

Waste Tire Management Fee Changes For 2004

Beginning September 19, 2004, the waste tire management and recycling fee (the fee) is expanded to include new tires for these additional vehicles:

- motorcycles;
- all-terrain vehicles (ATVs); and
- limited-use vehicles.

A motorcycle is defined in section 123 of the Vehicle and Traffic Law (VTL) as a motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor. Motorcycles are subject to registration under section 410 of the VTL.

An all-terrain vehicle (ATV) is defined in section 2281 of the VTL as any self-propelled vehicle manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways, provided such vehicle does not exceed seventy inches in width, or one thousand pounds dry weight. ATVs are subject to registration under section 2282 of the VTL.

A limited-use vehicle is defined in section 121-c of the VTL as a motor vehicle having a maximum performance speed of not more than forty miles per hour, that is not capable of being registered either as a motor vehicle or motorcycle under section 401 or 410 of the VTL. Limited-use vehicles consist of limited-use automobiles (including low speed vehicles) and limited-use motorcycles. A low-speed vehicle is defined in section 121-f of the VTL as a limited use automobile having a maximum performance speed of greater than twenty, but not more than twenty-five miles per hour. Limited-use motorcycles are categorized based on their maximum performance speed, none of which may exceed forty miles per hour. Limited-use vehicles are subject to registration under section 2261 of the VTL.

Tire sellers must collect the fee of \$2.50 on new tires sold within New York State, file quarterly returns reporting their sales on Form MT-170, *Waste Tire Management Fee Return*, and remit \$2.25 for each tire sold. This allows each tire seller to retain 25 cents for each tire sold to help defray administrative costs.

This fee is imposed by section 27-1913 of the Environmental Conservation Law, and the Department of Taxation and Finance is responsible for administering the collection of the fee.

General information

When the fee was originally enacted, it applied to new tires sold on or after September 12, 2003, that were for use on cars, trucks, motor homes, buses, and trailers, or any other vehicle that could qualify for registration under section 401 of the Vehicle and Traffic Law (VTL).

As expanded, the fee applies to:

- new tires sold for use on cars, trucks, motor homes, buses, and trailers, or any other vehicle that could qualify for registration under section 401 of the VTL;
- new tires sold for use on motorcycles that could qualify for registration under section 410 of the VTL;
- new tires sold for use on limited-use vehicles as defined in section 121-c of the VTL that could qualify for registration under section 2261 of the VTL; and
- new tires sold for use on all-terrain vehicles (ATVs) as defined in section 2281 that could qualify for registration under section 2282 of the VTL.

Consequently, the waste tire fee applies to new tires sold for use on nearly all self-propelled or towed vehicles that could be registered for any reason. (Refer to *Tires for exempt vehicles* below for information on vehicles that are exempt.) The fee also applies to new tires sold with a new or used vehicle, including spare tires, whether they are full-size or for emergency use only.

The fee does not apply to recapped or resold (used) tires. Nor does it apply to mail-order, phone-order, or Internet sales where the tires are delivered to the purchaser by the U. S. Postal Service or a common carrier.

Collection of the waste tire management fee expires on December 31, 2010, with the return for December 2010 due on March 31, 2011.

Sales subject to the fee

Every sale of a new tire will be treated as a sale subject to the fee unless the tire seller has documentation to establish the sale is not subject to the fee. (Refer to *Exempt sales* below.)

Leased or rented vehicles

For vehicles that are purchased to be leased or rented, the lessor, not the person renting or leasing the vehicle, is responsible for paying the fee. Consequently, when a rental or leasing company purchases a vehicle, it is responsible for paying the fee. However, when new replacement tires are purchased for a rented or leased vehicle, the purchaser of the tires is responsible for paying the fee. Consequently, when a lessee purchases new replacement tires for a leased vehicle, the lessee is responsible for paying the fee.

Sales invoices

The tire seller or vehicle dealer must separately state the waste tire management fee on any sales slip, invoice, receipt, contract, or other statement or memorandum of the price given to a customer. Any other fee, such as a used tire disposal fee, must be included in the published selling price of the new tire.

Sales tax

The waste tire management fee is not part of the receipt subject to sales tax. However, any additional management and recycling costs of the seller included in the selling price of the new tire are part of the receipt subject to sales tax.

Exempt sales

The following sales of new tires are not subject to the waste tire management fee.

Governmental entities and certain exempt organizations

Sales to the following are exempt from the waste tire management fee:

- the state of New York, its agencies, instrumentalities and political subdivisions;
- the United States, its agencies and instrumentalities;
- limited dividend housing companies exempt under section 93(1) of the Private Housing Finance Law; and
- nonprofit property and casualty insurance companies exempt under section 6707 of the Insurance Law.

