

VESSELS

COMPUTATION OF PETROLEUM SUBJECT TO TAX UNDER ARTICLE 13-A

An Article 13-A taxpayer who is engaged in the operation of vessels is liable for the gross receipts tax on all petroleum it imports or causes to be imported into New York State for consumption by it in its vessel operations in New York territorial waters and may reduce its tax base for Article 13-A by allocating to outside New York State only that portion of such fuel which it consumed outside New York State. Fuel consumed in New York waters and fuel imported or caused to be imported which a vessel operator claims was consumed outside New York State must be substantiated by appropriate records.

When petroleum is purchased by a consuming vessel operator from an Article 13-A taxpayer, and title to the petroleum passes to the purchaser within New York State, a "Certificate of Consumption" cannot be given for this type of transaction. The seller will be responsible for the gross receipts tax on its sale to the vessel operator. Such tax will presumably be passed on to the purchaser as an increase in the price of petroleum. At the same time, the consuming vessel operator will be taxed as an Article 13-A consuming taxpayer on the portion of petroleum which it imported or caused to be imported into this state for consumption by it within this state. Since petroleum is fungible and the vessel(s) may be fueled with petroleum purchased in New York State as well as imported petroleum, the following two formulas will be used for computing a vessel's tax liability on its Article 13-A tax returns. If a vessel purchases all of its fuel from outside New York State and does not purchase any fuel from New York sources, it would compute its petroleum subject to tax utilizing formula I only.

Formula I

I = working days in New York State territorial waters
E = working days everywhere
F = fuel consumed in operations everywhere
a = fuel deemed consumed in New York State
a = $\frac{I}{E} \times F$

Formula II

a = petroleum deemed consumed in New York per formula I
b = petroleum imported for consumption other than in fuel tanks
c = petroleum imported for consumption in fuel tanks
d = petroleum purchased in New York that was not imported nor caused to be imported
t = petroleum subject to the Consumption Tax
t = cannot exceed b + c
t = $a \times \frac{b + c}{b + c + d}$

Application of the above formula(s) is illustrated as follows:

During its current taxable year a consuming vessel purchased 60,000 gallons of fuel from sources outside New York State with title to the fuel passing outside New York State. Certificate(s) of Consumption were properly given. The vessel also purchased 30,000 gallons of fuel from Article 13-A taxpayers with title passing to the vessel operator within New York State. Certificate(s) of Consumption cannot be given for the in-state purchase(s). The vessel imported a total of 25,000 gallons of fuel into New York State in its fuel tanks. The vessel spent 400 working days in New York and 1000 working days everywhere. Total fuel consumed by the vessel was 100,000 gallons.

Formula I

$$\begin{aligned}
I &= 400 \\
E &= 1000 \\
F &= 100,000 \\
a &= \frac{I}{E} \times F \\
a &= \frac{400}{1000} \times 100,000 \\
a &= 40\% \times 100,000 \\
a &= 40,000
\end{aligned}$$

The total fuel subject to the consumption tax is calculated as follows:

Formula II

$$\begin{aligned}
a &= 40,000 \text{ gallons} \\
b &= 60,000 \text{ gallons} \\
c &= 25,000 \text{ gallons} \\
d &= 30,000 \text{ gallons} \\
t &= a \times \frac{b + c}{b + c + d} \\
t &= 40,000 \times \frac{60,000 + 25,000}{60,000 + 25,000 + 30,000} \\
t &= 40,000 \times 73.913\% \\
t &= 29,265 \text{ gallons consumed and subject to the consumption tax}
\end{aligned}$$

For purposes of the above computation, "working days" means days during which a vessel is sufficiently manned for the transportation of persons or cargo or when it has cargo aboard, exclusive of dry dock days. The working time in New York State and everywhere shall be computed in hours and minutes. At the end of each year, such time shall be totaled for all vessels and the sum converted into working days. A working day shall be considered to be twenty four (24) hours in length.

In order to properly compute the actual amounts of petroleum imported in the fuel tanks, and importations other than in fuel tanks, vessel operators will be required to take regular fuel readings when a vessel enters New York waters, and when it leaves New York waters. It will also be required to maintain records of how much fuel it took on board while in a New York port.