



# Department of Taxation and Finance

## Important

The information concerning the Petroleum Business Tax in this TSB-M is out-of-date and is provided only for historical purposes.

For the most up-to-date information about the Petroleum Business Tax including rates, see [Petroleum business tax](#).

The TSB-M begins on page 2 below.

1983 Legislation

Tax on Petroleum Businesses under Article 13-A of the Tax Law

Chapter 400 of the Laws of 1983 created a new Article 13-A. This article imposes an annual tax upon every petroleum business taxable in New York State. Section 3 of Chapter 400 terminated the 3/4 of 1% tax due under Section 182-a as of June 30, 1983. Section 4 of the Bill repealed the 2% tax due under Section 182-b as of June 30, 1983. Section 6 of the Bill repealed the Unitary Tax on Oil Companies due under Section 211.4(a) of Article 9-A effective with taxable years beginning on or after January 1, 1984.

A final report or an application for extension of time to file a report due under Sections 182-a (CT-182-a or CT-182-a-E) and 182-b (CT-182 or CT-182-E) for periods ending on June 30, 1983 is due on September 15, 1983.

A final report or an application for extension of time to file a report due under Section 211.4(a) of Article 9-A is due 2½ months after the close of the unitary group's taxable year.

The tax under Article 13-A takes effect on July 1, 1983. A 1983 calendar year taxpayer will file a report and compute the tax for the six month period July 1, 1983 to December 31, 1983. A taxpayer whose fiscal year includes July 1, 1983 in its taxable year will be required to file a report and pay the tax under Article 13-A on its gross receipts from the sale of petroleum from July 1, 1983 until the end of the fiscal year.

A "petroleum business" means every corporation AND every unincorporated business formed for, engaged in or conducting the business, trade or occupation of importing or causing to be imported (by a person other than the person who is subject to tax under this article) into this state for sale in this state, extracting, producing, refining, manufacturing, or compounding petroleum. An "unincorporated business" means any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership, joint venture, sole proprietorship, unincorporated association, fiduciary, or a corporation in liquidation.

A petroleum business is taxed under Article 13-A for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in New York State, for all or any part of each of its taxable years.

A seller of petroleum which only sells in New York State is not subject to tax under Article 13-A unless the seller of petroleum imports petroleum or causes petroleum to be imported into the State.

A petroleum business is importing petroleum into New York State if it takes title to petroleum outside New York State and ships or causes to be shipped into New York State 20,000 gallons or more of such petroleum during its taxable year.

A petroleum business is deemed to be causing petroleum to be imported into the State if it purchases 20,000 gallons or more of petroleum located outside New York State for delivery into New York State from a Seller not subject to tax under Article 13-A of the Tax Law.

The following sellers of petroleum are not subject to tax under Article 13-A:

1. Exempt organizations as described in Section 1116(a) of Article 28 of the New York State Sales Tax Law.
2. A seller of petroleum engaged in selling petroleum in New York State which does not import petroleum or cause petroleum to be imported into New York State.
3. A seller of petroleum which only delivers petroleum into the state and does not engage in business, do business, employ capital, own or lease property or maintain an office in New York State.

In any case where title has passed to the buyer outside New York State, prior to shipment into the State for sale in the State, the buyer is deemed to be importing petroleum for purposes of Article 13-A of the Tax Law and is, therefore, taxable. This is true regardless of the seller's taxable status under Article 13-A of the Tax Law and the method of transportation into New York State (for example, buyer's trucks, seller's trucks or common carrier). Where title passes to the buyer within New York State, the buyer is deemed to be causing petroleum to be imported into the State and is, therefore, taxable only when the seller is not subject to tax under Article 13-A of the Tax Law.

A petroleum business becomes taxable under Article 13-A on the day it meets the definition of a petroleum business as defined in Article 13-A. A petroleum business engaged in the sale of petroleum would become taxable for purposes of Article 13-A on the day it imports or causes petroleum to be imported into New York State, as defined in this memorandum. The petroleum business will remain taxable for the balance of its current taxable year and for all subsequent taxable years. However, if such petroleum business anticipates that it will not import or cause to be imported at least 20,000 gallons in a subsequent taxable year, it should not issue any resale certificates for such subsequent taxable year, since it will not meet the definition of a petroleum business under Article 13-A of the Tax Law and will, therefore, not be subject to that tax for such taxable year. The Department of Taxation and Finance must be notified immediately of such a change in taxable status. If a seller of petroleum does not anticipate it will import petroleum or cause petroleum to be imported into New York State in the amount of 20,000 gallons or more in its taxable year, it should not consider itself an Article 13-A taxpayer for that and subsequent taxable years. It should not issue resale certificates to its suppliers. However, if at any point during its taxable year, it imports 20,000 gallons or more the seller of petroleum becomes taxable under Article 13-A and at that point it should begin to provide resale certificates and notify the Department of Taxation and Finance that it has begun to do so. All notifications to the Department of Taxation and Finance should be sent to the address below:

