

8130.1100 UTILITIES AND RESIDENTIAL HEATING FUELS.

Subpart 1. **General law.** Under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (e), the furnishing for a consideration of electricity, gas, water, or steam for use or consumption within Minnesota are taxable sales.

Subp. 2. **Definitions.** The definitions in items A to F apply to this part.

A. "Billing month," for natural gas or electricity, means the month the bill is dated regardless of when the service was rendered. Billing month means the meter reading date if there is no date on the bill. If a utility uses a system of cycle billing and 12 revenue months per year, the billing month may be the utility's revenue month.

B. "Heating season" means the billing months of November, December, January, February, March, and April.

C. "Interruptible service credit" means a credit given by a utility company to a customer each month in exchange for the customer's agreement to shut down certain equipment during periods of high power usage.

D. "Primary source of residential heat" means the source which heats the largest square footage of floor space. When a user heats the same area with two sources of heat, each using different fuels, such as a home heated by wood which also has an electric heating system, then the primary source of residential heat is the source which supplies more heat than any other source for the largest period of time during the heating season. The examples in subitems (1) to (3) illustrate this situation.

(1) "B" heats a home with natural gas. "B" adds an addition to the home, which is heated with electricity. The largest square footage of the floor space is heated with gas. Since only the fuel which provides the primary source of heat for the entire residence qualifies for the exemption, both fuels cannot be exempt. Here, the electricity is taxable and the natural gas is exempt because the primary source of heat for the entire residence is natural gas.

(2) "B" heats a home with natural gas. "B" adds an addition to the home, which is heated with electricity. The square footage of the part of the home that is heated with natural gas is equal to the square footage of the addition that is heated with electricity. Although neither is the primary source of heat, in this situation "B" may choose one source of heat to be considered the primary source.

(3) "B" uses fuel oil to heat a home, but uses electricity to provide additional heat in the basement. The fuel oil would be exempt as all fuel oil delivered to a home is exempt. The electricity would be taxable since electricity is not the primary source of heat for the residence.

E. "Residential use" means use for general household purposes including cooking and water heating. Residential use does not include use in travel trailers, motor homes, or other recreational vehicles.

F. "Residential users" or "residential customers" includes persons billed for sales of residential heating fuel for single-family homes, duplexes, townhouse units, condominium units or buildings, apartment units or buildings, nursing homes, intermediate care facilities, mobile homes, fraternity or sorority houses, rooming houses, seasonal cabins, group homes, city and county jails, and state-operated correctional facilities and regional treatment centers.

Subp. 3. **Exemptions.** The following are exempt from sales and use tax:

A. Fuels, electricity, gas, steam, or water that is used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail. See part 8130.5500 and Minnesota Statutes, sections 297A.68, subdivision 2, and 297A.69, subdivision 2.

B. Fuel, electricity, gas, and steam stored, used, or consumed in the production of a taxable service intended to be sold ultimately at retail. See Minnesota Statutes, section 297A.68, subdivision 3.

C. For the billing months of the heating season, natural gas or electricity sold for residential use to customers who are metered and billed as residential users and who use natural gas or electricity for their primary source of residential heat. When gas or electricity is exempt as a heating fuel, all other gas or electricity used through the same meter is also exempt for the six-month heating season. Each qualifying customer must receive six months of service exempt from taxation. See Minnesota Statutes, section 297A.67, subdivision 15. See subpart 7 for tax treatment of residential customers on utility budget plans.

D. On a year-round basis, all fuel oil, coal, wood, steam, hot water, propane gas, and LP gas sold to residential customers for residential use. See Minnesota Statutes, section 297A.67, subdivision 15. See subpart 7.

E. Water services for residential use are exempt regardless of how the services are billed. See Minnesota Statutes, section 297A.67, subdivision 16.

