

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-00(31)S  
Sales Tax  
August 22, 2000

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970828A

On August 28, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Cynthia Havey, 2775 Main Street, Buffalo, New York 14214-1703.

The issue raised by Petitioner is whether purchases by residential condominium associations and trailer parks of energy sources and services which are used for the public areas and facilities described below are subject to New York State sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Residential condominium associations and trailer parks generally maintain areas and facilities for the general benefit of residents, which are used exclusively by unit owners or tenants and are not open to the general public. These areas and facilities include hallways in residential buildings, parking lots, community buildings, pool areas, and water pumps and sewage pump houses. Petitioner inquires whether purchases of fuel oil, coal, propane, gas, electricity, steam and gas, electric and steam services, to heat, light or operate these areas and facilities are subject to sales tax.

**Applicable Law and Regulations**

Section 1105(b)(1)(A) of the Tax Law imposes sales tax on the 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."

Section 1105-A of the Tax Law provides, in part:

(a) Notwithstanding any other provisions of this article, but not for purposes of the taxes imposed by section eleven hundred seven or eleven hundred eight or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (a) or (b) of section eleven hundred five on the receipts from the retail sale of fuel oil and coal used for residential purposes; the receipts from the retail sale of wood used for residential heating purposes; and the receipts from every sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services used for residential purposes shall be paid at the rate of . . . zero percent on and after October first, nineteen hundred eighty.

\* \* \*

(d) Where a residence is a part of a multiple dwelling or other premises consisting of residential and non-residential units, or where a portion of a residence is used for non-dwelling purposes including the conduct of a trade or business, the tax commission may establish such rules and regulations as may be necessary in order to allocate to such residence the portion of the sale of energy sources or services attributable to the residential portion.

Section 1210(a)(3), (b)(3) of the Tax Law authorizes localities to impose local sales and compensating use tax at a reduced rate on energy sources used for residential purposes.

Section 527.13 of the Sales and Use Tax Regulations provides, in part:

(a) Reduction in rate. (1) Section 1105-A of the Tax Law provides for a reduction in the four-percent statewide sales tax rate imposed under sections 1105(a) and 1105(b) of the Tax Law and in the four-percent statewide compensating use tax rate imposed under section 1110(a) of the Tax Law, as set forth in subdivision (c) of this section, on the receipts from every sale, other than for resale, used for residential purposes of:

- (i) fuel oil (except diesel motor fuel);
- (ii) coal;
- (iii) wood (for heating purposes only);
- (iv) propane (except when sold in containers of less than 100 pounds);
- (v) natural gas;
- (vi) electricity;
- (vii) steam; and
- (viii) gas, electric and steam services.

For purposes of this regulation, the term "energy sources" is used to describe the abovementioned tangible personal property and services.

\* \* \*

(d) *Definitions.*

(1) The term “residential purposes” means any use of a structure or part of a structure as a place of abode, maintained by or for a person, whether or not owned by such person, on other than a temporary or transient basis with the exclusion of accommodations subject to tax under subdivision (e) of section 1105 of the Tax Law.

(2) The term “nonresidential purposes” means any use other than for residential purposes, as defined in paragraph (1) of this subdivision, including any use in the conduct of a trade, business or profession, whether such trade, business or profession is carried on by the owner of the structure or some other person.

(3) The term “common area” means any area of the premises of a structure used without distinction for both residential and nonresidential purposes.

(e) *Certification and allocation.* (1) Purchases of energy sources used exclusively for residential purposes shall receive the reduced tax rate without the necessity of certification.

(2) Where energy sources billed on a single meter or in a lump sum are used for both residential and nonresidential purposes, and the residential purposes constitute 75 percent or more of the usage, the entire amount billed shall be taxed at the reduced sales tax rate without certification. See paragraph (5) of this subdivision to determine the percentage of residential use.

