

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, section 284-e (not subdivided), section 289-f (not subdivided), subdivision (1) of section 301-a, section 315 (not subdivided), section 471-e (not subdivided), section 475 (not subdivided), section 1112 (not subdivided), subdivisions (1), (8), (11), and (12) of section 1142, subdivision (m) of section 1210, and section 1250 (not subdivided) of the Tax Law, the Executive Deputy Commissioner of Taxation and Finance, being duly authorized to act as First Deputy Commissioner of Taxation and Finance in the vacancy in the Office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Cigarette and Tobacco Products Tax Regulations, as published in Subchapter I of Chapter I, to the Motor Fuel and Diesel Motor Fuel Tax Regulations, as published in Subchapter A of Chapter III, to the Petroleum Business Tax Regulations, as published in Subchapter B of Chapter III, and to the Sales and Use Tax Regulations, as published in Subchapter A of Chapter IV of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Subdivision (c) of section 74.1 of such regulations is amended to read as follows:

(c) In general and as provided for in this Title, no tax will be imposed under article 20 of the Tax Law on cigarettes sold:

- (1) under any circumstances that the State of New York is without power to impose the tax;
- (2) to or by the United States or a voluntary unincorporated organization of the United States Armed Forces that is operating a place for the sale of goods pursuant to regulations promulgated by the appropriate

executive agency of the United States;

(3) to the State of New York;

(4) to out-of-state purchasers; [or]

(5) to the United Nations; or

(6) to Indian nations or tribes, qualified Indians purchasing cigarettes on their qualified reservations, and reservation cigarette sellers located on qualified reservations, under the circumstances set forth in section 76.6 of this Title.

See Part 76 of this Title for exemptions from tax. See also, section 74.3 of this Part for nontaxable sales of cigarettes exclusively to licensed agents by persons introducing cigarettes into the New York State market.

Section 2. Subdivisions (a) and (b) of section 74.4 of such regulations are amended to read as follows:

(a) A licensed cigarette agent may sell cigarettes within this state to a retail dealer or other persons for purposes of resale, only if such agent is also a licensed wholesale dealer, and at retail if such agent is also a registered retail dealer. No licensed cigarette agent shall sell cigarettes in New York State unless proper cigarette stamps have been affixed to individual packages thereof and cancelled, or unless such cigarettes are exempt from tax as provided for in this Title. No agent may sell cigarettes to an unlicensed wholesale dealer, or to a wholesale dealer whose license has been cancelled or suspended pursuant to section 72.3 of this Title. Further, no agent may sell cigarettes to a retail dealer who has been forbidden to sell cigarettes pursuant to this section. Nothing in this subdivision shall prohibit an agent from selling stamped packages of cigarettes to an Indian nation or tribe or to a reservation cigarette seller on a qualified reservation, as such terms are defined by section 76.6 of this Title, when such packages of cigarettes are to be delivered or brought onto such qualified reservation for sale or resale.

(b) A wholesale dealer may not sell cigarettes in New York State unless proper cigarette tax stamps have been affixed to individual packages thereof and cancelled, or unless such cigarettes are exempt from tax as provided for in this Title. No wholesale dealer may sell cigarettes for purposes of resale or from vending machines in, at or upon premises owned or occupied by another person, unless such dealer has been licensed pursuant to Part 72 of this Title. No wholesale dealer may sell cigarettes for such purposes to an unlicensed wholesale dealer or to a wholesale dealer whose license has been cancelled or suspended. No wholesale dealer may sell cigarettes through vending machines unless such machines are registered pursuant to Part 73 of this Title. A wholesale dealer may not sell cigarettes to a retail dealer who has been forbidden to sell cigarettes as provided herein. Nothing in this subdivision shall prohibit a wholesale dealer from selling stamped packages of cigarettes to an Indian nation or tribe or to a reservation cigarette seller on a qualified reservation, as such terms are defined by section 76.6 of this Title, when such packages of cigarettes are to be delivered or brought onto such qualified reservation for sale or resale.

Section 3. Paragraph (1) of subdivision (a) of section 76.1 of such regulations is amended to read as follows:

(a)(1) The tax imposed on cigarettes possessed in the State for sale pursuant to section 471 of the Tax Law is not required to be paid on cigarettes sold under any circumstances that the State is without power to impose the tax. Further, such tax is not required to be paid on cigarettes sold to or by the United States or a voluntary unincorporated organization of the armed forces of the United States which operates a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. The tax on cigarettes possessed for sale is not required to be paid on cigarettes sold to the State of New York, to out-of-state purchasers, [or] to the United Nations, or to Indian nations or tribes, qualified Indians purchasing cigarettes on their qualified reservations, and reservation cigarette sellers located on qualified reservations,

under the circumstances set forth in section 76.6 of this Title.

Section 4. Paragraph (1) of subdivision (b) of section 76.1 of such regulations is amended to read as follows:

(b)(1) In general, exemptions from the cigarette tax shall be effectuated by means of a licensed cigarette agent's sale of cigarettes upon which such tax has neither [not] been prepaid by the seller on behalf of the ultimate consumer nor precollected as part of the selling price of such cigarettes. Cigarettes upon which the tax has not been prepaid and precollected shall include unstamped packages of cigarettes, as well as specially stamped exempt packages if so authorized by the Commissioner of Taxation and Finance. Cigarettes upon which the tax has been paid shall, only in extraordinary circumstances or as specifically provided for in this Part and Part 77 of this Title, be sold for exempt purposes. Where the seller of such cigarettes or an exempt purchaser can establish to the satisfaction of the Department of Taxation and Finance that circumstances necessitated the sale or purchase of cigarettes upon which the tax had been paid and that such tax was borne by the seller or exempt purchaser, as the case may be, the department may refund the tax paid. No interest shall be paid by the department on any such refunds.

