

COMPRESSOR FUEL FOR GAS PIPELINES

Notice #13-03

Sales and Use Tax

April 2013



- *The Department of Revenue requests input from interested parties.*

This Notice rescinds Notice #12-19 (a copy of such rescinded notice is included as page 2 of this notice). The Department seeks input from affected parties regarding the sales and use taxability of natural gas diverted from interstate pipelines that is used and consumed in the operation of in-state compressors and distribution equipment.

The Department, by this notice, requests that interested parties provide comments as to the appropriate application of sales and use tax statutes to these transactions. The Department requests that any comments be provided by June 30, 2013, to:

Commissioner Richard H. Roberts
Tennessee Department of Revenue
414 Union Street, Suite 700
Nashville, TN 37219

Email: Richard.Roberts@tn.gov

Subsequent to the Department's analysis of such comments, the Department will hold meetings with interested parties to discuss the future applicability of sales and use tax to these transactions, if any.

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.

COMPRESSOR FUEL FOR GAS PIPELINES

Notice #12-19

Sales and Use Tax

November 2012



Highlights

- *Effective 1/1/2013 operators of natural gas pipelines must pay state sales and use tax on in-state compressor fuel diverted from interstate pipelines*
- *T.C.A. § 67-6-203*
- *Tenn. R. & Regs. 1320-5-1-1.08(2)*
- *T.C.A. § 67-6-211*
- *No sales or use tax exemption is available for the compressor fuel used in this state.*

References:

- PC 312 (1989)*
- T.C.A. § 67-6-203*
- T.C.A. § 67-6-211*
- T.C.A. § 67-6-704*

INTRODUCTION

This notice is intended to provide operators of natural gas pipelines with information concerning the taxability of natural gas diverted from interstate pipelines that is used and consumed in the operation of in-state compressors and distribution equipment.

Natural gas diverted from interstate pipelines extending through Tennessee that is used to fuel in-state compressors to generate pressure to propel natural gas through the pipeline is subject to sales and use tax. Operators of natural gas pipelines must pay state sales or use tax at the rate of 7% on the purchase price of the fuel diverted from interstate pipelines, beginning January 1, 2013. Natural gas is exempt from local sales and use tax pursuant to Tenn. Code Ann. § 67-6-704.

DISCUSSION

Tennessee sales and use tax statutes provide that tax is levied on the sales/ purchase price of tangible personal property when the tangible personal property is sold, used, consumed, distributed, or stored for use or consumption in this state. Tenn. Code Ann. § 67-6-203. Specifically, Tenn. R. & Regs. 1320-5-1-1.08 (2) provides the following:

In the event a distributor of natural or artificial gas uses electricity, gas, or other tangible personal property in connection with his distribution, he shall be liable for the Sales or Use Tax applicable to the cost price thereof where it is used.

The Department has determined that the compressor fuel diverted from interstate pipelines that is used and consumed in this state is subject to Tennessee sales and use state tax.

Tenn. Code Ann. § 67-6-211 provides the following:

It is the intent of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state.

Sales and use tax statutes have been clarified and the Tennessee Supreme Court has determined the sales and use tax applies to the fullest extent allowed by the Commerce Clause of the United States Constitution. In addition, no exemption is available under this statute where the imposition of the sales or use tax does not constitute a violation of the Commerce Clause. The taxation of compressor fuel diverted from interstate pipelines extending through Tennessee that is used and consumed in this state is a taxable use that meets the criteria set forth in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, (1977).

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