



Instructions for Form CT-189

Tax on Importation of Gas Services

Tax Law changes

The Tax Law under section 189 of Article 9 has been amended to provide a series of tax rate reductions. For every tax month during the calendar year 2002, the tax rate is 1.9%.

Taxpayers who paid the tax at the rate of 4.25% for all or any of the period January 1, 2000, through May 31, 2000, will be allowed a credit against the tax imposed under section 189 or 189-a for any overpayment. Utilities who compute the gas import tax on Schedule A of Form CT-189 will be allowed a credit for tax overpayments credited to their customers who paid the tax at the higher rate during this period. Utilities should use Schedule E of this form to calculate the tax credit and MTA surcharge credit.

Taxpayers who have a direct pay permit or who do not use a regulated public utility may apply for the credit on Schedule B. Use the worksheet provided in the instructions for line 48 of Schedule B to calculate the tax credit and MTA surcharge credit.

The Tax Law was also amended to allow a tax reduction credit for the period October 1, 1998, through December 31, 1999. The credit is equal to the difference between the amount of tax paid at the rate of 4.25% and the amount of tax that would have been paid if the rate was 4.0% for that period. Regulated public utilities will provide a credit to their customers for the difference in the amount of tax due using the 4.0% rate and the amount of tax that was paid. Taxpayers who compute the tax on Schedule B will be allowed a credit against the tax due under sections 189 and 189-a of the Tax Law for this period, if not previously claimed on Form CT-189 or Form CT-189-WR, *Claim for Refund of Section 189 Tax and Tax Surcharges*.

The Tax Law was amended to allow a long-term care insurance credit beginning on or after January 1, 2002. The credit is equal to 10% of the premiums paid during the tax period for the purchase of qualifying long-term care insurance. To qualify for the credit, the taxpayer's premium payment must be for the purchase of a long-term care insurance policy approved by the New York State Superintendent of Insurance pursuant to section 1117 of the Insurance Law. For more information, see TSB-M-00(5)C.

Section 189.1 of the Tax Law was amended to exclude an electric corporation, as defined in section 2.13 of the Public Service Law, from the imposition of the tax on the importation of natural gas. Also, section 189.6 of the Tax Law was amended to exempt from tax gas service used to generate electricity for sale. This exemption does not include gas service sold to a co-generation facility as defined in section 2.2-a of the Public Service Law, or to a qualified 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 used to generate electricity for sale directly to a public utility which is subject to the jurisdiction of the Public Service Commission (PSC) as to rates on sales to customers. If you qualify as a co-generation facility, see Schedule B, Part II to compute your exemption. These changes are effective for tax months beginning on or after January 1, 2001.

If gas services are delivered by a regulated public utility to a gas customer with a valid Form AU-260, *Direct Pay Permit*, the gas customer, including a co-generator, may compute taxable consideration based on the *Annual average gas price per Mcf* on line 37 of Schedule B. Regulated public utilities collect and remit the tax using Schedule A of the form. Gas importers not using a regulated public utility use Schedule B and compute the tax based on actual consideration given or contracted to be given.

General information

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 or consumption. *Gas service* is the delivery of gas through mains or pipes. *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 by multiplying the applicable tax rate by the consideration given (or contracted to be given) by the gas importer for the imported gas services plus applicable surcharges. The tax must be computed by one of the methods on Schedule A or Schedule B, and must be filed quarterly.

- 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 unless the importer provides the utility with a valid Form AU-260, *Direct Pay Permit*, or a Form TP-136, *Certification of the Sale and Purchase of Natural Gas Services* (exemption certificate). The public utility must complete Form CT-189, Schedule A, and pay the tax required to be collected to the Tax Department quarterly. Even public utilities that have not collected any tax for a particular quarter, because no gas services were imported into New York State, must file Form CT-189 to show that no tax is due. When collected by a regulated public utility, the section 189 tax is administered jointly with sales tax.
- Schedule B** – If the gas services are delivered by a regulated public utility to a gas customer (including a co-generator) with a valid Form AU-260, *Direct Pay Permit*, the gas customer must compute the tax on the national average natural gas price as published by the U.S. Department of Energy. If the actual contract consideration is less than the annual average gas price, then actual contract consideration may be used.

