

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks: (i) whether purchases of electricity and natural gas used by his residential apartments are eligible for the reduced state sales tax rate; and (ii) if eligible, how to establish such eligibility so that suppliers charge the reduced tax rate at the time of purchase.

We conclude that receipts from the sale of energy used for residential purposes in Petitioner’s apartment buildings are eligible for the reduced State sales tax rate. To receive this reduced residential rate at the time of purchase, Petitioner should furnish his energy suppliers with a properly completed Form TP-385 -- *Certification of Residential Use of Energy Purchases* for each eligible meter.

Facts

Petitioner is the landlord of several residential apartment buildings located in New York State in the Counties of Onondaga, Oswego and Warren, and in the City of Oneida in Madison County. Each building contains multiple units Petitioner leases to residential tenants. Petitioner does not lease any units to commercial tenants. In addition to the apartments, the buildings contain hallways and staircases, a laundry room and storage area for tenants’ use, and a mechanical room. Each building has one electricity meter and one natural gas meter and the usage is billed directly to Petitioner. Gas and electric services are included as part of the tenants’ leases and Petitioner collects only a rent charge from tenants. Petitioner’s rental offices are in separate buildings from the tenants and those buildings have separate meters.

Analysis

Tax Law § 1105(b)(1)(A) imposes, in part, a 4% State sales tax rate on the receipts from every sale of gas and electricity, and gas and electric service (“energy sources and services”). Tax Law § 1105-A provides for a reduction in the State sales tax rate on energy sources and services to zero percent on the receipts from such energy sources and services used for residential purposes. See *also* 20 NYCRR 527.13. However, the taxes imposed by a county or city pursuant to the authority of Tax Law Art. 29 apply to residential energy sources and services unless the county or city has elected to impose tax on residential energy sources and services at a reduced rate. See Tax Law § 1210(a)(3); 20 NYCRR 527.13(a)(2).

The term “residential purposes” means any use of a structure as a place of abode that is maintained by or for a person, regardless of ownership. See 20 NYCRR 527.13(d)(1). The term “nonresidential purposes” means any use other than for residential purposes, including any use in the conduct of a trade, business or profession by the owner of the structure or some other person. See 20 NYCRR 527.13(d)(2).

Petitioner’s apartment buildings, which are leased exclusively to residential tenants, are used exclusively for residential purposes. See, e.g., TSB-A-00(31)S. Therefore, the energy sources and services billed on the meters for Petitioner’s residential buildings are eligible for the zero percent State sales tax rate. See 20 NYCRR 527.13(e). The counties of Onondaga, Oswego and Warren have elected to exempt residential energy sources and services from their local sales taxes. Accordingly, the energy sources and services provided to Petitioner’s residential buildings in those counties are also exempt from local sales tax. Madison County has also elected to exempt residential energy sources and services. However, the City of Oneida imposes sales tax at the rate of 2% and has not elected to exempt energy sources and services or to tax them at a reduced rate. Receipts from energy sources and services provided to Petitioner’s residential building in the City of Oneida are subject to the City’s tax at the rate of 2%. Additional information about local tax rates on residential energy sources and services may be found in Publication 718-R – *Local Sales and Use Tax Rates on Residential Energy*, or on the jurisdiction rate lookup available on the Department’s website.

Where Petitioner’s purchase of energy sources and services are eligible for the zero percent State rate, or a local exemption, or both, but the energy supplier has not classified a meter as residential, Petitioner should furnish the supplier with a properly completed Form TP-385 -- *Certification of Residential Use of Energy Purchases* for each eligible meter. See 20 NYCRR 527.13(f)(4), (g)(2). However, the meters associated with Petitioner’s rental offices, which are in separate buildings not occupied by residential tenants, are not eligible for the zero percent State rate or the local exemptions and Petitioner may not submit Form TP-385 for those meters.

DATED: August 5, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.