

1985 Legislation - Chapter 44

PREPAYMENT OF SALES TAX ON MOTOR FUEL (GASOLINE)

Chapter 44 of the laws of 1985 has been enacted effective June 1, 1985. The following general summary, containing pertinent definitions, illustrates the effects of this enactment on distributors, wholesalers, jobbers, retailers and others involved in the distribution and sale of motor fuel.

DEFINITIONS

Distributor - Any person, firm, association or corporation who or which imports motor fuel or causes it to be imported into New York State for use, distribution, storage or sale; or who or which produces, refines, manufactures, or compounds motor fuel within the state.

Motor Fuel - Gasoline, benzol or other product, except for kerosene and crude oil, which is suitable for use in the operation of a motor vehicle engine. If kerosene or crude oil is compounded or mixed with any other product or products resulting in a mixture which is suitable for use in the operation of any motor vehicle engine, the resulting mixture will be regarded as "motor fuel".

Tax Exempt Hospital - A hospital which holds (1) a valid operating certificate issued by the New York State Department of Health under Section 2805 of the Public Health Law and (2) a valid Exempt Organization Certificate, Form ST-119, issued by the New York State Department of Taxation and Finance.

Regions - The State is divided into two regions. Region 1 consists of the 12 counties included in the Metropolitan Commuter Transportation District (Kings, Queens, Richmond, Bronx, New York, Nassau, Suffolk, Westchester, Rockland, Putnam, Dutchess and Orange) and has an established rate of 7%. Region 2 consists of all the counties in New York State not included in Region 1 and has an established rate of 6%.

Regional Rate - The percentage rate used to compute the amount of sales tax to be prepaid on motor fuel imported into or manufactured in the region.

Regional Average Retail Sales Price - The prices used to compute the sales tax to be prepaid on motor fuel imported into or manufactured in the region. The regional average retail sales prices are set annually for each type of fuel - leaded, unleaded and premium. These prices will become effective on June 1 each year and remain effective through May 31 of the following year. However, if during the year the average retail sales price of any fuel in a region falls below 75% or rises above 125% of its current regional average retail sales price, the regional average retail sales price for that type of fuel will be recomputed. The re-computed price will then become effective two months after it is established and will remain in effect for the rest of the annual price period (See Pub. 790).

Airline - An airline is: (1) an air carrier of persons, property, and mail operating under a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board, or a foreign air carrier holding an equivalent certificate issued by the carrier's respective sovereign government; or (2) an air carrier holding a Certificate for All-Cargo Air Service issued by the Civil Aeronautics Board; or (3) an air taxi operator who is classified by the Civil Aeronautics Board as a "commuter air carrier", or who (a) performs at least five round trips per week between two or more points and publishes flight schedules which specify the times and days of the week and places between which such flights are performed or (b) transports mail by air pursuant to contract with the United States Postal Service.

GENERAL INFORMATION

Every distributor is required to prepay sales tax on all motor fuel which he imports or manufactures within New York State for sale, use or storage. Although the distributor remits the prepaid tax to the Department of Taxation and Finance monthly, he becomes liable for payment of the tax immediately upon importation or manufacture of the motor fuel in New York State. Tax-free inter-distributor transactions are no longer allowed.

The prepaid sales tax must be passed through to each successive purchaser until the motor fuel is sold at retail to the consumer, whether through a retail filling station or in volume. The vendor making the retail sale must collect sales tax computed on his actual selling price at the tax rate in effect in the locality where the motor fuel is delivered to the purchaser. The retail vendor is allowed a credit against these collections for the amount of prepaid sales tax passed through to him by his supplier.

In addition to the sales tax prepayment, the 8¢ per gallon motor fuel tax must be paid at the time of importation or production and must also be passed through to each purchaser.

When any purchaser (i.e., retailer, wholesaler, etc.) acquires motor fuel on which the required taxes have not been passed through, he must file Form FT-944, Report of Untaxed Purchases of Motor Fuel, and pay the taxes directly to the State Tax Commission within 24 hours of the day the fuel is received. However, if the purchaser is a registered motor fuel distributor, the taxes may be paid with the next required returns, but no later.

