

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-M-10(13)M
Petroleum Taxes
TSB-M-10(17)S
Sales Tax
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**Update on the Treatment of Nonroad, Locomotive and Marine Diesel Fuel
Under Articles 12-A, 13-A, and 28 of the Tax Law**

As explained in TSB-M-07(2)M, (4)S, *Treatment of Nonroad, Locomotive & Marine Diesel Fuel under Articles 12-A, 13-A, and 28 of the Tax Law*, since 2007, the federal Environmental Protection Agency (EPA) has been phasing in regulations regarding the standards, uses and labeling for nonroad, locomotive, and marine diesel fuel (NRLM).

Since June 1, 2007, EPA regulations have limited the sulfur content of NRLM diesel fuel to no greater than 500 parts per million (ppm). Effective August 1, 2010, for terminals, EPA regulations further reduce the maximum sulfur content of nonroad (NR) diesel fuel to 15 ppm. The maximum sulfur content for locomotive and marine (LM) diesel fuel (currently 500 ppm) is not required to meet the 15 ppm standard until June 1, 2012.

This TSB-M explains how NRLM diesel motor fuel that meets the 15 ppm (maximum) sulfur standard is treated under the excise, petroleum business, and sales taxes imposed by Articles 12-A, 13-A, and 28 of the Tax Law.

Enhanced diesel motor fuel

The Tax Department previously communicated that diesel fuel with a sulfur content of 15 ppm or less is **enhanced** diesel motor fuel for the purposes of Articles 12-A, 13-A and 28 of the Tax Law. (See TSB-M-08(4)M, (7)S, *Clarification of Nonroad, Locomotive & Marine Diesel Fuel under Articles 12-A, 13-A, and 28 of the Tax Law*.) Accordingly, diesel fuel meeting the 15 ppm (maximum) sulfur standard is enhanced diesel motor fuel whether it is designated as ultra-low sulfur non-highway diesel fuel (ULSD), 15 ppm ULSD NR diesel, or has a similar designation. All of the provisions related to enhanced diesel motor fuel apply to NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard. Details with respect to *manufacturing gallonage, commercial gallonage, and nonautomotive-type diesel motor fuel* are discussed below.

Effect on exemptions, rates, and forms

Since NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard is **enhanced** diesel fuel, it is not included in the definitions of manufacturing gallonage, commercial gallonage, or nonautomotive-type diesel motor fuel. (See Tax Law sections 300(m), (k), and (c), respectively.) Therefore, the following limitations apply:

- NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel does not qualify for the manufacturing exemption or the commercial gallonage rate. In both cases, the full automotive diesel motor fuel rate now applies. The Article 13-A petroleum business tax reimbursements for commercial gallonage and manufacturing gallonage provided in sections 301-c(i) and 301-c(j) do not apply to

NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard. Purchasers may **not** claim a reimbursement of the petroleum business tax on Form AU-473, *Reimbursement Application for Petroleum Business Tax on Fuel Used for Commercial Gallonage*. However, certain purchasers may qualify for refunds or reimbursements of the Article 12-A excise tax, Article 13-A petroleum business tax, and Article 28 and 29 state and local sales taxes, see *Refund/reimbursement*, below.

- NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel does not qualify for the Article 13-A utility credit or reimbursement.
- A registered distributor may not sell NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel to other registered distributors and retailers of heating oil only (ROHOs) without passing through the excise tax, petroleum business tax, and prepaid sales tax.
- ROHOs are not permitted to sell NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel. A ROHO that wants to sell this fuel must first become registered as a distributor of diesel motor fuel. Accordingly, ROHOs may not report NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel on Form PT-106, *Retailers of Heating Oil Only*, Form PT-201, *Retailers of Heating Oil Only (Quarterly Filer)*, or applicable schedules.
- Registered distributors and ROHOs may not accept the following certification forms for NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel:
 - Form FT-1001, *Exemption Certificate of Diesel Motor Fuel Interdistributor Transactions*, (unless they meet the conditions of Part 3 of this form related to direct pay permittees selling fuel for residential and nonresidential heating purposes), or
 - Form FT-1012, *Manufacturing Certification for Diesel Motor Fuel and Residual Petroleum Product*, or
 - Form FT-1020, *Exemption Certificate for Certain Taxes Imposed on Diesel Motor Fuel and Propane*.
- Registered distributors may not accept Form FT-1021-A, *Certification for Purchases of Unenhanced Diesel Motor Fuel, Residual Petroleum Product, or Dyed Diesel Motor Fuel, By Certain Exempt Organizations*, for sales of NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard when box 1, *Unenhanced diesel motor fuel*, is checked. Form FT-1021-A may be accepted for sales of **dyed** NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard and for sales of other **dyed** diesel motor fuel when box

2, *Dyed diesel motor fuel*, is checked. (See TSB-M-06(5)M, (13)S, *Tax Law Amendments Related to Dyed Diesel Motor Fuel*.)

- Registered distributors may not report as exempt, or partially exempt, on Form PT-102, *Tax on Diesel Motor Fuel*, or applicable schedules, NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel:
 - sold or used in manufacturing,
 - sold to registered diesel motor fuel distributors (except sales of **dyed** diesel motor fuel to holders of a direct pay permit),
 - sold for use and consumption directly and exclusively in the production of tangible personal property for sale by refining, extracting, and mining, or
 - sold for use and consumption in the production of gas, electricity, (except sales to rate-regulated electric corporations) refrigeration, or steam, for sale.

Registered distributors may not claim the Article 13-A petroleum business tax manufacturing gallonage reimbursement on sales of NRLM diesel fuel meeting 15 ppm (maximum) sulfur standard. However, certain purchasers may qualify for refunds or reimbursements of the Article 12-A excise tax, Article 13-A petroleum business tax, and Article 28 and 29 state and local sales taxes, see *Refund/reimbursement*, below.

Refund/reimbursement

The following describe the refund/reimbursement provisions applicable to purchases of NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel:

- Purchasers of NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel who use or consume the fuel in any manner other than in the operation of a motor vehicle upon or over the highways of New York State or in the operation of a pleasure or recreational motor boat upon or over the waterways of New York State including waterways bordering on this state may apply for a refund of the Article 12-A excise tax on Form FT-946/1046, *Motor/Diesel Motor Fuel Tax Refund Application*.
- Purchasers of NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel who use or consume the fuel directly and exclusively in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, assembling, generating, refining, mining or extracting may apply for a refund of the State and local sales taxes under Article 28 and 29 on Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*.

- Purchasers of NRLM diesel fuel meeting the 15 ppm (maximum) sulfur standard or other enhanced diesel motor fuel who use or consume the fuel directly and exclusively in the production of tangible personal property for sale by mining or extracting may apply for a reimbursement of the Article 13-A petroleum business tax on Form AU-630, *Application for Reimbursement of the Petroleum Business Tax*. The fuel must be delivered at the mining and extracting site and must not be consumed on the highway. No reimbursement is allowed for purchases of diesel motor fuel at a filling station.

Treatment of 500 ppm NRLM

EPA regulations permit the continued sale of 500 ppm NRLM through August 1, 2014, (for terminals) in Chautauqua, Cattaraugus, and Allegany counties. The information contained in TSB-M-07(2)M, (4)S and TSB-M-08(4)M, (7)S continues to apply to sales of 500 ppm NRLM. For questions regarding the regulations, contact the EPA at www.epa.gov.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.