Oil Tax Audits  
Room #402-A  
Building #9  
State Campus  
Albany, New York 12227

Unlike Section 182-a, a petroleum business which imports or causes petroleum to be imported into New York State for sale in New York State, but is principally engaged in selling fuel oil for residential purposes is taxable under Article 13-A and must pay a tax on all non-residential fuel sales.

For purposes of Article 13-A, petroleum shall mean crude oil, plant condensate, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil and liquifiable gases such as butane, ethane or propane. Products not listed are taxable if used as or blended with a product that is taxable. For example, naphtha is taxable petroleum for Article 13-A purposes when used as aviation fuel.

The tax rate is three and one-quarter percent (3¼%) of the gross receipts from sales of petroleum of the petroleum business where shipments are made to points within New York State or \$250, whichever is higher. The tax rate for Article 13-A filers will gradually decrease from 3¼% to 2 3/4% and finally to 3/4 of 1%. The following chart shows the correct rates based on date of sale:

Sales made from:

July 1, 1983 to March 31, 1984	3 1/4%
April 1, 1984 to June 30, 1985	2 3/4%
July 1, 1985 and subsequent years	3/4 of 1%

There is no allocation formula to determine New York State Receipts. As indicated, the tax applies directly to gross receipts from sales of petroleum where shipments are made to points within New York State.

A sale of petroleum is considered to be shipped to a point in New York State if:

1. the petroleum is shipped via common carrier or via seller's truck or via a truck of the affiliate of the seller to a point in New York State designated on the bill of lading or other shipping document, regardless of the F.O.B. point,  
OR
2. the petroleum is delivered to a purchaser or a designee of the purchaser at a point in New York State, and such sale does not qualify as a sale for immediate export as defined in this memorandum.

Gross receipts from sales of petroleum include all receipts from sales of petroleum where shipments are made to points in New York State whether in cash, credits or property of any kind or nature, without deduction for the cost of the property sold, the cost of materials used, labor, services or other costs, interest or discount paid, or any other expense.

Taxes on the sales of petroleum which are imposed directly on the purchaser are deductible from the total gross receipts from the sales of petroleum. The following taxes imposed on the purchaser are excluded in determining taxable gross receipts subject to the Article 13-A tax:

1. New York State and local sales taxes.
2. New York State tax on motor fuel.
3. New York State tax on diesel fuel.
4. Federal tax on diesel fuel.
5. New York City Leaded Motor Fuel Tax.

The federal tax on motor fuel is considered a manufacturer's excise tax although it may be paid by the distributor and, therefore, is included in computing taxable gross receipts. Transportation charges included in the seller's bill must be included in taxable gross receipts for purposes of Article 13-A. The Article 13-A tax itself is included in taxable gross receipts to the extent that it is passed on to the purchaser, whether it is invoiced separately or included in the product price.

Listed below are three examples of invoicing in the petroleum industry:

	<u>EXAMPLE # 1</u>	<u>EXAMPLE # 2</u>	<u>EXAMPLE # 3</u>
1. Quantity/Price	<u>1000 @ \$1.00</u>	<u>1000 @ \$1.036</u>	<u>1000 @ .98</u>
2. Product Total	\$1000.00	\$1036.00	\$980.00
3. Transportation charge	<u>None</u>	<u>None</u>	<u>\$ 20.00</u>
4. Sub-Total #1	\$1000.00	\$1036.00	\$1000.00
5. Federal Motor Fuel Tax(Gas)	<u>\$ 90.00</u>	<u>\$ 90.00</u>	<u>\$ 90.00</u>
6. Sub-Total #2	\$1090.00	\$1126.00	\$1090.00
7. G.R.T <u>/1</u>	<u>\$ 35.43</u>	<u>-0-</u>	<u>\$ 35.43</u>
8. Sub-Total #3	\$1125.43	\$1126.00	\$1125.43
9. State Motor Fuel Tax (Gas)	\$ 80.00	\$ 80.00	\$ 80.00
10. State & Local Sales Tax <u>/2</u>	<u>\$ 78.78</u>	<u>\$ 78.82</u>	<u>\$ 78.78</u>
11. Invoice Total	\$1284.21	\$1284.82	\$1284.21

