

1982 Legislation  
Information For Sellers and Purchasers of Automotive Fuel

General Information

Effective September 1, 1982, Chapters 454 and 469 of the Laws of 1982 have amended the Sales and Use Tax Law to provide for the imposition and collection of sales tax on motor fuel and diesel motor fuel when sold by a distributor required to be registered under Article 12-A of the tax law, hereinafter referred to as a "registered distributor."

Whereas prior to September 1, 1982 all retailers were required to collect sales tax on sales of automotive fuel (diesel motor fuel and other motor fuel), now, only distributors registered under Article 12-A collect sales tax on motor fuel. Registered distributors of motor fuel (other than diesel motor fuel) under Article 12-A are the parties who import or cause to be imported into New York State, or those who manufacture, "refine, or compound the motor fuel within New York State. Registered distributors of diesel motor fuel, under Article 12-A are retailers (the parties who sell the fuel to the ultimate consumers and deliver the diesel fuel directly into the fuel tanks of the customers' motor vehicles); and bulk users (who buy diesel motor fuel in bulk for use in whole or in part in vehicles under their control; they now pay a use tax at time of use, if appropriate, in lieu of a sales tax).

For that reason, this memorandum will address the treatment of automotive fuel sales by making a distinction between diesel motor fuel and other motor fuel. Hereinafter, all mention of "motor fuel" will mean only fuel other than diesel motor fuel, reference to "diesel motor fuel" will mean only such fuel, and mention of "automotive fuel" will mean both fuels are included in the reference.

Since the change in the sales tax law requires that the sales tax on automotive fuel be collected by the distributor registered under Article 12-A of the tax law, the registered distributor must also be registered as a sales tax vendor and file periodic sales tax returns (see Sales Tax Vendor Registration, page 7).

Even though a purchaser is a registered sales tax vendor, as of September 1, 1982, he may not use a Resale Certificate (form ST-120) to purchase automotive fuel without payment of sales tax. Additionally, holders of Out-of-State Resale Permits (form ST-128) may not use such permits to make tax free purchases of automotive fuel.

Nevertheless, some transactions between registered distributors will be possible without payment of sales tax, as outlined in the "Certificate for Sales Tax Exemption on Purchases of Certain Fuels", form TP-146.4.

Listed below are definitions of terms found throughout this memorandum as they apply to Chapters 454 and 469 of the tax law.

DEFINITIONS

- Automotive Fuel Carrier - any person Other than a registered distributor who purchases automotive fuel for sale and takes delivery in his own vehicles or in vehicles under his control.
- Bulk User - any person who buys diesel motor fuel in bulk for use in whole or in part in vehicles under his control.
- Exempt Organization - any organization, agency of the federal, state or local government (including a school district) exempt under section 1116(a) of the tax law, qualified diplomatic and consular personnel, and qualified Indians (see TSB-M-82(19)S).
- Fuel
- Automotive - includes both motor fuel and diesel motor fuel.
- Diesel - kerosene, crude oil and motor fuel commonly used in the operation of an engine of the diesel type.
- Motor - gasoline, benzol, or other product which is suitable for use in the operation of a motor vehicle engine except kerosene or crude oil unless compounded or mixed with any other products resulting in a compound or mixture suitable for use in operating a motor vehicle engine other than a diesel engine.
- Motor Vehicle - any road vehicle propelled by any power other than muscular.
- Registered Distributor
- Diesel - any vendor who sells the fuel to the ultimate consumer and delivers directly into the fuel tank of the customer's motor vehicle, or the bulk user (the party who buys diesel motor fuel in bulk for use in whole or in part in vehicles under his control), in accordance with Article 12-A of the tax law.
- Motor Fuel - any person who imports or causes to be imported into New York State, or who manufactures, refines or compounds the motor fuel within New York State, for sale, in accordance with Article 12-A of the tax law.
- Wholesaler or Jobber - any person other than a registered distributor or automotive fuel carrier who buys or sells any type of automotive fuel.

See the last page of this memorandum for a list of applicable forms.

Computation of Sales Tax

Motor Fuel - The appropriate sales tax rate is to be applied to the sum of the registered distributor's base selling price per gallon (which includes the 3/4% gross receipts tax and the 4¢ per gallon federal motor fuel tax) plus the statewide average retail markup per gallon. The 8¢ per gallon New York State motor fuel tax and the 1¢ per gallon tax on leaded gasoline sold in New York City are consumer taxes and, therefore, they are not to be included in the sum to which the rate of tax is applied.

