

I. **Sales Tax on Electricity** - Under the provisions of Florida Statute 212, and Florida Administrative Code 12A-1.053, sales of electricity by an electric utility are generally subject to state sales taxes. There is an exemption, however, not only for sales of electricity for use in residential households, but also for use in the 'common areas' of condominiums and cooperatives.

In order for this exemption to apply, the utility company selling the electricity must be required to pay a 'gross receipts tax' imposed by Florida Statute 203. Most large utilities are subject to this tax.

Please note that the policy reason for this exemption is based on the residential nature of the use of electricity. Therefore, the exemption does not apply to condominiums, cooperatives, or other developments which cater to transient or short term occupancy, such as a condotel.

II. **What about HOA common areas?** - The Administrative Rule specifically mentions condominiums and cooperatives, but not homeowner association-owned common areas. There appears, however, to be no logical reason to deny HOA common property the same exemption. The Rule does provide that it applies to sales of electricity for use ' . . . in other residential facilities.' This language is broad enough to support application of the exemption to HOA common area use. There is also a Technical Assistance Advisement (TAA85A-016, re-labeled 85A-1016) issued by the State Department of Revenue which strongly supports this conclusion.

III. **Protecting the Association's Interests** - Check your Association records to determine if you have been paying sales tax to your utility company for electricity used for common areas. If so, you should: 1) apply to the Department of Revenue for a refund, and 2) provide a certificate to your utility company to avoid being billed in the future.

IV. **The Refund Process** - The Florida Administrative Code requires that applications for refund must be filed with the Department of Revenue by submitting the appropriate form. In this situation, you would use Department of Revenue form DR26S. This form may be found at <http://www.myflorida.com/dor/forms/2005/dr26s.pdf>. Basically, you will complete page three (3) of the form and the 'Other' block on page four (4). You would then provide the documentation to support the claim as outlined on page twelve (12) of the form in the section again marked 'Other'. The form also provides a toll free number of 1-800-352-3671 for assistance from the Department of Revenue.

There is a time limitation concerning the period for which refunds can be claimed. For sales taxes paid on electricity to common areas on or after July 1, 1999, the application for refund must be filed with the Department of Revenue within three (3) years after the date the tax was paid. There is no right to refund for taxes paid earlier than three (3) years prior to the application for refund. You should also request interest when applying for a refund.

V. **Certificate of Exemption** - You should also furnish a certificate of exemption to your current utility company to avoid being billed in the future. Many utility companies have adopted their own form and you should contact your utility company first.