Based on the above invoice the Gross Receipts Tax liability would be computed as follows:

Invoice Total	\$1284.21	\$1284.82	\$1284.21
Less State Sales Tax <u>/3</u>	(78.78)	(78.82)	(78.78)
State Motor Fuel Tax	(80.00)	(80.00)	(80.00)

Receipts for purpose of computation

of Gross Receipts Tax	\$1125.43	\$1126.00	\$1125.43
G.R.T Due-Article 13-A	36.58	36.60	36.58

/1 Industry practice-may appear on some invoices.

/2 For purposes of this example the tax is computed at 7% on the selling price although the actual computation should be based upon the regional average selling price as required by Lack-Kremmer.

/3 State diesel, NYC tax on leaded gasoline & Federal Diesel tax would also be deducted if included in price.

Gross receipts from sales of petroleum are receipts from sales of petroleum less:

1. Receipts from any sale of fuel oil where shipments are made to points in New York State (excluding diesel motor fuel) or liquified or liquifiable gases (except when sold in containers of less than 100 lbs.) used for residential purposes. It shall be presumed that no receipts are receipts received by reason of any sale of fuel oil (excluding diesel motor fuel) or liquified or liquifiable gases (except when sold in container of less than 100 lbs.) used for residential purposes unless the purchaser furnishes the petroleum business with a residential use certificate, Form CT-13-A-H. The CT-13-A-H/E is available as an informational report for use between buyer and seller and will not be accepted in lieu of the CT-13-A-H. A CT-13-A-H must always be furnished to the seller by the buyer to substantiate any deduction taken as a sale for residential use. The ultimate consumer of residential fuel oil shall not be required to furnish a residential use certificate to the petroleum business. However, the petroleum business making such a sale shall be required to maintain records of these transactions in such form and manner as prescribed by the Tax Commission.

"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. A structure or part of a structure is maintained on a temporary or transient basis when it is occupied by the same person for less than 90 consecutive days.

Examples of structures that would generally be considered used for residential purposes are: college dormitories, nursing homes, federal and state prisons, orphanages, military barracks used to house armed services personnel permanently assigned to the facility.

Examples of structures that would not generally be considered used for residences are hospitals, county and local jails; schools; shelters for runaways etc.; and military barracks used to house reservists for summer training programs.

If a structure is used for both residential and non-residential purposes such as:

- A. Building with offices or stores on the first floor and apartments on all upper floors.
- B. A multi-story apartment building with professional offices on the first floor.
- C. A college building which contains both dormitories and classrooms.

AND

The petroleum to heat the structure is billed in a lump sum, the amount of petroleum deemed used for residential purposes will be determined as follows:

1. The total square footage (less common areas) used for residential purposes divided by the total square footage of the premises (less common areas).
2. The percentage (rounded to the nearest 10%) will be applied to the sales of petroleum used to heat the structure and the result will be considered sales for residential use. If the percentage is 75% or more, the entire sales of petroleum used to heat the structure will be considered sales for residential use.

2. Receipts from any sale for resale where shipments are made to points in New York State to a purchaser which is a petroleum business subject to tax under Article 13-A of the Tax Law. It shall be presumed that no receipts are receipts from a sale for resale to such a purchaser, unless the purchaser furnishes the petroleum business with a resale certificate, Form CT-13-A-R.

