings, the tax rate reduction shall not apply unless more than one half of the days included in the billing period are for days on and after the effective date of the tax rate reduction.

For example, in a locality imposing a 2% local tax, an electric company bills residential customers based on the following data:

<u>Previous Reading</u>	<u>Present Reading</u>	<u>Billing Days</u>	<u>Days After 12/31</u>	<u>Rates Applicable to Total Bill</u>		
				<u>N.Y.S. Rate</u>	<u>Local Tax Rate</u>	<u>Total Rate</u>
12/15/78	1/14/79	30	14	4	2	6
12/16/78	1/15/79	30	15	4	2	6
12/17/78	1/16/79	30	16	3	2	5

In the first two situations, more than 1/2 of the days covered by the bill do not occur after December 31, therefore the reduced New York State rate does not apply.

Definitions

"Residential Purposes"

Any use of a structure or part of a structure as a place of abode maintained by or for a person, whether or not owned by such person, on other than a temporary or transient basis, with the exclusion of accommodations subject to tax under subdivision (e) of Section 1105 of the Tax Law (e.g., hotel and motel rooms).

"Non-Residential Purposes"

Any use other than for "residential purposes", as defined above, including any use in the conduct of a trade, business or profession, whether such trade, business or profession is carried on by the owner of the structure or some other person.

"Common Area"

Any area of the premises of a structure used without distinction for both residential and non-residential purposes.

Certification and Allocation

Under certain conditions, it will be necessary for the user of the energy sources to file a "Certification of Residential Use" (Form TP-385) with the supplier of the energy sources, in order to qualify for the reduced tax rate on the percentage of energy sources used for residential purposes.

Formula For Arriving at Residential Percentage

The percentage of energy sources eligible for reduction will be arrived at by determining the total area of space used for residential purposes, excluding common areas, divided by the total area (residential and non-residential), excluding common areas. (Total area is to be measured in square feet.)

The resulting percentage should be rounded to the nearest 10% but only if it does not exceed 75%. A percentage of residential use of 75% or more qualifies as 100% residential use.

Certifications, when needed, may be obtained from the Taxpayer Assistance Bureau at the State Campus in Albany, from any District Tax Office or from the supplier of the energy sources and services.

Conditions Requiring No Certification

1. Purchases of energy sources used exclusively for residential purposes. (Total usage eligible for rate reduction.)
2. Energy sources billed on a single meter or in a lump sum which are used for both residential and non-residential purposes, the residential purposes constituting 75% or more of the usage. (The entire amount billed shall be eligible for the reduced rate.)
3. A structure used exclusively for non-residential purposes. (No percentage is eligible for rate reduction.)

Condition Requiring Certification

1. Energy sources billed on a single meter or in a lump sum, used for both residential and non-residential purposes, and less than 75% of the usage is for residential purposes. The purchaser, in order to qualify for the rate reduction on the eligible percentage of energy sources (portion used for residential purposes) must file a Certification, indicating the eligible percentage arrived at in accordance with the formula stated above.

Where a customer is eligible for the reduced tax rate, as a residential customer described in paragraphs (1) or (2) of "Conditions Requiring No Certification", but the supplier of energy sources has not classified him as a residential user, the customer should furnish the supplier with a certification.

In the absence of certification, the supplier of energy sources will collect the full tax on the entire usage.

Vendor Classification

1. Vendors of energy sources regulated by the New York State Public Service Commission.
2. All other vendors of energy sources.

Vendors and Consumers of New York State Public Service Commission Regulated Utilities

Vendors regulated by the New York State Public Service Commission, who have a tariff or rate schedule on file which classifies their customers as either residential or nonresidential, may request approval from the Tax Commission for use of such classifications for purposes of determining the eligibility of their customers for a reduced sales tax rate without certification. Such approval will relieve the vendor of any liability in the event the classifications are questioned at some future date. The vendor will also be relieved of liability for acceptance of a certification in which the customer misrepresented the facts. He is not relieved of any liability in the case of his own fraud.

Vendors and Consumers of Non-Regulated Energy Sources

Vendors of energy sources not subject to regulation by the New York State Public Service Commission who have classified customers on their records as residential and nonresidential, may use such classification for the purpose of collecting the reduced rate of sales tax on sales to residential customers without the necessity of obtaining a Certification of Residential Use (Form TP-385) from the customer.

Those vendors who have not previously classified their customers as residential and nonresidential are required to make a visual inspection of the customers' structures in order to determine the customers' eligibility for a reduced rate of sales tax without need for certification.

