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Pennsylvania explains sales and use tax on natural gas delivery charges

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## Article

# Pennsylvania explains sales and use tax on natural gas delivery charges

Sellers and consumers of nonresidential natural gas can expect to pay more

September 10, 2023

# | BUSINESS TAX | STATE & LOCAL TAX | ENERGY | LIFE SCIENCES

## Executive summary:

### Pennsylvania clarifies charges for delivery of natural gas to nonresidential customers

The Pennsylvania Department of Revenue recently issued [Sales and Use Tax Bulletin 2023-01](#) stating that delivery charges on sales of natural gas to nonresidential customers whether or not separately invoiced are now subject to tax. The guidance does not include an effective date for enforcement of the new position and increases the tax and potential exposure associated with the delivery of natural gas to nonresidential customers in Pennsylvania.

### Pennsylvania explains sales and use tax on natural gas delivery charges

The Pennsylvania Department of Revenue recently announced in [Sales and Use Tax Bulletin 2023-01](#) that charges for supply and transportation (or delivery) are part of the taxable purchase price of natural gas sold to nonresidential customers, even if invoiced separately. In the new guidance the department applies the Pennsylvania Supreme Court's decision on electric supply and distribution charges in *Spectrum Arena Ltd. Partnership v. Commonwealth*, 983 A.2d 641 (Pa. 2009) to the natural gas industry deregulated under the Natural Gas Choice and Competition Act ('Gas Act') because the Gas Act deregulated the natural gas industry in the same manner as the Electricity Generation Customer Choice and Competition Act ('Electric Act') deregulated the electric industry. The department adopts this treatment despite

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### Pennsylvania explains sales and use tax on natural gas delivery charges

differences between the natural gas and electricity industries and laws, as well as the Commonwealth previously admitting the opposite should apply to the treatment of natural gas during the *Spectrum Arena litigation*.

In *Spectrum Arena*, the Court held that the deregulation and unbundling of electricity generation and delivery under the Electric Act did not fundamentally alter the sale of electricity for sales and use tax purposes. The Court reasoned that under a plain reading of the law a taxable sale includes the total value of all consideration received for the complete performance of the sale of tangible personal property and, same as before the Electric Act, generation and delivery are required to complete the sale. Accordingly, the Court concluded that delivery charges on the sale of electricity to nonresidential customers are subject to sales and use tax, even if separately invoiced. The Court's treatment is consistent with a department policy statement issued shortly after the state deregulated electricity in 1997 – see [Statement of Policy, 61 Pa. Code 60.23\(d\), Electric utility services](#).

The Court rejected the argument that unbundled electricity delivery charges should be treated as nontaxable delivery charges made and billed by someone other than the vendor. Under sales and use tax regulations, tax is imposed on the total value received, including delivery charges, on a sale at retail. But delivery charges made by someone other than the vendor are excluded from tax. Notwithstanding, the Court determined that since electric generation and electric delivery companies are both vendors that must work in concert to provide adequate electricity there is no truly independent electric delivery company. Further, the Court found that the Electric Act's revenue-neutral reconciliation provision ensured that the state would be able to impose tax on the same charges that were taxable prior to deregulation. Accordingly, the Court held that all delivery charges for electricity delivered to nonresidential consumers in Pennsylvania are taxable, regardless.

In Bulletin 2023-01, the department applies an abridged version of the Court's reasoning in *Spectrum Arena* to treat charges for delivery of natural gas to nonresidential customers in the same manner as delivery charges for delivery of electricity, including with respect to separately invoiced delivery. Further, the department does not appear to limit the bulletin to prospective application. To the department's reasoning, while true the Gas Act deregulated the natural gas industry similar to the Electric Act and the electric industry, Statement of Policy 61 Pa. Code 60.23 only applies to electricity and there is no equivalent revenue neutral reconciliation in the Gas Act. In addition, the bulletin reflects a departure from the Commonwealth's position on gas delivery charges in *Spectrum Arena* and is understood to be a departure from the department's historical practice.

## Takeaways

Businesses purchasing natural gas can now expect to pay sales and use tax on gas delivery charges if the gas is not otherwise exempt. Similarly, businesses engaged in natural gas selling and transporting natural gas can now expect expanded sales tax compliance obligations with respect to their Pennsylvania nonresidential customers. This change in position increases the benefit of a gas utility study to determine if some other exemption or exclusion, like the manufacturing, research and development, mining or public utility exemption may limit taxation.

Practitioner consensus is that the department has not historically viewed separately invoiced gas delivery charges as taxable. Also, the bulletin is not law, and, as noted, there are key differences between taxation of the natural gas industry and electric industry, including the following:

- The Gas Act does contain a revenue neutral reconciliation like the Electric Act
- The department issued a statement of policy addressing the effect of the Electric Act on electricity delivery charges by a separate vendor, but no similar policy exists for natural gas
- The Commonwealth admitted in a request for admission in *Spectrum Arena* that gas delivery charges are not taxable

The bulletin is not limited to prospective application. A business assessed penalties for an audit period prior to issuance of the bulletin should consider requesting penalty relief, given what appears to be a change in department policy and practice. Taxpayers purchasing natural gas in Pennsylvania or vendors selling natural gas to Pennsylvania customers should be aware of the bulletin and prepare to discuss its impact with their state and local tax advisers.