The resale certificate must be accompanied by a Certificate of Taxability under Article 13-A to be valid. The Certificate of Taxability may be obtained by the buyer from the:

Department of Taxation and Finance  
Oil Tax Audits  
Room 402-A  
Building 9, State Campus  
Albany, New York 12227  
Telephone: (518) 457-4397

3. Receipts from any exchange sale of petroleum, where shipments are made to points in New York State, between petroleum businesses subject to Article 13-A to the extent that such exchange sale is not recognized as income or reduction of costs for federal income tax purposes unless the Tax Commission finds that the primary purpose for such exchange sale is the avoidance or evasion of the tax imposed under Article 13-A.
4. Receipts from any sale of petroleum if such petroleum is sold for immediate exportation from New York State for use outside the State and if in conjunction with such sale, such petroleum is immediately shipped to facilities of the petroleum business' buyer outside this state, regardless of whether the delivery of the petroleum to the buyer occurs in New York State, to the extent that such sale is included in the gross receipts from the sale of petroleum in New York State. It shall be presumed that no sale is for immediate export unless the buyer furnishes the Article 13-A taxpayer (seller) with an export certificate, Form CT-13-A-X. Immediate export means that the petroleum product is removed from the state by the buyer within 48 hours of its purchase from the seller. If the 48 hour criterion is not met do not use the export certificate. If it is believed that the transaction nonetheless qualifies under section 303(b)(4) submit a written request for an opinion to Technical Services Bureau, Bldg. 9, State Campus, Albany, NY 12227. The written request should set forth all pertinent facts. The sale of bunker fuel to vessels in New York is subject to tax under Article 13-A.

The export certificate is only necessary when the buyer transports the petroleum for immediate export in transportation owned by the buyer, affiliate of the buyer or is transported by the buyer's customer or an affiliate of the buyer's customer. A sale of petroleum transported by the seller, affiliate of the Seller or common carrier (whether arranged for by buyer or seller) to a point outside New York State is considered a non-New York sale. These sales are considered to be shipments made to points outside New York State and no export certificate is necessary.

There is no exemption from this tax on sales made to governmental agencies. This includes sales to the United States or any of its agencies, New York State or any of its agencies, and any county, city, town or village government. There is also no exemption for sales made to not-for-profit organizations, religious institutions, school districts or any eleemosynary organization.

A buyer should not furnish the petroleum business (seller) with an Export Certificate (CT-13-A-X) on a sale for which the buyer has previously issued a Residential Use Certificate.

A buyer should not furnish an Export Certificate to the seller if the buyer is in the petroleum business and subject to tax under Article 13-A since all of its purchases shall be made as a sale for resale. The seller will be furnished a Resale Certificate and the buyer will include the transaction on its report (CT-13-A) as an export sale when ultimately resold, if it is delivered to the customer in New York State and qualified as an export sale.

Residential use certificates (CT-182-a-H) and resale certificate (CT-182-a-R) may be used for the period July 1, 1983 to September 30, 1983 to substantiate these deductions under Article 13-A. However, these forms should be marked to identify them as certifications under Article 13-A. New certificates for Article 13-A will be available for use by October 1, 1983.

If a buyer submits a false or fraudulent resale certificate, export certificate or residential use certificate to a seller, a penalty equal to 5% of the gross receipts which would have otherwise been taxable to the seller, shall be imposed on the buyer.

A penalty of \$100 will be imposed on a purchaser for each failure to supply a petroleum business (seller) with a completed residential use certificate or export certificate or for an understatement of the amount of petroleum sold for immediate export or residential fuel on the certificate. Total penalties imposed shall not exceed \$5,000 in any one taxable year.

A petroleum business taxable under Article 13-A of the Tax Law will be required to file Form CT-13-A. This form is required to be filed on or before the 15th day of the third month following the close of the taxable year. If an extension is needed Form CT-13-A-E Application for 3 Month Extension for the Tax on Petroleum Businesses, should be filed.

The privilege tax under Article 13-A must be added back to federal income in computing taxable income for purposes of Articles 9-A, 22, 32 and 33.

#### Declaration and Payments of Estimated Tax

If a petroleum business, taxable under Article 13-A of the Tax Law, determines or can reasonably expect that the tax under Article 13-A will exceed \$1,000 for the taxable period, then it must file a declaration of estimated tax on Form CT-400.1 and pay the estimated tax shown to be due thereon.

The declaration and payments of estimated tax made under Article 13-A shall be subject to the provisions as set forth in Sections 197-a and 197-b of Article 9.

