



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The information concerning the Petroleum Business Tax in this TSB-M is out-of-date and is provided only for historical purposes.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

Registration of Article 13-A Petroleum Businesses

General

Chapters 581 and 582 of the Laws of 1986 were approved on July 24, 1986. Chapter 581 amends Article 13-A to create a more formal system of registration, similar to the registration of a distributor under Article 12-A. Chapter 582 makes certain technical changes to Chapter 581.

These amendments take effect on January 1, 1987. Prior to that date the State Tax Commission or Department of Taxation and Finance may propose or adopt rules and regulations or take whatever other action deemed necessary to implement this act.

If a petroleum business subject to tax under Article 13-A, has been issued a Certificate of Taxability prior to January 1, 1987, these amendments take effect on the date the Certificate of Taxability expires on or after January 1, 1987.

Effective January 1, 1990, the reference to ownership of more than 10 percent of the shares of stock of a corporation (25 percent or more if the corporation has four or fewer shareholders) for determining who is a controlling person and whether a transfer has taken place is changed to a reference to more than 50 percent. Also, effective January 1, 1990 Section 302(1) is repealed.

Summary of Provisions

Section one of Chapter 581 adds a new section 302 to Article 13-A of the Tax Law. The new section 302 requires petroleum businesses subject to tax under Article 13-A to register with the State Tax Commission. The new section's provisions are modeled on section 283 of the Tax Law governing distributor registration under Article 12-A of the Tax Law (Motor Fuel Tax). The new section 302 contains the following:

1. Registration Requirement - All petroleum businesses (i.e., those corporations and unincorporated businesses subject to tax under Article 13-A) must make an application for registration to the Tax Commission. The application must be in a form and contain such data as the Tax Commission shall prescribe.

No petroleum business, unless so registered, may make any sale, transfer, use or other disposition of petroleum in New York State except in instances where the US Constitution or federal law prohibits New York State from imposing such a restriction.

The Tax Commission may issue the registration for a specified term of not less than 3 years, subject to renewal in accordance with the rules of the Tax Commission. Whether or not issued for a specified term, such registrations are subject to cancellation or suspension as provided in the Tax Law.

2. Registration Approval - The Tax Commission will base its decision on whether to register or refuse to register an applicant on the answers to these questions:

S Does the applicant or controlling person owe any amount of tax imposed by or pursuant to the authority of the Tax Law or Article 2E of the General City Law which has been finally determined to be due from the applicant or a controlling person of the applicant?

S Has the applicant or any controlling person been convicted of any crime provided for in the Tax Law within the preceding five years?

S Was the applicant or any controlling person in the applicant's business the controlling person in another petroleum business at a time when:

1. The other petroleum business had tax liabilities finally determined but not paid in full;
2. The other petroleum business was convicted of a crime provided for in the Tax Law within the preceding five years;
3. The registration of the other petroleum business was cancelled or suspended pursuant to section 302(d) within the preceding five years;
4. The registration of the applicant has been cancelled or suspended pursuant to Section 302(d) of the Tax Law within the preceding 5 years; and
5. A controlling person of the applicant has committed any of the acts specified in Section 302(d) of the Tax Law within the preceding 5 years.

3. Bond or Other Security - The Tax Commission may, as a condition of registration, require a bond or other security, in an amount determined in accordance with rules and regulations prescribed by the Tax Commission, to cover an Article 13-A taxpayer's liability. Further, the Tax Commission may increase the bond or other security if it determines that such action is necessary to protect Article 13-A revenues. Such bonding requirement will, whenever possible, be coordinated with the requirements set forth in section 283.3 of the Tax Law (Motor Fuel Tax).

4. Cancellation or Suspension of Registration - Acts of the registrant that may lead to cancellation or suspension of a registration are:

- S Failure to maintain in full force and effect a bond or other security when required or when the amount thereof is increased.
- S Failure to comply with any of the provisions of Article 13-A or any rule or regulation adopted pursuant to Article 13-A by the Department or the Tax Commission.
- S Knowingly aiding and abetting another person in violating any of the provisions of Article 13-A or any rule or regulation adopted pursuant to Article 13-A by the Department or the Tax Commission.
- S Transfer of its registration as a petroleum business without the prior written approval of the Tax Commission.

Acts of the registrant or controlling person that may lead to cancellation or suspension of a registration are:

- S Resorting to fraud or deceit in operating a petroleum business or in procuring a registration.
- S Having been convicted in a court of competent jurisdiction, either in or outside of New York State, of a felony bearing on the registrant's duties and obligations under the Tax Law.
- S Impersonating any person represented to be a petroleum business under Article 13-A but not in fact, registered under section 302.
- S Knowingly aiding and abetting the sale or consumption of petroleum by a corporation or unincorporated business which a registrant or controlling person knows (1) has not been registered by the Tax Commission and (2) is a petroleum business under Section 300(c) of Article 13-A.

5. Hearing Requirement - As a general rule, a registration will not be cancelled or suspended, nor will an application for registration be refused, unless the registrant or applicant has had an opportunity for a hearing. However, an application for registration may be denied prior to a hearing and a registration may be cancelled or suspended for:

- S Failure to file a return within 10 days of the date prescribed under Article 13-A or failure to pay any taxes due under Article 13-A for which a notice and demand has been properly issued.

- S Failure to maintain in full force and effect the bond or other security required by the Tax Commission in the amount fixed by it.

If a surety bond is cancelled prior to expiration, the Tax Commission may, after considering all the relevant circumstances, make such other arrangement and may require the filing of such other bond as it deems appropriate.

- S The transfer of a 13-A registration without the prior written approval of the Tax Commission.

A petroleum business is required to inform the Tax Commission immediately in writing of any change in its address. If the petroleum business is a corporation or partnership, the petroleum business must immediately inform the Tax Commission, in writing, of any change of controlling persons or their residence addresses as shown in its application for registration.