Tires for resale

New tires that are purchased solely for the purpose of resale are not subject to the waste tire management fee at the time of purchase for resale. A purchase of new tires by a dealer of used vehicles for installation on a vehicle that will be sold by the dealer is a purchase for resale and is not subject to the waste tire management fee at the time of purchase by the dealer. Similarly, a dealer of new vehicles purchasing new tires for installation on a new vehicle prior to delivery to a customer is purchasing for resale.

In these instances, the dealer of new or used vehicles would issue an exemption certificate (Form MT-171) for the purchase of the tires and collect the waste tire management fee on the sale of the vehicle unless the purchaser is exempt.

Tires for exempt vehicles

New tires purchased for use on the following vehicles are not subject to the fee.

- Electrically-driven mobility assistance devices operated or driven by persons with a disability.
- Go-carts. Small motorized devices with four wheels created for off-road use that cannot be registered as either a motor vehicle or ATV.
- Golf carts.
- Go-peds. Devices, like a skateboard or scooter, that have a motor attached and a handle for a standing rider.
- Mini-bikes. Small motorized devices with two wheels created for off-road use that do not qualify as limited-use motorcycles, motorcycles or ATVs.
- Motor-assisted bicycles. Bicycles that have a small motor attached that do not qualify for registration as limited-use motorcycles, motorcycles, or ATVs.
- Vehicles that run only upon rails or tracks.

Documentation of exempt sales

Persons purchasing new tires, either for resale or installation on an exempt vehicle, must obtain Form MT-171, *Waste Tire Management Fee, Exempt Purchase Certificate*, from the Tax Department, complete the form, and give it to the seller at the time of purchase. The revised version of the form will be applicable to purchases made on or after September 19, 2004. The previous version of Form MT-171 with the print date of 9/03 is applicable to purchases made before September 19, 2004. It is not necessary to obtain a new certificate when a blanket certificate was issued for purchases made before September 19, 2004, provided all purchases made on or after that date that are covered by the certificate are still exempt from the fee.

Governmental entities exercise their exemption by issuing governmental purchase orders, other appropriate governmental documents, or Form MT-171, *Waste Tire Management Fee, Exempt Purchase Certificate*.

Limited dividend housing companies, and nonprofit property/casualty companies exercise their exemption by providing the tire retailer with a copy of their sales tax exemption letter issued to them by the Tax Department.

Returns

Form MT-170, *Waste Tire Management Fee Return*, must be filed on a quarterly basis with the Tax Department, even when there are no sales of tires subject to the waste tire management fee during the quarter, unless the tire seller has ceased doing business and has filed a final return. The quarterly periods are the same as those used for remitting sales tax. However, unlike the due dates for the sales tax return, the waste tire management fee returns are due by the last day of the month following the close of the quarter.

Multiple locations

When a tire seller has more than one location within the state and files a combined sales tax return for all locations, the tire seller must file a combined waste tire management fee return for the same locations.

Any tire seller who has not received a return by the fifteenth of the month following the end of the quarter, may obtain one from the Tax Department's Web site at www.nystax.gov, by calling 1 800 462-8100, or by calling the Tax Department's fax-on-demand system at 1 800 748 FORM (3676).

The quarterly periods and return due dates are as follows.

Quarterly period

Due date for filing return

December 1 through February 28 (29)
March 1 through May 31
June 1 through August 31
September 1 through November 30

March 31
June 30
September 30
December 31

A tire seller that ceases selling tires is required to file a final return within 30 days of ceasing such operation, regardless of when the quarter ends.

Incorporation of Article 27 of the Tax Law into the waste tire management fee

The provisions of Article 27 of the Tax Law relating to Corporate Tax Procedure and Administration apply to the waste tire management fee imposed by section 27-1913 of the Environmental Conservation Law, except where the provisions of Article 27 are either inconsistent with section 27-1913 of the Environmental Conservation Law, or are irrelevant. As a result, Article 27 procedures including, but not limited to, notices of deficiency, assessments, civil penalties, overpayments, refunds, interest, appeals, hearings, collections, levies, and liens apply to the waste tire management fee.

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Miscellaneous Tax -
Waste Tire
Management Fee
September 2, 2004

Additional requirements under the Environmental Conservation Law

The Environmental Conservation Law requires that a sign measuring at least 8 ½ inches by 14 inches be prominently displayed by the tire retailer. The sign must contain the following language:

New York State Law requires us to accept and manage waste tires from vehicles in exchange for an equal number of new tires that we sell or install. We are required to charge a separate and distinct waste tire management and recycling fee of \$2.50 for each new tire we sell. Any additional tire management recycling costs are included in the advertised price of the new tire.