If the gas services are delivered by other than a regulated public utility, the tax must be computed based upon the actual consideration given or contracted to be given. For the purposes of Schedule B, a *regulated public utility* includes a utility that is subject to the regulation of any activity supervised by the Public Service Commission, including but not limited to service, securities, safety, rates and charges, records, reports, or accounting.
- Schedules C and D** – Use Schedules C and D to help compute the tax and MTA surcharge due on Schedule A. If the taxpayer is computing the tax on Schedule B it will not be necessary to use these schedules.
- Schedule E** – Use Schedule E to compute the tax reduction credit for Schedule A.

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 cannot 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 is 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 June 14, then the tax month is considered to be May.)

Due date — Returns 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 fifteenth 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 MTA surcharge due on or before the due date, you must pay interest on the amount of underpayment from the due date to the date paid.

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

- If you do not file a return when due, add to the tax 5% per month, up to 25% (section 1085(a)(1)(A)).
- If you do not file a return within 60 days of the due date, the addition to tax for item A above cannot be less than the smaller of \$100 or 100% of the amount required to be shown as tax (section 1085(a)(1)(B)).
- 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)).
- The total of the additional charges in items A and C above may not exceed 5% for any one month except as provided for in item 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).

Note: If you wish, we will compute the interest and penalty for you. Call the Business Tax Information number listed in the *Need help?* section on page 4.

Application for a direct pay permit

Any co-generation facility (as defined in section 2.2-a of the Public Service Law) or a qualifying facility that 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 apply for a direct pay permit.

Any other gas customer, other than a co-generator, may apply for a direct pay permit if all of the following apply:

- 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);
- The sale of gas from any of these suppliers takes place in New York State under a contract with a term of one year or more; and
- The purchaser's total annual transportation load is at least 100,000 Mcfs of gas.

A direct pay permit should be applied for by submitting Form TP-135, *Application for a Direct Pay Permit under Article 9, Section 189 of the Tax Law*, to the following address: TTTB-FACCTS, Registration Unit, Bldg 8 — 855, W A Harriman Campus, Albany NY 12227. Upon receipt of a properly approved direct pay permit, permit holders must file a copy of the permit with the public utility they use for gas transportation services. They will not be required to pay the tax to the utility and instead will compute their own tax by completing Schedule B.

Exemption certificate

Blank exemption certificates may be obtained from the New York State Tax Department by calling toll free 1 800 462-8100. They may be used if all of the following conditions are met and stated on the certificate:

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

Specific instructions

Whole dollar amounts — You may elect to show amounts in whole dollars rather than in dollars and cents. Round an amount from 50 cents through 99 cents to the next higher dollar, and round any amount less than 50 cents to the next lower dollar.

Percentages — When computing percentages, convert decimals into percentages by moving the decimal point two spaces to the right. Percentages should be carried out to two decimal places. For example: $5,000/7,500 = .66666 = 66.67\%$.

Negative amounts — Show any negative amounts in parentheses.

Line instructions

Line A — Make your payment in United States funds. We will accept a foreign check or foreign money order only if payable through a United States bank or if marked **Payable in U.S. Funds**.

Schedule A — Collection and remittance by a regulated public utility

Part I — Computation of tax (section 189)

Line 1 — Enter the total number of Mcfs imported by and delivered to a transportation customer in New York State for use in New York State. An

Mcf is one thousand cubic feet of gas. Complete Schedule C on page 3, and enter the total on this line. Include Mcfs imported by and delivered to transportation customers for which you received a properly completed exemption certificate or direct pay permit.

Line 2 — Enter the total number of Mcfs imported and delivered to transportation customers in New York State that have provided the utility with a valid Form AU-260, *Direct Pay Permit*.

Line 3 — Enter the total number of Mcfs delivered to transportation customers in New York State that have provided the utility with a properly completed exemption certificate, Form TP-136, *Certification of the Sale and Purchase of Natural Gas Services*.