Section 5. A new paragraph (3) is added to subdivision (d) of section 76.1 of such regulations to read as follows:

(3) See section 76.6 of this Title for documentation requirements for exempt sales of cigarettes on qualified reservations.

Section 6. New section 76.6 is added to such regulations to read as follows:

Sec. 76.6 Sales of cigarettes on qualified reservations. (Tax Law, Secs. 471, 471-a, 471-e, and 475)

(a) "General." (1) Qualified Indians (as defined in subdivision (b) of this section) may purchase cigarettes for such qualified Indians' own use or consumption exempt from cigarette tax on their nations' or

tribes' qualified reservations. However, such qualified Indians purchasing cigarettes off their reservations or on another nation's or tribe's reservation, and non-Indians making cigarette purchases on an Indian reservation are not exempt from paying the cigarette tax when purchasing cigarettes within this state. Accordingly, all cigarettes sold on an Indian reservation to non-members of the nation or tribe or to non-Indians will be taxed, and evidence of such tax will be by means of an affixed cigarette tax stamp.

(2) In order to ensure an adequate quantity of cigarettes on Indian reservations which may be purchased by qualified Indians exempt from the cigarette tax, the Department of Taxation and Finance will provide Indian nations and tribes within this state with Indian tax exemption coupons as set forth in this section. A reservation cigarette seller will be able to present such Indian tax exemption coupons to a wholesale dealer licensed under article 20 of the Tax Law in order to purchase stamped cigarettes exempt from the imposition of the cigarette tax. Qualified Indians may purchase cigarettes from a reservation cigarette seller exempt from the cigarette tax even though such cigarettes will have an affixed cigarette tax stamp.

(b) "Definitions."

(1) "Indian nation or tribe" for purposes of this Part means one of the following New York State Indian nations or tribes: Cayuga Indian Nation of New York, Oneida Indian Nation of New York, Onondaga Nation of Indians, Poospatuck or Unkechauge Nation, St. Regis Mohawk, Seneca Nation of Indians, Shinnecock Tribe, Tonawanda Band of Senecas and Tuscarora Nation of Indians.

(2) "Qualified Indian" for purposes of this Part means a person duly enrolled on the tribal rolls of one of the Indian nations or tribes. In the case of the Cayuga Indian Nation of New York, such term shall include enrolled members of such Nation when such enrolled members purchase cigarettes on any Seneca reservation.

(3) "Qualified reservation" for purposes of this Part means (i) lands held by an Indian nation or tribe that is located within the reservation of that nation or tribe in the State; (ii) lands within the State over which

an Indian nation or tribe exercises governmental power and that are either “(a)” held by the Indian nation or tribe subject to restrictions by the United States against alienation, or “(b)” held in trust by the United States for the benefit of such Indian nation or tribe; or “(iii)” lands held by the Shinnecock Tribe or the Poospatuck (Unkechaug) Nation within their respective reservations. Any land that falls within category (i) or (ii) and which may be sold and replaced with other land in accordance with an Indian nation’s or tribe’s land claims settlement agreement with the State of New York (“i.e.,” land that enjoys a right of substitution), shall nevertheless be deemed to be subject to restriction by the United States against alienation.

(4) “Reservation cigarette seller” for purposes of this Part means a seller of cigarettes which is an Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells cigarettes within the boundaries of a qualified reservation.

(c) “Indian tax exemption coupons.”

(1) Indian tax exemption coupons shall be provided to the recognized governing body of each Indian nation or tribe to ensure that each Indian nation or tribe can obtain cigarettes upon which the tax will not be collected that are for the use or consumption by the nation or tribe or by the members of such nation or tribe. The Indian tax exemption coupons will be provided to the Indian nations or tribes on a quarterly basis for each of the four quarters beginning with the first day of December, March, June, and September. It is anticipated that the Indian nations or tribes will retain the amount of Indian tax exemption coupons they will need each quarter to purchase cigarettes for official nation or tribal use, and will distribute the remaining Indian tax exemption coupons to reservation cigarette sellers on such nations’ or tribes’ qualified reservations. Only Indian nations or tribes or reservation cigarette sellers on their qualified reservations may redeem such Indian tax exemption coupons pursuant to this section.

(2) The amount of Indian tax exemption coupons to be given to the recognized governing body of each

Indian nation or tribe shall be based upon the probable demand of the qualified Indians on such nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use.

(i) Probable demand shall be determined by reference to, among other data, the United States average cigarette consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected Indian nation or tribe.

(ii) In making a determination of probable demand, the department shall take into consideration any evidence submitted by such recognized governing body relating to such probable demand (e.g., a verifiable record of previous sales to qualified Indians or other statistical evidence) and/or relating to the amount needed for such nation's or tribe's official use.

