



Department of Taxation and Finance

Important:

The Franchise Tax on Certain Oil Companies was repealed, effective for tax years beginning on or after the first day of July, 1983, by Chapter 400 of the Laws of 1983. As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to the Franchise Tax on Certain Oil Companies.

For additional information concerning Article 13-A of the Tax Law, which was enacted by Chapter 400 of the Laws of 1983, see [Petroleum business tax](#).

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-81(5.3)C (Revised)
Corporation Tax
August 25, 1981

This memorandum supersedes memorandum TSB-M-81(5.3)C, dated August 25, 1981 which should be destroyed. The new material is underlined for quick reference.

1981 LEGISLATION

Franchise Tax on Oil Companies under Section 182-a of the Tax Law

Section 182-a was amended by Chapter 1043 of the Laws of 1981. That section imposes an annual franchise tax upon every oil company taxable in New York State.

The tax takes effect on July 1, 1981. A 1981 calendar year taxpayer will compute the tax and file a report for six months. A taxpayer whose fiscal year includes July 1, 1981 in its taxable year will be required to file a report and pay the tax under Section 182-a from July 1, 1981 until the end of the fiscal year.

An "Oil Company" means every corporation formed for or engaged in the business of importing petroleum or causing it to be imported (by a person other than a corporation subject to tax under Section 182-a) into New York State for sale in New York State and every corporation formed for or engaged in the business of extracting, producing, refining, manufacturing, or compounding petroleum.

For the purposes of this section, a corporation is engaged in the business of importing petroleum into New York State if it owns petroleum located outside New York State and ships or causes it to be shipped to a point within New York State for sale in New York State.

A corporation is engaged in the business of causing petroleum to be imported into New York State, if it purchases petroleum located outside New York for delivery into New York State from a seller of petroleum which is not subject to Section 182-a. The following sellers of petroleum are not taxable under this section:

1. Sole Proprietor
2. Partnership
3. A corporation not taxable under Article 9-A
4. Corporations taxable under Article 9 Sections 183, 184, 185, or 186
5. A corporation principally engaged in selling fuel oil used for residential purposes.

The following are examples of corporations which are no longer taxable under the amended Section 182-a.

1. ABC Service Station, Inc. sells a brand name gasoline. All of the gasoline is delivered by its supplier which is a major oil company which is taxable in New York State. ABC Service Station, Inc. is NOT taxable under Section 182-a.
2. Middleman Heating Oil, Inc. sells fuel oil and gasoline at both retail and wholesale levels. Its sales of residential fuel oil represent 40% of its total gross receipts. All petroleum products are picked up or delivered from the New York terminals of its suppliers which are "oil companies." Middleman Heating Oil, Inc. is NOT taxable under Section 182-a.
3. DEF Petroleum, Inc. is a wholesaler. It buys all of its petroleum products from one major oil company which is taxable in New York State. Almost all of its purchases are picked up at the New York terminal of its supplier. However, it occasionally, (once or twice during its taxable year), must go to its supplier's Massachusetts terminal to pick up petroleum. DEF is billed by the supplier from its regional office for all purchases. DEF Petroleum, Inc. is NOT taxable under Section 182-a.

The following are examples of corporations which will continue to be taxable under Article 9, Section 182-a.

1. Major Oil Company, Inc. brings its own petroleum into New York State and stores it at its own terminal until sold. Major Oil Company, Inc. IS taxable under Section 182-a.
2. XYZ Co., Inc. purchases some of its petroleum from Major Oil Company, Inc. (See above) However, it also buys from Smith and Jones Oil of New Jersey which is a partnership operating in New Jersey. XYZ Co., Inc. IS taxable under Section 182-a.
3. I.D.P. Refiner, Inc. buys crude oil on the spot market and refines it in New York State. I.D.P. Refiner, Inc. IS taxable under Section 182-a.

For purposes of Section 182-a, petroleum shall mean crude oil, plant condensate, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, petrochemical feedstocks, distillate fuel, residual oil, and liquified or liquifiable gases, such as butane, ethylene, or propane. A corporation will not be considered an oil company for purposes of Section 182-a if it is a corporation which is principally engaged in selling fuel oil (excluding diesel motor fuel) used for residential purposes.

Any corporation taxable under Section 183, 184, 185 or 186 of Article 9 of the Tax Law is not subject to tax under Section 182-a.

The tax is three quarters of 1% (.0075) of the allocated adjusted gross receipts from sales of petroleum of the "Oil Company" or \$250.00, whichever is higher.

Total gross receipts from sales of petroleum are all receipts from sales of petroleum (within and without the United States) whether in cash, credits or property of any kind or nature, without deduction for the cost of the property sold, the cost of materials used, labor, services or other costs, interest or discount paid, or any other expense.

Taxes on the sales of petroleum which are imposed directly on the purchaser are deductible from the total gross receipts from sales of petroleum in arriving at the taxable gross receipts from the sales of petroleum. The following taxes imposed on the purchaser are excluded in determining taxable gross receipts subject to the Section 182-a tax:

1. State and local sales taxes.
2. State tax on motor fuel.
3. State tax on diesel fuel.
4. Federal tax on diesel fuel.

The federal tax on motor fuel is imposed on the distributor and, therefore, is included in computing taxable gross receipts.

