

## **Sales and Use Tax (Gas/Electric Services)**

*Can a person claim a refund for sales tax paid on utilities for residential use even for a multi-unit dwelling?*

Under exemption provision 39-26-715(1)(a)(II) sales and purchases of electricity and gas "to occupants of residences, whether owned, leased, or rented by said occupants . . ." are exempt from sales tax. The regulation to this section provides that occupants of multi-unit dwellings such as apartments are also exempt even though the service is provided through a single meter rather than individual meters.

Several apartment management companies have written the Department requesting refunds of the sales tax paid by them on utility service provided to multi-dwellings served by a single meter. In view of these letters, the question for consideration is whether the sale of gas and electricity to a management company or similar third party entity for the benefit of individual occupants is exempt. A review of the provisions clearly indicates that the sales tax exemption is intended to apply only to "occupants of residences." Since management companies are not "occupants of residences", any utility sales made to them are taxable.

While the general rule is that sales of utility services to management companies are taxable, the Department considers such sales exempt in limited circumstances. For example, if the occupant can show that he or she was directly responsible for payment of the utility service (i.e. by making payment directly to the utility, or a lease provision making the occupant responsible for the payment of utilities) such service would be exempt. Also, in those situations where utility service is furnished with the rent, the service would be exempt if either the occupant or management company can show how the payment was apportioned between rent and utilities. In either of these situations, if the tax was erroneously billed and collected the Department will issue a refund directly to the occupant.