Where the reduced rate of sales tax is collected based on such determination, acceptance of the reduced rate by the customer will indicate his agreement with the vendor's determination. Under such conditions, a vendor will not be held liable if it is later determined by the Tax Commission that the percentage of residential usage of a particular customer is less than 75%; nor will he be held liable for misrepresentation by the customer of information furnished on the certification. He is always liable, however, in the case of his own fraud.

Sales Other Than Energy Sources and Services

The reduced rate of tax does not apply to sales by vendors of energy sources, of tangible personal property or services other than those specified on page 1. Sales of appliances, uninstalled heating and cooling equipment, parts and supplies, propane in containers of less than 100 pounds, wood for other than residential heating purposes, repair services, cleaning and maintenance services, etc. are subject to the full statewide sales tax rate in addition to any applicable local tax.

General Information

Every vendor making sales of energy sources which are taxed at the reduced rate will be required to file a supplemental schedule (Schedule B) in addition to his normal quarterly or long-form, part-quarterly return.

Vendors filing short-form, part-quarterly returns may adjust the amount reported as "Comparable Quarter-Prior Year" to reflect the reduction in current sales tax collections.

3% SALES AND USE TAX COLLECTION CHART

Amount of Sale	Tax to be Collected	Amount of Sale	Tax to be Collected	Amount of Sale	Tax to be Collected	Amount of Sale	Tax to be Collected
\$0.01 to \$0.15.....	None	2.50 to 2.83.....	8¢	\$5.17 to \$5.49.....	\$.16	7.84 to 8.16.....	.24
.16 to .47.....	1¢	2.84 to 3.16.....	9¢	5.50 to 5.83.....	.17	8.17 to 8.49.....	.25
.48 to .80.....	2¢	3.17 to 3.49.....	\$.10	5.84 to 6.16.....	.18	8.50 to 8.83.....	.26
.81 to 1.16.....	3¢	3.50 to 3.83.....	.11	6.17 to 6.49.....	.19	8.84 to 9.16.....	.27
1.17 to 1.49.....	4¢	3.84 to 4.16.....	.12	6.50 to 6.83.....	.20	9.17 to 9.49.....	.28
1.50 to 1.83.....	5¢	4.17 to 4.49.....	.13	6.84 to 7.16.....	.21	9.50 to 9.83.....	.29
1.84 to 2.16.....	6¢	4.50 to 4.83.....	.14	7.17 to 7.49.....	.22	9.84 to 10.00.....	.30
2.17 to 2.49.....	7¢	4.84 to 5.16.....	.15	7.50 to 7.83.....	.23		

THIS FORM MAY BE REPRODUCED WITHOUT REQUESTING PERMISSION

TP-385 (10/78)		CERTIFICATION OF RESIDENTIAL USE SALES TAX REDUCTION ON ENERGY PURCHASES	
NAME		ACCT. NO.	
STREET ADDRESS			
CITY	COUNTY	STATE	ZIP
IF CERTIFICATION IS FOR ANOTHER LOCATION GIVE ADDRESS			
CITY	COUNTY	STATE	ZIP
____ % Percentage of residential use for property indicated above.			
If the percentage of residential use is 75% or more, your supplier will collect the reduced rate of tax for your total energy purchase.			
If the percentage of residential use is less than 75%, your energy supplier will collect the reduced rate of tax on the percentage indicated above.			
DATE	SIGNATURE		TITLE

Effective January 1, 1979, the rate of sales & use tax on fuel oil, coal, propane (except when sold in containers of less than 100 lbs.) natural gas, electricity, steam & gas, electric & steam services used for residential purposes & wood for residential heating purposes will be reduced

Instructions

1. Enter name & billing address. If reduction is claimed for location other than billing address indicate in space provided.
2. Indicate percentage of residential use. (Rounded to the Nearest 10%)
3. Completed certification should be sent to the utility Company or fuel dealer from whom energy purchases Are made.

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**A NEW CERTIFICATION SHOULD BE FILED WHEN
THERE IS A CHANGE IN RESIDENTIAL USE**

TP-385 (Back) (10/78)

ALLOCATION METHOD

The following allocation formula must be used when the premises consist of both residential and non-residential space and the area used for residential purposes comprises less than 75% of the premises. (Hotels, motels, etc. may only claim reduction for those units occupied by permanent residents (90 days or more permanent occupancy)).

Total area of space used for residential purposes (excluding common areas) divided by the total area of premises (excluding common areas). (Residential space (sq. ft.) ÷ total area of premises (sq. ft.) = % applicable to residential use.

ALL ALLOCATION PERCENTAGES SHALL BE ROUNDED TO THE NEAREST 10%.
(Only when computation results in less than 75%.)