



Sales and Use Tax DOR Directive 92-3

Massachusetts
Department of
Revenue

Massachusetts Sales and Use Tax Exemptions for Certain Sales and Use of Gas, Steam, Electricity and Fuel

Massachusetts imposes a five percent sales tax on all sales at retail of tangible personal property in Massachusetts by any vendor, unless an exemption applies. G.L. c. 64H, §§ 2, 6. Tangible personal property includes gas, electricity, and steam. G.L. c. 64H, § 1. Sales of gas, steam, electricity, and fuel are exempt from tax when the sales are made to certain exempt purchasers, such as small businesses, governmental organizations, and charitable organizations, or when sales are made for an exempt use, including (among others) residential use, certain industrial uses, agricultural use, and use in commercial fisheries. See generally, G.L. c. 64H, §§ 6 (d), (e), (i), (j), (r), (qq); TIR 90-7. This Directive explains the procedures for claiming these exemptions. To the extent that this Directive requires different forms or different procedures than those described in TIR 90-7, this document supersedes those provisions.

Issue 1:

How is a sales tax exemption claimed for purchases of gas, steam, electricity or fuel?

Directive 1:

The procedure for claiming an exemption depends on the particular exemption claimed. The appropriate procedure for each exemption is listed below.

a. Governmental and Charitable Organizations

Sales of gas, steam, electricity or fuel to governmental and certain charitable organizations are exempt under G.L. c. 64H, §§ 6(d) and (e), respectively.

A governmental organization claiming exemption under G.L. c. 64H, § 6(d) for its purchase of taxable gas, steam, electricity or fuel is not required, but is encouraged to obtain a Certificate of Exemption (Form ST-2) and to use an Exempt Purchaser Certificate (Form ST-5) when purchasing gas, steam, electricity and fuel. If a governmental organization does not offer these forms the vendor must maintain adequate documentation, generally a copy of the government check, verifying the status of the purchaser as a governmental organization.

An organization tax exempt for federal purposes under Internal Revenue Code Section 501(c)(3) claiming exemption from the sales tax under G.L. c. 64H, § 6(e) must first obtain Form ST-2 from the Commissioner and must then present to its vendor a Form ST-5 accompanied by a copy of its Form ST-2 at the time of purchase or, if used as a blanket certificate, at the time of its first purchase. Although the organization must renew Form ST-2 every five years, a blanket Form ST-5 is valid indefinitely, provided that the circumstances continue to support the exemption.

Form ST-EEC: Temporary Energy Exemption Certificate Phased Out. Form ST-EEC is to be phased out of use. For purchases made after December 31, 1992, the exemptions under G.L. c. 64H, §§ 6(d) (if the agency chooses to use certifi-

cates) and (e) may be claimed only by presentation of Form ST-5 with attached copy of Form ST-2. However, any Form ST-EEC that is properly presented to a vendor for this purpose before December 31, 1992 will continue to be valid indefinitely, provided that the circumstances continue to support the exemption. Form ST-2 must be renewed every five years.

b. Residential Use

Sales of gas, steam or electricity used for residential purposes are exempt under G.L. c. 64H, § (i), and sales of fuel used for residential heating purposes are exempt under G.L. c. 64H, § 6(j).

A purchaser claiming exemption for purchases of gas, steam or electricity used for residential purposes under G.L. c. 64H, § 6(i), or for purchases of fuel used for residential heating purposes under G.L. c. 64H, § 6(j) is not required to provide a vendor with an exemption certificate in order to make tax free purchases. Rather, a vendor may accept a purchaser's representation of residential use in lieu of collecting tax, provided that the vendor is acting in good faith.

c. Small Business Users

The sale of gas, steam, electricity or heating fuel to any business which has five or fewer employees is exempt under G.L. c. 64H, § 6(qq); 830 CMR 64H.6.11.

A purchaser claiming exemption as a small business under G.L. c. 64H, § 6(qq) must present to its vendor a timely, properly executed Form ST-13 (Small Business Energy Exemption Certificate) annually at the time it first purchases taxable fuels or utilities. The certificate is valid for the remainder of the calendar year in which it is given.

From September–December, 1990, some small businesses may have used Form ST-EEC when purchasing taxable gas, steam, electricity or heating fuel. Any small business that presented vendors with this form during this period was entitled to rely on it until December 31, 1991. For purchases made on or after January 1, 1992, a small business must present its vendor with a Form ST-13. See 830 CMR 64H.6.11(10).

d. Other Uses

A purchaser claiming any of the following exemptions listed in 1-9. below must present the vendor with a properly executed Form ST-12, Exempt Use Certificate, at the time of purchase or, if used as a blanket certificate, at the time of its first purchase. Form ST-12 is valid indefinitely, provided that the circumstances continue to support the exemption.