(3) Each Indian tax exemption coupon shall consist of a retention portion for a wholesale dealer's recordkeeping purposes and a redemption portion for a wholesale dealer's submission to the department when claiming a refund as set forth in subdivision (e) of this section, and shall contain the following information:

- (i) the identity of the Indian nation or tribe to which it is issued;
 - (ii) the identity and the quantity of the product for which it is issued;
 - (iii) the date of issuance and the date of expiration; and
 - (iv) any other information as the commissioner may deem appropriate.
- (d) "Tax exempt purchases."

(1) An Indian nation or tribe may purchase cigarettes for its own official use or consumption from a wholesale dealer licensed under article 20 of the Tax Law without payment of the cigarette tax to the extent that the Indian nation or tribe provides such wholesale dealer with Indian tax exemption coupons entitling the Indian nation or tribe to purchase such quantities of cigarettes as allowed for on each Indian tax exemption coupon without paying the cigarette tax.

(2) A qualified Indian may purchase cigarettes for his or her own use or consumption without payment of the cigarette tax, provided that the qualified Indian makes such purchase on his or her qualified reservation.

(3) A reservation cigarette seller may purchase cigarettes for resale without payment of the cigarette tax from a wholesale dealer licensed under article 20 of the Tax Law:

(i) provided that such reservation cigarette seller brings such cigarettes or causes them to be delivered onto a qualified reservation for resale on such reservation;

(ii) to the extent that such reservation cigarette seller provides such wholesale dealer with Indian tax exemption coupons entitling the reservation cigarette seller to purchase such quantities of cigarettes as allowed for on each Indian tax exemption coupon without paying the cigarette tax; and

(iii) provided that such cigarettes are affixed with a cigarette tax stamp.

(4) A wholesale dealer shall not collect the cigarette tax from any purchaser to the extent the purchaser gives such wholesale dealer Indian tax exemption coupons entitling the purchaser to purchase such quantities of cigarettes as allowed for on each such Indian tax exemption coupon without paying the cigarette tax.

(e) "Refunds." A wholesale dealer licensed under article 20 of the Tax Law who has one or more Indian tax exemption coupons may file a claim for refund as provided for in Part 77 of this Title with respect to any cigarette tax previously paid on cigarettes it sold without collecting the tax because it accepted an Indian tax exemption coupon from its purchaser pursuant to this Part.

(f) "Tax agreements with Indian nations or tribes." If an Indian nation or tribe enters into an agreement with New York State regarding the sale and distribution of cigarettes on the nation's or tribe's qualified reservation, the terms of such agreement shall take precedence over the provisions of this Part, and the sale or distribution, including transportation, of any cigarettes to the nation's or tribe's qualified reservation shall be in accordance with the provisions of such agreement.

Section 7. Paragraph (1) of subdivision (a) of section 77.1 of such regulation is amended to read as follows:

(a)(1) Whenever any cigarettes upon which stamps evidencing the payment of the cigarette tax have been placed on packages thereof:

(i) are sold and shipped into another state or other identified location outside of New York State for sale or use in such other state or location;[or]

(ii) are destroyed; or

(iii) are sold to an Indian nation or tribe or to a reservation cigarette seller as set forth in section 76.6 of this Title where an Indian tax exemption coupon is presented as set forth in such section 76.6;

a dealer, including a licensed cigarette agent, shall be entitled to a refund of the actual amount of cigarette tax which was paid and borne by the dealer with respect to such cigarettes, provided an application for refund is timely filed. Further, whenever any cigarettes upon which stamps have been placed on packages thereof:

[iii] (iv) become unfit for use and consumption; or

[iv] (v) become unsalable;

a dealer who is a licensed agent shall, upon timely application, be entitled to such a refund. Accordingly, a retail dealer and a wholesale dealer may be entitled to a refund of the face value of the stamps, including the city tax in the case of joint stamps. Where the dealer is a licensed cigarette agent and has purchased and affixed said stamps, such agent may be entitled to a refund of the face value of the stamps, less any commissions (except in the case of subparagraph (iii) of this paragraph where such agent may be entitled to a refund of the face value of the stamps) allowed the agent pursuant to article 20 of the Tax Law and the Administrative Code of the City of New York. In the event that an agent cannot establish the date of purchase of such stamps for purposes of ascertaining the applicable rate or rates of commission to be used in computing the net amount of

refund due, the rate or rates in effect at the time of such sale, destruction or determination of unsuitability may be used, with the prior consent of the Department of Taxation and Finance.

Section 8. Paragraph (3) of subdivision (b) of section 77.1 of such regulations is amended to read as follows:

(3) Any seller or exempt purchaser who makes an application for a refund pursuant to this subdivision, except in the case of subparagraph (iii) of paragraph (1) of subdivision (a) of this section, must obliterate or otherwise void the cigarette tax stamps on all packages of cigarettes which are the subjects of such claim.

Section 9. Section 89.1 of Article 3 of Subchapter I of Chapter I of such regulations is amended to read as follows:

General. (Tax Law, Secs. 471-b, 471-c, and 471-e)

(a) Except as otherwise provided in this Subchapter or the Tax Law, all tobacco products;

[(a)] (1) possessed in New York State by any person for sale; or

[(b)] (2) used in New York State by any person;

are subject to the tobacco products tax imposed pursuant to article 20 of such law. The tobacco products tax is imposed at the rate of 37 percent of the wholesale price of the tobacco product.

