NEW YORK STATE | Department of Taxation and Finance

Important

The information concerning the Petroleum Business Tax in this TSB-M is out-of-date and is provided only for historical purposes.

For the most up-to-date information about the Petroleum Business Tax including rates, see Petroleum business tax.

The TSB-M begins on page 2 below.

Insert added on July 18, 2024.

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

TSB-M-83 (22.1)C
Corporation Tax
June 8, 1984

1984 LEGISLATION

Amendments to Tax on Petroleum Businesses Under Article 13-A of the Tax Law

General

Chapters 67 and 68 of the Laws of 1984 amended Article 13-A to include a tax on petroleum consumed within New York State. This amendment extended the definition of a "petroleum business" to include every corporation and unincorporated business importing or causing to be imported* (by a person other than one which is subject to tax under this article) petroleum into this State for consumption by it in this State. Petroleum brought into this State in the ordinary fuel tank connecting with the engine of a motor vehicle propelled by the use of such petroleum, and to be used only in the operation thereof, shall not be deemed imported for consumption in this State, if not removed from such tank except as used in the propulsion of such engine. Motor vehicles are generally defined as vehicles designed for use on public roads. This would include cars, trucks, tractor/trailers and buses. Excluded would be construction equipment, farm vehicles, aircraft and vessels.

The amendment to Article 13-A became effective on April 1, 1984. A 1984 calendar year taxpayer should file a report and compute the tax due on its consumption of petroleum within this State for the 9 month period April 1, 1984 through December 31, 1984. A taxpayer whose fiscal year includes April 1, 1984 is required to file a report and compute the tax due on petroleum imported or caused to be imported and consumed by it within this State from April 1st, 1984 until the end of its fiscal year.

Consumption Tax Base

The Consumption Tax is imposed on the consideration given or contracted to be given by a petroleum business for petroleum that it imports or causes to be imported into New York State for consumption by it within New York State. The consideration given or contracted to be given for petroleum means the amount given or contracted to be given for such petroleum in cash or credits and the fair market value of property of any kind or nature given or contracted to be given for such petroleum.

Exempt Commercial Consumers

The following commercial consumers of petroleum are not considered petroleum businesses under Article 13-A (as amended). However, an Article 13-A taxpayer may, in order to recoup the Article 13-A tax imposed on it, increase the price of petroleum sold to entities which do not qualify as a "Petroleum Business", such as:

1. Exempt organizations as described in Section 1116(a) of Article 28 of the New York State Sales and Use Tax Law.

* Where the terms "causing" or "caused to be imported" appear in this memorandum, such terms shall be interpreted to be followed by the parenthetical statement "by a person other than one which is subject to tax under this Article."

2. A user of petroleum in New York State which does not import petroleum or cause petroleum to be imported into New York State.

Petroleum Defined

For purposes of Article 13-A, petroleum shall mean crude oil, plant condensate, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil and liquifiable gases such as butane, ethane or propane. Products not listed are taxable if used as or blended with a product that is taxable. For example, naphtha is taxable for Article 13-A purposes when used as aviation fuel.

Tax Rates

The tax rate is two and three-quarters percent (2 3/4%) of the gross purchases of petroleum of the commercial consumer where petroleum is imported or caused to be imported into this State for consumption within this State or $250, whichever is higher. The tax rate for Article 13-A filers is scheduled to decrease from 2 3/4% to 3/4 of 1% on 7/1/85. The following chart shows the correct rates based on date of purchase:

Purchases made from:	Tax Rate
April 1, 1984 to June 30, 1985	2 3/4%
July 1, 1985 and thereafter	3/4 of 1%

Consumers Subject to the Consumption Tax

For purposes of this Article, a purchaser who is not a seller, becomes subject to the commercial consumption tax where (1) the petroleum is located outside New York State and the purchaser imports the petroleum in its own vehicles for consumption within New York State; (2) title to the petroleum passes to the buyer outside New York State and the product is shipped into New York State other than in the buyer's vehicles (in both 1 and 2, the buyer owns petroleum outside New York, and is therefore subject to tax under Article 13-A); and (3) where petroleum is purchased outside New York State and subsequently delivered by the seller, a non-Article 13-A taxpayer, to such purchaser within New York State, the purchaser is considered to have caused the importation of petroleum into New York State.

Certificate of Consumption

Provision for the issuance of a Certificate of Consumption (CT-13-AC) to a supplier which is an Article 13-A taxpayer has been made in order to avoid double taxation under Article 13-A for petroleum imported or caused to be imported. When a Certificate of Consumption is provided with a "Commercial Consumer - Certificate of Taxability" and accepted in good faith by a petroleum business (seller), such petroleum business is permitted to reduce its taxable gross receipts by any amounts represented by the Certificate of Consumption. The commercial consumer is required to account for all petroleum for which it has issued a Certificate of Consumption, in addition to all other petroleum it may have imported or caused to have been imported.

