



# Department of Taxation and Finance

## Important

The information concerning the Petroleum Business Tax in this TSB-M is out-of-date and is provided only for historical purposes.

For the most up-to-date information about the Petroleum Business Tax including rates, see [Petroleum business tax](#).

The TSB-M begins on page 2 below.

Computation of Petroleum Subject  
to Tax Under Article 13-A

General

Article 13-A, as amended April 1, 1984, requires any corporation or unincorporated business "doing business in New York State" to pay a tax under Article 13-A (with certain exceptions) on petroleum that was imported or caused to be imported into New York for consumption by it in this State. Since petroleum is fungible and vessel or aircraft fuel tanks may contain both imported and non-imported fuel, a determination must be made as to what portion of the fuel consumed in New York is imported and therefore subject to the consumption tax. In accordance with TSB-M-83(22.1)C and TSB-M-83(22.3)C, the portion of fuel subject to the consumption tax is determined by the ratio of fuel imported for consumption to fuel imported for consumption and fuel purchased in New York.

An Article 13-A supplier may, in order to recoup the Article 13-A tax imposed on it, increase the price of its product to reflect such tax. Thus, a taxpayer who purchases all or part of its fuel in New York State will ordinarily pay an amount higher than one which purchases all of its fuel outside New York, since the New York purchaser may not give a Certificate of Consumption (CT-13-AC) for those purchases (only where title and risk of loss pass to the purchaser in New York). A taxpayer which purchases all its fuel outside the state would pay the consumption tax only on the portion of such fuel consumed in the state. On the other hand, a taxpayer which purchases fuel within the state would pay, in addition to the consumption tax on the fuel imported and consumed in New York, an amount reflecting the tax paid by its supplier. This disparity is apparent where fuel consumed by the taxpayer exceeds that which it imports or where fuel is purchased in New York State but is consumed outside the state.

Revised Policy

To ameliorate this disparity, the Tax Commission has revised its policy, effective for taxable periods beginning on or after July 1, 1985, pertaining to the computation of petroleum subject to tax under Article 13-A. The computation of fuel deemed consumed in New York State will remain as set forth in TSB-M-83(22.1)C and TSB-M-83(22.3)C. All petroleum imported or caused to be imported is presumed to be consumed in New York State and subject to tax under Article 13-A, unless demonstrated otherwise. However, in computing that portion of petroleum consumed which is subject to tax, fuel purchased in New York is subtracted from fuel deemed consumed in New York. Fuel deemed consumed is no longer deemed consumed in the same ratio as that determined based upon purchases. The modification herein made presumes that, for purposes of the Article 13-A tax, all non-imported fuel is used first. Thus, a tax in excess of the minimum tax of \$250 would be due only when fuel deemed consumed in New York exceeds fuel purchased in New York in an amount that will produce a tax higher than \$250.

In order to qualify for this modification, the consumption taxpayer subject to tax under Article 13A must purchase the petroleum which is being claimed as a qualified purchase in either of the following two manners:

1. The fuel must have been shipped to the consuming taxpayer's location in New York State from a location in New York State.
2. If the petroleum is shipped to a location in New York State from a point outside New York State, the following conditions must exist:
  - a. Title to the petroleum did not pass to the buyer until it was delivered in New York State.
  - b. The seller must be subject to Article 13A as a petroleum business and as evidence of this, the purchaser should get from the seller a copy of a certificate of taxability (Form AU299) issued to the seller by the department which is valid as of the dates of the transactions.
  - c. The purchaser must not have executed a consumption certificate (Form 13AC) for any of the purchases for which they are claiming qualified purchases.

Examples

The following examples will illustrate the modification:

Example 1 - A vessel owned by a business qualifying as a petroleum business travels from New Jersey to New York. Upon leaving New Jersey it has 1,000 gallons of fuel in its tanks. All of this fuel was purchased in New Jersey and the Article 13-A gross receipts tax was not included in the purchase price because the seller was not an Article 13-A taxpayer (did not do business in New York). During the trip 350 gallons were consumed in New Jersey waters and 400 gallons were consumed in New York waters. After discharging its cargo in New York, it fills its fuel tanks with 2,000 gallons of fuel purchased from a seller taxable under Article 13-A. Assuming that it will again consume 400 gallons of fuel in New York waters on the return trip, the amount of petroleum deemed consumed and subject to tax would be as follows.

Fuel deemed consumed in New York Waters (Roundtrip)	800 gallons
Fuel purchased in New York	2,000 gallons
Fuel subject to tax on returns	-0- gallons

Note: If this were the only trip made during its particular taxable period, the taxpayer would still be liable for a minimum of \$250.

The taxpayer is not entitled to a refund of tax paid to his supplier on the 1,200 gallons purchased in New York but not consumed in New York State.

Example 2 - During its taxable period a trucking company purchased 450,000 gallons of petroleum from an Article 13-A taxpayer, title having passed to the trucking company at the seller's New Jersey terminal. The petroleum was shipped (in the seller's trucks) to the trucking company's terminal located in New York State. The purchaser (trucking company) gave the Article 13-A seller a properly executed Certificate of Consumption along with a Certificate of Taxability, thus permitting the seller to reduce its taxable gross receipts for that sale (i.e. the purchaser buys the fuel exempt from tax). The trucking company also purchased 400,000 gallons of petroleum from an Article 13-A taxpayer, with title having passed inside New York State. No certificate is permitted to be given for that sale. The total fuel subject to the Consumption Tax is calculated as follows (based on amounts required to be shown on Form MT-903, Section II, line 5, columns (a) and (b) of 500,000 gallons).

Fuel deemed consumed in New York	500,000 gallons
Fuel purchased in New York	400,000 gallons
Fuel subject to tax	100,000 gallons

Example 3 - During its current taxable period an airline purchased 600,000 gallons of fuel from sources outside New York State, with title to the fuel passing outside New York State. Since the seller was an Article 13-A taxpayer, Certificates of Consumption were properly given. Therefore, the purchase did not include the New York State gross receipts tax. The airline also purchased 100,000 gallons of fuel from Article 13-A taxpayers with title passing to the airline inside New York. No certificates are permitted to be given for the in-state purchases. The airline imported 150,000 gallons of fuel into New York in the fuel tanks of its aircraft during the period. Section 303(c)(3) provides an exclusion for aviation fuel except for aviation fuel consumed in New York State. The petroleum deemed consumed in New York per Section 303(c)(3) was 300,000 gallons (based on 150,000 gallons imported in tanks, all fuel consumed in intrastate flights and fuel consumed during take-off of interstate and foreign flights). The total fuel subject to the consumption tax is calculated as follows.

Fuel deemed consumed in New York	300,000 gallons
Fuel purchased in New York	100,000 gallons
Fuel subject to tax	200,000 gallons

Claim For Credit or Refund

Taxpayers who have not, as yet, filed final returns for taxable periods beginning on or after July 1, 1985, should make the appropriate adjustment in their computation of fuel subject to tax on their Article 13-A returns. Taxpayers who have already filed final returns, for periods beginning on or after July 1, 1985, may file claims for credit or refund, where appropriate. Claims for credit or refund of taxes paid under Article 13-A will be allowed for periods

beginning on or after July 1, 1985. All filings should include an "amended return" accompanied by a Form CT-8. A separate claim must be filed for each period for which a credit or refund is claimed. Interest on such claims will be paid pursuant to Tax Law Section 1088.