(3) Where energy sources billed on a single meter or in a lump sum are used for both residential and nonresidential and less than 75 percent of the usage is for residential purposes, the purchaser is entitled to the reduced tax rate on only the percentage of energy sources used for residential purposes. This percentage shall be determined in accordance with paragraph (5) of this subdivision and shall be rounded off to the nearest 10 percent. A certificate shall be filed in the form provided and shall be given by the purchaser to the supplier of the energy sources. In the absence of such a certificate, the supplier of energy sources shall collect the full tax on the entire usage.

(4) Where a structure is exclusively used for nonresidential purposes, no certification or statement is required, since no eligibility for a reduced sales tax rate shall exist for purchases of energy sources and services.

(5) To determine the percentage of the area of a structure used for residential purposes, the following formula shall be used by the purchaser of the energy sources

and services: total area of space used for residential purposes, excluding common areas, divided by the total area (residential and nonresidential), excluding common areas, equals the percentage rounded off to the nearest 10 percent applicable to use for residential purposes. Thus, if the percentage before rounding is 74.9 percent, the percentage when rounded is 70 percent.

\* \* \*

(f)(4) Where a customer is eligible for the reduced tax rate, as a residential customer described in paragraph (1) or (2) of subdivision (e) of this section, but the supplier of energy sources has not classified him as a residential user, the customer should furnish the supplier with a certification.

### **Opinion**

Section 1105-A of the Tax Law exempts energy sources and services used for residential purposes from New York State sales and use taxes. In the case of residential condominium associations and trailer parks, under the circumstances described above by Petitioner where the facilities are closed to the general public, parking lots, play areas, community buildings or club houses, swimming pools, and hallways and stairways in residential buildings, are used for residential purposes. Accordingly, energy sources and services purchased exclusively to heat or light the public areas and facilities described above are exempt from State sales and use taxes, and will be subject to reduced local rates or exempt from local taxes if the locality has elected to provide reduced rates or such an exemption, as the case may be.

If a condominium association or trailer park contains areas used for residential purposes and areas used for nonresidential purposes, e.g. areas used in the conduct of a trade or business, it may be necessary to allocate the portion of energy sources and services attributable to residential purposes. Pursuant to Section 527.13(e)(2) of the Sales and Use Tax Regulations, if the energy sources and services purchased by the condominium association or trailer park are billed on a single meter or in a lump sum and the energy used for residential purposes constitutes 75% or more of the usage, calculated in accordance with Section 527.13(e)(5) of the Regulations, then the entire amount billed will be exempt from State sales and use taxes, and will be subject to reduced local rates or exempt from local taxes if the locality has elected to provide reduced rates or such an exemption, as the case may be. On the other hand, pursuant to Section 527.13(e)(3) of the Regulations, if the residential usage is less than 75%, calculated in accordance with Section 527.13 (e)(5) of the Regulations, then Petitioner would be entitled to the exemption from State tax (and local tax, or at a reduced local rate, if applicable) only on the percentage of residential energy usage as applied to the entire amount billed.

TSB-A-00(31)S  
Sales Tax  
August 22, 2000

Water pumps and sewer pumps attached to residential units would be considered residential. Accordingly, energy sources and services used to operate these pumps would be used for residential purposes and would be exempt from State tax under Section 1105-A of the Tax Law and would be taxed at a reduced local rate or exempt from local taxes, as the case may be. If water or sewer pumps, or sewage pump houses, serve both residential and nonresidential areas, energy sources and services used in their operation may be subject to State and local taxes based on the allocation rules of Section 527.13(e) of the Sales and Use Tax Regulations described above.

These conclusions represent the current position of the Department. To the extent Windsor Square Homes Association, Adv Op Comm T&F, April 16, 1992, TSB-A-92(34)S; The Tower At Montauk Condominium, Adv Op Comm T&F, October 5, 1993, TSB-A-93(53)S, or any other advice from the Department suggests a contrary conclusion, it does not represent current policy.

DATED: August 22, 2000

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.