NOTE: A Certificate of Consumption is considered proper only when given to an Article 13-A Taxpayer under the following circumstances. Title to the petroleum must pass outside New York State and the petroleum must be subsequently delivered into New York State by the seller or common or contract carrier, for consumption by the purchaser within New York State. The delivery must be made so that the seller is required to report the sale to New York as a New York sale pursuant to the destination rules under Article 9A, which are applicable to Article 13-A. If the delivery is made where the seller is not required to report the sale to New York as a New York sale pursuant to the destination rules under article 9-A, which are applicable to Article 13-A, the purchaser may not issue a Certificate of Consumption and the seller may not accept such Certificate for such transaction.

The commercial consumer (purchaser) must present to the seller a Certificate of Consumption (Form CT-13AC) which must have attached to it a copy of a "Commercial Consumer - Certificate of Taxability - Article 13-A" (Form AU-299.1). A "Commercial Consumer - Certificate of Taxability" will be issued only to those entities which qualify as a petroleum business and may be obtained from:

Chief of Oil Tax Audits
Room # 402-A
Building #9
State Campus
Albany, New York 12227

Examples of Transactions Which May or May Not be Taxable in Accordance With Article 13-A

Example 1

"A" Corporation purchases from "B", an out of state supplier, not taxable in New York, 100,000 gallons of petroleum, to be used in its factory boilers. The seller delivers the petroleum to "A" Corporation's tanks in New York. "A" Corporation is now taxable under Article 13-A, because it caused the petroleum to be imported into New York State. "A" should not issue a Certificate of Consumption to the supplier since such supplier is not an Article 13-A Taxpayer. "A" Corporation will be responsible to account for the purchase of the 100,000 gallons of petroleum plus all other petroleum it imports or causes to be imported.

Example 2

"C", an Article 13-A taxpayer located outside New York State sells petroleum to "D" (a manufacturer in New York State). The change of title takes place outside New York State. The product is subsequently delivered to "D's" facilities inside New York State by "E" (a common carrier). "D" is now a consuming taxpayer under Article 13-A, as amended, since it took title to petroleum outside New York State and subsequently imported the petroleum into this State for consumption by it within this State.

"C" is required to report the sale as a New York destination sale. "D" should then issue to "C" a properly executed Certificate of Consumption, so as to permit "C" to exclude the sale to "D" on "C's" gross receipts return, thereby avoiding double taxation on the same transaction.

Example 3

"F" is an Article 13-A taxpayer and a terminal operator who book transfers 100,000 gallons of gasoline to "G" in place at the terminal outside New York State. One month later "G" tells "F" to deliver the product to its New York plant. "F" is required to report the sale as it is a New York destination sale. "G" is now a taxpayer because it owned petroleum outside New York State and imported such petroleum into New York State for consumption in New York State. "G" should issue a Certificate of Consumption to "F", so as to permit "F" to exclude the sale on "F's" Gross Receipts Return and thereby avoiding double taxation on the same transaction.

Example 4

"H" is an Article 13-A taxpayer (as a seller) and delivers 30,000 gallons of gasoline in its own vehicles, to "I" in New York State from a location outside New York. The sale was made with title passing inside New York State. "I" does not become a taxpayer under Article 13-A because "I" did not import or cause the petroleum to be imported into the State by someone other than a 13-A taxpayer. "H" is responsible for the gross receipts tax on its sale to "I". Provision for issuance of a Certificate of Consumption would not apply in this example since "I" is purchasing from a taxable seller and title passes inside New York State.

Example 5

"J", an Article 13-A Taxpayer, delivers 30,000 gallons of gasoline to "K" in New York State from a New York State terminal. "J" is responsible for the gross receipts tax on it sale to "K" since "K" does not become an Article 13-A taxpayer by virtue of this transaction. Title to the gasoline passed inside New York State and was delivered by "J" a 13-A Taxpayer. No certificate of consumption should be given in the foregoing transaction.

Example 6

"L", an Article 13-A taxpayer, sells petroleum to "M". The petroleum is delivered by "L" in "L's" trucks to "M" in New York City, from a location outside New York State. "M" is a petroleum wholesaler who resells the product to "N", a user. "N" is not a taxpayer under 13-A, even though it is buying from a non-13-A taxpayer, because "N" did not import or cause the petroleum to be imported into this State. "M" is not a taxpayer, even though it purchased petroleum outside New York State, it did not import or cause the petroleum to be imported into York State by someone not subject to tax under Article 13-A. No Consumption Certificate can be given by "M" or "N". "L" is responsible for tax on its receipts from sales made to "M".