(b) Where tobacco products subject to the tobacco products tax have been purchased on or from a qualified reservation, as such term is defined in section 76.6 of this Title, the purchaser is not relieved of his or her liability to pay the tax due. Within twenty-four hours after liability for the tax accrues, the purchaser shall file a tobacco products use tax return with the Department of Taxation and Finance together with a remittance of the tax due and not collected.

Section 10. Subdivision (f) of Section 412.1 of Article 1 of Subchapter A of Chapter III of such regulations is amended to read as follows:

(f) Whenever motor fuel is subject to tax pursuant to this Title, such tax is required to be passed through to any purchaser of such fuel. Whenever such motor fuel is sold for purposes of resale, the seller must give the purchaser a certification of tax payment when the fuel is delivered. (See sections 412.3 and 412.4 of this Part for information with respect to the certifications of tax payment.) A seller of motor fuel is relieved of the requirement to pass through the tax if it receives from the purchaser:

(1) a properly completed certification (as prescribed by the Department of Taxation and Finance) indicating that the purchaser is a duly registered or licensed distributor of, or dealer in, motor fuel in another state or province of a foreign country, and will immediately export the motor fuel being purchased to an identified location in that state or province for the purpose of selling such motor fuel; or

(2) one or more Indian tax exemption coupons as set forth in section 414.6 of this Title.

Section 11. A new paragraph (5) is added to subdivision (a) of section 414.1 of such regulations to read as follows:

(5) In accordance with section 414.6 of this Title, Indian nations or tribes, qualified Indians, and reservation motor fuel sellers located on qualified reservations, as these terms are defined by such section 414.6 of this Title, may purchase motor fuel upon which the seller has not passed through the motor fuel tax imposed pursuant to article 12-A of the Tax Law.

Section 12. Paragraph (2) of subdivision (c) of section 414.1 of such regulations is amended to read as follows:

(2) (i) In order to make purchases of motor fuel upon which the seller has not passed through the motor fuel tax, a purchaser must:

“(a)” furnish to the seller a properly completed certificate to the effect that the purchaser is entitled to acquire motor fuel upon which the tax has not been passed through, on a form which the Department of

Taxation and Finance has prescribed for such purpose, together with such other information as the department may require;

“(b)” furnish to the seller a government purchase contract, purchase order or the appropriate exemption document, where the purchaser is a governmental entity described in subparagraphs (a)(2)(i) and (ii) of this section; [or]

“(c)” purchase such motor fuel, with a valid credit card issued by an oil company, pursuant to the provisions of sections 414.4 and 414.5 of this Part, where the purchaser is an individual or entity described in paragraph (a)(4) of this section; or

“(d)” purchase such motor fuel in accordance with the procedures described in section 414.6 of this Title, where the purchaser is an individual or entity described in paragraph (a)(5) of this section.

(ii) “(a)” When a person sells motor fuel without passing through to the purchaser the motor fuel tax as provided for in this Part, as proof of the exemption the seller must obtain from the purchaser and retain in his files either:

“(1)” a properly completed certificate to the effect that the purchaser is entitled to acquire motor fuel upon which the tax has not been passed through; or

“(2)” a government purchase contract or order, or the appropriate exemption document, where the purchaser is a governmental entity described in subparagraphs (a)(2)(i) and (ii) of this section.

“(b)” In the case of a credit card sale of motor fuel to a purchaser described in paragraph (a)(4) of this section, as proof of the exemption the United States Department of State or the American Institute in Taiwan must certify to an oil company that an individual or entity is in fact exempt from tax. Such oil company must retain in its files a copy of said certification. On such certification and the issuance of an authorized credit card, the oil company will bill the individual or entity, exclusive of the taxes from which such purchaser is

exempt. (See sections 414.4 and 414.5 of this Part.)

“(c)” In the case of a sale of motor fuel to a purchaser who is an Indian nation or tribe or a reservation motor fuel seller located on a qualified reservation, as these terms are defined by section 414.6 of this Title, an Indian tax exemption coupon must be obtained from such purchaser as set forth in such section 414.6 of this Title.

Section 13. A new paragraph (3) is added to subdivision (d) of section 414.1 of such regulations to read as follows:

(3) See Section 414.6 of this Title for documentation requirements for exempt sales of motor fuel on qualified reservations.

Section 14. A new section 414.6 is added to such regulations to read as follows:

Sec. 414.6. Sales of motor fuel on qualified reservations. (Tax Law, Secs. 284(1), 284-e, and 289-c)

(a) “General.” (1) Qualified Indians (as defined in subdivision (b) of this section) may purchase motor fuel for such qualified Indians’ own use or consumption exempt from the motor fuel tax on their nations’ or tribes’ qualified reservations. However, such qualified Indians purchasing motor fuel off their reservations or on another nations’s or tribe’s reservation, and non-Indians making motor fuel purchases on an Indian reservation are not exempt from paying the motor fuel tax when purchasing motor fuel within this state. Accordingly, all motor fuel sold on an Indian reservation to non-members of the nation or tribe or to non-Indians will be taxed.

(2) In order to ensure an adequate quantity of motor fuel on Indian reservations which may be purchased by qualified Indians exempt from the motor fuel tax, the Department of Taxation and Finance will provide Indian nations and tribes within this state with Indian tax exemption coupons as set forth in this section. A reservation motor fuel seller will be able to present such Indian tax exemption coupons to a distributor

licensed under article 12-A of the Tax Law in order to purchase motor fuel exempt from the imposition of the motor fuel tax. Qualified Indians may purchase motor fuel from a reservation motor fuel seller exempt from the motor fuel tax even though the motor fuel tax on such motor fuel will have been previously paid or assumed by, or passed through to such distributor.