# Apply for the Low Income Home Energy Assistance Program (LIHEAP)

The Low Income Home Energy Assistance program (LIHEAP) provides cash grants to help Pennsylvania families pay their heating bills.

The 2024–2025 LIHEAP season is open **November 4, 2024, to April 4, 2025.**

Apply Online

## On this page

### About LIHEAP

LIHEAP can help you keep your home warm and safe during the coldest seasons. From **November 4, 2024, to April 4, 2025**, you can apply for a cash grant to help pay your heating bill. You can receive from \$200 to \$1,000 based on your household size, income, and fuel type.

The cash grant is a one-time payment. The grant will be sent directly to your utility provider or fuel company to be credited on your bill.

Are you experiencing an emergency related to your household's heat? [You may be eligible to receive additional funds through a crisis grant.](#)

#### COMPASS

### Apply for Home Heating and Energy Assistance

We all face hard times, and we all deserve the basic dignity of a warm and safe home. DHS has programs like LIHEAP that are designed to help.

Apply Online Using COMPASS

### Eligibility

To qualify for LIHEAP in Pennsylvania, you must meet income requirements, which are set based on your household size. Renters and homeowners are both eligible for benefits.

You **do not** need to be on another public assistance program or have unpaid heating bills to qualify.

### Household Size

A household includes the person or group of people who live together. When determining your household size, you must list those who live at the residence, including:

- All children and adults
- All relatives who are rooming at the residence
- All unrelated people who are rooming at the residence and share household expenses

### Income Requirements for 2024-2025

Your eligibility for LIHEAP is determined by the total annual income and size of your household. The income limit includes cumulative yearly earnings of all members of your household. To determine your household income, you should include the income of:

- All related or unrelated household members
- Renters who are related to you by blood, marriage, or adoption to a household member

Household Size	Income Limit
1	\$22,590
2	\$30,660
3	\$38,730
4	\$46,800
5	\$54,870
6	\$62,940
7	\$71,010
8	\$79,080
9	\$87,150
10	\$95,220

For every additional person, add \$8,070.

## If Your Household is Experiencing a Heating Crisis

In addition to LIHEAP cash grants, crisis benefits are available to those who are experiencing a heating emergency. LIHEAP crisis benefits provide assistance for those experiencing:

- Broken heating equipment or leaking lines that must be fixed or replaced
- Lack of fuel
- The shut off of the main heating source or secondary heating source (a source that is used to operate the main heating source or used if the main heating source is not working)
- The danger of being without fuel (less than a 15-day supply)
- The danger of having utility service terminated

Eligible applicants will receive benefits within 10 business days of applying, or sooner for those who are experiencing a time-sensitive, life-threatening crisis.

### Apply for a Crisis Grant

If you have not received standard LIHEAP benefits this year, you must apply for the program to be considered for a crisis grant. If you have already received a LIHEAP benefit this season, [contact your local County Assistance Office](#) to

report your heating emergency.

#### BENEFITS TABLE

### How Much Do You Qualify for?

You qualify for LIHEAP benefits, now find out how much you will receive in benefit payments.

[View Your Benefit Amount](#) 

## How to apply

You can apply for LIHEAP online, by mail, or in-person at your local county assistance office.

### [Apply for LIHEAP Online](#)

To complete an application in person at a [county assistance office](#), **download a LIHEAP application in:**

- [English LIHEAP Application](#)
- [Spanish LIHEAP Application](#)
- [Simplified Chinese LIHEAP Application](#)
- [Arabic LIHEAP Application](#)
- [Cambodian LIHEAP Application](#)
- [Haitian Creole LIHEAP Application](#)
- [Russian LIHEAP Application](#)
- [Vietnamese LIHEAP Application](#)

### Required Documents

When applying for LIHEAP, you must include:

- A recent bill from your main heating source
- Proof of household income for each household member. Documents can include pay stubs, award letters, employer statements, and other forms of verification

Additional documents may be required if you are not a U.S. citizen, if your heating bill is included in your rent, or if your income is less than the cost of your monthly basic living needs.

### After You Apply

After your application is reviewed, you will receive written notice explaining your eligibility and the amount of assistance you will receive. Please allow 30 days for a response, unless you are applying for a crisis grant.

### Maintaining Eligibility

You must reapply each year to receive a cash or crisis grant. If you received benefits in the previous year's LIHEAP season, you will receive notice to apply early during LIHEAP pre-season. Standard applications open in November annually.

## Frequently Asked Questions

<a href="#">When are applications open for LIHEAP?</a>	▼
<a href="#">What is a LIHEAP crisis grant?</a>	▼
<a href="#">How much money can I receive?</a>	▼
<a href="#">Do I need to repay this grant?</a>	▼
<a href="#">Do I need to reapply to this program every year?</a>	▼
<a href="#">How do I determine the type of fuel my heating uses?</a>	▼
<a href="#">How can I keep my home warm during the winter?</a>	▼

## Contact LIHEAP

### For Crisis Situations

Assistance with home heating crisis situations is available 24 hours a day. In most counties, you should contact your [county assistance office](#).



#### LIHEAP Hotline

Call the hotline Monday through Friday at 1-866-857-7095. Individuals with hearing impairments can call 711.

[Call the Hotline →](#)



#### LIHEAP TTY Hotline

[For hearing impaired →](#)



#### Contact Your County Assistance Office (CAO)

For questions or additional information contact your local County Assistance Office (CAO).

[Find Your County Office →](#)

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