A registered distributor who sells motor fuel through his own retail outlet must compute the sales tax on the sum of his base retail selling price per gallon, plus the statewide average retail markup per gallon, as stated above.

The statewide average retail markup is not intended to become a part of the registered distributor's selling price, only to be used in the computation when determining sales tax to be collected. It is simply a device for adjusting the amount upon which the tax is imposed, so that the tax collected approximates the amount which would have been collected on the sale to the ultimate consumer. The markup is mandated by law and is computed quarterly.

Diesel Motor Fuel - The appropriate sales tax rate is to be applied to the sum of the registered distributor's base selling price per gallon (which includes the gross receipts tax), plus the state-wide average retail markup per gallon. The federal and state diesel motor fuel taxes are not to be included in the sum to which the rate of tax is applied, as they are both imposed on the ultimate consumer.

As the retail vendor of diesel motor fuel is also the registered distributor, his selling price includes his retail markup. Therefore, the average retail markup per gallon to be added for purposes of the sales tax computation has been set at 0¢.

For the period September 1, 1982 through November 30, 1982, the statewide average retail markup per gallon on the various types of fuel is:

<u>Type of Fuel</u>	<u>Markup per gallon*</u>
Leaded	\$ .080
Unleaded (including jet fuel, kerosene & propane)	.111
Premium (including leaded and unleaded premium and aviation gasoline)	.172
Diesel	.000

\*Remember - the markup per gallon is for purposes of sales tax computation only. It is not to be reflected in the distributor's selling price.

Rate of Sales Tax to be Collected

Beginning September 1, 1982, a registered distributor must collect sales tax at the maximum statewide rate of 8¼% on all sales of automotive fuel to persons other than registered distributors, with the following exceptions:

1. Where a registered distributor sells automotive fuel to a purchaser other than an automotive fuel carrier and delivers the fuel to the purchaser or when delivery is made by common carrier (regardless of which party hires the common carrier), the sales tax is to be collected at the combined State and local rate in effect where delivery is actually made to the purchaser. If point of delivery cannot be determined, the maximum statewide rate of 8¼% must be collected. (For sales tax purposes, delivery by common carrier is deemed to be delivery by the seller.)
2. Where a registered distributor sells automotive fuel to an automotive fuel carrier (any person other than a registered distributor who purchases automotive fuel for sale and takes delivery in his own vehicles or in vehicles under his control) and the automotive fuel carrier presents a photocopy of his Automotive Fuel Certificate (form TP-146)\* indicating that the rate of sales tax he is required to pay on all purchases of automotive fuel is less than the 8¼% maximum rate. The registered distributor should collect sales tax at the rate shown on the front of form TP-146, and as of November 1, 1982 on form PR-121.

\*As of November 1, 1982, TP-146 will be replaced by PR-121.

3. When a registered distributor sells automotive fuel at his own retail outlet or through other direct sale to the ultimate consumer, the rate of sales tax to be collected is the rate in effect where delivery to the customer takes place.
4. Where a purchaser presents a properly completed Certificate for Sales Tax Exemption on Purchases of Certain Fuels (form TP-146.4) indicating that his purchase is not subject to sales tax at this time because of any of the reasons listed on the form.
5. Where a purchaser other than a retail service station or automotive fuel carrier presents a properly completed Exempt Use Certificate, form ST-121, or a photocopy of his Direct Payment Permit, form ST-123.
6. No sales tax is to be collected where a registered distributor sells automotive fuel directly to:
  - (a) a governmental agency which tenders a governmental purchase order or contract
  - (b) an exempt organization which tenders a properly completed form ST-119.1 (Exempt Organization Certification)
  - (c) an Indian who qualifies for exemption as described in TSB-M-82(19)S and tenders a properly completed form TP-156.9
  - (d) diplomatic or consular personnel who are qualified holders of DTF-10 identification cards and tender properly completed forms ST-126.