(b) “Definitions.”

(1) “Indian nation or tribe” for purposes of this Part means one of the following New York State Indian nations or tribes: Cayuga Indian Nation of New York, Oneida Indian Nation of New York, Onondaga Nation of Indians, Poospatuck or Unkechauge Nation, St. Regis Mohawk, Seneca Nation of Indians, Shinnecock Tribe, Tonawanda Band of Senecas and Tuscarora Nation of Indians.

(2) “Qualified Indian” for purposes of this Part means a person duly enrolled on the tribal rolls of one of the Indian nations or tribes. In the case of the Cayuga Indian Nation of New York, such term shall include enrolled members of such Nation when such enrolled members purchase motor fuel on any Seneca reservation.

(3) “Qualified reservation” for purposes of this Part means (i) lands held by an Indian nation or tribe that is located within the reservation of that nation or tribe in the State; (ii) lands within the State over which an Indian nation or tribe exercises governmental power and that are either “(a)” held by the Indian nation or tribe subject to restrictions by the United States against alienation, or “(b)” held in trust by the United States for the benefit of such Indian nation or tribe; or “(iii)” lands held by the Shinnecock Tribe or the Poospatuck (Unkechauge) Nation within their respective reservations. Any land that falls within category (i) or (ii) and which may be sold and replaced with other land in accordance with an Indian nation’s or tribe’s land claims settlement agreement with the State of New York (“i.e.,” land that enjoys a right of substitution), shall nevertheless be deemed to be subject to restriction by the United States against alienation.

(4) “Reservation motor fuel seller” for purposes of this Part means a seller of motor fuel which is an

Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells motor fuel within the boundaries of a qualified reservation.

(c) "Indian tax exemption coupons."

(1) Indian tax exemption coupons shall be provided to the recognized governing body of each Indian nation or tribe to ensure that each Indian nation or tribe can obtain motor fuel upon which the tax will not be collected that is for the use or consumption by the nation or tribe or by the members of such nation or tribe. The Indian tax exemption coupons will be provided to the Indian nations or tribes on a quarterly basis for each of the four quarters beginning with the first day of December, March, June, and September. It is anticipated that the Indian nations or tribes will retain the amount of Indian tax exemption coupons they will need each quarter to purchase motor fuel for official nation or tribal use, and will distribute the remaining Indian tax exemption coupons to reservation motor fuel sellers on such nations' or tribe's qualified reservations. Only Indian nations or tribes or reservation motor fuel sellers on their qualified reservations may redeem such Indian tax exemption coupons pursuant to this section.

(2) The amount of Indian tax exemption coupons to be given to the recognized governing body of each Indian nation or tribe shall be based upon the probable demand of the qualified Indians on such nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use.

(i) Probable demand shall be determined by reference to, among other data, the United States average motor fuel consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected Indian nation or tribe.

(ii) In making a determination of probable demand, the department shall take into consideration any evidence submitted by such recognized governing body relating to such probable demand (e.g., a verified record of previous sales to qualified Indians or other statistical evidence) and/or relating to the amount needed

for such nations's or tribe's official use.

(3) Each Indian tax exemption coupon shall consist of a retention portion for a distributor's recordkeeping purposes and a redemption portion for a distributor's submission to the department when claiming a refund as set forth in paragraph (1) of subdivision (e) of this section, and shall contain the following information:

- (i) the identity of the Indian nation or tribe to which it is issued;
 - (ii) the identity and the quantity of the product for which it is issued;
 - (iii) the date of issuance and the date of expiration; and
 - (iv) any other information as the commissioner may deem appropriate.
- (d) "Tax exempt purchases."

(1) An Indian nation or tribe may purchase motor fuel for its own official use or consumption from a distributor registered under article 12-A of the Tax Law without payment of the motor fuel tax to the extent that the Indian nation or tribe provides such distributor with Indian tax exemption coupons entitling the Indian nation or tribe to purchase such quantities of motor fuel as allowed for on each Indian tax exemption coupon without paying the motor fuel tax.

(2) A qualified Indian may purchase motor fuel for his or her own use or consumption without payment of the motor fuel tax, provided that the qualified Indian makes such purchase on his or her qualified reservation.

(3) A reservation motor fuel seller may purchase motor fuel for resale without payment of the motor fuel tax from a distributor registered under article 12-A of the Tax Law:

(i) provided that such reservation motor fuel seller brings such motor fuel or causes it to be delivered onto a qualified reservation for resale on such reservation; and

- (ii) to the extent that such reservation motor fuel seller provides such distributor with Indian tax

exemption coupons entitling the reservation motor fuel seller to purchase such quantities of motor fuel as allowed for on each Indian tax exemption coupon without paying the motor fuel tax.

(4) A distributor shall not collect or pass through, as the case may be, the motor fuel tax from any purchaser to the extent the purchaser gives such distributor Indian tax exemption coupons entitling the purchaser to purchase such quantities of motor fuel as allowed for on each such Indian tax exemption coupon without paying the motor fuel tax.

