

**Conditions for Issuing Exemption Certificates and Direct
Pay Permits under Article 9, Section 189**

Section 189 of the Tax Law imposes a privilege tax on the importation of gas services (i.e., gas delivered through mains or pipes). The tax is imposed on persons who import gas services for their use or consumption from out-of-state. If the gas services are delivered in New York State to the consumer by a public utility, the public utility is required to collect the section 189 tax from the consumer and remit it to the Tax Department. Where a public utility is not the owner of the gas service and is only providing transportation services, it is presumed that the utility is required to collect and remit the section 189 tax.

Effective December 1, 1996, a public utility providing gas transportation service in New York State will be held harmless and not be required to collect and remit the section 189 tax if the public utility receives one of the following documents in good faith:

1. an Exemption Certificate signed by the seller and the purchaser of the gas - Form TP-136, or;
2. a copy of the purchaser's Direct Pay Permit - Form AU-260.

The procedures regarding the Exemption Certificate (TP-136) and Direct Pay Permit (AU-260) are as follows:

Exemption Certificate, Form TP-136

An exemption certificate, which must be signed by both the purchaser (consumer) and the seller of the gas, may be provided to the utility to release the utility of its obligation to collect the section 189 tax if ALL of the following conditions are met and stated on the certificate:

1. The sale of gas services takes place in New York State.
2. The sale of gas services is pursuant to a contract with a term of at least one year.
3. The certificate is signed and dated by the seller and purchaser of the gas services.
4. The purchaser (consumer) is purchasing gas from only one seller (other than the transporter-utility).
5. The seller is assuming all liability for any amounts due under section 186-a and, if applicable, section 186 of the Tax Law.
6. The purchaser and seller are jointly and severally bound by the terms of the certificate.

Blank certificates may be obtained from the Department of Taxation and Finance by calling, toll

free, 1 800 462-8100. From areas outside the U.S. and Canada, call (518) 485-6800 or write to the New York State Department of Taxation and Finance, Taxpayer Assistance Bureau, W.A. Harriman Campus, Albany, New York, 12227, U.S.A. The certificate can also be obtained using the Department's "Fax-On-Demand" system by dialing 1 800 748-FORM (1 800 748-3676) and, when prompted, entering the following 5 digit fax code: 12017.

Direct Pay Permit, Form AU-260

The Department of Taxation and Finance may issue a Direct Pay Permit to a purchaser (consumer) if ALL of the following conditions are met:

1. The consumer is an individual (stand-alone) customer of the utility transporting the gas and is purchasing gas from at least two suppliers (other than the transporting utility).
2. The sale of gas from any of these suppliers takes place in New York State under a contract that has a term of at least one year.
3. The purchaser's total annual transportation load is at least one hundred thousand (100,000) Mcfs.

A person operating an electric co-generating facility can also obtain a Direct Pay Permit issued by the Department.

If a purchaser provides a copy of the direct pay permit to the public utility, then the purchaser must pay any section 189 tax due directly to the Tax Department. The tax is due quarterly and reported on Form CT-189 in accordance with the rules provided in TSB-M-91(5)C dated December 31, 1991. To obtain an application for a direct pay permit (Form TP-135), write to the Transaction and Transfer Tax Bureau, Registration Unit, Building 8-855, W. A. Harriman Campus, Albany, New York, 12227 or call 1-800-462-8100. The application can also be obtained using the Department's "Fax-On-Demand" system by dialing 1-800-748-FORM (1 800 748-3676) and, when prompted, entering the following 5 digit fax code: 12016.

Note: This memorandum replaces TSB-M-96(5)C. It has been changed to correct certain form number references. The Direct Pay Permit was previously referenced as Form TP-135. The correct reference is Form AU-260. The application for a direct pay permit is Form TP-135.