



FYI Sales 30

Special Regulation: Gas and Electric Services

1) Energy Sales occurring before March 1, 2010 or after June 30, 2012.

Gas and electric services, whether furnished by municipal, public, or private corporations or enterprises, are taxable when furnished for commercial consumption, but are not taxable when sold for resale or for any of the uses set out in 39-26-102(21), C.R.S. or when subject to any of the general exemptions of the Act. (see also, Regulation 26-102.21.)

The tax applies to all amounts paid for taxable gas or electric services, irrespective of whether there is an actual consumption; the tax is imposed on all payments, whether in the form of a minimum charge, a flat rate, or otherwise.

Persons performing services, as well as stores, office buildings and other commercial users, are not industrial users and are required to pay the sales tax.

Electricity sold for commercial lighting purposes is taxable, but electricity sold for industrial use is exempt. Example: electricity used to light a restaurant is taxable; electricity used by a restaurant to prepare meals is exempt; electricity used to light chicken houses to stimulate egg production is exempt; electricity used to light an industrial plant to enable it to produce is exempt.

The following methods are available for restaurant operators to claim credit for sales tax on their purchases of gas and electricity used in processing food for immediate human consumption.

[The following sentence added, 2002] These credits or reductions only apply if a Colorado sales tax is charged against all the utility bills of the establishment or their landlord, and the utilities are used to process food that when sold is subject to Colorado sales tax.

a) If the sales of processed foods exceed 25% of the total sales revenue, the restaurant may receive credit based on 55% of the Colorado sales tax paid on their purchase of gas and electricity.

b) If the sales of processed food are 25% or less of total sales revenue, or the restaurant is metered for gas and electricity purposes as part of another business operation, such as hotel, motel, bowling alley, gas station, etc., then the allowable credit shall be based on 1/2 of 1% of the total Colorado processed food sales by the restaurant.

For the purpose of determining the applicable percentage of food sales, the term "food sales" shall include only sales of edible foodstuffs which are processed and sold for immediate consumption, but shall not include the sales of alcoholic beverages. The second method may be used even though the applicable percentage of food sales exceed 25%.

The credit shall be claimed on an annual basis on the January sales tax return for the previous year. In the case of a seasonal business, the credit shall be claimed on the June sales tax return. The computation for claiming this credit should be made on forms prescribed by the department of revenue.

2) Energy Sales or use occurring on or after March 1, 2010 and before July 1, 2012.

The exemption of the sale, use, storage, or consumption of energy pursuant to §§39-26-102(21) and 715(2)(b), C.R.S. (2009), and as described in subsection a), above, is suspended and such sale, use, storage, or consumption is subject to sales and use tax if the sale, use, storage, or consumption occurs on or after March 1, 2010 and before July 1, 2012. The suspension of this exemption does not apply to: (1) diesel fuel for off-road use, (2) electricity, coal, gas, fuel oil, steam, coke, nuclear fuel used for agricultural, (3) coal, gas, fuel oil, steam, coke, nuclear fuel used for generation of electricity, (4) electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel used by railroads, and (5) state-administered city, county, and special district sales taxes. Electricity, coal, wood, gas, fuel oil, or coke sold for residential use is exempt from sales and use tax regardless of whether such sale, use, storage, or consumption occurs before or after March 1, 2010. See, Regulations 39-26-102.21 and 39-26-715.1(a)(II) for additional details.

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.