

1 Department of Revenue

2

3 Adopted Permanent Rules Relating to Sales and Use Tax; Utilities
4 and Fuels

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6 Rules as Adopted

7 8130.1100 UTILITIES AND RESIDENTIAL HEATING FUELS.

8 Subpart 1. **Applicable law.** Under Minnesota Statutes,
9 section 297A.01, subdivision 3, paragraph (f), the furnishing
10 for a consideration of electricity, gas, water that is not for
11 residential use, or steam for use or consumption within
12 Minnesota are taxable sales.

13 Minnesota Statutes, section 297A.25, subdivision 23,
14 exempts sales of residential heating fuels from the sales and
15 use tax in the manner shown in items A to C:

16 A. all fuel oil, coal, wood, steam, hot water,
17 propane gas, and LP gas sold to residential customers for
18 residential use;

19 B. natural gas sold for residential use to customers
20 who are metered and billed as residential users and who use
21 natural gas for their primary source of residential heat for the
22 heating season; and

23 C. electricity sold for residential use to customers
24 who are metered and billed as residential users and who use
25 electricity for their primary source of residential heat for the
26 heating season.

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

29 A. "Billing month," for natural gas or electricity,
30 means the month the bill is dated regardless of when the service
31 was rendered. Billing month means the meter reading date if
32 there is no date on the bill. If a utility uses a system of
33 cycle billing and 12 revenue months per year, the billing month
34 may be the utility's revenue month. ~~Each-qualifying-customer~~
35 ~~must-receive-six-months-of-service-exempt-from-taxation.~~

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

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

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

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

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

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

36 E. "Residential use" means use for general household

1 purposes including cooking and water heating. Residential use
2 does not include use in travel trailers, motor homes, or other
3 recreational vehicles.

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

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

14 A. Electricity, gas, steam, or water that is used or
15 consumed in agricultural or industrial production of personal
16 property intended to be sold ultimately at retail. See part
17 8130.5500 and Minnesota Statutes, section 297A.25, subdivision 9.

18 B. For the billing months of the heating season,
19 natural gas or electricity sold for residential use to customers
20 who are metered and billed as residential users and who use
21 natural gas or electricity for their primary source of
22 residential heat. When gas or electricity is exempt as a
23 heating fuel, all other gas or electricity used through the same
24 meter shall also be exempt for the six-month heating
25 season. Each qualifying customer must receive six months of
26 service exempt from taxation. See subpart 7 for tax treatment
27 of residential customers on utility budget plans.

28 C. On a year-round basis, all fuel oil, coal, wood,
29 steam, hot water, propane gas, and LP gas sold to residential
30 customers for residential use. See subpart 7.

31 Subp. 4. **Charges included in sales price.** All charges
32 associated with furnishing utilities or making utility service
33 available, except fees for the safe drinking water testing
34 program mandated by federal law, are considered part of the
35 sales price and are subject to tax. If the utility service
36 being provided is exempt from tax, the additional charges are

1 also exempt. If the utility service being provided is partially
 2 exempt from tax, the additional charges will be exempt to the
 3 same extent the utility service is exempt. The following are
 4 examples of taxable charges that are included in the base on
 5 which the sales tax is charged. These charges are taxable even
 6 if minimal or no services are consumed:

7 A. demand charge;

8 ~~B. fee for the safe drinking water testing program~~
 9 ~~mandated by federal law, sometimes referred to as a connection~~
 10 ~~fee;~~

11 ~~C. B. fixed or basic monthly charge;~~

12 ~~D. C. franchise fee;~~

13 ~~E. D. fuel clause adjustment;~~

14 ~~F. E. minimum charge;~~

15 ~~G. F. reconnection fee;~~

16 ~~H. G. service charge;~~

17 ~~I. H. service connection charge;~~

18 ~~J. I. standby fee; and~~

19 ~~K. J. surcharge.~~

20 Subp. 5. Credits determined before and after the sale.

21 Credits or dividends, such as capital contribution credits,
 22 interruptible service credits, and patronage dividends, are not
 23 included in the amount subject to sales tax if the credit and
 24 the amount of the credit are determined prior to the sale.

25 These credits are included in the amount subject to sales tax if
 26 the credit or the amount of the credit is determined by events
 27 that happen after the sale has occurred. The examples in items
 28 A to C illustrate these situations.

29 A. An electric company and a manufacturer enter into
 30 an interruptible service agreement. Under this agreement, the
 31 manufacturer agrees to shut down certain machinery during peak
 32 electricity demand periods. In exchange, the electric company
 33 gives the customer a credit on each bill. This credit is a
 34 constant dollar amount and is based on the amount of kilowatts
 35 the manufacturer would conserve by shutting down the agreed upon
 36 machinery. The credit is given regardless of whether the

1 manufacturer was required to shut down machinery during the
2 period. Here, the credit is contracted for before the sale and
3 should be subtracted from the sales price before sales tax is
4 calculated.

5 B. A utility company and a manufacturer enter into an
6 interruptible service agreement. Under this agreement, the
7 manufacturer agrees to allow the utility company to control its
8 water heaters during peak kilowatt demand periods and must use
9 500 kilowatts during the period. In exchange, the utility
10 company gives the ~~manufacture~~ manufacturer an \$8 rebate each
11 month. If 500 kilowatts are not used during the period, no
12 rebate is given. The rebate can only be used as a credit
13 against the next bill, and if service is not continued the
14 credit is forfeited. In this case, whether a credit will be
15 allowed is not determined until after the sale occurs.
16 Therefore, the amount of the credit must be included in the
17 sales price when calculating the amount of sales tax due.

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

30 **Subp. 6. Commercial and residential use.**

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

1 50 percent or more of the building is used for commercial
2 operations, the utility service will be considered to be for
3 commercial use.

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

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

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

21 (2) "C" owns and operates a resort. "C" has a
22 home and four cabins which are heated by LP gas from one LP gas
23 tank. The four cabins constitute a commercial business
24 activity. There is only one common source of heat. The fuel
25 supply to the common heating plant is not regarded as used for
26 residential use if the square footage of the four cabins exceeds
27 that of the home. In determining the square footage of
28 commercial use, the seasonal use must also be considered.
29 Assume "C" has a 1,600 square foot home and four rental units of
30 750 square feet each that are available for rent six months of
31 the year. In computing the square footage for commercial use, 4
32 x (1/2 of 750) or 1,500 is for commercial use; and as 1,600
33 square feet is for residential use, the heating fuel is exempt.

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

1 footage of the home.

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

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

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

30 D. Where a building houses both residential quarters
31 and commercial operations, a utility's good faith reliance upon
32 its customer's claiming of the residential heating fuel
33 exemption will relieve the utility from liability for the tax if
34 it is later determined that the exemption was improperly
35 claimed. The utility must exercise reasonable care and judgment
36 before allowing the customer to use the exemption for the

1 utility to be relieved of liability under this item.

2 Subp. 7. Residential heating fuels.

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

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

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

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

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

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

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

35 B. A utility that is operated by a local government,
36 but that is not separately incorporated, should not charge sales

1 tax on sales of utility services to other departments or
2 divisions within the same unit of local government. The
3 transfer is merely a book transfer within one entity and no
4 taxable sale has occurred.

5 REPEALER. Minnesota Rules, part 8130.7000, is repealed.