

Application of Sales Tax to Sales of Certain Utility Services

Questions have been raised concerning the imposition of sales tax on sales of electricity and gas and the provision of electric and gas services. These questions, which have arisen as a result of the deregulation of the utility industry, have caused the Department to re-examine its policy with respect to both gas and electricity.

Section 1105(b) of the Tax Law imposes a sales tax on “[t]he receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature...” (emphasis added). Historically, electricity or gas, along with (among other things) the service of getting it to the consumer, was provided by one party, the utility, and the entire charge was subject to sales tax. In a restructured environment, one company will be selling electricity or gas and another company will be providing the service of (among other things) getting the electricity or gas to the customer. The phrase “gas, electricity . . . and gas, [and] electric . . . service of whatever nature” imposes tax on the services of both parties in the provision of electricity or gas.

Therefore, the Department has determined that the fee a utility charges the customer for getting the electricity or gas to the customer is subject to state and local sales tax as a charge for electric or gas service. This interpretation represents a change in policy. In order to allow an orderly implementation of this new policy, the change will be effective April 1, 1999.

It is noted that the new policy does not affect any of the exemptions provided in the Tax Law. For example:

- purchases by residential customers remain exempt from the 4% statewide sales tax and most local taxes;
- purchases by exempt organizations (charitable, educational, etc.) remain exempt; and
- electricity or gas used directly and exclusively in manufacturing or research and development remains exempt.

Transitional Provisions Relating to Implementation of This Policy

Where billings are based on meter readings and the number of days from April 1, 1999 to the date of the next meter reading is *more* than half of the total number of days covered by the meter reading, the total amount of the bill is subject to sales tax.