Subp. 4. **Charges included in sales price.** All charges associated with furnishing utilities or making utility service available, except fees for the safe drinking water testing program mandated by federal law and taxes legally imposed directly on the consumer that are separately stated on the bill given to the purchaser, are considered part of the sales price and are subject to tax. If the utility service being provided is exempt from tax, the additional charges are also exempt. If the utility service being provided is partially exempt from tax, the additional charges will be exempt to the same extent the utility service is exempt. The

following are examples of taxable charges that are included in the base on which the sales tax is charged. These charges are taxable even if minimal or no services are consumed:

- A. demand charge;
- B. fixed or basic monthly charge;
- C. franchise fee;
- D. fuel clause adjustment;
- E. minimum charge;
- F. reconnection fee;
- G. service charge;
- H. service connection charge;
- I. standby fee; and
- J. surcharge.

Subp. 5. **Credits determined before and after the sale.** Credits or dividends, such as capital contribution credits, interruptible service credits, and patronage dividends, are not included in the amount subject to sales tax if the credit and the amount of the credit are determined prior to the sale. These credits are included in the amount subject to sales tax if the credit or the amount of the credit is determined by events that happen after the sale has occurred. The examples in items A to C illustrate these situations.

A. An electric company and a manufacturer enter into an interruptible service agreement. Under this agreement, the manufacturer agrees to shut down certain machinery during peak electricity demand periods. In exchange, the electric company gives the customer a credit on each bill. This credit is a constant dollar amount and is based on the amount of kilowatts the manufacturer would conserve by shutting down the agreed upon machinery. The credit is given regardless of whether the manufacturer was required to shut down machinery during the period. Here, the credit is contracted for before the sale and must be subtracted from the sales price before sales tax is calculated.

B. A utility company and a manufacturer enter into an interruptible service agreement. Under this agreement, the manufacturer agrees to allow the utility company to control its water heaters during peak kilowatt demand periods and must use 500 kilowatts during the period. In exchange, the utility company gives the manufacturer an \$8 rebate each month. If 500 kilowatts are not used during the period, no rebate is given. The rebate can only be used as a credit against the next bill, and if service is not continued the credit is forfeited. In this case, whether a credit will be allowed is not determined until after the sale occurs. Therefore, the amount of the credit must be included in the sales price when calculating the amount of sales tax due.

C. The rate a utility cooperative charges its patrons includes a capital contribution in addition to the cost of providing services. The bylaws of the cooperative require that the excess of its revenue over its operating costs and other expenses are capital contributions paid by its patrons. At the end of each year, the amount of each patron's contribution is determined and credited to the patron's capital account. In this case, it is not determined until after the sale has occurred if a credit will be allowed, and if so, how much the credit will be. Therefore, the amount of the credit must be included in the sales price when calculating the amount of sales tax due.

Subp. 6. Commercial and residential use.

A. If a building houses both residential quarters and commercial operations and contains one meter for the entire building for either water, electricity, or natural gas, the water, electricity, or natural gas supplied will be considered to be for residential use if less than 50 percent of the square footage of the building is used for commercial operations. If 50 percent or more of the building is used for commercial operations, the utility service will be considered to be for commercial use.

B. If a building which houses both residential quarters and commercial operations contains one central heating plant for the entire building, heating fuels supplied to or for the heating plant will be considered to be used for residential use if less than 50 percent of the square footage of the building is used for commercial operations. If 50 percent or more of the building is used for commercial operations, the heating fuels will be considered to be for commercial use.

C. Examples of a residence that is also used as a commercial property:

(1) "B" owns a building with a restaurant on the first floor. "B" lives in an apartment on the second floor. There is one central heating plant for the entire building, and the primary source of heat is natural gas. The basement is not used as part of the commercial operation. Since less than 50 percent of the square footage is used for commercial purposes, the exemption applies.

