New York State Department of Taxation and Finance

Instructions for Form CT-189
Tax on Importation of Gas Services

CT-189-I
(12/93)

Section 189 of the Tax Law imposes a tax on *gas importers* who import, or cause to be imported, gas services into this state for their own use. Gas service is the delivery of gas through mains or lines. Gas importers include individuals, partnerships, societies, associations, joint stock companies, corporations, estates, receivers, trustees, assignees, referees, and other persons acting in a fiduciary or representative capacity, and the state of New York, its agencies, instrumentalities, public corporations and political subdivisions, including school districts. The tax is computed at the rate of 4¼% (.0425) of the consideration given (or contracted to be given) by the gas importer for the imported gas services plus applicable surcharges. Compute the tax by one of two methods on either Schedule A or Schedule B of Form CT-189:

1 **Schedule A** - If the gas services are delivered into this state by a regulated public utility, the utility must collect the tax from the individual gas importer on a monthly basis. The public utility must complete Form CT-189, Schedule A, and pay the tax required to be collected to the Tax Department on a quarterly basis. Even public utilities which have not collected any tax for a particular quarter, because no gas services were imported into NYS, must file Form CT-189 to show that no tax is due. When collected by a regulated public utility, the section 189 tax will be administered jointly with sales tax.

2 **Schedule B** - If the gas services are not delivered by a regulated public utility, or if they are imported by a co-generator with a direct payment certificate, the gas importer must compute the tax on Schedule B of this form and file quarterly.

Columns A and B - Section 189-b of the Tax Law imposes a state tax surcharge equal to 15% of section 189 tax for all tax months ending on or before December 31, 1993. For tax months ending January 31, 1994, through December 31, 1994, the tax surcharge rate decreases to 10%. Because the state tax surcharge rate change occurs in the middle of a tax period, the tax and tax surcharge for the period December 1, 1993, through February 28, 1994, must be computed using both columns A and B.

Meter Reading: Determination of Tax Months for Public Utilities

When the importation or delivery of gas services are billed based on meter readings, the following rules apply: the total amount billed as a result of a meter reading should not be split between months, but instead the entire amount must be included in only one tax month depending upon the date of the meter reading; if more than one-half the number of days included in the period covered by the bill falls within a particular month that month will be considered the tax month and the entire bill based upon the meter reading is subject to section 189 tax for that month (Example: If the meter reading occurs on January 14, then the tax month is considered to be December).

Due Date

Returns to be filed by regulated public utilities and entities with a direct payment permit are due 20 days from the end of the quarter. Returns of importers not using a regulated public utility for delivery and which do not have a direct payment permit are due by the 15th day following the end of the quarter. Tax quarters end on the last day of February, May, August and November.

Interest

If you do not pay the tax and tax surcharges due on or before the due date, you must pay interest on the amount of underpayment from the due date to the date paid. You may call the Business Tax Information Center for the current rate or to have the interest computed for you.

For information, call the Business Tax Information Center toll free (from the continental U.S. only) 1 800 972-1233. You can also call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

Additional Charges

Additional charges for late filing are computed on the amount of tax and tax surcharges required to be shown on the return after deduction of any payment made on or before the due date.

a. If you do not file a return when due, add to the tax 5% per month, up to 25% (section 1085(a)(1)(A)).

b. If you do not file a return within 60 days of the due date, the addition to tax cannot be less than the smaller of $100 or 100% of the amount required to be shown as tax (section 1085(a)(1)(B)).

c. If you do not pay the tax shown on a return, add to the tax ½% per month, up to 25% (section 1085(a)(2)).

d. The total of the additional charges in a and c above may not exceed 5% for any one month except as provided for in b above (section 1085(a)).

If you think you are not liable for these additional charges, attach a statement to your return explaining the delay in filing, payment, or both (section 1085).

Direct Payment Permit for Co-generation Facilities

A co-generation facility defined in section 2.2-a of the Public Service Law or a qualifying facility which is treated as a co-generation facility as defined by section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617) may obtain a direct payment permit by applying in writing to the following address: TTTB - FACCTS, Registration Unit, Building 8 - 855 Central, W A Harriman Campus, Albany NY 12227.

This application should include the legal name and address of the business, federal employer identification number, summary of operations, a complete list of owners, officers, directors and partners, and the name and location of the thermal host. Upon the receipt of a properly approved direct payment permit, permit holders should file a copy of the permit with the public utility they use for gas transportation services. Co-generators who have obtained a direct payment permit are exempt from paying the tax to the public utility and, instead, will compute their own tax by completing Schedule B.

Schedule A — Collection and Remittance by a Regulated Public Utility

Part I — Computation of Tax and State Tax Surcharge

Line 1 — Enter the total number of Mcf's imported by and delivered to a transportation customer in New York State for use in New York State. Do not include Mcf's imported by and delivered to transportation customers from the transportation customer's own out-of-state gas well and for which you received a properly completed exemption certificate. An *Mcf* is one thousand cubic feet of gas.

Line 2 — The price used to compute the tax to be collected is set by law. It is the preceding calendar year's annual average of the national average natural gas price per Mcf as published by the U.S. Department of Energy. For the period December 1, 1993, through February 28, 1994, the annual average gas price is $1.86.

Line 3 — Multiply the total number of Mcf's on line 1 by the average annual gas price ($1.86) on line 2 to arrive at the total amount used for computing the tax to be collected.