Gross receipts from sales of petroleum are receipts from sales of petroleum less:

1. Receipts from any sale of fuel oil (excluding diesel motor fuel) or liquified or liquifiable gases (except when sold in containers of less than 100 lbs.) used for residential purposes. It shall be presumed that no receipts are receipts received by reason of any sale of fuel oil (excluding diesel motor fuel) or liquified or liquifiable gases (except when sold in container of less than 100 lbs.) used for residential purposes unless the purchaser furnishes the "Oil Company" with a residential use certificate, Form CT-182-a-H and Form CT-182-a-H/E. If the "Oil Company" is not provided with a required residential use certificate from an individual, partnership, or other entity that is not taxable under Article 9-A of the Tax Law then the "Oil Company" can estimate the amount of sales of petroleum for residential use from these purchasers. However, the "Oil Company" must retain supporting documentation that will verify the estimate.

2. Receipts from any sale for resale to a purchaser which is an "Oil Company" subject to tax under Section 182-a of the Tax Law. It shall be presumed that no receipts are receipts from a sale for resale to such a purchaser, unless the purchaser furnishes the "Oil Company" with a resale certificate, Form CT-182-a-R.

3. Receipts from sales of petroleum made or delivered on or after July 1, 1981, between an oil company as defined by Section 182-a and New York State or any of its agencies, instrumentalities or political subdivisions, provided that such sales are pursuant to:

- a. any contract awarded or entered into prior to July 11, 1981.

OR

- b. a contract awarded or entered into after July 11, 1981 pursuant to a bid submitted prior to July 11, 1981.

Gross receipts from sales of petroleum are multiplied by the allocation percentage to determine allocated gross receipts from sales of petroleum. The allocation percentage is determined by dividing gross receipts from sales of petroleum where shipments are made to points within New York State, by gross receipts from sales of petroleum within and without New York State. Receipts from sales for resale and sales of fuel oil or liquified or liquifiable gases, used for residential purposes are INCLUDED in both the numerator and denominator in the computation of the allocation percentage. A sale of petroleum is considered to be shipped to a point in New York State if:

1. the petroleum is shipped via common carrier or via taxpayer's truck to a point in New York State designated on the bill of loading or other shipping document, regardless of the F.O.B. point,

OR

2. the petroleum is delivered to a purchaser at a point in New York State.

Example 1: A taxpayer has its oil refinery in New York State. A customer located in New Jersey comes into New York State in its own truck or one rented by it and picks up its purchase at the taxpayer's oil refinery. The receipts from such sales must be allocated to New York State.

An "Oil Company" taxable under Section 182-a of Article 9 of the Tax Law will be required to file Form CT-182-a. This form is required to be filed on or before the 15th day of the third month following the close of the taxable year. If an extension is needed, Form CT-182-a-E, Application for 3 Month Extension For Filing Tax Return for the Additional Franchise Tax on Oil Companies, should be filed.

A penalty is imposed by Section 182-a if a resale certificate (Form CT-182-a-R) or residential use certificate (Form CT-182- a-H and Form CT-182-a-H/E) is determined to be false or fraudulent. The company that furnished such a certificate to the oil company shall be subject to a penalty equal to 3% of the gross receipts which would have been taxable if such certificate had not been furnished.

If a purchaser fails to provide an "Oil Company" or other supplier with a residential use certificate or provides a certificate which understates the amount of fuel oil (excluding diesel motor fuel) or liquified or liquifiable gases (except when sold in containers of less than 100 lbs.) used for residential purposes, than a penalty of \$100 for each residential use certificate or for each certificate which understates the amount of fuel used for residents purposes shall be imposed on such purchaser. However, the total amount of this penalty may not exceed \$5,000 in any calendar year.

The franchise tax under Section 182-a must be added back in computing entire net income for Article 9-A. A line is provided on Schedule B of Form CT-3 for the addback of the franchise taxes that were deducted on the Federal return.

For taxable periods beginning on or after January 1, 1981, declarations of estimated tax and payments of estimated tax for Section 182-a of Article 9 of the Tax Law are required to be paid in two equal installments. The declaration and payment of estimated taxes will be filed on form CT-400.3 and are due as indicated below:

<u>If the Taxable Year ends on</u>	<u>Declaration and Payment of Estimated Tax Due Dates</u>	
	<u>Installments</u>	
	<u>First</u>	<u>Second</u>
Dec. 31, 1981	Sep. 15, 1981	Dec. 15, 1981
Jan. 31, 1982	Oct. 15, 1981	Jan. 15, 1982
Feb. 28, 1982	Nov. 15, 1981	Feb. 15, 1982
Mar. 31, 1982	Dec. 15, 1981	Mar. 15, 1982
Apr. 30, 1982	Jan. 15, 1982	Apr. 15, 1982
May 31, 1982	Feb. 15, 1982	May 15, 1982
Jun. 30, 1982	Mar. 15, 1982	Jun. 15, 1982
Jul. 31, 1982	Apr. 15, 1982	Jul. 15, 1982
Aug. 31, 1982	May 15, 1982	Aug. 15, 1982
Sep. 30, 1982	Jun. 15, 1982	Sep. 15, 1982
Oct. 31, 1982	Jul. 15, 1982	Oct. 15, 1982
Nov. 30, 1982	Aug. 15, 1982	Nov. 15, 1982

For taxable periods beginning on or after January 1, 1982, the declarations and payments of estimated tax will be made in three equal installments in accordance with Sections 197-a and 197-b of Article 9. See TSB-M-81(5.2)C (Revised) for additional information on the Declaration of Estimated Tax.

Declarations and payments of estimated tax for short period reports will have to be determined on an individual basis. For a determination, please write to:

Department of Taxation and Finance
 Technical Service Bureau
 Instructions and Interpretations Section
 Corporation Tax
 State Campus
 Albany, New York 12227
 Phone Number: (518)-457-2751

Forms may be obtained by calling 1-800-462-8100 or by writing to:

Forms Control Section
 Taxpayer Assistance Bureau
 State Campus
 Albany, New York 12227