Line 4 — Enter the number of Mcfs of gas service delivered for use to generate electricity for sale. This exemption does not include gas service sold to a co-generation facility (as defined in section 2.2-a of the Public Service Law) or a qualified facility that is a co-generation facility (as defined by section 201 of the Public Utility Regulator Policies Act of 1978) and used to generate electricity for sale directly to a public utility which is subject to the jurisdiction of the PSC as to rates. If you qualify as a co-generation facility, see Schedule B, Part II to compute your exemption.

Line 7 — The annual average gas price used to compute the tax required 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 March 1, 2002, through May 31, 2002, the applicable annual average gas price is \$3.60.

Line 9 — The tax rate for the period March 1, 2002, through May 31, 2002, is 1.9%.

Line 12 — 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). Complete Schedule A, Part II to compute your MTA surcharge, and enter line 30 amount.

Line 14 — 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 and section 189-a tax from previous quarters not previously claimed.

Use Schedule E to compute the tax reduction credit allowed for the period of October 1, 1998, through May 31, 2000, if not previously claimed on Form CT-189 or requested as a refund on Form CT-189-WR (see instructions beginning on Page 4). Add the total amounts from columns 2, 3, and 4. Add this total to any other credits or overpayments due and enter on this line.

Line 16 — See *Interest* on page 1.

Line 17 — See *Additional charges* on page 1.

Line 18 — Pay the amount due computed on this line. If this amount is negative because of an excess of credits on line 14, enter this figure in brackets.

Line 19 — If line 18 is a negative amount, enter the amount of overpayment you wish to be credited to the next period.

Line 20 — If line 18 is a negative amount, enter the amount of overpayment you wish to be refunded. You must attach either a Form CT-189-WR, *Claim for Refund of Section 189 Tax and Tax Surcharges*, with Schedule D completed or a statement requesting a refund signed by an elected officer or authorized person.

Part II — Computation of metropolitan transportation business tax (MTA surcharge - section 189-a)

Line 21 — Enter the total from page 4, Schedule D. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

Line 22 — Enter the total number of Mcfs imported by and delivered to customers in the MCTD that have provided the utility with a valid Form AU-260, *Direct Pay Permit*.

Line 23 — Enter the total of Mcfs delivered to customers in the MCTD that have provided the utility with a properly completed exemption certificate, Form TP-136, *Certification of the Sale and Purchase of Natural Gas Services*.

Line 24 — Enter the number of Mcfs of gas service delivered in the MCTD for use to generate electricity for sale. This exemption does not include gas service sold to a co-generation facility (as defined by section 2.2-a of the Public Service Law) or a qualified facility that is a

co-generation facility (as defined by section 201 of the Public Utility Regulatory Policies Act of 1978) and used to generate electricity for sale directly to a public utility which is subject to the jurisdiction of the PSC as to rates. If you qualify as a co-generation facility, see Schedule B, Part IV to compute your exemption.

Line 29 — The surcharge rate of .323%, for the period March 1, 2002, through May 31, 2002, represents the tax rate of 1.9% multiplied by the MTA surcharge rate of 17%.

Line 32 — Enter the amount of MTA surcharge credit from Schedule E, column 4, Total.

Schedule B — Computation and payment of tax by importers who have obtained a Direct Pay Permit (including co-generators) or by importers not using a regulated public utility

Part I — Computation of tax (section 189)

Line 37 — The annual average gas price used to compute the tax is set by law. It is the preceding 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 March 1, 2002, through May 31, 2002, the applicable annual average gas price is \$3.60

Line 39 — If the gas services are delivered by a regulated public utility, enter the lesser of the amount on line 38 or actual consideration paid during the quarter. If the gas services are not delivered by a regulated public utility, enter the actual consideration paid during the quarter. For the purposes of Schedule B, a regulated public utility includes a utility that is subject to the regulation of any activity supervised by the Public Service Commission, including but not limited to services, securities, safety, rates and charges, records, reports, or accounting.

Line 40 — Multiply line 39 by the exemption percentage on line 57. If you qualify as a co-generation facility, see Part II below for computation of this exemption.