Example 7

"O" is a 13-A taxpayer who sells to "P", a user. The petroleum is shipped from "O's" terminal in New York State (using "O's" trucks) to "P's" factory in New York State. "P" does not become a 13-A taxpayer because "P" did not import or cause the petroleum to be imported into this State. "O" is responsible for the tax on its sales to "P". "P" cannot give "0" a Certificate of Consumption since title passed within New York State even though "0" is an Article 13-A Taxpayer.

Example 8

"S" is a 13-A taxpayer who sells 1,000,000 gallons of petroleum to "T" from its terminal located outside New York State, for delivery to "T's" facilities in New York State. Three weeks later "S" sells to "T" 500,000 gallons from its New York Terminal. In both sales title passed at the terminal when the trucks were loaded for delivery. "T" becomes a 13-A Taxpayer as a result of the first transaction (1,000,000 gallons). "S" is responsible for the tax on both sales. However, "T" can and should give "S" a Certificate of Consumption for the first purchase only, since it took possession (title) outside New York State and it imported the petroleum into New York for consumption in this State. "S" can reduce its taxable gross receipts by the 1,000,000 gallon sale but will be responsible for the tax on the second transaction in its entirety. "T" is required to account for the 1,000,000 gallons of petroleum as well as any other petroleum it may have imported or caused to be imported. It is not responsible to account for the 500,000 gallons in the second transaction since such petroleum was not imported by it or caused to be imported by it.

Example 9

"U" is a New York manufacturer who contracts with "V", an Article 13-A Taxpayer, to purchase 1 millon gallons of petroleum. The change of title takes place outside New York State. After two weeks "U" requests that "V" deliver the fuel (in "V's" Trucks) to "U's" New York facilities. Since "V" is taxable under Article 13-A, this sale would be treated as a New York sale for "V". Since "U" will consume the petroleum and since "U" imported the petroleum into New York, "U" is now a taxpayer under Article 13-A. "U" should give "V" a properly executed Certificate of Consumption, thus permitting "V" to exclude the 1 million gallon sale from its taxable gross receipts and thereby avoiding double taxation of the same transaction. The Article 13-A tax would now be the responsibility of "U" as a commercial consuming purchaser.

Taxability of Petroleum Imported or Caused to be Imported into New York State

All petroleum imported or caused to be imported into New York State is presumed to be consumed in New York State and subject to the tax under Article 13-A, unless demonstrated otherwise. Specific exclusions have been developed for specific industries.

Exclusions from Consideration Given or Contracted to be Given for Petroleum

Section 303, Subdivision (c)(1) and (2) provide exclusions from the Consumption Tax for (1) consideration given or contracted to be given for fuel oil (excluding diesel motor fuel) or liquefied or liquefiable gases (except when sold in containers of less than 100 pounds) used for residential purposes in this State and for (2) consideration given or contracted to be given for petroleum where such petroleum is sold by the petroleum business which gave such consideration, where the receipts received by such petroleum business from such sale are received within one taxable year of the time that such consideration is given, where such receipts are taxable as a sale pursuant to paragraph (i) of subdivision (a) of section 301 of Article 13-A. Thus, in 2, if a petroleum business imports or causes petroleum to be imported into this State for its own consumption, such that the petroleum is subject to the consumption tax, it may exclude that petroleum from the consumption tax to the extent that it subsequently sells the petroleum

since it would then become taxable for the amount sold as a seller under the Gross Receipts Tax. Also, where consideration is given for fuel used for residential purposes as outlined above, such amount shall be excluded for purposes of the Consumption Tax under Article 13-A, as amended.

Petroleum Purchased for Conversion to Alternative Forms of Energy

When a petroleum business imports or causes petroleum to be imported into this State for its own consumption, such that the petroleum is subject to the Consumption Tax, it may exclude from total consideration given or contracted to be given, only that portion which is directly used by it for residential purposes. The exclusion for residential use is allowable only when the Article 13-A taxpayer is the ultimate consumer and is using the petroleum for residential purposes. The exclusion for residential purposes is not to be used by a purchaser of petroleum that converts the petroleum to another form of energy which is subsequently sold to an ultimate consumer to be used for residential purposes.

For example, a public utility may not exclude, as a purchase for residential use, any portion from total consideration given or contracted to be given for petroleum purchased, which it converts to electricity, and such electricity is subsequently sold to an ultimate consumer, even though the ultimate consumer uses the electricity for residential purposes, such as heating a home.

Aviation Fuel Exclusion

Section 303, Subdivision (c)(3) of Article 13-A, as amended, provides an exclusion from the Consumption Tax for aviation fuel except aviation fuel consumed in New York State. Aviation fuel presumed to be consumed in New York State is:

1. For flights taking off from New York State and landing outside this State:

   a) Fuel consumed in taxiing from the loading gate to the take-off area and,

   b) Fuel consumed in take-off. "Take-off" is defined as the point the brake is released until such time as control of the flight transfers to the New York Air Route Traffic Control Center or other Regional Air Traffic Control Centers.