(e) "Refunds and credits." (1) A distributor registered under article 12-A of the Tax Law who has one or more Indian tax exemption coupons may file a claim for refund or credit as provided for in Part 415 of this Title with respect to any motor fuel tax it previously paid, assumed, or has had passed through to it on motor fuel it sold without passing through the tax because it accepted an Indian tax exemption coupon from its purchaser.

(2) A distributor of motor fuel must report motor fuel sold to an Indian nation or tribe or a reservation motor fuel seller in its monthly return of tax on motor fuel and may deduct the quantity so sold in arriving at the net taxable gallonage to the extent such fuel was sold without passing through to such purchasers the motor fuel tax.

(f) "Tax agreements with Indian nations or tribes." If an Indian nation or tribe enters into an agreement with New York State regarding the sale and distribution of motor fuel on the nation's or tribe's qualified reservation, the terms of such agreement shall take precedence over the provisions of this Part, and the sale or distribution, including transportation, of any motor fuel to the nation's or tribe's qualified reservation shall be in accordance with the provisions of such agreement.

Section 15. Paragraph (2) of subdivision (c) of section 415.1 of such regulations is amended to read as follows:

(2)(i) Except as provided for in [subparagraph] subparagraphs (ii) and (iii) of this paragraph, all refunds and reimbursements claimed with reference to motor fuel purchased or sold during any calendar month must be included in a single application and a claimant may include two or more months in a single timely application.

(ii) A distributor of motor fuel selling motor fuel to a governmental entity without passing through the motor fuel tax (as provided in article 12-A of the Tax Law and section 414.2 of this Title), may apply for a refund of the tax on these sales on a weekly, in addition to a monthly, basis. If the period covered by the refund application is a period of less than one month, the period must begin and end in the same calendar month.

(iii) A distributor of motor fuel selling motor fuel to an Indian nation or tribe or to a reservation motor fuel seller without passing through the motor fuel tax (as provided in section 414.6 of this Title), may apply for a refund of the tax on these sales on a weekly, in addition to a monthly, basis.

Section 16. Subdivision (a) of section 416.5 of such regulations is amended to read as follows:

(a) Any owner of a filling station who willfully and knowingly has in its custody, possession or under its control any motor fuel upon which the tax imposed pursuant to article 12-A of the Tax Law has not been assumed or paid by a distributor registered as such under article 12-A of the Tax Law or has not been passed through to the owner of the filling station as required by the Tax Law is liable for a penalty in the amount of twice the tax not assumed or paid or passed through. Such penalty may be determined by the department within three years of the date when such motor fuel came into the custody or possession, or under the control, of the owner of the filling station. The Department of Taxation and Finance may, of its own motion, abate any part of such penalty determined to be excessive or erroneous. Nothing in this subdivision shall prohibit a reservation motor fuel seller from having in its custody, possession, or under its control any motor fuel that it has purchased in accordance with the procedures described in section 414.6 of this Title.

Section 17. A new Part 431 of Article 2 of Subchapter A of Chapter III is added to such regulations to read as follows:

Tax exempt sales of diesel motor fuel to qualified Indians and Indian nations or tribes on qualified Indian reservations.

Sec. 431.1 Sales of diesel motor fuel on qualified reservations. (Tax Law, Secs. 282-a(1), 286-a, 289-c, and 301-a(1))

(a) "General." (1) Qualified Indians (as defined in subdivision (b) of this section) may purchase diesel motor fuel for such qualified Indians' own use or consumption exempt from the diesel motor fuel tax imposed by article 12-A of the Tax Law on their nations' or tribes' qualified reservations. However, such qualified Indians purchasing diesel motor fuel off their reservations or on another nations's or tribe's reservation, and non-Indians making diesel motor fuel purchases on an Indian reservation are not exempt from paying the diesel motor fuel tax when purchasing diesel motor fuel within this state. Accordingly, all diesel motor fuel sold on an Indian reservation to non-members of the nation or tribe or to non-Indians will be taxed.

(2) In order to ensure an adequate quantity of diesel motor fuel on Indian reservations which may be purchased by qualified Indians exempt from the diesel motor fuel tax, the Department of Taxation and Finance will provide Indian nations and tribes within this state with Indian tax exemption coupons as set forth in this section. A reservation diesel motor fuel seller will be able to present such Indian tax exemption coupons to a distributor licensed under article 12-A of the Tax Law in order to purchase diesel motor fuel exempt from the imposition of the diesel motor fuel tax. Qualified Indians may purchase diesel motor fuel from a reservation diesel motor fuel seller exempt from the diesel motor fuel tax even though the diesel motor fuel tax on such diesel motor fuel will have been previously paid or assumed by, or passed through to such distributor.

(3) The provisions of this Part shall not apply to diesel motor fuel which would otherwise be excluded

from the diesel motor fuel tax, imposed by section 282-a of the Tax Law, by reason of the enumerated exclusions set forth in paragraph (b) of subdivision (3) of such section.

(b) “Definitions.”

(1) “Indian nation or tribe” for purposes of this Part means one of the following New York State Indian nations or tribes: Cayuga Indian Nation of New York, Oneida Indian Nation of New York, Onondaga Nation of Indians, Poospatuck or Unkechauge Nation, St. Regis Mohawk, Seneca Nation of Indians, Shinnecock Tribe, Tonawanda Band of Senecas and Tuscarora Nation of Indians.

