

New Guidelines on the Sales of Motor Fuel and Diesel Motor Fuel Subject to the Cents-Per-Gallon Sales Tax

On May 21, 2006, Governor George E. Pataki signed into law Chapter 35 of the Laws of 2006. Chapter 35 amended section 1111 of the Tax Law to provide a new cents-per-gallon method for computing the state sales tax on motor fuel and diesel motor fuel effective June 1, 2006. In addition, recently enacted legislation amended section 1111 of the Tax Law to limit which sales of motor fuel and diesel motor fuel are subject to the cents-per-gallon method. As a result of this new legislation, TSB-M-06(7)S, *Reduction in State Sales Tax on Motor Fuel, with Local Option*, and TSB-M-06(7.1)S, *Questions and Answers Related To TSB-M-06(7)S, Reduction in State Sales Tax on Motor Fuel, with Local Option*, which provided information on the cents-per-gallon sales tax, are obsolete and should not be used. This TSB-M provides a complete summary of changes made by Chapter 35 and the recently enacted legislation.

General

Effective June 1, 2006, Chapter 35 amended the Tax Law to change the New York State percentage rate sales and use tax (sales tax) on motor fuel and diesel motor fuel to a cents-per-gallon method. The change to a cents-per-gallon method also applies to the additional state sales tax imposed on motor fuel and diesel motor fuel in the Metropolitan Commuter Transportation District (MCTD). The state sales tax on motor fuel and diesel motor fuel outside the MCTD is now 8 cents-per-gallon. In the MCTD, the tax is 8¾ cents-per-gallon.

Section 1111 of the Tax Law, as amended by Chapter 35, also allows counties and cities, including New York City, (localities) to change their percentage rate sales tax to a cents-per-gallon method, effective for sales and uses occurring on or after July 1, 2006. See TSB-M-06(9)S, *Local Sales Tax on Qualified Motor Fuel and Diesel Motor Fuel, Localities Electing to Change to Cents-Per-Gallon Calculation Method Effective July 1, 2006 and Other Rate Information*.

Furthermore, localities that change to a cents-per-gallon method of computing sales tax may revert to a percentage rate method for that fuel on the first day of a subsequent sales tax quarter. In addition, the law allows localities that do not elect the cents-per-gallon method effective July 1, 2006, to change to a cents-per-gallon method beginning on the first day of a subsequent sales tax quarter.

The amendments to section 1111 of the Tax Law made by Chapter 35 provided that the state, and, if applicable, the local cents per-gallon-method would apply to all retail sales of motor fuel and diesel motor fuel that are subject to sales tax. The recently enacted legislation amended section 1111 to provide, effective for sales and uses occurring on or after June 1, 2006, for the state sales tax, and, on or after July 1, 2006, for the local sales tax, that the state and local cents-per-gallon sales tax method applies only to *qualified fuel*, as defined below.

For sale or uses of motor fuel and diesel motor fuel that is **not** qualified fuel, including the rules for sales or uses of such fuel during the period June 1, 2006 – June 30, 2006, see “**Sales tax on motor fuel and diesel motor fuel that is not qualified fuel**” on page 3 of this memorandum.

Definitions

Motor vehicle means any vehicle operated or driven on a public highway that is propelled by any power other than muscular. *Motor vehicle* does not include boats, snowmobiles, all terrain vehicles, road building and construction machinery, power shovels, tractor cranes, tractors used exclusively for agricultural purposes and vehicles that run only on rails or tracks.

A *retail gas station* means a filling station where motor fuel or diesel motor fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle. A *retail gas station* also includes a filling station where motor fuel or diesel motor fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of the vessel (e.g., a marina gas station).

Qualified fuel means motor fuel or diesel motor fuel that is:

- sold for use directly and exclusively in the engine of a motor vehicle; or
- sold by a *retail gas station* (other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons.) Note: If a business qualifies as a retail gas station, any motor fuel or diesel motor fuel it sells (other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons) is qualified fuel and therefore will be subject to the state’s cents-per-gallon rate, and to the local cents-per-gallon rate if the locality elected such a rate, regardless of how the fuel sold by the station is used by the purchaser. For example, if a retail gas station sells fuel to a purchaser who pumps the fuel into a five-gallon can for use in a lawnmower, snowmobile, ATV or other equipment, that fuel is qualified fuel.