For calendar year 1983 and fiscal years which begin in 1983 and end before June 30, 1984 declarations and payments of estimated tax will be made two equal installments as follows:

<u>Taxable Year</u> <u>Ends on</u>	<u>Declaration And Payment of Estimated Tax Due Dates If the</u> <u>Installments</u>	
	<u>First</u>	<u>Second</u>
Dec. 31, 1983	Sept. 15, 1983	Dec. 15, 1983
Jan. 31, 1984	Oct. 15, 1983	Jan. 15, 1984
Feb. 28, 1984	Nov. 15, 1983	Feb. 15, 1984
Mar. 31, 1984	Dec. 15, 1983	Mar. 15, 1984
Apr. 30, 1984	Jan. 15, 1984	Apr. 15, 1984
May 31, 1984	Feb. 15, 1984	May 15, 1984

No declaration of estimated tax or payments of estimated tax will be required for a petroleum business with a fiscal period beginning in 1982 and ending before December 31, 1983. This applies only to those petroleum businesses with taxable years that end on 7/31/83, 8/31/83, 9/30/83, 10/31/83 and 11/30/83 and only to these specific taxable years. Declarations and payments must be made pursuant to § 197-a and § 197-b for subsequent taxable years.

For taxable years beginning on or after July 1, 1983, declarations and payments of estimated tax will be made in three equal installments on the fifteenth day of the sixth, ninth and twelfth month of the taxable period. In accordance with Section 197-b(1)(a) of Article 9, a 25% mandatory installment for the following year shall be paid with the annual report due under Article 13-A-(CT-13-A) or with an application for extension, Form CT-13-A-E, if filed. This 25% mandatory first installment is due if the tax for the preceding year exceeds \$1,000.

<u>If the Taxable Year</u> <u>Ends on</u>	<u>Declaration and Payment of Estimated Tax Due Dates</u> <u>Installments</u> 25% Mandatory			
	<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>
Jan. 31	April 15	July 15	Oct. 15	Jan. 15
Feb. 28	May 15	Aug. 15	Nov. 15	Feb. 15
March 31	June 15	Sept. 15	Dec. 15	Mar. 15
Apr. 30	July 15	Oct. 15	Jan. 15	Apr. 15
May 31	August 15	Nov. 15	Feb. 15	May 15
June 30	Sept. 15	Dec. 15	Mar. 15	June 15
July 31	Oct. 15	Jan. 15	Apr. 15	July 15
Aug. 31	Nov. 15	Feb. 15	May 15	Aug. 15
Sept. 31	Dec. 15	Mar. 15	June 15	Sept. 15
Oct. 31	Jan. 15	Apr. 15	July 15	Oct. 15
Nov. 30	Feb. 15	May 15	Aug. 15	Nov. 15
Dec. 31	Mar. 15	June 15	Sept. 15	Dec. 15

However, a small petroleum business (those with gross receipts from sales of petroleum of less than \$1 million per year) would file a declaration of estimated tax in the ninth, rather than sixth, month of the taxable year; for example, September rather than June for a calendar year taxpayer. Estimated payments for a small petroleum business would be made in the ninth and twelfth months, rather than in the sixth, ninth and twelfth months. A 25% mandatory installment for the following year shall be paid with the annual report or with an application for extension, if filed.

The following table lists the due dates of declarations and payments of estimated tax for a small petroleum business:

<u>If the Taxable Year</u> <u>Ends on</u>	<u>Declaration and Payment of Estimated Tax Due Dates</u> <u>Installments</u>		
	25% Mandatory		
	<u>First</u>	<u>Second</u>	<u>Third</u>
Jan. 31	April 15	Oct 15	Jan. 15
Feb. 28	May 15	Nov 15	Feb. 15
March 31	June 15	Dec 15	Mar. 15
Apr. 30	July 15	Jan 15	Apr. 15
May 31	Aug. 15	Feb 15	May 15
June 30	Sept. 15	Mar 15	June 15
July 31	Oct. 15	Apr 15	July 15
August 31	Nov. 15	May 15	Aug. 15
Sept. 30	Dec. 15	June 15	Sept. 15
Oct. 31	Jan. 15	July 15	Oct. 15
Nov. 30	Feb. 15	Aug. 15	Nov. 15
Dec. 31	Mar. 15	Sept. 15	Dec. 15

However, for purposes of this mandatory installment the tax for periods beginning prior to July 1, 1984 will be placed on an annual basis. The following example illustrates this annualization:

Tax return covering the short-period ended 10/31/83 (4 months)	\$ 3,500.00
Annualized (12 months)	10,500.00
25% Installment to be paid on account for the year ended 10/31/84	<u>2,625.00</u>

Therefore, the above taxpayer will have a \$2,625.00 first installment for the period ended 10/31/84 which is due with the final report or application for extension for the period ended 10/31/83 which is due on or before 1/15/84.