(2) “Qualified Indian” for purposes of this Part means a person duly enrolled on the tribal rolls of one of the Indian nations or tribes. In the case of the Cayuga Indian Nation of New York, such term shall include enrolled members of such Nation when such enrolled members purchase diesel motor fuel on any Seneca reservation.

(3) “Qualified reservation” for purposes of this Part means (i) lands held by an Indian nation or tribe that is located within the reservation of that nation or tribe in the State; (ii) lands within the State over which an Indian nation or tribe exercises governmental power and that are either “(a)” held by the Indian nation or tribe subject to restrictions by the United States against alienation, or “(b)” held in trust by the United States for the benefit of such Indian nation or tribe; or “(iii)” lands held by the Shinnecock Tribe or the Poospatuck (Unkechauge) Nation within their respective reservations. Any land that falls within category (i) or (ii) and which may be sold and replaced with other land in accordance with an Indian nation’s or tribe’s land claims settlement agreement with the State of New York (“i.e.,” land that enjoys a right of substitution), shall nevertheless be deemed to be subject to restriction by the United States against alienation.

(4) “Reservation diesel motor fuel seller” for purposes of this Part means a seller of diesel motor fuel which is an Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells diesel motor fuel within the boundaries of a qualified reservation.

(c) "Indian tax exemption coupons."

(1) Indian tax exemption coupons shall be provided to the recognized governing body of each Indian nation or tribe to ensure that each Indian nation or tribe can obtain diesel motor fuel upon which the tax will not be collected that is for the use or consumption by the nation or tribe or by the members of such nation or tribe. The Indian tax exemption coupons will be provided to the Indian nations or tribes on a quarterly basis for each of the four quarters beginning with the first day of December, March, June, and September. It is anticipated that the Indian nations or tribes will retain the amount of Indian tax exemption coupons they will need each quarter to purchase diesel motor fuel for official nation or tribal use, and will distribute the remaining Indian tax exemption coupons to reservation diesel motor fuel sellers on such nations' or tribe's qualified reservations. Only Indian nations or tribes or reservation diesel motor fuel sellers on their qualified reservations may redeem such Indian tax exemption coupons pursuant to this section.

(2) The amount of Indian tax exemption coupons to be given to the recognized governing body of each Indian nation or tribe shall be based upon the probable demand of the qualified Indians on such nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use.

(i) Probable demand shall be determined by reference to, among other data, the United States weighted average diesel motor fuel consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected Indian nation or tribe.

(ii) In making a determination of probable demand, the department shall take into consideration any evidence submitted by such recognized governing body relating to such probable demand (e.g., a verifiable record of previous sales to qualified Indians or other statistical evidence) and/or relating to the amount needed for such nations's or tribe's official use.

(3) Each Indian tax exemption coupon shall consist of a retention portion for a distributor's

recordkeeping purposes and a redemption portion for a distributor's submission to the department when claiming a refund as set forth in paragraph (1) of subdivision (e) of this section, and shall contain the following information:

- (i) the identity of the Indian nation or tribe to which it is issued;
 - (ii) the identity and the quantity of the product for which it is issued;
 - (iii) the date of issuance and the date of expiration; and
 - (iv) any other information as the commissioner may deem appropriate.
- (d) "Tax exempt purchases."

(1) An Indian nation or tribe may purchase diesel motor fuel for its own official use or consumption from a distributor registered under article 12-A of the Tax Law without payment of the diesel motor fuel tax to the extent that the Indian nation or tribe provides such distributor with Indian tax exemption coupons entitling the Indian nation or tribe to purchase such quantities of diesel motor fuel as allowed for on each such Indian tax exemption coupon without paying the diesel motor fuel tax.

(2) A qualified Indian may purchase diesel motor fuel for his or her own use or consumption without payment of the diesel motor fuel tax, provided that the qualified Indian makes such purchase on his or her qualified reservation.

(3) A reservation diesel motor fuel seller may purchase diesel motor fuel for resale without payment of the diesel motor fuel tax from a distributor registered under article 12-A of the Tax Law:

(i) provided that such reservation diesel motor fuel seller brings such diesel motor fuel or causes it to be delivered onto a qualified reservation for resale on such reservation; and

(ii) to the extent that such reservation diesel motor fuel seller provides such distributor with Indian tax exemption coupons entitling the reservation diesel motor fuel seller to purchase such quantities of diesel motor

fuel as allowed for on each Indian tax exemption coupon without paying the diesel motor fuel tax.

(4) A distributor shall not collect or pass through, as the case may be, the diesel motor fuel tax from any purchaser to the extent the purchaser gives such distributor Indian tax exemption coupons entitling the purchaser to purchase such quantities of diesel motor fuel as allowed for on each such Indian tax exemption coupon without paying the diesel motor fuel tax.

(5) For purposes of this Part, nothing in this subdivision shall prohibit a reservation diesel motor fuel seller from having in its custody, possession, or under its control any diesel motor fuel that it has purchased in accordance with the procedures described herein.

(e) "Refunds and credits." (1) A distributor registered under article 12-A of the Tax Law who has one or more Indian tax exemption coupons may file a claim for refund or credit with respect to any diesel motor fuel tax it previously paid, assumed, or has had passed through to it on diesel motor fuel it sold without passing through the tax because it accepted an Indian tax exemption coupon from its purchaser.