Special rules for motor fuel and diesel motor fuel sold for use directly and exclusively in the engine of a motor vehicle

As stated above, qualified fuel includes motor fuel and diesel motor fuel sold by vendors other than retail gas stations if the fuel is used directly and exclusively in the engine of a motor vehicle (e.g., qualified fuel would include motor fuel or diesel motor fuel sold by a distributor to a bulk purchaser who will use the fuel exclusively in its fleet of rental cars.) Any vendor of fuels that is **not** a retail gas station, must compute the sales tax due using the percentage rate method unless the purchaser gives the vendor, within 90 days of sale, a properly completed Form ST-121, *Exempt Use Certificate*, using Part III, Box T. For this purpose, purchasers of motor fuel or diesel motor fuel who are not required to have a *Certificate of Authority* are not required to list a *Certificate of Authority* number on Form ST-121.

If the vendor receives and accepts a properly completed ST-121 when the purchaser has used Part III, Box T in good faith within 90 days of the sale, the vendor should treat the fuel as qualified fuel and therefore should compute and collect the state tax, and if the locality has elected the cents-per-gallon method, the local tax, using the cents-per-gallon method.

If the purchaser actually uses the motor fuel or diesel motor fuel for purposes other than in the engine of a motor vehicle, the purchaser is subject to any additional sales or use taxes due, based on the difference between the tax paid and the state and local tax that would have been due if the fuel had not been treated as qualified fuel.

If the purchaser does not give the vendor a properly completed Form ST-121, the vendor should not treat the fuel as qualified fuel and should compute and collect the state and local sales taxes using the percentage rate sales tax method. However, if the purchaser actually uses the fuel in the engine of a motor vehicle, the purchaser may claim a credit on its sales tax return or file a claim for a refund using Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*, for any overpayment of sales tax for the portion of the fuel that is actually used directly and exclusively in the engine of a motor vehicle. The amount of the refund or credit is the difference between the tax paid on such fuel and the amount of state and local tax that is due on qualified fuel.

Sales of motor fuel and diesel motor fuel that is not “qualified fuel”

As a result of the recently enacted legislation, for sales made on or after July 1, 2006, vendors must resume computing and collecting the state and, if applicable, the MCTD sales tax on motor fuel and diesel motor fuel that is **not** qualified fuel using the percentage rate sales tax method. In addition, vendors must continue to compute and collect the local tax on this fuel using the percentage rate sales tax method. That is, the tax is computed on these sales by multiplying the taxable receipt by the combined state and local tax percentage rate in the jurisdiction where the sale occurred. This is the method that was in effect prior to the June 1, 2006 effective date of Chapter 35.

If a vendor sold motor fuel or diesel motor fuel that was not qualified fuel on or after June 1, 2006, but before July 1, 2006, and computed the state sales tax using the cents-per-gallon method, the vendor will not be required to collect from the customer the additional sales tax resulting from the application of the percentage rate method. However, the customer must remit to the Department any additional state sales tax due. The additional state sales tax due is the difference between the tax paid and the state tax due, including the MCTD tax due, if applicable, using the percentage rate method.

Authority to adjust cents-per-gallon tax

State and local cents-per-gallon rates may be adjusted quarterly (the first day of March, June, September, December) due to reductions in automotive fuel prices or local rate changes. The Tax Department will notify vendors of cents-per-gallon rate changes prior to any such rate changes taking effect.

Changes to method of determining prepaid tax on automotive fuel

Chapter 35 also amended section 1111 of the Tax Law relating to the sales tax prepayment provisions for distributors of automotive fuel. The prepaid sales tax is computed based on the number of gallons of motor fuel and diesel motor fuel imported, manufactured or sold in either Region 1 or Region 2 of the state. Effective June 1, 2006, for Region 1, the new prepayment amount is 14³/₄ cents-per-gallon. For Region 2, the new prepayment amount is 14 cents-per-gallon. See Publication 787, *Chart for Prepayment of Sales Tax On Diesel Motor Fuel*, and Publication 790, *Chart for Prepayment of Sales Tax On Motor Fuel*, for further information on prepaid sales tax on automotive fuels. The recently enacted legislation did not change these prepayment rules or the fuels subject to the prepaid sales tax.

Requirements for retail vendors and distributors to reduce prices they charge

The General Business Law and Tax Law were amended (1) to require distributors of motor fuel and diesel motor fuel to reduce the price they charge their customers for such fuel by any reductions in the prepaid sales taxes paid by the distributor, and (2) to require retail vendors to reduce the price they charge their customers for qualified fuel to reflect the lower sales tax as a result of the new state and local cents-per-gallon computation method. Furthermore, the Tax Department, in conjunction with the State Consumer Protection Board, is required to monitor prices to determine if they have been appropriately reduced. A penalty of up to \$5,000 per day for each violation may be imposed if a seller or distributor is found to be in violation of the price reduction requirements of the General Business Law. The Tax Department will provide notice to sellers or distributors of any violations found and will provide an opportunity for a hearing not less than 10 days after providing such notice.

(See Tax Law sections 1111(e), 1111(m), 1817(t), and General Business Law section 392-i.)