NOTE: When a registered distributor sells motor fuel other than diesel motor fuel to a bulk purchaser for use by the bulk purchaser in his own vehicles, the registered distributor is required to collect sales tax at the rate in effect in the locality where delivery occurs, unless the purchaser is an exempt organization or governmental agency and provides the proper exemption documents. The sales tax collected is to be computed as indicated under "Computation of Sales Tax" on page 3 of this memorandum.

### Automotive Fuel Certificates

An automotive fuel carrier, as defined earlier in this memorandum, who makes all of his sales in localities where the combined state and local sales tax rate is less than 8 $\frac{1}{4}$ % may apply to the Department of Taxation and Finance for permission to pay sales tax at a rate less than the established maximum.

Upon approval of his application (TP-146), the automotive fuel carrier is issued an Automotive Fuel Certificate, form PR-121, indicating the highest percentage rate of sales tax in effect in his marketing area. This is the percentage rate of sales tax he is required to pay to his registered distributors on ALL purchases of automotive fuel, regardless of where he takes delivery or where he later sells the fuel.

For the period September 1 through October 31, 1982 the automotive fuel carrier will be permitted to give his suppliers photocopies of his application for the Automotive Fuel Certificate (form TP-146). The supplier may honor the application through October 31, 1982.

On and after November 1, 1982 suppliers will not be permitted to accept photocopies of form TP-146. The automotive fuel carrier must replace his temporary certificate with a permanent validated Automotive Fuel Certificate (PR-121). The permanent certificate remains in effect with the supplier until withdrawn or replaced by the automotive fuel carrier.

### Refunds and Credits

If an automotive fuel carrier, hereinafter referred to as an AFC, resells and delivers motor fuel to a customer located in an area where the sales tax is lower than the rate that the AFC was required to pay to his registered distributor and he passes through to his customer only the sales tax computed at the lower rate, the AFC may apply to the Department of Taxation and Finance for a refund or credit of the difference between the sales tax he paid the registered distributor and the sales tax he passed through to his customer (forms TP-166.2, 166.3).

An AFC may also apply for a refund or credit of sales tax paid on motor fuel which he resold outside New York State, which he sold to a customer whose use is exempt, or which he sold to an organization that is exempt, provided he did not pass the tax through.

An exempt organization or exempt individual, when making cash purchases or credit card (other than oil company credit card) purchases from someone who is neither a registered distributor nor an AFC, must pay the full selling price of the automotive fuel including the sales tax and subsequently apply to the Department of Taxation and Finance for a refund of the sales tax paid (with the exception noted in question #9, page 12). Special refund applications (form TP-166.1)

are available for this purpose through the Department. At the time of purchase, the exempt organization must be sure to get a written receipt showing the number of gallons purchased, the selling price per gallon, the amount of sales tax per gallon (to the nearest 10th of a cent) included in the selling price, the total amount paid and the locality in which the vendor's outlet is located. A copy of this receipt must be submitted by the exempt organization as part of its' refund application.

Jobbers or wholesalers who are not required to be registered as distributors under Article 12-A of the tax law may be eligible to apply for a credit or refund of floor tax\* overpaid, if the rate on which the floor tax was based (location of the inventory) was higher than the rate in effect where the fuel was subsequently resold or if the motor fuel was resold outside New York State.

In any instance where a purchaser who is entitled to an exemption (exempt organization, AFC, manufacturer, farmer, etc.) has paid sales tax on his purchase of automotive fuel, he may apply to the Department of Taxation and Finance for a refund. Special refund forms are available for automotive fuel carriers and for exempt organizations (forms TP-166.1,2,3). Other purchasers claiming a refund should use forms AU-11, AU-11.2, and any other appropriate forms.

NOTE: Adequate records must be maintained by vendors or other purchasers, in order to justify any claims they may submit for refund of sales tax.

#### Exempt Organizations

For purposes of this memorandum, the term "exempt organization" means:

- (a) an organization granted exemption from sales tax in accordance with the provisions of section 1116(a) of the tax law, and any other qualified organization to whom ST-119 (Exempt Organization Certificate) has been issued,
- (b) an agency of the federal, state or local government including a school district,
- (c) qualified diplomatic and consular personnel, or
- (d) qualified Indians as described in TSB-M-82(19)S.

When an exempt organization purchases automotive fuel after September 1, 1982, the organization will not lose its exemption, but it may have to handle such purchases in a different manner.

