



Department of Taxation and Finance

Important:

The Franchise Tax on Certain Oil Companies was repealed, effective for tax years beginning on or after the first day of July, 1983, by Chapter 400 of the Laws of 1983. As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to the Franchise Tax on Certain Oil Companies.

For additional information concerning Article 13-A of the Tax Law, which was enacted by Chapter 400 of the Laws of 1983, see [Petroleum business tax](#).

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-81 (5.1)C
Corporation Tax
January 11, 1982

This memorandum supersedes memorandum TSB-M-81(5.1)C, dated September 10, 1981, which should be destroyed.

New Definition of "Oil Company" for Section 182-a

An "oil company" for purposes of Section 182-a of the Tax Law, as amended by Chapter 1043 of the Laws of 1981, is a corporation formed for or engaged in the business of:

1. importing petroleum or causing it to be imported (by an entity other than a corporation subject to the tax imposed by Section 182-a) into New York State for sale in New York State,
2. extracting petroleum,
3. producing petroleum,
4. refining petroleum,
5. manufacturing petroleum,
- OR
6. compounding petroleum

For the purposes of this section, a corporation is engaged in the business of importing petroleum into New York State if it owns petroleum located outside New York State and ships or causes it to be shipped to a point within New York State for sale in New York State.

A corporation is engaged in the business of causing petroleum to be imported into New York State, if it purchases petroleum located outside New York for delivery into New York State from a seller of petroleum which is not subject to Section 182-a. The following sellers of petroleum are not taxable under this section:

1. Sole Proprietor
2. Partnership
3. A corporation not taxable under Article 9-A
4. Corporations taxable under Article 9 Sections 183, 184, 185 or 186
5. A corporation principally engaged in selling fuel oil used for residential purposes.

The following are examples of corporations which are no longer taxable under the amended Section 182-a.

1. ABC Service Station, Inc. sells a brand name gasoline. All of the gasoline is delivered by its supplier which is a major oil company which is taxable in New York State. ABC Service Station, Inc. is NOT taxable under Section 182-a.

2. Middleman Heating Oil, Inc. sells fuel oil and gasoline at both retail and wholesale levels. Its sales of residential fuel oil represent 40% of its total gross receipts. All petroleum products are picked up or delivered from the New York terminals of its suppliers which are "oil companies." Middleman Heating Oil, Inc. is NOT taxable under Section 182-a.
3. DEF Petroleum, Inc. is a wholesaler. It buys all of its petroleum products from one major oil company which is taxable in New York State. Almost all of its purchases are picked up at the New York terminal of its supplier. However, it occasionally, (once or twice during its taxable year), must go to its supplier's Massachusetts terminal to pick up petroleum. DEF is billed by the supplier from its regional office for all purchases. DEF Petroleum, Inc. is NOT taxable under Section 182-a.

The following are examples of corporations which will continue to be taxable under Article 9, Section 182-a.

1. Major Oil Company, Inc. brings its own petroleum into New York State and stores it at its own terminal until sold. Major Oil Company, Inc. IS taxable under Section 182-a.
2. XYZ Co., Inc. purchases some of its petroleum from Major Oil Company, Inc. (See above) However, it also buys from Smith and Jones Oil of New Jersey which is a partnership operating in New Jersey. XYZ Co., Inc. IS taxable under Section 182-a.
3. I.D.P. Refiner, Inc. buys crude oil on the spot market and refines it in New York State. I.D.P. Refiner, Inc. IS taxable under Section 182-a.

A corporation which is principally engaged in selling fuel oil, except diesel motor fuel, which is used for residential purposes is NOT considered an oil company for purposes of Section 182-a of the Tax Law. For purposes of the foregoing, "principally engaged" means that more than 50% of the corporation's TOTAL gross receipts must be from the sale of fuel oil, excluding diesel motor fuel, used for residential purposes. Total gross receipts for purposes of this paragraph means all gross receipts of the corporation without any deductions. "Residential purposes" means any use of a structure or part of a structure as a place of abode, maintained by or for a person, whether or not owned by such person, on other than a temporary or transient basis (less than 90 consecutive days). The definition of "residential purposes" is the same for Section 182-a as it is for the reduced sales tax on certain energy sources imposed by Section 1105-A. This includes the use of the 75% rule described in sales tax regulation 527.13(e)(2).