6. Hearing Procedure - A notice of proposed cancellation or suspension of registration or refusal to register must be given to a petroleum business registered under Article 13-A or applying for registration. The notice is given in the same manner as prescribed for a notice of deficiency of tax, including all provisions applicable to such a notice under Article 27 of the Tax Law, insofar as such provisions can be made applicable to that notice. A notice of proposed cancellation, suspension or proposed refusal to register must be given to a person within 5 years from the date of the omission or act on which the notice is based. But, if fraud or falsity is involved, the notice may be issued at any time. The cancellation or suspension of a registration prior to a hearing may be challenged through the hearing process by filing a petition within 90 days after the giving of such notice of cancellation or suspension.

Where the Tax Commission refuses to register an applicant, a notice of refusal to register must be issued promptly after such application for registration is received by the Tax Commission. Where a timely application for a hearing is made, a hearing will be scheduled. Within 3 months of the date of application for a hearing, taking into consideration any postponements of any scheduled hearing or conference or other delay made at the request of the applicant, the Tax Commission must issue a notice of refusal to register or else register the applicant, if the Tax Commission fails to issue the notice of refusal to register in a timely manner, it must register the applicant so long as the applicant has filed a bond or other security as required by the Tax Commission in the amount fixed by it.

In the event that the Tax Commission determines that an increase in the amount of bond or other security filed by a registrant is required to secure the liability of the registrant, such increase must be filed within 30 days from the day notice and demand have been given by the Tax Commission. If the registrant fails to both file the increase and make timely application for a hearing specifically on the amount of the increase, the Tax Commission will cancel or suspend the registration of such registered petroleum business.

Application for a hearing on an increase must be made by the registrant within 7 days of the day that the notice and demand for such increase was given. The Tax Commission may, by regulation, for the cause stated therein, extend such period to a period not exceeding 15 days from the date of the notice. If a timely application for hearing on an increase is made, such hearing must be held, unless extended by the Tax Commission for good cause, no less than 7 days and no more than 10 days after receipt of the application for hearing. Within 15 days of receipt of such application, the Tax Commission will issue its decision on the increase. If it decides that the increase must be filed, the increase must be filed within 7 days from the date of the decision or if later 30 days from the day the notice and demand for such increase was issued. Notwithstanding any judicial review of the decision of the Tax Commission, if the increase is not timely filed, the Tax Commission will cancel or suspend the registration of such Article 13-A petroleum business registrant.

7. Summary Order - Whenever evidence is furnished by the Tax Commission to any justice of the Supreme Court, at court or at chambers, showing that any corporation or unincorporated business not registered as a petroleum business is, in fact, a petroleum business subject to tax under Article 13-A, such justice will make a summary order prohibiting the corporation or unincorporated business or any of its agents from selling such petroleum or any petroleum illegally. Such order would also prohibit all other persons from selling or releasing any petroleum illegally sold until the corporation or unincorporated business has registered, reported the sale of petroleum illegally sold and paid any tax due thereon or until the Tax Commission consents to such sale.
  
8. Felony Definition and Applicability - In determining whether a person has been convicted of a felony for purposes of denial or cancellation of a registration, a conviction of a felony includes the conviction of a felony in New York courts or courts of the United States or courts of another state of the United States. However, if such crime is not treated as a felony in other jurisdictions but is a felony under New York statutes, such conviction will be considered a felony for purposes of Article 13-A. Where such crime is a felony in other jurisdictions but is not a felony in New York, such conviction is not considered a felony conviction for purposes of Article 13-A.

If a conviction is set aside or reversed on appeal any registration that has been cancelled or suspended as a result of the conviction shall be restored.

If a person convicted of a felony or a crime defined by New York statutes as a felony is subsequently pardoned by the governor of the state where the conviction occurred, or by the president of the United States, or is granted a certificate of good conduct by the board of parole, the Tax Commission may, in its discretion, on application of that person, with proper substantiation, reregister such person as a petroleum business under Article 13-A.

9. Transfer of Registration Prohibited - A registration granted to a petroleum business is considered personal to the petroleum business to which it is granted. Any transfer of its registration without the prior written approval of the Tax Commission is invalid and will be considered grounds for immediate cancellation or suspension of the registration of the petroleum business. A specific procedure will be established to review any proposed transfer of registration. The Tax Commission must issue its decision about the proposed transfer within 75 days after the day of receipt of a properly completed application for review of the proposed transfer. If the decision is not timely issued, the Tax Commission is required to register the proposed transferee.

A registration is considered to be transferred where, among other things, there is any addition or substitution of a partner of the registrant or the acquisition by any person of shares of stock (where the registrant is a corporation) so that such person becomes the owner of more than 10 percent (25% or more if the corporation has 4 or fewer shareholders owning voting shares) of voting shares. Where the stock of the registrant or a partnership interest in the registrant or, where the registrant is a sole proprietorship, the interest of the decedent thereon is transferred pursuant to bequest or inheritance to certain family members, such transfer, in and of itself, does not constitute revised grounds for cancellation or suspension. However, a revised application for registration must be made within 90 days of the death of such decedent. Failure to do so will be considered grounds for immediate cancellation or suspension of the registration. Further, in considering the revised application, the Tax Commission may cancel or suspend such registration because of existence of other grounds to do so.

10. Disclosure of Registration Information - The Tax Commission, when authorized by the petroleum business, shall furnish information regarding the registration and any other information about the petroleum business. No authorization is needed for the disclosure of the names of petroleum businesses subject to tax under Article 13-A.
11. Definition of Terms - Definitions are provided for terms used in the new Section 302 of Article 13-A. Terms defined include "person" and "controlling person."