After September 1, 1982, sales to exempt organizations will be treated as follows:

A "registered distributor" or AFC selling motor fuel or diesel motor fuel directly to an exempt organization, either by bulk delivery or at retail outlets operated by the distributor or AFC, may continue to accept exemption documents from these customers and not collect sales tax on sales to them.

\*See section on Floor Tax on Motor Fuel, page 9.

An AFC who has entered into a motor fuel supply contract with an exempt entity may present a photocopy of the contract to the registered distributor from whom he makes the purchase and the distributor may accept this photocopy as a basis for not collecting sales tax on the purchase of the quantity of motor fuel needed to fulfill the terms of the contract. In the case of an exempt organization, the AFC must also attach a photocopy of form ST-119 (Exempt Organization Certificate). AFC sales to exempt entities where there is no contract will require appropriate documentation as follows:

- (a) governmental agencies - governmental purchase order
- (b) exempt organization - photocopy of ST-119 (Exempt Organization Certificate)
- (c) exempt Indians - TP-156.9
- (d) exempt diplomatic and consular personnel - ST-126, upon presentation of DTF-10.

On cash sales or on credit card sales (other than oil company credit cards), a vendor other than an AFC or registered distributor must collect the full selling price of the fuel including sales tax. (See exception noted on page 12, question #9.) However, the exempt organization may apply for a refund, as explained on page 5 in the section on Refunds and credits.

On oil company credit card sales, the vendor must charge the full selling price for the automotive fuel including sales tax. The charge card receipt must show the number of gallons purchased, the selling price per gallon, the amount of sales tax per gallon included in the selling price, the total amount of the sale and all of the dealer identification information required by the oil company issuing the charge card. When the exempt organization is billed for these purchases by the oil company who issued the card, the oil company may exclude the sales tax from the bill provided proper substantiation is on file with them.

#### Sales Tax Vendor Registration

Distributors of motor fuel or diesel motor fuel required to be registered under Article 12-A of the tax law must also be registered with the Department of Taxation and Finance as sales tax vendors. They must obtain a validated Certificate of Authority (form TP-153A) designating them as persons authorized to collect sales tax. Any distributor who is not already a registered sales tax vendor must contact the nearest office of the Department of Taxation and Finance immediately and obtain the forms required for sales tax vendor registration.

#### Recordkeeping Requirements

A registered distributor required to collect sales tax on sales of automotive fuel is subject to the general sales tax recordkeeping requirements as outlined in Publication 752, Recordkeeping for Sales Tax Vendors, and as required by the applicable sales and use tax regulations. This is in addition to requirements under section 12-A of the tax law.

The registered distributor's records must clearly indicate the following for each sale:

- 1) the type of fuel sold,
- 2) the number of gallons sold,
- 3) the purchaser of the fuel,

- 4) the price upon which the sales tax was computed; the actual selling price of the fuel excluding the federal diesel motor fuel tax, the state motor fuel or diesel motor fuel tax and the New York City tax on leaded gasoline, but including the gross receipts tax, the federal motor fuel tax and the applicable statewide average retail markup,
- 5) the percentage rate of sales tax imposed,
- 6) the amount of sales tax collected,
- 7) the locality where the fuel was delivered to the purchaser,
- 8) the taxing jurisdiction to which the sale is attributed, and
- 9) if no sales tax was collected, the basis for the exemption.

These records must be retained for three years and made available for audit on the request of the New York State Tax Commission.

### Sales Tax Reporting

Every registered distributor whose taxable sales of automotive fuel in each of the last four quarters total less than 100,000 gallons and whose taxable sales and purchases subject to use tax total less than \$300,000 in every quarter of the preceding four sales tax quarters must file sales tax returns quarterly. The quarterly periods for sales tax reporting begin on June 1, September 1, December 1 and March 1. A registered distributor whose taxable sales of automotive fuel in each of the last four quarters total 100,000 gallons or more or whose taxable sales and purchases subject to use tax total \$300,000 or more in any quarter of the preceding four sales tax quarters must file sales tax returns on a monthly basis (part-quarterly returns). Returns must be filed within twenty days from the close of the period covered by the return. (Specific information regarding the quarterly and part-quarterly returns and their completion can be found in instruction forms ST-150.1 and ST-825 respectively, which accompany the returns.)

