

DUTCHESS COUNTY DEPARTMENT OF LAW
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MEMORANDUM :

TO: Marcus J. Molinaro, County Executive

FROM: James M. Fedorchak, County Attorney 

DATE: April 3, 2014

SUBJECT: Residential Energy Tax Exemption and Refund Issue
Our File No. G-1591

The following is the process for reinstating the residential energy tax exemption as set forth in the New York State Tax Law and confirmed by counsel to the Department of Taxation and Finance:

- The reinstatement of the exemption shall be done by resolution;
- The reinstatement can take effect only on the first day of a sales tax quarter; namely, March 1, June 1, September 1, or December 1 of any given year;
- A certified copy of the resolution reinstating the exemption with the raised seal of the Clerk of the Legislature must be mailed by certified or registered mail through the United States Postal Service (overnight mail or private carrier is not allowed by law) to the Commissioner of Taxation and Finance in Albany;
- The certified copy of the Resolution must be postmarked at least 90 days prior to the effective date of the resolution or at least 30 days prior to the effective date if there is a 90 day waiver request;
- The waiver request must be in writing directed to the Commissioner and it must specifically ask that the Commissioner reduce the minimum 90 day notice period of the exemption to take effect to a period of not less than 30 days for the exemption to take effect;
- The Commissioner may grant the waiver if the Commissioner deems it consistent with the Commissioner's duties under Article 29 of the Tax Law.

For the instatement of the exemption to take effect on June 1, the certified copy of the resolution along with the waiver request must be postmarked no later than May 2, 2014 as described above.

The issue has been raised as to whether the County can refund tax revenues received.

I have discussed this matter with counsel to the State Department of Taxation and Finance who has advised that the County may not make such refunds.

Section 1139 of the New York State Tax Law provides that a refund of sales tax is allowable only if the tax was erroneously, illegally or unconstitutionally paid.

The County properly repealed its exemption from sales tax for residential energy effective March 1, 2014. The charge of the sales tax on any purchases made on or after March 1st is a proper charge. The New York State Commissioner of Taxation and Finance administers the County's general sales tax imposed pursuant to the New York State Tax Law. Accordingly, only the Commissioner is authorized to make a refund of the County's sales tax and refunds may only be made if it were found that the tax had been erroneously, illegally or unconstitutionally imposed.

The County, therefore, has no authority to refund its sales tax paid on residential energy and the Commissioner has no basis as a matter of law to make such a refund.