

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

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Corporation Tax
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Tax on Importation of Gas Services
Article 9 Section 189

DEFINITIONS

1. Gas services means the delivery of natural gas through mains or lines.
2. Gas importer means every person who imports gas services or causes gas services to be imported into New York State for their own use or consumption.
3. Person means any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee and any other person acting as a fiduciary.
4. Mcf means 1,000 cubic feet of gas.
5. Annual average gas price means the natural gas wellhead price published by United States Department of Energy, Energy Information Administration. The price will be changed annually on July 1. The price in effect from August 1, 1991 through June 30, 1992 is \$1.72 per Mcf.
6. Actual consideration is the price paid for gas services; this amount will not include reasonable transportation charges that are separately stated.
7. Public utility means a public utility subject to the jurisdiction of the Public Service Commission as to the matter of rates on sales to customers making delivery of gas services in New York to a gas importer.
8. For purposes of section 189 of the Tax Law, purchase means the acquisition of natural gas from another person.
9. Co-generation facility means a co-generation facility as defined in subdivision 2-a of section 2 of the Public Service Law or a qualifying facility which is a co-generation facility pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

IMPOSITION

A tax is imposed on every gas importer at the rate of 4 1/4~ (plus applicable surcharges) of the consideration given or contracted to be given for gas services imported or caused to be imported into New York.

PAYMENT OF TAX

1. If importation is through a regulated public utility-the public utility is required to collect the tax monthly from the gas importer. The public utility shall separately state the tax and show it on all invoices, receipts or other memoranda of price regarding the transportation of gas services.

The public utility is a trustee of the State. Sales tax provisions apply with respect to the tax required to be collected. The sales tax requirements that: the tax be collected when collecting the payment for the transportation of gas services; the tax be separately stated; certain records are required to be kept, all pertain. The sales tax provisions concerning who is liable for the tax also pertain.

The tax is collected by the utility on the basis of the annual average gas price per Mcf.

Computation by the utility:

Mcf of gas delivered x annual average gas price x 4 1/4% = tax.

Payment of the tax required to be collected. A regulated public utility is required to file a return (Form CT-189) by the 20th day following the end of the quarter and to remit the tax required to be collected during the quarter (whether or not actually paid over by the customer during the quarter). Quarters end on the last day of February, May, August and November.

Refund. A gas importer may apply for a refund quarterly for the excess of the amount collected by the public utility. Accordingly, if a gas importer's consideration given on the commodity is less than the annual average gas price, such gas importer is entitled to a refund. To substantiate the refund, copies of monthly public utility bills for the months for which the Refund is requested must be provided as well as documents substantiating the amounts paid.

2. A co-generation facility may apply for a direct pay permit (Form AU-R40) so as to be able to purchase the gas tax free. It is then required to file a return and pay the tax in a manner similar to the importer who does not use a regulated public utility for delivery.

If the co-generation facility does not obtain a direct pay permit (Form AU-840). It will have to pay the tax on the full amount of gas services delivered and claim a refund for the amount exempted.

3. When gas services are delivered to the gas importer by other than a regulated public utility, such gas importer will be required to file a return quarterly. The quarters covered by the return are quarters ending on the last day of February, May, August and November, and are due on March 15, June 15, September 15 and December 15, respectively.

The tax is computed by multiplying actual consideration given or contracted to be given for gas service consumed for the period covered by the report by A 1/4%.

There is no provision for an extension of time to file the return or pay the tax.

EXEMPTION and EXCLUSIONS

Gas services imported by a co-generation facility, and used to generate electricity and/or steam produced by such facility when such electricity and/or steam is supplied to and used by a thermal energy host located at or near the project site shall be exempt. The portion of natural gas exempt is determined by the following formula:

$$\frac{\text{BTUs of steam and electricity supplied to thermal host}}{\text{Total useful BTUs produced}} = \text{Exemption percentage}$$

BTU equivalent values of steam and electricity are those used by the New York State Energy Office, e.g.:

1 kilowatt hour = 3,412 BTUs

1 pound of low pressure steam = 1,000 BTUs

* For additional steam BTU value equivalents, use ASME or NBS/NRC steam tables.

Total useful steam and electricity produced by a facility includes that produced for the host, an electric utility and any other useful purpose.

Excluded from the tax are persons who import natural gas into New York from a well they own outside of New York. If an importer imports both gas from its own well and gas it has purchased the tax is computed on the gas purchased.

Gas delivered, from August 1, 1991 to December 31, 1991, by a regulated public utility will have the tax included. Importers may claim a refund for the portion of such gas that comes from their own well. For periods after December 31, 1991 an importer may submit a Form AU-278, Natural Gas Exclusion Certificate, to the utility showing the amount of gas not subject to tax. Bills from the utility will reflect the exclusion.

In order to claim exclusion a person must be able to show the ownership of the well. If a well is owned by a related company and that related company provides natural gas to the importer the transaction is not subject to the exclusion and is therefore subject to the tax.

Example: Company A owns 100% of the stock of Company B. Company B owns a natural gas well in Louisiana. B provides gas to A who imports it into New York State. A is subject to the tax.

METROPOLITAN TRANSPORTATION TAX SURCHARGE

For all or any part of taxable months beginning on or after August 1, 1991 and ending on or before December 31, 1991 every gas importer importing or causing gas service to be imported for its use or consumption into the Metropolitan Commuter Transportation District (MCTD) must pay a surcharge of 17% of the tax imposed under section 189 of the Tax Law. The base does not include the tax surcharge imposed in section 189-b of the Tax Law.

No tax credits are allowed against the MCTD surcharge.

The surcharge is not allowed as a deduction in the computation of any tax under the tax law.

TAX SURCHARGE

There is a tax surcharge imposed on the tax computed under section 189 of 15% for taxable months beginning on or after August 1, 1991 and ending on or before December 31, 1991 and 10% for taxable months beginning on or after January 1, 1992 and ending on or before December 31, 1992.

The MCTD surcharge is not included in the base of the 15% or 10% surcharge.