

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 108—Sales/Use Tax—Taxable Services

12 CSR 10-108.300 Sales of Electricity, Water and Gas

PURPOSE: Section 144.020.1(3), RSMo, imposes a tax on the basic rate paid for sales of electricity, water and gas to domestic, commercial or industrial consumers. Section 144.030.2(23), RSMo, exempts from tax, sales for domestic use of these services, as well as wood, coal and home heating oil. Section 144.032, RSMo, provides cities and counties the option to reimpose certain local sales taxes on sales for domestic use. This rule explains the taxation of electricity, water and gas. This rule does not address the exemptions for sales of electricity to manufacturers or material recovery processing plants, for use in basic steelmaking or battery manufacturing, or sales for resale to hotels or other lodging establishments.

(1) In general, sales of electricity, water and gas to commercial or industrial consumers are subject to tax. Sales of these services to domestic consumers are exempt from state sales tax but may be subject to certain local sales taxes if reimposed by a city or county. Sales of electricity, water and gas for agricultural use are excluded from tax.

(2) Definition of Terms.

(A) Basic rate—the rate charged for utility services, including any advance or equalized payment, surcharge, minimum or flat rate. It does not include such things as refundable deposits, or separately stated charges for any franchise, occupation, sales, license, excise, privilege or similar tax or fee of any kind imposed upon the supplier of the utility service by any taxing body or authority whether by statute, ordinance or otherwise. The basic rate does include income taxes and other charges imposed on the seller even if the seller chooses to separately state such charges. The basic rate also includes any “payment in lieu of tax (PILOT)” imposed on municipal-owned utilities, even if separately stated.

(B) Domestic use—nonagricultural, nonindustrial and noncommercial use. Sales made by regulated utilities pursuant to a “residential” rate classification are for domestic use. Sales through a single master meter for residential nursing homes, apartments or condominiums, including service for common areas and facilities and vacant units, but not including administrative and maintenance areas, are sales for domestic use.

(C) Utilities—electricity, water or gas services.

(3) Basic Application of Tax.

(A) Sales tax applies to all sales of electricity, water and gas to commercial or industrial consumers.

(B) Sales tax does not apply to sales of electricity, metered water service, and gas if sold for domestic use. Certain local sales taxes apply if reimposed by a city or county.

(C) Sales tax does not apply to agricultural use of utility services, including use by greenhouses.

(D) Sales of propane gas, wood, coal or home heating oil for domestic use are exempt from sales tax. Certain local sales taxes apply if reimposed by a city or county.

(E) Sales of sewer service for either commercial or domestic use are not subject to tax if billed separately.

(F) Sales of unmetered water service for domestic use are subject to tax except in the City of St. Louis, where metered and unmetered water service for domestic use are exempt from state sales tax.

(G) Persons making domestic purchases of service exempt from sales tax that use a portion of the service for nondomestic purposes must file a return and pay sales tax by April 15 of the year following the year of purchase on that portion of service used for nondomestic purposes.

(H) Persons making commercial purchases of service subject to state tax that use a portion of the service for domestic purposes may file for a refund for that portion of the utility service. See 12 CSR 10-102.016.

(4) Examples.

(A) An apartment complex purchases electricity. To the extent the purchases are for residents of the complex or for common areas, the purchases are exempt. The complex may issue an exemption certificate to its utility supplier. The purchases are subject to local sales taxes if reimposed by the local taxing authorities. If some of the electricity is used for the complex office or other facilities related to the business of the complex owner, the complex must remit state tax on these purchases directly to the department.

(B) A farmer has a single meter that services both the farm and his home. If the local taxing authorities have reimposed local tax on domestic use, the farmer must file a return and pay local sales tax directly to the department on the portion of the service used for his home.

(C) A company purchases natural gas from an out-of-state supplier for commercial use. Transportation charges are included on its monthly bill and separately stated. Use tax applies to the cost of the gas purchased including the transportation charges.

(D) A propane gas company located in City A delivers gas by commercial truck and meters the gas on the truck. The company delivers gas to a customer located in City B. The company should charge the local sales tax (if applicable) based on its business location in City A. If the meter is located on the customer's tank, the local tax rate is based on the location of the meter.

AUTHORITY: sections 144.010 and 144.030, RSMo Supp. 2005 and 143.961, 144.032, 144.036 and 144.046, RSMo 2000. Original rule filed May 1, 2006, effective Nov. 30, 2006.

**Original authority: 143.961, RSMo 1972; 144.010, RSMo 1939, amended 1941, 1943, 1945, 1947, 1974, 1975, 1977, 1978, 1981, 1985, 1988, 1993, 1996, 1998, 1999, 2001, 2005; 144.030, RSMo 1939, amended 1941, 1943, 1945, 1949, 1961, 1965, 1967, 1969, 1977, 1979, 1980, 1982, 1983, 1985, 1986, 1988, 1989, 1991, 1995, 1996, 1997, 1998, 1999, 2003, 2005; 144.032, RSMo 1979, amended 1986, 1987; 144.036, RSMo 1985, amended 1988, 1993 and 144.046, RSMo 1995.*

***American Healthcare Management, Inc. v. Director of Revenue**, 984 S.W.2d 496 (Mo. banc 1999). The court found that nursing homes may purchase utility service exempt from sales tax for their residents under the domestic use provision.*

***Bert v. Director of Revenue**, 935 S.W.2d 319 (Mo. banc 1996). Section 144.190, RSMo, provides that only the taxpayer legally obligated to remit the tax has the right to request a refund directly from the state. However, Section 144.030.2(23)(c), RSMo, provides a limited exception: A person who purchases non-domestic utilities and uses any portion of those utilities for domestic use may seek a refund directly from the Department of Revenue.*

***Hyde Park Housing Partnership v. Director of Revenue**, 850 S.W.2d 82 (Mo. banc 1993). The court held that utilities purchased for vacant units by apartment owners were for domestic use because the taxpayer's tariff filed with the PSC was classified as residential.*

***Norwin G. Heimos Greenhouse, Inc. v. Director of Revenue**, 724 S.W.2d 505 (Mo. banc 1987). The court held that agricultural purchases of utility service are excluded from taxation. It concluded that agricultural users of utilities are distinct from industrial or commercial users. The statute taxes only industrial or commercial users; therefore, agricultural consumers are excluded from tax.*

***Consolidated Fuel Corp. v. Director of Revenue** (AHC 1993). The Administrative Hearing Commission held that transportation charges incurred in conjunction with the purchase of natural gas from an out of state supplier were a part of the sale and subject to use tax. The commission noted that there was only one carrier, the pipeline, and the purchaser had no choice as to delivery.*