NEW YORK STATE | Department of Taxation and Finance

Important:

The Franchise Tax on Certain Oil Companies was repealed, effective for tax years beginning on or after the first day of July, 1983, by Chapter 400 of the Laws of 1983. As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to the Franchise Tax on Certain Oil Companies.

For additional information concerning Article 13-A of the Tax Law, which was enacted by Chapter 400 of the Laws of 1983, see Petroleum business tax.

Insert added on August 26, 2022.

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

TSB-M-82 (28)C
Corporation Tax
December 17, 1982

This memorandum should be cross-referenced to TSB-M-81(5.1)C (Revised) and (5.3)C (Revised).

Section 182-a of Article 9
(3/4 of 1% Tax on Oil Companies)

Definition of An Oil Company-Policy Clarifications

A corporation is engaged in the business of importing petroleum into New York State if it owns petroleum located outside New York State and ships or causes it to be shipped to a point within New York State for sale in New York State.

A corporation is engaged in the business of causing petroleum to be imported into New York State if it purchases petroleum located outside New York for delivery by the seller or by someone under the control of the seller into New York State for sale in the State and the seller is not subject to tax under section 182-a of the Tax Law.

For periods beginning on or after July 1, 1981 but before January 1, 1983, a corporation subject to tax under Article 9-A of the Tax Law* shall be deemed to be importing petroleum if, more than twice during the year, it takes title to (owns) petroleum outside New York State and ships or causes it to be shipped into New York State. For periods beginning on or after January 1, 1983 a corporation subject to tax under Article 9-A of the Tax Law shall be deemed to be importing petroleum if it takes title to (owns) petroleum outside New York State and ships or causes to be shipped into New York State 20,000 gallons or more of such petroleum during its taxable year.

For periods beginning on or after July 1, 1981 but before January 1, 1983, a corporation subject to tax under Article 9-A of the Tax Law* shall be deemed to be causing petroleum to be imported into the State if, more than twice a year, it purchases petroleum located outside New York State for delivery into New York State from a seller which is not subject to tax under section 182-a of the Tax Law. For periods beginning on or after January 1, 1983 a corporation subject to tax under Article 9-A of the Tax Law* shall be deemed to be causing petroleum to be imported into the State if it purchases 20,000 gallons or more of petroleum located outside New York State for delivery into New York State from a seller not subject to section 182-a of the Tax Law.

TSB-M-(5.3)C (Revised), pg. 2, Example 3 under ". . .examples of corporations which are no longer taxable. . .", will only apply to periods beginning on or after July 1, 1981 but before January 1, 1983. For periods beginning on or after January 1, 1983 this example is revised to read:

*See the exception on page 2 of this memorandum.

DEF Petroleum, Inc. is a wholesaler. It buys all its petroleum products from one major oil company which is taxable in New York State. Almost all of its purchases are picked up at the New York terminal of its supplier. However, it occasionally must go to its supplier's Massachusetts terminal where it picks up petroleum, not exceeding a total of 20,000 gallons in its taxable year. DEF is billed by the supplier from its regional office for all purchases. DEF Petroleum, Inc. is not taxable under section 182-a of the Tax Law.

These rules apply only to those corporations engaged in the sale of petroleum. They do not apply to corporations engaged in the business of extracting, producing, refining, manufacturing or compounding petroleum. Such corporations are taxable under section 182-a regardless of the method and location of their petroleum purchases in New York State, provided they are subject to tax under Article 9-A. (See the exception in the next paragraph.)

A corporation which meets the definition of an "oil company" under section 182-a of the Tax Law whose shareholders have made an election to be taxed under the Personal Income Tax imposed by Article 22 of the Tax Law, rather than under Article 9-A of the Tax Law must, nevertheless, file and pay the franchise tax due under section 182-a of the Tax Law.

A corporation becomes taxable under section 182-a on the day it meets the definition of an oil company as defined in section 182-a. A corporation engaged in the sale of petroleum would become taxable for purposes of section 182-a on the day it imports or causes petroleum to be imported into New York State, as defined in this memorandum. The corporation will remain taxable for the balance of its current taxable year and for all subsequent taxable years. However, if such a corporation anticipates that it will not import or cause to be imported more than 20,000 gallons in a subsequent taxable year, it should not issue any resale certificates for such taxable year, since it will not meet the definition of an "oil company" under section 182-a of the Tax Law and will, therefore, not be subject to that tax for such taxable year. The Department of Taxation and Finance must be notified immediately of such a change in taxable status. On and after January 1, 1983, if a seller of petroleum does not anticipate it will import petroleum or cause petroleum to be imported into New York State in excess of 20,000 gallons in its taxable year, it should not consider itself a section 182-a taxpayer for that and subsequent taxable years. It should not issue resale certificates to its suppliers. However, if at any point during its taxable year it exceeds the 20,000 gallon limit, the corporation becomes taxable under section 182-a and at that point it should begin to provide resale certificates and notify the Department of Taxation and Finance that it has begun to do so. All notifications to the Department of Taxation and Finance should be sent to the address below:

Room #408
Building #9
State Campus
Albany, New York 12227

TSB-A-82(11)C, an Advisory Opinion issued to Merit Oil Corporation, defined importing for purposes of determining taxability under section 182-a of the Tax Law. The opinion states, in part:

"Petitioner is a gasoline distributor, as well as a management company. Petitioner states that it purchases substantially all of its gasoline from a supplier (hereinafter 'Seller') which itself is subject to tax under Section 182-a of the Tax Law. The contract between Petitioner and Seller provides for delivery F.O.B. at designated loading points in New Jersey for shipment into New York. Petitioner has contracted with barging companies and trucking companies to receive the gasoline in New Jersey for shipment into New York. The applicable contract provides that title to the gasoline delivered and all responsibility for any loss and/or damage passes from Seller to Petitioner when such gasoline passes the flange between Seller's delivery line and the vessel's permanent hose connections with respect to delivery into barges, and when such gasoline passes from Seller's truck loading fill pipe into the tank transport trucks with respect to deliveries into trucks. The gasoline is transported to terminals within New York and then distributed to gasoline stations affiliated with Petitioner, in New York, for retail sale at these locations."

"Since Petitioner takes title to the gasoline in question in New Jersey and thereupon has it shipped to New York for sale in New York, Petitioner is engaged in importing petroleum into New York for sale therein, within the meaning of Section 182-a of the Tax Law. Since Petitioner is engaged in the business of selling gasoline in New York it is 'doing business' in New York, thus satisfying the jurisdictional criteria set forth in Section 182-a.1 of the Tax Law. Accordingly, Petitioner is an 'oil company' subject to tax under section 182-a of the Tax Law."

On the basis of the Merit Oil opinion, a corporation which takes title to petroleum outside New York State and imports it into New York State for sale in the State is subject to tax under section 182-a of the Tax Law. The following are three situations in which a corporation will be deemed to be importing or causing petroleum to be imported in accordance with the Merit Oil decision:

Example 1

EFG Corp. is a New York wholesaler solely engaged in the sale of petroleum within (or within and without) New York State. It purchases petroleum from HIJ Corporation, a major oil company based in New Jersey. HIJ Corporation happens to be taxable under section 182-a of the Tax Law. The petroleum is shipped into New York via common carrier with title passing to EFG Corp in New Jersey at HIJ's terminal. EFG Corp is importing petroleum and, therefore, subject to tax under section 182-a of the Tax Law because title to the petroleum passed to the buyer in New Jersey before being shipped into New York State for sale in the State.

Example 2

KLM Corporation is a New York wholesaler solely engaged in the sale of petroleum within (or within and without) New York State. It purchases petroleum from NOP Corporation, a Connecticut corporation with terminals in Connecticut. NOP Corp happens not to be taxable under section 182-a of the Tax Law. The petroleum is picked up in New Jersey by KLM Corporation's trucks with title passing to KLM Corp in New Jersey. KLM Corp is importing petroleum and, therefore, subject to tax under section 182-a of the Tax Law because title to the petroleum passed to the buyer in New Jersey before being shipped into New York State for sale in the State.

Example 3

QRS Corporation is a corporation operating retail gas stations only in New York State. It purchases petroleum from TUV Corp, a wholesaler with terminals in Pennsylvania. TUV Corporation happens not to be taxable under section 182-a of the Tax Law. The petroleum is shipped into New York via TIN Corporation's trucks with title passing in New York. QRS Corporation is causing petroleum to be imported and, therefore, is subject to tax under section 182-a of the Tax Law because the petroleum was purchased from a corporation not taxable under Section 182-a of the Tax Law and was shipped into New York State for sale in the State.

In any case where title has passed to the buyer outside New York State, prior to shipment into the State for sale in the State, the buyer is deemed to be importing petroleum for purposes of section 182-a of the Tax Law and is, therefore, taxable. This is true regardless of the seller's taxable status under section 182-a of the Tax Law and the method of transportation into New York State (for example, buyer's trucks, seller's trucks or common carrier). (Examples 1 & 2) Where title passes to the buyer within New York State, the buyer is deemed to be causing petroleum to be imported into the State and is, therefore, taxable only when the seller is not subject to tax under section 182-a of the Tax Law. (Example #3)