

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") of [REDACTED] Petitioner asks whether: (1) propane delivered to tanks used solely for heating Petitioner's detached garage on a residential property is exempt from sales tax; (2) use of a detached garage is considered a residential use when there is no business activity on the property; and (3) propane delivered into a tank used for running a back-up generator used to power Petitioner's home during a power outage is exempt from sales tax.

We conclude that the propane delivered to Petitioner for the purposes described above is exempt from State, but not local, sales tax.

Facts

Petitioner's primary residence is located in St. Lawrence County. Petitioner has propane delivered by a supplier into four propane tanks on the property. Two of those tanks are used solely for heating a detached garage. The two other tanks are used for heating Petitioner's home. Petitioner is considering using propane from one of the tanks used for heating his home to power a back-up generator for the home for use during power outages. Petitioner is charged sales tax on the propane delivered into the tanks used for heating the garage, but not on the propane delivered into the tanks used to heat the home. No trade, business or professional activity is conducted on the property, including in the detached garage. Petitioner uses the detached garage in the same manner as an attached garage would be used.

Analysis

Tax Law § 1105(a) imposes a four percent State sales tax on the receipts from every retail sale of tangible personal property. Sales tax is also imposed on "gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature" ("energy sources and services"). See Tax Law § 1105(b)(1); 20 NYCRR 527.13(a)(1). However, the rate of the tax imposed by Tax Law § 1105(a) and (b) on propane (except when sold in containers of less than 100 lbs.) used for residential purposes is zero percent. See Tax Law § 1105-A(a). The propane sold to Petitioner is not sold in containers of less than one hundred pounds; rather, it is delivered into tanks located on the property.

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. 20 NYCRR 527.13(d)(1). The term "nonresidential purposes" means any use other than for residential purposes, including

any use in a trade, business or profession, whether conducted by the owner of the structure or some other person. 20 NYCRR 527.13(d)(2).

No certification is needed to qualify for the zero percent State rate if the propane is used exclusively for residential purposes. See 20 NYCRR 527.13(e)(1). However, if the purchaser is eligible for the reduced rate and their supplier has not classified them as a residential user, the purchaser should provide the supplier with Form TP-385 - *Certification of Residential Use of Energy Purchases*. See 20 NYCRR 527.13(f)(4).

Because the property in question is Petitioner's primary residence and no trade, business or professional activity is conducted on the property, including in the detached garage, the entirety of the property is used for residential purposes. Accordingly, the propane used to heat Petitioner's detached garage and Petitioner's residence is used for residential purposes and qualifies for the zero percent State sales tax rate. Petitioner's use of propane from one of his tanks for a back-up generator to power his home during a power outage would also qualify as a residential use eligible for the zero percent State rate.

The reduction in the State sales tax rate in Tax Law § 1105-A(a) does not, however, apply to taxes imposed by localities pursuant to Tax Law Article 29, unless the locality elects to reduce its tax rate on residential energy sources and services. See Tax Law § 1210(a)(3)(i); 20 NYCRR 527.13(a)(2). St. Lawrence County, where Petitioner resides, taxes residential energy at 4% and this tax applies to Petitioner's propane purchases. See Publication 718-R - *Local Sales and Use Tax Rates on Residential Energy*.

DATED: August 14, 2024

/s/
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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.