(2) A distributor selling diesel motor fuel to an Indian nation or tribe or to a reservation diesel motor fuel seller without passing through the diesel motor fuel tax as set forth in subdivision (d) of this section may apply for a refund of the tax on these sales on a weekly or monthly basis.

(3) A distributor of diesel motor fuel must report diesel motor fuel sold to an Indian nation or tribe or a reservation diesel motor fuel seller in its monthly return of tax on diesel motor fuel and may deduct the quantity so sold in arriving at the net taxable gallonage to the extent such fuel was sold without passing through to such purchasers the diesel motor fuel tax.

(f) "Tax agreements with Indian nations or tribes." If an Indian nation or tribe enters into an agreement with New York State regarding the sale and distribution of diesel motor fuel on the nation's or tribe's qualified reservation, the terms of such agreement shall take precedence over the provisions of this Part, and the sale or

distribution, including transportation, of any diesel motor fuel to the nation's or tribe's qualified reservation shall be in accordance with the provisions of such agreement.

Section 18. A new Part 451 of Subchapter B of Chapter III is added to such regulations to read as follows:

Tax exempt automotive fuel sales to qualified Indians and Indian nations or tribes on qualified Indian reservations.

Sec. 451.1. "Sales on qualified Indian reservations." (Tax Law, Secs. 301-a(1) and 315(b))

In furtherance of the joint administration of the taxes imposed by article 12-A of the Tax Law and the taxes imposed by article 13-A of the Tax Law, the provisions of section 414.6 of this Title concerning sales of motor fuel on qualified Indian reservations and of section 431.1 of this Title concerning sales of diesel motor fuel on qualified Indian reservations apply to the payment and pass-through of petroleum business tax in the same manner and with the same force and effect as if the provisions of such sections had been incorporated in full into this Part, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant thereto, and with such other modifications as may be necessary to adapt the language of the provisions of sections 414.6 and 431.1 to the provisions of this Part.

Section 19. Subdivision (g) of section 531.6 of Subchapter A of Chapter IV of such regulations is relettered to subdivision (i) and new subdivisions (g) and (h) are added to read as follows:

(g) "Purchases of tangible personal property or services on qualified Indian reservations." Where property or services subject to the sales or compensating use tax have been purchased on or from a qualified reservation, as such term is defined in section 76.6 of this Title, the purchaser is not relieved of his or her liability to pay the tax due. The tax due and not collected must be paid by the purchaser directly to the Department of Taxation and Finance as set forth in subdivision (b) of this section.

(h) Notwithstanding any other provision of this Title, in lieu of filing reports and paying taxes within the 20-day period set forth in subdivision (b) of this section, the taxes may be reported and paid with such personal income tax forms or other tax forms as the Commissioner of Taxation and Finance deems appropriate. The purchaser should check the personal income tax and other such forms and instructions for the conditions and limitations applicable to reporting this tax on such forms to be sure that such purchaser is allowed and wishes to report this tax on such forms.

Section 20. Subdivision (f) of section 561.1 of such regulations is REPEALED.

Section 21. A new subdivision (d) is added to section 561.17 of such regulations to read as follows:

(d) “Sales on qualified Indian reservations.” The provisions of section 414.6 of this Title concerning sales of motor fuel on qualified Indian reservations apply to the prepayment of sales tax imposed on motor fuel pursuant to section 1102 of the Tax Law in the same manner and with the same force and effect as if the provisions of such section had been incorporated in full into this Part, except to the extent that any such provision is either inconsistent with a provision of section 1102 of the Tax Law or is not relevant thereto, and with such other modifications as may be necessary to adapt the language of the provisions of section 414.6 to the provisions of this Part.

Section 22. A new section 562.2 is added to such regulations to read as follows:

Section 562.2 Joint administration by the Department of Taxation and Finance of State and local sales and use, motor fuel and diesel motor fuel taxes. (Tax Law, section 1142(11))

(a) “General.” See section 1142(11) of the Tax Law and section 561.17 of this Title for joint administration provisions.

(b) “Sales on qualified Indian reservations.” The provisions of section 431.1 of this Title concerning sales of diesel motor fuel on qualified Indian reservations apply to the prepayment of sales tax imposed on

diesel motor fuel pursuant to section 1102 of the Tax Law in the same manner and with the same force and effect as if the provisions of such section had been incorporated in full into this Part, except to the extent that any such provision is either inconsistent with a provision of section 1102 of the Tax Law or is not relevant thereto, and with such other modifications as may be necessary to adapt the language of the provisions of section 431.1 to the provisions of this Part.

Section 23. A new subdivision (d) is added to section 564.1 of such regulations to read as follows:

(d) "Sales on qualified Indian reservations." The provisions of section 76.6 of this Title concerning sales of cigarettes on qualified Indian reservations apply to the prepayment of sales tax imposed on cigarettes pursuant to section 1103 of the Tax Law in the same manner and with the same force and effect as if the provisions of such section had been incorporated in full into this Part, except to the extent that any such provision is either inconsistent with a provision of section 1103 of the Tax Law or is not relevant thereto, and with such other modifications as may be necessary to adapt the language of the provisions of section 76.6 to the provisions of this Part.

Section 24. This rule will take effect on the date that the Notice of Adoption regarding such amendments is published in the *State Register*, and shall apply to tax periods commencing on or after December 1, 2003.

Andrew S. Eristoff
Executive Deputy Commissioner
of Taxation and Finance

Dated: Albany, New York
September 10, 2003