COMPUTATION OF SALES TAX PREPAYMENT

As of June 1, 1985, the sales tax prepayment is computed on the appropriate regional average retail sales price, at the rate for the region where the fuel first comes to rest in New York State. The state is divided into two regions. In both regions, the prepayment of tax is computed by multiplying the regional average retail sales price per gallon, for each type of fuel, by the appropriate regional rate. The resulting sales tax per gallon is rounded to the nearest one-tenth of one cent and then multiplied by the number of taxable gallons to arrive at the total sales tax prepayment due.

Effective June 1, 1985, all Automotive Fuel Certificates (Form PR-121) and Commercial Account Certificates (Form PR-122) are cancelled. These certificates are no longer used in the computation of tax on sales of motor fuel.

FILING OF REQUIRED RETURNS

New sales tax reporting requirements could change a vendor's sales tax filing status from quarterly to monthly filing. Any person selling 100,000 gallons or more of automotive fuel (combined motor fuel and diesel motor fuel sales) whether taxable or not, in any one of the previous four quarters must file monthly sales tax returns. A change in filing status should be reported immediately to the Sales Tax Processing Unit of the Department of Taxation and Finance, either by writing to them at the W. Averell Harriman State Office Building Campus, Albany, New York 12227, or by calling (518) 457-7311.

Retail Vendors

All retail vendors of motor fuel will be required to report the sales tax collected on sales of motor fuel on Schedule R (Form ST-100.9) which must accompany their regular sales tax returns. The retail vendor is required to collect sales tax based on his actual selling price of motor fuel at the appropriate state and local sales tax rate for the locality in which the sale occurs. A credit is allowed for the sales tax prepayments made either to the vendor's supplier or paid by the vendor on Form FT-944, Report of Untaxed Purchases of Motor Fuel on motor fuel sold or used during the period. Retail vendors are also required to file Form FT-943, Monthly Motor Fuel Inventory Report for Retail Service Stations. Total gallons of motor fuel purchased and sold are required to be reported, as well as information about suppliers.

Schedule R is also used by retail vendors for reporting self-use of motor fuel. A retail vendor should compute the tax on motor fuel he consumes by multiplying his actual purchase price (excluding state motor fuel tax) by the rate in effect for the locality where the fuel is used. Credit is allowed for any prepaid sales tax on the motor fuel. (Retail vendors in New York City may also exclude the 1¢ tax imposed in New York City on leaded fuel, when computing tax on motor fuel for self-use.)

All Vendors Other Than Retailers

Any person, other than a retailer, making sales of motor fuel within New York State is required to file Form FT-945, Report of Prepayment of Sales Tax on Motor Fuel monthly. He must also comply with general sales tax reporting requirements.

If in addition to selling motor fuel at wholesale, a vendor makes retail sales of motor fuel, he must also file a Form ST-100.9, Schedule R, with his sales and use tax returns. Tax on motor fuel consumed by the vendor must also be reported on Schedule R.

Tax is computed on motor fuel consumed by the vendor by multiplying the actual purchase price (excluding state motor fuel tax) by the rate in effect for the locality where the fuel is used. Credit is allowed for any prepaid sales tax on the motor fuel.

A manufacturer or refiner computes sales tax on motor fuel that he consumes based on the price at which he normally sells motor fuel to others (excluding state motor fuel tax) at the rate in effect for the locality where the fuel is used.

INVENTORY ON HAND MAY 31, 1985 - REPORT REQUIRED

Persons holding fuel for sale within New York State, as of the close of business on May 31, 1985, were required to file a Report of Inventory of Motor Fuel (Form N85-12) no later than June 5, 1985. Each location where motor fuel is held for sale required a separate inventory report.