1. Use In Industrial Plant. Sales of gas, steam, electricity or fuel consumed and used directly and exclusively in an industrial plant are exempt only in two situations. First, the sale of gas, steam, or electricity may be exempt if the gas, steam, or electricity is used in the actual manufacture of tangible personal property to be sold. G.L. 64H, §§ 6(i), (r). This exemption applies only if seventy-five percent or more of the gas, steam, or electricity consumed at a metered location is consumed either directly in the manufacturing process or in heating an industrial plant in which a manufacturing process takes place. G.L. c. 64H, §§ 6(i), 6(r). Second, the sale of fuel may be exempt if the fuel is used in the heating of an industrial plant. This exemption applies only if seventy-five percent or more of the building, location, or premises that the fuel is used to heat is used in the actual manufacture of tangible personal property to be sold. G.L. c. 64H, § 6(j).

2. Use In Aircraft and Railroads. Sales of fuel used in the operation of aircraft or railroads are exempt under G.L. c. 64H, § 6(j).

3. Fuel as an Ingredient or Component Part of Tangible Personal Property. Sales of fuel, or any substitute therefor, which become an ingredient or component part of tangible personal property to be sold are exempt under G.L. c. 64H, § 6(r).

4. Research and Development. Sales of fuel, or any substitute therefor, consumed and used directly and exclusively in research and development by a manufacturing corporation

or a research and development corporation within the meaning of G.L. c. 63, §§ 38C or 42B are exempt under G.L. c. 64H, § 6(r).

5. Furnishing of Power. Sales of fuel, or any substitute therefor, consumed and used directly and exclusively in the furnishing of power to an industrial manufacturing plant are exempt under G.L. c. 64H, § 6(r).

6. Fuel to Furnish Utilities — Delivered to Consumers. Sales of fuel, or any substitute therefor, consumed and used directly and exclusively in the furnishing of gas, water, steam or electricity, when delivered to consumers through mains, lines or pipes are exempt under G.L. c. 64H, § 6(r).

7. Agricultural Production. Sales of fuel, or any substitute therefor, consumed and used directly and exclusively in agricultural production, are exempt under G.L. c. 64H, § 6(r).

8. Commercial Fisheries. Sales of fuel, or any substitute therefor, consumed and used directly and exclusively in commercial fisheries are exempt under G.L. c. 64H, § 6(r).

9. Production of Animals for Research. Sales of fuel, or any substitute therefor, consumed and used directly and exclusively in the production of animals for research, testing, or other purposes relating to the promotion or maintenance of health, safety, or well being of human beings or animals are exempt under G.L. c. 64H, § 6(r).

Form ST-EEC: Temporary Energy Exemption Certificate Phased Out. Form ST-EEC is to be phased out of use. For purchases made after December 31, 1992, the exemptions under G.L. c. 64H, §§ 6(i), (j), or (r) may be claimed only by using Form ST-12. However, any Form ST-EEC that is properly presented to a vendor for this purpose before December 31, 1992, will continue to be valid indefinitely, provided that the circumstances continue to support the exemption.

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Issue 2:

If a purchaser qualified for one of the exemptions listed above but did not give the vendor a required exemption certificate at the time of purchase, can the purchaser claim a refund of the tax by presenting a proper certificate later?

Directive 2:

A purchaser claiming a small business exemption that fails to submit a timely, properly executed exemption certificate covering a particular period must pay sales tax on all purchases made before it presented the certificate even if the purchaser otherwise would have qualified for exemption under G.L. c. 64H, § 6(qq). A small business is not entitled to a refund of taxes paid before its annual presentation of a proper certificate. Therefore, a vendor should not refund taxes to a purchaser claiming the small business exemption for any period not covered by a valid exemption certificate. A vendor is not entitled to an abatement from the Commissioner of taxes which the vendor has refunded to small business customers for periods not covered by a timely-presented certificate.

Through December 31, 1991 either Form ST-EEC (for those small businesses that presented this form between the September–December, 1990 period) or ST-13 was considered an acceptable certificate to claim the small business exemption if properly completed. After December 31, 1990 (or December 31, 1991, for those businesses that presented Form ST-EEC during the September–December, 1990 period), Form ST-13

must be used. See Qualifying Small Business Exemption Regulation, 830 CMR 64H.6.11(10).

A purchaser claiming exemption under G.L. c. 64H, § 6(d),¹ (e), (i), (j),² or (r), (i.e. a purchaser claiming an exemption other than the small business exemption) should present the appropriate exemption certificate at the time of its purchase of gas, electricity, steam, or fuel. A purchaser that did not provide this certificate at the time of purchase and was not relying on a previously submitted properly executed blanket exemption Form and that paid sales tax to its vendor must prove, by evidence apart from any untimely certificate, that it was entitled to exemption for the period in question. If the purchaser claiming the exemption demonstrates to the vendor that its purchases are exempt, the vendor may refund taxes paid by the customer and then may apply to the Commissioner for an abatement. Alternatively, a customer may apply directly to the Commissioner for an abatement under a Power of Attorney (Form M-2848) signed by the vendor. See Abatements regulation, 830 CMR 62C.37.1.

Mitchell Adams
Commissioner of Revenue
July 30, 1992

1. As noted earlier, governmental agencies are encouraged but not required to present certificates to make tax free purchases.
2. As noted earlier, no certificate is necessary to claim the residential exemption under G.L. c. 64H, § 6(i) or (j).