

Sales Tax Exemptions and Reductions for Certain Alternative Fuels Beginning September 1, 2006

On June 23, 2006, Governor Pataki signed Chapter 109 of the Laws of 2006 into law. Chapter 109, in part, reduces or eliminates the state and local sales and use taxes on certain alternative fuels. The affected alternative fuels are E85, B20, compressed natural gas (CNG), and hydrogen (see definitions on pages 2 and 3).

Chapter 109 also reduces or eliminates the Article 13-A petroleum business tax and the Article 12-A state excise tax on certain alternative fuels. This memorandum explains the Chapter 109 amendments to the sales and use tax. For further information on the amendments affecting the petroleum business tax and the state excise tax, see TSB-M-06(2)M, *Excise Tax and Petroleum Business Tax Exemptions for Certain Alternative Fuels Beginning September 1, 2006*.

Prepaid sales tax

Effective September 1, 2006, CNG and hydrogen fuels are exempt from the prepaid sales tax imposed by section 1102(a) of the Tax Law. In addition, E85 fuel will be exempt from the prepaid tax provided it is delivered to and placed in a storage tank of a filling station to be dispensed directly into a motor vehicle for use in the operation of the motor vehicle. This new exemption from the prepaid sales tax applies to CNG, hydrogen, and E85 fuels as described above that are sold from September 1, 2006, through August 31, 2011. The exemption from the prepaid sales tax does not apply to sales of B20. Thus, the prepaid sales tax with respect to B20 must be computed at the full amount and may **not** be reduced by 20%.

Exemption for retail sales of certain CNG, hydrogen and E85 fuels

Effective September 1, 2006, retail sales of CNG, hydrogen and E85 fuels that are qualified fuels as defined on page 3 are exempt from the state cents-per-gallon sales tax and the local cents-per-gallon or percentage rate sales taxes. This exemption expires on August 31, 2011.

Partial exemption for B20 fuel

Chapter 109 also provides for a partial exemption from state and local sales taxes for the retail sale of B20 fuel that is qualified fuel (qualified B20). Under the new law, for the period September 1, 2006, through August 31, 2011, the state cents-per-gallon sales tax on qualified B20 is equal to 80% of the rate that applies to qualified fuel (the regular rate). The amount so determined is rounded to the nearest whole cent, except for the state Metropolitan Commuter Transportation District (MCTD) tax, which is rounded to the nearest tenth of a cent. Accordingly, effective September 1, 2006, the state cents-per-gallon rate for qualified B20 sold

or used outside the MCTD is 6 cents-per-gallon. In the MCTD, the state tax is 6.6 cents-per-gallon.

If a county or city (locality) imposes its local tax on qualified fuel using the cents-per-gallon method, the new law provides that its cents-per-gallon rate on the sale or use of qualified B20 in the locality is 80% of the rate that applies to qualified fuel (the regular rate). The amount so determined is rounded to the nearest whole cent.

Example: In Albany County, the current local cents-per-gallon rate on qualified B20 is 8 cents-per-gallon. Therefore, the combined sales tax on the sale of a gallon of qualified B20 fuel in Albany County would be 12 cents-per-gallon (6 cents state rate plus (8 cents county rate x 80% [(6.4 rounded to 6 cents)] = 12 cents).

If a locality or city currently imposes its local sales tax on qualified fuel using the percentage rate method, the local sales taxes on the sale of qualified B20 fuel is determined by multiplying 80% of the taxable receipt (or in the case of the use tax, 80% of the consideration) by the percentage rate for the locality.

Example: In Delaware County, the local sales tax rate on qualified fuel is 4%. Therefore, the combined state and local tax on a gallon of qualified B20 would be the sum of 80% of the taxable receipt multiplied by 4% plus the state cents-per-gallon rate of 6 cents.

Definitions

Motor Fuel means gasoline, benzol or other product, except kerosene and crude oil, which is suitable for use in operation of a motor vehicle engine, but if kerosene or crude oil is compounded or mixed with any other product or products, and the resulting compound or mixture is suitable for use in the operation of any such motor vehicle engine, such resulting compound or mixture in its entirety shall be a "motor fuel."

