

Sales 66: Sales Tax Exemption on Residential Energy Usage

All gas, electricity, coal, wood, fuel oil, or coke sold for residential use are exempt from state sales and use taxes. [§§ 39-26-715(1)(a)(II) and (2)(c) C.R.S.] Residential use is use of energy for any domestic purpose, including powering lights, refrigerators, stoves, water heaters, space heaters, air conditioners, or other domestic items that require power or fuel in a residence. The exemption also applies to all purchases of propane and wood pellets used to heat a home or prepare food. Residential use includes fuel used for minor buildings associated with the residence that are billed under the residential utility meter, such as a shed, garage, or small barn. Utility usage is presumed to be for residential use when a utility provider charges a residential utility rate. However, if a utility provider charges a residence at a commercial rate, such rate does not preclude the use of energy for residential use to be exempt from tax. Many cities, counties, and special districts also allow an exemption for residential energy use. For a list of which special districts and local jurisdictions exempt residential energy use, see Department publication DR 1002.

ELIGIBILITY

This exemption applies to residential use of fuel in single-family homes, apartments, condominiums, mobile/trailer parks, dorms, nursing homes, assisted living homes, and any other dwelling in which people reside, even if the units are not billed from their own meter.

NON-RESIDENTIAL USAGE

The exemption does not apply to any energy use that is not for domestic purposes. Non-residential usage includes energy used in areas of a single-family home, apartment, mobile/trailer park, dorm, nursing home, assisted living home, or any other dwelling in which people reside that are not used for residential purposes including, but not limited to, commercial offices, commercial rental space, employee offices, or leasing office.

Non-residential usage also includes utilities used for business purposes. Non-residential usage will generally include utility usage that can be deducted as an expense on an income tax return whether or not the individual does deduct such expense. However, even utility usage that cannot be deducted from income tax may still be used for a non-residential purpose.

Computing Non-Residential Percentage of Utilities

Customers who purchase utilities for both residential and nonresidential uses must determine the percentage of their use that is non-residential and thus, does not qualify for the exemption. There are two common ways to compute your percentage of non-residential utility usage. You may calculate the actual energy usage of exempt versus nonexempt use or calculate the percentage of square footage in the exempt versus nonexempt areas.

Remitting Non-Residential Usage

The utility user who has not been charged tax by the utility company, but who has both residential and non-residential utility use must compute the percentage of non-residential utility usage and remit the applicable sales tax on the non-residential portion directly to the Department of Revenue on line 10 of the Retail Sales Tax Return (DR 0100). The filing of the return and payment of the tax are due annually to the Department by January 20. If you do not have a sales tax account, you should remit the tax annually on a Combined Annual Retail Sales Tax Return (DR 0100A).

APPLICATION PROCEDURE FOR TAX EXEMPTION

If more than 75% of the utility usage is for residential use, the person or entity making payments to the utility provider may complete and submit to their utility company (*not to the Department of Revenue*) a Sales Tax Exempt Certificate Electricity and Gas for Domestic Consumption (DR 1260). **Note: If your utility bills show that you are not being invoiced for sales tax, you do not need to file this application.** You should keep a copy for your records. The utility company will exempt the account from sales taxes, but will continue to collect the taxes of those local jurisdictions that do not allow this exemption. If some portion of your utility usage is not exempt from sales tax, you must compute the percentage of non-residential utilities used and remit the applicable tax on such percentage to the Department, as noted above.

REFUNDS FOR TAX PAID

If you paid tax on some portion of a utility bill that was for residential use, you may obtain a refund of the sales taxes you paid if you make a claim for refund to the Department. A resident, property manager, HOA, nursing home, assisted living, or any other person or entity who pays tax on a utility bill for exempt residential use may file a claim for refund of sales tax previously paid.

To claim a refund, complete and return to the Department a Claim for Refund of Tax Paid to Vendors (DR 0137B) that shows each separate jurisdiction for which you are requesting a refund (state, RTD/CD, RTA, city, county, etc.). These tax rates may be obtained from Department publication 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 if seventy-five percent or more of the utility usage is for residential use.

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.