SALES OF MOTOR FUEL IN INVENTORY ON JUNE 1, 1985

For sales tax purposes, the inventory of motor fuel on hand as of close of business May 31, 1985, on which sales tax was previously paid, will be considered the first motor fuel sold on and after June 1, 1985 until that inventory is completely sold off. The tax previously paid must be passed through as part of the selling price. On each subsequent sale, this same amount must be passed through until the motor fuel is sold at retail.

Motor fuel which was acquired tax-free and was on hand at close of business May 31, 1985 will be considered withdrawn for sale only in any month when the amount of motor fuel sold or used that month exceeds the amount of motor fuel imported or purchased during that month. Until then, this inventory will remain untaxed.

Records must be maintained to account for this inventory separately. The balance of tax-free inventory must be included in the inventory balances reported each month on Form FT-945, Report of Sales Tax Prepayment on Motor Fuel. In effect, when the closing inventory in any one month drops below the level of the closing inventory in the previous month, the balance in tax-free inventory must be reduced by the difference between the two amounts. This new tax-free balance remains unchanged until the next time that the monthly ending inventory drops below that of the prior month. Under no circumstances will the balance of tax-free inventory be permitted to increase. The amount of tax-free inventory removed through these adjustments must be reported as a taxable acquisition on the reports for the period in which the adjustments are required to be made and must be taxed at the regional rate and the regional average retail sales price currently in effect where the fuel is located.

On all sales of motor fuel, except sales at retail, each seller must give his purchaser a Certification of Prepayment of Sales Tax and Payment of Motor Fuel Tax (Form FT-935), indicating the pass-through of tax.

REQUIRED CERTIFICATES AND REPORTS

Form FT-935, Certification of Prepayment of Sales Tax and Payment of Motor Fuel Tax

This certification, properly completed, must be given by a supplier to his purchaser, upon delivery of motor fuel. An invoice or other billing document, given at the time of delivery, will also be acceptable as certification of prepaid tax if it contains the following:

- Seller's name and address
- Seller's sales tax identification number and motor fuel tax registration number, if any

Purchaser's name and address

Type of fuel purchased (leaded, unleaded, or premium) and number of gallons of each

A separately stated amount for each tax included in the selling price

A signed statement that the amounts of tax shown have been or will be paid by the seller or his supplier. (If the seller is a registered motor fuel distributor under Article 12-A, no signature is required. If the payer of the motor fuel tax is other than the seller, that payer must be named.)

For a limited interim period when it is not possible to provide a properly completed certification at the time of delivery, a preliminary certification may be issued until the full certification can be made available to the purchaser. Preliminary certification may take either of these two forms:

1. The seller may incorporate the following statement in its bill of lading, loading ticket, delivery receipt, or other shipping document given to the purchaser.

 (Seller) certifies that both the New York State motor fuel tax and prepaid sales tax required to be paid for the motor fuel shown on this document have been paid or will be paid by the seller. The amounts of these taxes will be supplied to the purchaser within 10 business days of this delivery and in a form acceptable to the New York State Department of Taxation and Finance.

or

2. The seller may provide its customer, prior to delivery, with a statement signed by an authorized representative of the seller stating that:

 (Seller) certifies that both the New York State motor fuel tax and prepaid sales tax required to be paid on any fuel sold to (Purchaser) have been or will be paid by the seller. The amounts of these taxes will be supplied to you within 10 business days of any delivery and in a form acceptable to the New York State Department of Taxation and Finance.

This statement must be renewed at least once a month.

Some situations where preliminary certification may be necessary are when motor fuel is sold through a terminal operated by a third party, or when the sale is made through an automated terminal and no bill or invoice is prepared at the time of sale.

A preliminary certification given prior to or at the time of delivery, when accepted in good faith will relieve the purchaser of the requirement to pay the motor fuel tax and prepaid sales tax within 24 hours of the day the fuel is received. However, the purchaser must be given a detailed certification setting forth all of the required information within 10 business days of the delivery. Failure to receive a completed certification will prevent the purchaser from relying on the protection of any preliminary certification received from this seller on future purchases.