Diesel motor fuel shall mean kerosene, crude oil, fuel oil or other middle distillate and also motor fuel suitable for use in the operation of an engine of the diesel type, excluding, however, any product specifically designated "No. 4 Diesel Fuel" and not suitable as a fuel used in the operation of a motor vehicle engine.

B20 fuel means a mixture consisting by volume of 20% biodiesel and the remainder of which is diesel motor fuel.

Biodiesel fuel shall mean a diesel motor fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751-02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

CNG fuel means fuel comprised primarily of methane, stored in either a gaseous or liquid state, suitable for use and consumption in the engine of a motor vehicle.

E85 fuel means a mixture consisting by volume of 85% ethanol and the remainder of which is motor fuel.

Hydrogen fuel means fuel comprised primarily of molecular hydrogen, stored in either a gaseous or liquid state, suitable for use and consumption in the engine of a motor vehicle.

Motor vehicle means any vehicle operated or driven on a public highway that is propelled by any power other than muscular. A motor vehicle does not include boats, snowmobiles, all terrain vehicles, road building and construction machinery, power shovels, tractor cranes, tractors used exclusively for agricultural purposes and vehicles that run only on rails or tracks.

Qualified fuel means motor fuel and diesel motor fuel, that is:

- sold for use directly and exclusively in the engine of a motor vehicle; or
- sold by a *retail gas station* (other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons). Note: If a place qualifies as a retail gas station, any motor fuel or diesel motor fuel it sells (other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons) is qualified fuel regardless of how the fuel sold by the station is used by the purchaser. For example, if a retail gas station sells fuel to a purchaser who pumps the fuel into a five-gallon can for use in a lawnmower, snowmobile, ATV or other equipment, that fuel is qualified fuel.

A *retail gas station* means a filling station where motor fuel or diesel motor fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle. A *retail gas station* also includes a filling station where motor fuel or diesel motor fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of the vessel (e.g., a marina gas station).

(See Tax Law, section 282, subdivisions 22-25.)

Special rules for vendors who are not retail gas stations

Sales of qualified CNG, hydrogen and E85 fuel by vendors other than retail gas stations where such fuel is used directly and exclusively in the engine of a motor vehicle (e.g., such fuel sold by a distributor to a bulk purchaser who will use the fuel exclusively in its fleet of rental cars) are eligible for the new exemptions for CNG, hydrogen, and E85 fuels or the reduced cents-per-gallon rate or taxable receipt on qualified B20 as described above. However, any vendor that is **not** a retail gas station must compute and collect the sales taxes on such fuel on the

total taxable receipt and at the regular applicable percentage rate of state and local sales taxes, unless the purchaser gives the vendor, within 90 days of sale, a properly completed Form ST-121, *Exempt Use Certificate*, using Part III, Box U. For this purpose, purchasers of motor fuel or diesel motor fuel who are not required to have a *Certificate of Authority* are not required to list a *Certificate of Authority* number on Form ST-121.

If the vendor receives and accepts a properly completed Form ST-121 when the purchaser has used Part III, Box U in good faith within 90 days of the sale, the vendor should treat the fuel as qualified fuel and therefore should not collect state or local sales tax on CNG, hydrogen and E85, and should collect using the reduced cents-per-gallon or the local reduced receipt on B20.

If the purchaser actually uses the motor fuel or diesel motor fuel for purposes other than in the engine of a motor vehicle, the purchaser is subject to any additional sales or use taxes due, based on the difference between the tax paid, if any, and the state and local taxes that would have been due if the fuel had not been treated as qualified fuel.

If the purchaser does not give the vendor a properly completed Form ST-121, the vendor should not treat the fuel as qualified fuel and should compute and collect the state and local sales taxes using the total receipt and the percentage rate sales tax method. However, if the purchaser actually uses the fuel in the engine of a motor vehicle, the purchaser may claim a credit on its sales tax return or file a claim for a refund using Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*, for any overpayment of sales tax for the portion of the fuel that is actually used directly and exclusively in the engine of a motor vehicle. The amount of the refund or credit is the difference between the tax paid on such fuel and the amount of state and local sales taxes, if any, that is due on qualified fuel.

Effective date

The exemptions from sales taxes for the sale or use of CNG fuel, hydrogen fuel and the specified E85 fuel and the partial exemption for qualified B20 fuel applies to sales or uses of such fuels occurring from September 1, 2006, through August 31, 2011.