Lines 6a and 6b — Section 189-b imposes a 15% state tax surcharge rate on tax due under section 189 for the one month period ending 12/31/93. For the remaining months in the tax period, the surcharge will be imposed at the rate of 10%.

Line 8 — Section 189-a imposes an MTA surcharge of 17% on the tax due on gas service imported into New York State for use in the Metropolitan Commuter Transportation District (MCTD).

Line 10 — A regulated public utility will be given credit for Section 189, 189-a and 189-b tax paid to New York State but never collected because it became uncollectible. Enter any such credit for bad debts on this line along with any overpayments of section 189 tax from previous quarters.

Line 12 — See *Interest* on the front of the instructions.

Line 13 — See *Additional Charges* on the front of the instructions.

Line 14 — Pay the amount due computed on this line. If this amount is negative because of an excess of credits on line 10, enter this figure in brackets. This amount will be credited to the next period. If you wish to receive a refund, make this election by attaching a written request.

Part II - Computation of Metropolitan Transportation Tax (MTA Surcharge)

Section 189-a imposes a temporary MTA surcharge on gas importers for any tax month ending on or before June 30, 1995.

Line 15 — Enter the number of Mcf's of gas service imported by and delivered to a transportation customer in the MCTD for the period December 1, 1993, through February 28, 1994, in the appropriate column. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

Line 18 — The surcharge rate of .7225% shown on this line represents the tax rate of 4.25% multiplied by the MTA surcharge rate of 17%.

Schedule B - Computation and Payment of Tax By Gas Importers Not Using a Regulated Public Utility or by Co-generators Who Have Obtained A Direct Payment Permit

Part I — Computation of Tax and State Tax Surcharge Due

Line 20 — Enter the actual consideration given or contracted to be given for gas services imported into New York State during the tax period. The actual consideration given or contracted to be given is the price of the gas service not including any separately stated transportation charges which are reasonable.

Line 21 — Enter the exemption for co-generators. If you qualify as a co-generation facility see Part II below for computation of this exemption.

Lines 25a and 25b — Section 189-b imposes a 15% state tax surcharge on tax due under section 189 for the one-month-period ending 12/31/93. For the remaining months in the tax period, the surcharge will be imposed at the rate of 10%.

Line 27 — Section 189-a imposes an MTA surcharge of 17% on the tax due on the portion of gas service imported into New York State for consumption or use in the Metropolitan Commuter Transportation District (MCTD).

Line 29 — Enter any overpayments of section 189 tax from previous quarters.

Line 31 — See *Interest* on the front of the instructions.

Line 32 — See *Additional Charges* on the front of the instructions.

Line 33 — Pay the amount due computed at this line. If this amount is negative because of an excess of credits on line 29, enter this figure in brackets. This amount will be credited to the next period. If you wish to receive a refund, make this election by attaching a written request.

Part II — Exemption for Co-generation Facilities

A co-generation facility defined in section 2.2-a of the Public Service Law or a qualifying facility which is a co-generation facility as defined by section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617) and which has been issued a direct payment permit may compute this exemption.

An exemption will be allowed when gas service imported by a qualifying co-generation facility is used to generate electricity or steam which is supplied and used by a thermal energy host located at or near the project site.

To determine the consideration for natural gas to be exempted, the total consideration for natural gas used by the facility during the period is multiplied by the ratio of the BTU value of steam and of electricity supplied to and used by the host, to the total BTU value of all useful steam and electricity produced by the facility during the same period.

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

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

Note: 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 or any other useful purpose.

After computing the exemption, enter the amount from line 38 on Part I, line 21, to reduce the amount of consideration upon which the tax is imposed.

Part III — Computation of Metropolitan Transportation Tax (MTA Surcharge)

Section 189-a imposes a temporary MTA surcharge on gas importers for any tax month ending on or before June 30, 1995.

Line 39 — Enter the total consideration given or contracted to be given for gas services imported into the MCTD for the period December 1, 1993, through February 28, 1994. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

Line 40 — Enter the MCTD exemption for co-generators. If you qualify as a co-generation facility, see Part IV below for computation of this exemption.

Line 42 — The surcharge rate of .7225% shown on this line represents the tax rate of 4.25% multiplied by the MTA surcharge rate of 17%.

Part IV — Exemption for Co-generation Facilities Within The MCTD

Only a co-generation facility which qualified for the exemption in Part II may qualify for this exemption in Part IV. The same formula applies as described in Part II above. The resulting exemption percentage will be applied only against the computation of the MTA surcharge since the statewide exemption computed in Part II has already been applied against the computation of the tax and state tax surcharge. After computing this exemption, transfer the amount from Part IV, line 48, to Part III, line 40, to reduce the amount of consideration upon which the MTA surcharge is computed.

Privacy Notification

Our authority to require and maintain personal information, including identifying numbers (social security numbers, etc.), is found in sections 189 and 1096 of the Tax Law.

We will use this information primarily to administer the tax on importation of gas services under Article 9 of the Tax Law and for any other purpose authorized by law.

Your failure to provide the required information may result in denial of a refund or in civil or criminal penalties, or both, under Articles 9, 27, 28 and 37 of the Tax Law.

This information will be maintained by the Director Data Management Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from outside New York State, call (518) 400-0501.