Registered distributors of motor fuel must file Schedule D quarterly, as part of their sales and use tax return, reporting the following information on the schedule:

- 1) number of taxable gallons of motor fuel sold during the period,
- 2) total taxable sales of motor fuel for each taxing jurisdiction in which sales were made. The amount of total taxable sales reported on each line of Schedule D is the total of the amounts which comprise the distributor's selling price plus the statewide average retail markup (the aggregate figure on which the tax was computed) attributed to each jurisdiction multiplied by the number of gallons involved in each sale. (See "Computation of Sales Tax" on page 3 of this memorandum.)
- 3) the total amount of sales tax actually collected for each taxing jurisdiction or the total amount of sales tax actually due, if greater, when determined in accordance with the information contained in this memorandum.

The tax collected by a distributor may vary from 4% to 8¼%. Each sale and the appropriate sales tax should be reported on the sales tax return on the line for the locality in which the distributor delivered the motor fuel to his customer, but at the percentage rate of tax applicable to that sale.

For example, when a registered distributor sells motor fuel to an AFC who picks up the fuel at the distributor's terminal which is in Albany, the sale should be reported on distributor's Schedule D on the line for Albany County, but at the rate of sales tax actually applicable to that sale, which may not necessarily be at the rate in Albany County.

When a distributor delivers the motor fuel to his customer, the sale is reported on the line for the taxing jurisdiction where delivery was made at the rate applicable to that sale. The rate of tax collected may or may not be the rate in effect in the jurisdiction where delivery occurs, but the tax will still be reported in that jurisdiction.

Deliveries of motor fuel into counties not listed on Schedule D should be reported on the "New York State" line.

Taxable sales of diesel motor fuel should be reported on page 2 of the sales and use tax return on the line for the locality where delivery or taxable use occurs. Motor fuel or diesel motor fuel taken from inventory by the registered distributor for use in his own vehicles should be reported as a purchase subject to use tax on page 2 of his sales and use tax return, computed as provided under "Computation of Sales Tax" on page 3 of this memorandum.

Sales on which no sales tax was due should be included in gross sales, but should NOT be included in taxable sales.

#### Floor Tax on Motor Fuel

The amendments to the Sales Tax Law also impose a "floor tax" on motor fuel in excess of 500 gallons held in inventory for sale as of the opening of business on September 1, 1982 by: 1. retail vendors not required to be registered as distributors of motor fuel under the Motor Fuel Tax Law; 2. retail vendors required to be registered as distributors of diesel motor fuel under the Motor Fuel Tax Law, but not as distributors of motor fuel; and 3. other vendors, such as jobbers or wholesalers, not required to be registered as distributors of motor fuel under the Motor Fuel Tax Law. If a vendor operates two or more outlets as one entity, there must be a separate floor tax return filed for each outlet, with only one 500 gallon exemption allowed for each vendor.

A retail vendor or other vendor of motor fuel not required to register as a distributor of motor fuel under Article 12-A of the tax law, must, on or before October 1, 1982, file a floor tax return, form ST-800, and either pay the tax due on his inventory of motor fuel or attach an explanation to the return stating why no tax is due. Failure to file the floor tax return on or before October 1, 1982 could result in the imposition of penalties as provided in section 1145 of Article 28 of the tax law.

Jobbers or wholesalers who are not required to be registered as distributors under Article 12-A of the tax law pay the floor tax at the rate in effect in the locality where the inventory was located on September 1, 1982. They may, under certain circumstances, apply for a refund or credit of any floor tax which may have been overpaid (see page 5, Refunds and Credits section).

If the motor fuel is subsequently resold to a customer located in an area with a higher tax rate, the jobber or wholesaler must remit the additional tax due. (Refer to the floor tax return, form ST-800 and instructions, form ST-800-I for further information.)

As defined earlier in this memorandum, a wholesaler or jobber means anyone who buys or sells any type of automotive fuel who is not also a registered distributor or an AFC. A wholesaler or jobber who is either a registered distributor or an AFC is treated as such for purposes of this legislation.

The following questions and answers expand upon or help to illustrate the information presented above.

