

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

810-6-5-.26.04. Utility Tax Exclusion for Patronage Refunds Distributed to Members by Electric and Telephone Cooperatives.

(1) Monthly charges or advances which are collected from members by an electric or telephone cooperative organized pursuant to Chapter 6 of Title 37 and which are later found not to be necessary to defray expenses or to provide for other uses prescribed in Section 37-6-20 are not gross receipts from furnishing utility services and, when distributed to members as patronage refunds, may be excluded from taxable receipts reported by the cooperative. (State v. Pea River Electric Coop., 434 So.2d 785 (Ala. Civ. App.) and State Department of Revenue v. Mon-Cre Telephone Cooperative, Inc., et al., Alabama Court of Civil Appeals, decided August 29, 1997.)

(a) The following amounts shall be excluded from the computation of the amount of the exclusion available to the cooperative for patronage refunds issued to its members: (i) amounts advanced by members who are exempt from the utility gross receipts tax and upon whose accounts utility taxes were not paid and (ii) amounts paid by nonexempt cooperative members for charges or fees which are not subject to the utility tax. (State Department of Revenue v. Mon-Cre Telephone Cooperative, Inc., et al., Alabama Court of Civil Appeals, decided August 29, 1997.)

(b) The amount of the exclusion available to the cooperative for patronage refunds is not required to be reduced for that portion of patronage refunds attributable to revenues of the cooperative from nonmember sources including, but not limited to, interest received on the cooperative's bank accounts and revenues from pole rentals and other charges to nonmember companies using the cooperative's network. (State Department of Revenue v. Mon-Cre Telephone Cooperative, Inc., et al., Alabama Court of Civil Appeals, decided August 29, 1997.)

(2) A cooperative may recover the utility tax which it erroneously collected on excludable monthly charges or advances and remitted to the department by filing a direct petition for refund with the department or by taking a credit against current utility tax liability provided the cooperative has refunded or credited the erroneously collected tax to its members or to the members' patronage account. Petitions for refund filed by the cooperative shall be governed by the procedures contained in Code of Alabama 1975, Section 40-2A-7(c) (Adopted through APA effective July 9, 1998)