Line 41 — Enter the dollar value of Mcfs of gas service used to generate electricity for sale. Compute this amount either by:

- (1) multiplying the number of Mcfs of gas service used to generate electricity for sale by the annual average gas price on line 37, if the annual gas price was used to calculate the taxable consideration on line 39; or
- (2) using the actual consideration paid for gas service used to generate electricity for sale during the quarter, if the actual consideration was used to calculate the taxable consideration on line 39.

This exemption does not include gas service sold to a co-generation facility as defined by section 2.2-a of the Public Service Law or a qualified facility that is a co-generation facility (as defined by section 201 of the Public Utility Regulatory Policies Act of 1978) and used to generate electricity for sale directly to a public utility which is subject to the jurisdiction of the PSC as to rates. If you qualify as a co-generation facility, see Part II below for computation of this exemption.

Line 43 — The tax rate is reduced from 2.0% effective for tax months beginning on or after January 1, 2002. The tax rate for the period March 1, 2002, through May 31, 2002, is 1.9%.

Line 46 — 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 MCTD.

Line 48 — Enter the total tax reduction credit, the recently enacted long-term insurance care credit, and any other credits or overpayments of section 189 tax. Exclude any tax for gas services used in the production of electricity for sale to a regulated public utility and for which such utility reimbursed you for the section 189 gas importation tax.

To compute the tax reduction credit for the period October 1, 1998, through May 31, 2000, use the following worksheet.

Include any long-term care insurance credit on this line. The credit is equal to 10% of the premiums paid during the period March 1, 2002, through May 31, 2002, for the purchase of qualifying long-term care insurance. The long-term care insurance credit included on this line may not exceed amount on line 44 and may not be applied against the MTA surcharge computed on line 46; however, any portion of the credit which cannot be applied in the current tax quarter may be carried forward to any New York State return filed under Article 9 (except sections 180 and 181), 9-A, 22, 32, or 33. Please indicate on line 48 that you are claiming the long-term care insurance credit, and attach a copy of the credit computation.

Tax reduction credit worksheet	
Do not complete if computed in a previous period.	
For each month beginning October 1, 1998, through December 31, 1999, attach a schedule of the credit computation as follows:	
1	Tax paid at 4.25% rate
	Less:
	Tax calculated as if the rate was 4.0%:
a	Taxable consideration
b	Tax rate <u>.04</u>
2	Tax due for this period (multiply line 1a by line 1b)
3	Credit allowed (subtract line 2 from line 1)
For each month beginning with January 1, 2000, through May 31, 2000, the computation is as follows:	
4	Tax paid at 4.25% rate
	Less:
	Tax calculated at the 2.1% rate:
a	Taxable consideration
b	Tax rate <u>.021</u>
5	Tax due for this period (multiply line 4a by line 4b)
6	Credit allowed for January 1, 2000, through May 31, 2000, (subtract line 5 from line 4)
Computation of the MTA surcharge credit for the period January 1, 2000, through May 31, 2000:	
7	Multiply line 6 above by 17% (.17) (enter here and on line 71 of Form CT-189)
8	Total tax reduction credit allowed (add lines 3, 6, and 7) (enter here and on line 48 of Form CT-189)

Line 50 — See *Interest* on page 1.

Line 51 — See *Additional charges* on page 1.

Line 52 — Pay the amount due computed on this line. If this amount is negative because of an excess of credits on line 48, enter this figure in brackets.

Line 53 — If line 52 is a negative amount, enter the amount of overpayment you wish to be credited to the next period.

Line 54 — If line 52 is a negative amount, enter the amount of overpayment you wish to be refunded. You must attach either a Form CT-189-WR, *Claim for Refund of Section 189 Tax and Tax Surcharges*, with Schedule D completed or a statement requesting a refund signed by an elected officer or an authorized person.

Part II — Exemption for co-generation facilities

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

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

To determine the consideration for natural gas to be exempted, multiply the total consideration for natural gas used by the facility for co-generation during the period by the ratio of the BTU value of steam and electricity supplied to and used by the host, to the total BTU useful value of all energy (steam, electricity, heat, etc.) produced by the facility for sale or self use.

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

BTU equivalent values of steam and electricity are computed as follows:

- 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 for any other useful purpose.

