

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

TSB-A-90(55)S
Sales Tax
TSB-A-90(23)C
Corporation Tax
TSB-A-90(2)M
Miscellaneous Tax
November 7, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z900725A

On July 25, 1990 a Petition for Advisory Opinion was received from Cargill, Incorporated, P.O. Box 9300, Loc. #26, Minneapolis, Minnesota 55440.

The issues raised by Petitioner, Cargill, Incorporated, are whether Northeast Petroleum, a division of Petitioner may claim a credit or refund of sales tax imposed under Article 28 of the Tax Law, motor fuel tax imposed under Article 12-A of the Tax Law and the gross receipts tax imposed under Article 13-A of the Tax Law when a debt attributable to the sale of motor fuel has been ascertained to be uncollectible.

Petitioner is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. Northeast Petroleum, a division of Cargill, is headquartered in Chelsea, Massachusetts. Northeast Petroleum is a marketer of petroleum products in New England. Its main products are home heating oil, industrial grade fuel oil, and gasoline.

From time to time, Northeast Petroleum makes sales of petroleum or motor fuels on credit to customers in New York who subsequently do not pay the debts owed.

Article 13-A of the Tax Law imposes a tax on petroleum businesses for the privilege of doing business, employing capital, owning or leasing property or maintaining an office in New York State. For taxable years or portions of taxable years terminating prior to September 1, 1990, the tax is based on the gross receipts from sales of petroleum shipped to points within New York and the consideration given or contracted to be given on sales of petroleum products imported into New York. For taxable months commencing after August 31, 1990, a monthly gallon age tax is imposed and is the sum of the motor fuel component, the automotive-type diesel motor fuel component, the nonautomotive-type diesel motor fuel component and the residual petroleum product component.

With respect to the gross receipts tax from sales of petroleum, section 303(a) of Article 13-A of the Tax Law, in effect prior to September 1, 1990, provided that gross receipts from sales of petroleum means all receipts from sales of petroleum where shipments are made to points within New York State, whether in cash, credits or property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or services, of other costs, interest or discount paid or any other expense whatsoever.

With respect to the monthly gallon age tax, section 301-a of Article 13-A of the Tax Law provides that for taxable months commencing on or after September 1, 1990 the tax based on the gallon age of motor fuel imported, caused to be imported, or produced, refined, manufactured or

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compounded in New York during the month and the gallon age of automotive-type diesel motor fuel, nonautomotive-type diesel motor fuel and residual petroleum product sold or used in New York State during the month.

There is no provision, in Article 13-A of the Tax Law, under either the old gross receipts tax base or the new gallon age tax base to allow for a refund of taxes paid on sales where the corresponding receivable is subsequently written off as uncollectible.

Article 12-A of the Tax Law imposes an excise tax on the sale and use of motor fuel and diesel motor fuel in New York State.

On the sale of nondiesel motor fuel there is a basic excise tax of four cents per gallon, an additional excise tax of three cents per gallon, a supplemental excise tax of one cent per gallon and a local tax of one cent per gallon on leaded fuel which is imposed by cities with populations of one million Or more.

On the sale of diesel motor fuel there is a basic excise tax of six cents per gallon, an additional excise tax of three cents per gallon and a supplemental tax of one cent per gallon.

Section 289-c of the Tax Law sets forth the circumstances under which refunds may be obtained for taxes paid pursuant to Article 12-A. There are no provisions in Section 289-c or elsewhere in Article 12-A for refund or credit of taxes paid where the claim for credit or refund arises as the result of bad debt write-offs by a distributor.

The language contained in Section 289-c(2) of the Tax Law, indicating that the intention of Article 12-A is to place the ultimate burden resulting from the tax upon those operating motor vehicles on state highways or using state waterways is merely a preamble explaining the rationale of the specific refund or credit provisions contained in said section.

Section 1102 of the Tax Law requires every distributor to prepay sales tax on each gallon of motor fuel which it imports into New York State for use, distribution, storage or sale in New York State. The prepaid tax is based upon the regional average retail sales price prescribed for the region in which the motor fuel is imported.

Section 1120 of the Tax Law sets forth the circumstances under which refunds and credits may be obtained for sales taxes paid with respect to motor fuels pursuant to Section 1102 of the Tax Law. There are no provisions in Section 1120 allowing a distributor a refund or credit of taxes paid where the claim for refund or credit arises as the result of bad debt write-offs by a distributor.

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Section 1132(c) of the Tax Law and Section 534.7(b) of the Sales and Use Tax Regulations are not applicable to a distributor paying sales tax pursuant to Section 1102 of the Tax Law since such distributor is not a retail vendor and thus is not entitled to the relief granted by such sections.

DATED: November 7, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.