(2) "C" owns and operates a resort. "C" has a home and four cabins which are heated by LP gas from one LP gas tank. The four cabins constitute a commercial business activity. There is only one common source of heat. The fuel supply to the common heating plant is not regarded as used for residential use if the square footage of the four cabins exceeds that of the home. In determining the square footage of commercial use, the seasonal use must also be considered. Assume "C" has a 1,600 square foot home and four rental units of 750 square feet each that are available for rent six months of the year. In computing the square footage for commercial use, $4 \times (1/2 \text{ of } 750)$ or 1,500 is for commercial use; and as 1,600 square feet is for residential use, the heating fuel is exempt.

(3) "D" is a dentist who has a dental office in the home. "D's" home is heated with fuel oil. The fuel is exempt if the office occupies less than 50 percent of the square footage of the home.

(4) "B" owns a resort and uses LP gas to heat "B's" residence and five rental units from the same tank. At the end of the season, the rental units are closed down and only "B's" residence consumes LP gas. The rental units that are not operational during the winter must be included when determining if the customer is a residential user, but the seasonal use of the rental units is considered in determining if the commercial use equals or exceeds 50 percent. See subitem (2).

(5) "C" owns a resort and rents out cabins on a weekly basis during the summer months. During the months of September through May, the cabins are rented as rental units on a monthly basis. The cabins are heated by propane fuel from one storage tank. Fuel used to heat the cabins rented on a monthly basis from September through May is exempt as residential heating fuel. However, fuel used during the summer months to operate cabins rented weekly is taxable. "C" may purchase the fuel exempt for residential heating, but must pay use tax on fuel during the summer months.

(6) "D" owns an apartment building that is heated with electricity. "D" is responsible for heating the entire building including all common areas. The residential heating fuel exemption would apply in this case. Apartment buildings and condominium units are considered to be residential. Therefore, sales of electricity used as a primary source of heat to owners of these buildings are exempt during the heating season. This is true even when the electricity is used by the building owner to heat common areas such as hallways and laundry rooms.

D. When a building houses both residential quarters and commercial operations, a utility's acceptance of a fully completed exemption certificate claiming the residential heating fuel exemption will relieve the utility from liability for the tax if it is later determined that the exemption was improperly claimed. The utility must exercise reasonable care and judgment before allowing the customer to use the exemption for the utility to be relieved of liability under this item.

Subp. 7. **Residential heating fuels.**

A. All fuel oil, coal, wood, steam, hot water, propane gas, and LP gas delivered to a residence is assumed to be used for residential heating and is exempt. All fuel oil, coal, wood, steam, hot water, propane gas, and LP gas that is not delivered to a residence is taxable. Heating fuels picked up by a customer are taxable unless the customer provides the retailer with a written statement indicating that the heating fuel is for residential heating purposes.

B. Sales of firewood are exempt as residential heating fuel whether delivered or picked up by the customer. Sales of firewood for recreational use, including camping and picnics, are taxable.

C. Sales of artificial fireplace logs are not exempt home heating fuel and are taxable.

D. Fuel used to heat fish houses is taxable since fish houses are not regarded as residences.

E. The monthly payments of residential customers on budget plans with a local utility will not change during the heating season. Sales tax is paid by the utility on actual consumption, not the monthly payments. Therefore, while residential customers will not pay sales tax on their heating fuel during the heating season, their monthly payments will remain the same.

Subp. 8. **Sales of utility services by local governments to themselves.** Effective June 1, 1992, items A and B apply when a local government sells utility services to other departments or divisions within the same unit of local government.

A. A utility that is operated by a local government as a separate corporation is considered a separate legal entity or person. Therefore, the sale of utility services by this entity to other departments within the local government are taxable sales.

B. A utility that is operated by a local government, but that is not separately incorporated, should not charge sales tax on sales of utility services to other departments or within the same unit of local government. The transfer is merely a book transfer within one entity and no taxable sale has occurred.

Statutory Authority: *MS s 14.388; 270.06; 270C.06; 297A.29*

History: *17 SR 1279; 18 SR 83; L 2005 c 151 art 1 s 114; 31 SR 449*

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