

202112010L [Tax Type: Sales] [Document Type: Letter/Memo]

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Texas Comptroller of Public Accounts STAR System

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TAX POLICY NEWS

December 2021

Sales Tax

Even though February's winter storm is in our rearview mirror, it's hard to forget just how cold it was. For those who were greatly affected by the frigid extremes, the storm was especially memorable. As we prepare for cooler temperatures, here are some reminders about the taxability of some things Texans use to warm their homes or businesses and stay safe.

Natural Gas and Electricity

The sale of [natural gas and electricity](#) used to heat or power homes is not subject to state sales tax. Some local cities and special purpose districts associated with those cities can, however, choose to impose [local](#) sales tax on those sales.

The sale of natural gas and electricity is taxable when sold for commercial use, unless an [exemption](#) applies.

Propane, Butane and Kerosene

The use of propane for residential and nonresidential real property is exempt. In addition, butane and kerosene are exempt from tax by [law](#). For example, sales of propane for a barbecue pit, kerosene for a lantern or butane for a portable heater are not taxable sales. An exemption certificate is not required.

Firewood

The sale of firewood is taxable, including any additional fees for delivering, packing and stacking. Sales tax is also due when hiring someone to cut down or cut up a tree for firewood.

Generators

A whole home or business generator keeps systems and appliances powered when there is a separation from the power grid. Generally, these generators must be installed at a structure. A whole home or business generator would be considered an improvement to realty if it is permanently affixed or embedded to the land or the building, and after installation is necessary to the intended usefulness of the structure.

New and Existing Residential Property and New Nonresidential Property

A contractor improving new or existing residential property or new nonresidential property with a generator may enter into either a lump-sum or separated contract with its customers.

Under a lump-sum contract where the contractor charges the customer one price for labor and materials, the contractor is considered the consumer of all materials (e.g., generators, transfer switches and wiring) and owes tax on those materials at the time of purchase. The labor for the construction is not taxable; therefore, no tax is charged to the residential customer for the lump-sum contract.

Under a separated contract, the contractor identifies separate labor and material charges to the customer. The contractor is reselling the materials such as the generators that are incorporated into the customer's residential property. Therefore, the contractor may issue a resale certificate to vendors to purchase materials tax free that will be incorporated into the home. The contractor will then charge its customer tax on the materials but not on the labor.

Existing Nonresidential Real Property

A service provider installing a generator at an existing nonresidential building is performing a [real property improvement](#) and must charge tax on both labor and materials. The service provider can use either a lump sum or separated contract and should collect state sales tax plus any [local tax](#) on the total charge for the job.

More Information

- [Section 151.308 – Items Taxed by Other Law](#)
- [Rule 3.291 – Contractors](#)
- [Rule 3.295 – Natural Gas and Electricity](#)
- [Rule 3.357 – Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance](#)
- [Tax Policy News article – Contractors and Related Services](#)

ACCESSION NUMBER: 202112010L
SUPERSEDED: N
DOCUMENT TYPE: L
DATE: 2021-12-21
TAX TYPE: SALES