

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

TSB-M-86 (10)M
(See also TSB-M-85(5)M)
Motor Fuel Tax
December 1, 1986

Subject: Motor Fuel Tax Law Changes (Tax Imposition)

Chapter 276 of the New York State Laws of 1986 made amendments to Article 12-A, Motor Fuel Tax Law, effective July 14, 1986. This memorandum, TSB-M-86(10)M (Tax Imposition), together with

TSB-M-86(9) M (Registrations and Licenses),
TSB-M-86(11) M (Manifest Requirements) and
TSB-M-85(8.1)M (Criminal Penalties and other Offenses),

reflects the Chapter 276 Motor Fuel Tax Law changes of 1986.

These memoranda should be associated with

TSB-M-85(5)M (Registrations and Tax Imposition) and
TSB-M-85(8)M (Criminal Penalties),

which respectively reflect the Chapter 44 and Chapter 65 Motor Fuel Tax Law changes of 1985.

Imposition of Motor Fuel Tax

Section 284, subdivision 3, which gave a nondistributor 24 hours to pay tax on motor fuel imported into New York State, has been repealed. As a result a person who is not registered as a distributor may not possess, for any period of time, motor fuel on which the motor fuel tax has not already been paid by a registered distributor. Possession of such fuel will result in the imposition of both civil and criminal penalties and any subsequent payment of the tax by the nondistributor will not relieve him of the possibility of criminal prosecution.

Presumption of taxability

Section 285-a has been repealed and a new section 285-a is added:

Section 285-a, subdivision 1, prohibits the purchase of motor fuel, except a purchase at retail, where the purchaser does not receive a certificate indicating that a registered distributor has assumed or paid the Article 12-A taxes and that such tax is being passed through to such purchaser. Any person who purchases motor fuel without having received a certification from the seller shall be jointly and severally liable to pay the taxes imposed with respect to such motor fuel.

Section 285-a, subdivision 2, establishes the presumption that all motor fuel imported, manufactured or sold, received or possessed in the state is intended for use, distribution, storage or sale in the state and is subject to the Article 12-A motor fuel tax until the contrary is established. It further presumes that all motor fuel imported, manufactured or sold, received or possessed in the state by any person (except motor fuel delivered into a motor vehicle for use in its operation or in small drums or similar

containers) which cannot be accounted for by the person is subject to the motor fuel tax, and the person is responsible for payment of such taxes.

A registered distributor who imports or manufacturers motor fuel and stores such motor fuel in the state on which he has paid or has assumed liability for payment of the motor fuel tax is allowed to adjust the gallons subject to tax to account for losses due to shrinkage, evaporation and handling. Any such adjustment may not exceed 2% of the fuel stored in the state by the registered distributor.

An adjustment is also allowed for gallons lost or destroyed due to an accident, such as fire, while the motor fuel was being held or transported for sale other than for sale at retail. The burden of proving motor fuel is not subject to tax is on the person responsible for payment of the tax on such fuel.

Section 285-a, subdivision 3, paragraph (a), requires that on each sale of motor fuel, other than retail sales, the seller must give to the purchaser at the time of delivery of motor fuel, a certification stating: (i) that the seller is a registered distributor and is passing through the taxes imposed by Article 12-A which he paid or assumed liability for payment of or (ii) the seller is passing through the taxes that were previously assumed or paid by an identified registered distributor and passed through to him.

Section 285-a, subdivision 3, paragraph (b), places the burden solely on the seller to prove that the taxes imposed were assumed or paid by a registered distributor and passed through, if the required certification has been furnished to the purchaser at delivery and accepted in good faith.

Section 285.2, subdivision 3, paragraph (c), provides that where the required certification is not furnished by the seller at the time of delivery of motor fuel it shall be presumed that the motor fuel taxes imposed have not been paid or liability for payment assumed by a registered distributor, and that the purchaser is jointly and severably liable for such taxes.

Section 285-a, subdivision 3, paragraph (d), permits the Tax Commission to authorize the delivery of the certification at a time after the delivery of the motor fuel if due to unusual circumstances it is not possible for the seller to furnish the certification at the time of delivery.

Refunds and Credits

Section 289-c is amended by adding a new subdivision l-a which allows any person selling motor fuel to the State of New York, any of its agencies, instrumentalities, public corporations or political subdivisions, the United States and any of its agencies and instrumentalities, or a hospital which has qualified for exemption under Section 1116(a)(4) of the Tax Law, for its own use or consumption, and any person selling kerojet fuel to an airline for use in its airplanes to exclude the amount of Article 12-A tax from the selling price. The seller may claim a refund or credit of Article 12-A taxes under rules and regulations prescribed by the Tax Commission.

Section 289-c, subdivision 3, paragraph (g) has been amended to provide that the organizations listed in 289-c-la, where any such entity is the purchaser, user or consumer of motor fuel or diesel motor fuel in a vehicle owned and operated by it and used exclusively for its purposes, or an airline where it has purchased Kero-jet fuel for use in its airplanes, shall be entitled to a refund of taxes on motor fuel and diesel motor fuel imposed by Article 12-A when such taxes were included in the purchase price.

Section 289-c, subdivision 9, provides that interest shall be paid to an organization described in Section 1116(a)(4) of the Tax Law which is eligible under subdivision 3 of Section 289-c for refund of the taxes on motor fuel and diesel motor fuel if the refund check is not issued within 45 days of receipt of the refund application in a form processible by the Department of Taxation and Finance.

Tax Enforcement Provisions

Section 288, subdivision 1, paragraph (a) has been amended to include in the term distributor, for purposes of determining tax liability, any person liable for taxes imposed under Article 12-A whether or not such person is registered as a motor fuel distributor.

Section 288-a authorizes the Tax Commission to issue a jeopardy assessment prior to the filing of a return and prior to the date a return is required to be filed if it believes that the collection of any tax will be jeopardized by delay. The amount of such jeopardy assessment shall become due and payable as soon as a notice thereof is given to the taxpayer personally or by registered or certified mail. The collection of any jeopardy assessment may be stayed pending a hearing or a proceeding under article 78 of the Civil Practice Law and Rules by filing with the Tax Department a bond issued by a surety company authorized to transact business in this State and approved by the Superintendent of Insurance as to solvency and responsibility, or by depositing with the department other security acceptable to the Tax Commission.

Section 289-b, subdivision 1, paragraph (e) has been amended to provide for a penalty of twice the amount of taxes imposed under Article 12-A on owners of filling stations (regardless of whether or not such owners are registered distributors of motor fuel) who willfully and knowingly have in their custody, possession or control,

- (i) any motor fuel on which the taxes imposed pursuant to Article 12-A have not been assumed or paid by a registered distributor, or
- (ii) any motor fuel on which the taxes imposed pursuant to Article 12-A which were required to have been passed through to such owners and included in their cost of such fuel have not been so passed through and included in their purchase price.

It will be presumptive evidence that owners of filling stations shall willfully and knowingly have in their custody, possession or control such motor fuel where they have not received the certifications required by Section 285-a(3) of the Tax Law.