Preliminary certification for the month of June will be allowed without permission from the Tax Department. However, as of July 1, 1985, preliminary certification will require permission, in writing, from the Department of Taxation and Finance. Requests for permission to use preliminary certification should be addressed to:

New York State Department of Taxation and Finance
INV Unit
Building 9, Room 402-A
W. Averell Harriman State Office Building Campus
Albany, New York 12227

Form FT-944, Report of Untaxed Purchases of Motor Fuel

This report, obtainable by contacting the Taxpayer Assistance Bureau, (see address and phone numbers on page 9), must be filed by a purchaser when: 1) he receives no evidence from his supplier of prepayment of sales tax and payment of motor fuel tax, or 2) he picks up the motor fuel outside New York State. In either of these two situations, the purchaser must, within 24 hours of receipt of the motor fuel, pay both the sales tax and the motor fuel tax to the State Tax Commission, remitting the taxes with this form. (A purchaser who is a registered motor fuel distributor is not required to file this report; he may pay the taxes with the next required returns.)

Form FT-940, Certification of Use of Motor Fuel Purchased in Volume

This certification, given to the seller by a person purchasing motor fuel in volume, indicates whether the fuel is being purchased for resale or for consumption by the purchaser. This is not a requirement for a consumer making a purchase at a retail filling station where the motor fuel is dispensed directly into the consumer's motor vehicle or a small container.

If a purchaser fails to provide Form FT-940 to the seller, the seller must charge the greater of the prepaid sales tax or sales tax computed on the actual retail selling price.

Form FT-943, Monthly Motor Fuel Inventory Report for Retail Service Stations

This report is to be filed monthly by retail service stations, indicating total gallons of motor fuel purchased and sold, along with information about suppliers.

Form FT-945, Report of Prepayment of Sales Tax on Motor Fuel

This report is to be filed monthly by persons other than retailers, in addition to any other reporting requirements. The form provides for inventory information and the computation of any required prepayments of sales tax on motor fuel imported or manufactured within New York State for sale, use or storage.

EXEMPTIONS

Only the following entities may purchase motor fuel without payment of sales tax:

The United States Government and any of its agencies and instrumentalities
The State of New York, its agencies, instrumentalities, public corporations
and political subdivisions (including school districts)
Tax-exempt hospitals
Airlines, as defined in the sales tax law and regulations, but only when
purchasing kero-jet fuel for use in its airplanes

Governmental entities must furnish a governmental purchase order or contract to substantiate exemption.

Tax-exempt hospitals must furnish a properly completed Form FT-937, Certificate of Sales Tax and Motor Fuel Tax Exemption for Qualified Hospitals, to the seller.

An airline must furnish a properly completed Form FT-938, Certificate for Certain Purchases of Fuel, to the seller.

NO OTHER DOCUMENTS ARE ACCEPTABLE AS A BASIS FOR EXEMPTION.

All other purchasers who, prior to June 1, 1985, were eligible for exemption from sales tax under sections 1115 or 1116 of the Tax Law must pay the sales tax on motor fuel and apply to the Tax Department for a refund of the tax paid. To get a refund, the exempt purchaser will need a written receipt which includes the price per gallon, the amount of sales tax paid per gallon, the number of gallons purchased, and the vendor's name and address. Special refund forms can be obtained by contacting the Taxpayer Assistance Bureau at the address and phone numbers listed on the last page of this memorandum.

SALES FOR IMMEDIATE EXPORT

To facilitate the sale of motor fuel for export, the Tax Department has established an interim procedure whereby sellers of motor fuel within New York State may make sales for immediate export without passing through the sales tax required to be prepaid and the motor fuel tax. The sellers must obtain a properly completed Statement of Exportation of Motor Fuel by Purchaser (Form FT-936) from the purchaser, at the time of sale.