1. (Q) I am a propane dealer who occasionally sells to customers who use the propane as a motor fuel. Do I compute the sales tax on the product sold as motor fuel any differently than on my other sales?
  - (A) Yes. When propane is sold as a motor fuel the sales tax is to be computed on the selling price (less the 8¢ per gallon state motor fuel tax) plus the appropriate statewide average retail markup. The markup factor to be used for propane is the one published for unleaded gasoline. This markup is only applied for sales tax computation purposes; it is not an attempt to set the actual selling price.
  
2. (Q) I am a distributor of motor fuel under Article 12-A and, as a sales incentive, I give volume discounts or location discounts to my customers. My normal practice is to charge the customer the full selling price on delivery and to issue a refund check to him for the "discount" on the portion of his monthly purchases which exceeded minimum volume. What effect does this "discount" have on the selling price upon which I compute the sales tax?
  - (A) The sales tax collected from your customer is based upon the selling price to him plus the statewide average retail markup. When a "discount" is given in the form of a cash refund paid at the end of a billing cycle, the selling price of individual deliveries has not been reduced and the sales tax collected and invoiced must be on the full selling price. Any amount subsequently refunded should include a refund of sales tax on that amount. You, in turn, may then claim credit on your sales tax return for any tax remitted and later refunded. However, if instead of a cash refund, the customer is given a credit against future purchases, the sales tax on these subsequent purchases should be computed on the net selling price plus the state-wide average retail markup.
  
3. (Q) I am a distributor of motor fuel registered under Article 12-A and I sell to persons who are not 12-A distributors. When I deliver motor fuel to my customer's storage facility, what rate of sales tax do I charge?
  - (A) When you deliver motor fuel to a customer, you should collect sales tax at the rate in effect at the point of delivery unless the customer is an automotive fuel carrier. If you know that your customer is an automotive fuel carrier, collect 8¼% unless he gives you a copy of his Automotive Fuel Certificate indicating that he should be taxed at a

different rate. If no such certificate is received, and you are not aware that your customer is an automotive fuel carrier, you must collect sales tax at the appropriate rate for the point of delivery. If your customer subsequently distributes the motor fuel using his own delivery equipment to his customers in localities with higher tax rates, he will be personally liable for the additional sales tax.

4. (Q) I am a motor fuel distributor registered under Article 12-A. I purchase some of my inventory from automotive fuel carriers who are not 12-A distributors and who, therefore, have paid sales tax on their purchase of the motor fuel. This sales tax is passed through to me as part of my purchase price. What happens with the sales tax when I resell this product, since the Sales Tax Law seems to indicate that I always collect sales tax on my sales?

(A) When your supplier sells motor fuel to you, sales tax included, you should claim a credit on your sales tax return for the entire amount of sales tax passed through to you. The credit should be taken on the appropriate line on Schedule D for the locality to which the tax was originally distributed by the person who collected it, whether or not you have taxable sales to report for that locality. If you have tax to report on that locality line, the amount of the credit should be used to reduce the taxable sales and the sales tax due for the period in that locality. The credit against taxable sales is the amount you paid to your supplier less the sales tax and the credit against sales tax due is the amount of sales tax passed through to you on that purchase. If you have no sales tax due in the locality to which the tax was originally distributed, you should show the credit against taxable sales and sales tax due in parentheses as negative credits on that locality line.

The invoice which you receive from your supplier will show the amount of sales tax included in his price to you and the locality to which it was distributed.

When you resell this motor fuel, you should compute and collect the appropriate sales tax in accordance with the information contained in this memorandum.

At the time that you file your periodic sales tax return, you will show the sales tax collected on this motor fuel, minus the credit for tax paid to your supplier, and remit the net tax due.

5. (Q) I am a distributor of motor fuel registered under Article 12-A. I have customers who operate multiple retail outlets in different localities. Occasionally these customers send a common carrier to my terminal to make pick-ups. I have no idea to which of the customers' locations the fuel will be delivered. Your instructions state that where delivery is made by common carrier, I should collect tax at the rate for the point where delivery is made by the carrier. Since the customer will not tell me where the fuel is going, what do I do?

- (A) When a customer sends a common carrier to your terminal to pick up motor fuel for delivery to an undisclosed location, you must collect 8 $\frac{1}{4}$ % unless presented with a copy of an automotive fuel certificate showing a lower authorized rate of tax.

If the customer is not an automotive fuel carrier and if he discloses, in writing, the location of the retail outlet to which the fuel will be delivered, you may collect the sales tax at the appropriate rate for that locality and the sale should be reported on the appropriate line for that locality.