If the seller does not receive the certificate or it is incomplete, he must include the prepaid tax in the price and furnish the purchaser with a copy of Form FT-935, Certification of Prepayment of Sales Tax and Payment of Motor Fuel Tax. A purchaser may then apply to the Tax Department for a refund of the tax included in the purchase price.

REFUNDS AND CREDITS

Any person selling motor fuel to a customer who establishes that the purchase is not subject to the pass-through of the prepaid tax, or to the retail sales tax, (i.e., the United States Government and its agencies and instrumentalities; the State of New York and its agencies, instrumentalities, public corporations and political subdivisions; tax-exempt hospitals; airlines; and persons purchasing for immediate export who furnish Form FT-936 to the seller at the time of purchase) may claim a credit or refund of the tax which has been prepaid.

If the sales tax collected by a retailer on the actual selling price is less than the prepaid sales tax passed through to the retailer, a refund or credit will be allowed the retailer in the amount by which the prepaid sales tax exceeds the sales tax collected from the customers.

TAX COLLECTION AND REGIONAL PRICE SCHEDULES

Tax collection schedules for retail sales and use of motor fuel and regional average retail sales prices for computing the tax prepayment can be obtained from the Taxpayer Assistance Bureau (see page 9 for address and phone numbers).

RECORDKEEPING REQUIREMENTS

Any person who imports, manufactures or sells motor fuel in New York State is subject to the general sales tax recordkeeping requirements and must keep records that clearly indicate, in addition to any other required information, the following:

- 1) The type of fuel and number of gallons imported, manufactured or sold.
- 2) The name, address and sales tax vendor identification number of suppliers.
- 3) The region where the fuel was first imported, manufactured or sold in New York State.
- 4) The regional average retail sales price and rate on which the prepayment was computed.
- 5) The name, address, and sales tax vendor identification number of purchasers, if known.(Does not apply to sales at retail filling stations.)
- 6) The taxing jurisdiction where the motor fuel was delivered.
- 7) The amount of sales tax collected or prepaid.
- 8) If no sales tax was collected or passed through, the basis for the exemption.
- 9) All motor fuel withdrawn for use rather than sale, the locality where the fuel was used and the amount of use tax paid.
- 10) The amount of tax paid on purchases of motor fuel (including any form received from suppliers).

All records must be kept for three years and made available for audit upon request of the New York State Tax Commission.

DEFERRAL OF PAYMENT OF CERTAIN TAXES DUE ON JUNE 20, 1985

Any registered distributor of motor fuel (other than diesel) who is required to pay sales and motor fuel taxes on motor fuel sales made before June 1, 1985, with the returns due on June 20, 1985, is allowed (upon application to the Tax Commission) to defer total combined motor fuel and sales tax payments in the lesser of: \$200,000 or the amount by which taxes paid to suppliers of motor fuel for June 1985 exceeds combined taxes paid to suppliers of motor fuel for June 1984.

The deferred tax payments must be paid in three equal installments on September 20, October 20, and November 20, 1985. The distributor may request an extension of these installment payment dates, but not beyond March 31, 1986. If the distributor fails to pay any installment when due, it and any remaining installment will be due immediately and subject to collection procedures.

Instructions and forms for requesting the authorization of deferred installment payments were sent with the sales tax returns which were to be filed by June 20, 1985.

PENALTIES

Severe criminal and civil penalties, for failure to comply with requirements, are imposed on the owner or operator of a retail filling station.

Penalties are also provided for any person who fails to file a return or make prepayments of the required tax in a timely manner.

TAXPAYER ASSISTANCE BUREAU ADDRESS AND PHONE NUMBERS

Write - New York State Department of Taxation and Finance
Taxpayer Assistance Bureau
W. Averell Harriman State Office Building Campus
Albany, New York 12227

Call, within New York State -

Information - 1-800-342-3536 (toll-free)
Forms and Publications - 1-800-462-8100 (toll-free)

Call, from outside New York State -

Information - 1-518-438-8581
Forms and publications - 1-518-438-1073