6. (Q) I am an automotive fuel carrier who is not a 12-A distributor. I make non-contract cash sales to exempt organizations and I sell to other customers who use the motor fuel in a manner exempt under sales tax law. Must I pass through the sales tax that I paid, or may I accept exemption documents from these customers and claim refunds?
- (A) When you sell motor fuel upon which sales tax has been paid to an exempt organization or other exempt user, you may accept your customers' valid exemption documents (photocopies of Exempt Organization Certificates, ST-119, or Direct Payment Permits, ST-123, or copies of Exempt Use Certificates, ST-121) and deduct the sales tax from your selling price. In order to recover the sales tax paid on your purchase of the motor fuel, you may file a claim for refund by properly completing and filing Forms TP-166.2 and 166.3.
7. (Q) I am a motor fuel distributor registered under Article 12-A and, as part of my business operation, I sell motor fuel in bulk quantities to commercial accounts. On what price do I compute the sales tax I am required to collect from my customers?
- (A) As a distributor of motor fuel you must compute the sales tax you collect from your customers on your base selling price (which includes the 3/4% gross receipts tax and the federal motor fuel tax) plus the appropriate statewide average retail markup. This is true whether the sale is being made to a commercial account, a retailer or to the final consumer.
8. (Q) What if ALL my sales are to commercial accounts and no sales are made to either retailers or through retail outlets?
- (A) Section 1111(e)(1) of the tax law requires that a registered motor fuel distributor compute sales tax on his base selling price as described in 7(A) above, plus the statewide average retail markup when selling motor fuel to a customer subject to sales tax. The law does not distinguish between sales to commercial accounts, retailers or final consumers; it requires computation of sales tax on the same basis for ALL taxable sales made by distributors.
9. (Q) I have recently received instructions from the Department of Taxation and Finance advising me that as a retail service station operator I should no longer accept any exemption documents on cash sales of motor fuel or diesel motor fuel. However, the Certificate of Diplomatic and Consular Tax Exemption, form ST-126, indicates that the certificate is also used to claim exemption from the New York State motor fuel tax. May I continue to accept the ST-126 and not collect the motor fuel tax imposed under Article 12-A of the tax law from diplomatic or consular customers?

- (A) Yes. Although you should not accept ST-126 as a sales tax exemption certificate, since you are not entitled to a refund or credit for sales tax not passed through to customers, you may continue to accept the certificate as a valid basis for exemption from the New York State motor fuel tax.

List of Forms and Publications

Pub. 790	Statewide Average Retail Markups
Pub. 890	Supplement to Forms TP-188.1 and ST-800-I
ST-100.7	Quarterly Schedule D
ST-800	Report of Floor Tax Due on Motor Fuel
ST-800-I	Information for Vendors of Motor Fuel Regarding Sales Tax Legislation
ST-810.7	Quarterly Schedule D for Part-Quarterly Filers
ST-820	Installment Voucher Forms for Payment of Sales and Use Tax on Motor Fuel and Diesel Motor Fuel Due on or before September 20, 1982 (Vouchers numbered ST-820A, ST-820B and ST-820C)
TP-146	Application for Automotive Fuel Certificate
TP-146.4	Certificate for Sales Tax Exemption on Purchases of Certain Fuels
TP-166.1	Claim for Refund of Sales Tax on Automotive Fuel by Certain Exempt Purchasers
TP-166.2	Application for Refund of State and Local Sales Tax Paid on Automotive Fuel by Automotive Fuel Carriers Only
TP-166.3	Schedule of Sales Tax Refund Claimed by Automotive Fuel Carriers
TP-187.13	Information for Governmental Agencies Regarding Purchases of Automotive Fuel on and after September 1, 1982
TP-187.14	To: Organizations Issued Exempt Organization Certificates (ST-119) and Holders of DTF-10, Identification Card for Diplomatic and Consular Tax Exemption Regarding Purchases of Automotive Fuel on and after September 1, 1982
TP-187.15	Information for Bulk Users of Diesel Motor Fuel Regarding Sales Tax Requirements Effective on and after September 1, 1982
TP-188.1	Information for Distributors of Motor Fuel and Diesel Motor Fuel
PR-121	Automotive Fuel Certificate