2. All fuel consumed in a flight that originates and terminates in New York.

Except as noted under 2 above, fuel used in aircraft descent and landing is not taxed.

A flight or a leg of a flight originating and terminating at points within New York is presumed to be allocable to New York at 100% for purposes of the consumption tax in that all air mileage is over New York. For example, a flight from LaGuardia to Albany would be deemed an intra-state flight in which all fuel consumed is allocable to New York, including fuel used in the descent and landing portions of the flight, even though some air miles may have been outside New York State. Loops (circling an airport) are considered consumed at the airport, even though the loop may cross state or national boundries. For an allocated flight, refer to Examples A and B below.

Subdivision (c)(3) of section three hundred three of Article 13-A (pertaining to exclusions from consideration given or contracted to be given for aviation fuel subject to the Consumption Tax) contains a fair and equitable clause with respect to attribution of aviation fuel presumed to be consumed in New York State. Where the Tax Commission decides that with respect to a certain petroleum business any of the methods prescribed do not fairly and equitably reflect aviation fuel consumed in this state, the Tax Commission shall prescribe methods of attribution which fairly and equitably reflect aviation fuel consumed in this State.

The intent of the Tax Commission is to utilize the authority granted to it by the above language to provide relief to a petroleum business subject to paragraph 3, subdivision c, section 300 of the Tax Law, in cases where the specific language of the section does not fairly and equitably reflect aviation fuel consumed in the State, resulting in hardship and unfairness to such business.

When a taxpayer petitions the Tax Commission for relief under the fair and equitable provision of Article 13-A, each request will be considered on its own merits, on a case by case basis. Any deviations from the statutory attribution of aviation fuel consumed in New York State must have the explicit approval of the Tax Commission. Once an alternative method of attribution has been established, such method may not be changed without the prior consent of the Tax Commission. Any alternative method of attribution of aviation fuel consumed in New York State should be set forth in a rider to form CT-13-A and must have attached to it a statement indicating that prior consent of the Tax Commission has been obtained for such change.

Example A - Allocation of Air Miles for Consumption Tax Purposes

Assume that an aircraft takes off from LaGuardia with a non-stop termination in Buffalo, New York. After take-off the aircraft is routed over New Jersey and Pennsylvania. A total of 1600 gallons of fuel was used from the gate to top of climb and from the start of the descent to the gate. A total of 7200 gallons of fuel was used from top of climb to beginning of descent (cruising fuel). It is proven that 50 percent of the actual cruising flight time was outside New York State. The taxpayer petitioned the Tax Commission and was granted relief under the fair and equitable provision of Article 13-A, to the extent that the taxpayer has been allowed to allocate fuel consumed based on the ratio that New York air bears to total air miles of that flight. The computation of fuel consumed subject to the tax under Article 13-A is made as follows:

	Total	Taxable
Fuel used in take-off and descent portions of this flight	1600 gallons	1600 gallons
Fuel used in actual cruising flight	7200 gallons	
Times allocation percentage (50%)		3600 gallons
Total fuel subject to consumption tax	8800 gallons	5200 gallons

Example B

An aircraft takes off from Cincinnati, Ohio, with a final destination of Boston, Massachusetts. The plane will stop in Syracuse and Albany, New York. The entire Syracuse to Albany leg of the flight will be within New York State.

The plane was required to circle before landing at Albany and Boston. A total of 10,000 gallons of fuel is on board at the beginning of the flight. The number of gallons of fuel consumed and deemed taxable on this flight are as follows:

	Total Fuel	Taxable Fuel
Take-off from Cincinnati(Included 440 gallons for take-off, as defined)	880	
Cruising fuel to Syracuse	2000	
Landing at Syracuse	150	
Taxiing:		
To gate	50	
From gate	150	150
Take-off from Syracuse(Included 440 gallons for take-off, as defined)	880	880
Cruising fuel to Albany	1600	1600
Loops at Albany	230	230
Landing at Albany	150	150
Taxiing:		
To gate	40	40
From gate	140	140
Take-off at Albany(Included 440 gallons for take-off, as defined)	1020	440
Cruising fuel to Boston	1260	
Loops at Boston	500	
Landing at Boston	150	
Total Fuel	9200	3630

An airline, taxable under the commercial consumption provision (of Article 13-A), will be required to report the number of take-offs from New York State, where the landings were outside New York State and all flights or legs of flights that took off and landed in New York, with respect to each general type of aircraft involved, and apply fuel consumption factors to each, in order to calculate the amount of fuel consumed within New York State that will be subject to tax under Article 13-A. Airlines will also be required to report the number of gallons of fuel imported into New York State from outside New York State, in the fuel tanks of the aircraft.

An airline should give a properly executed Certificate of Consumption together with a Certificate of Taxability form AU-299.1, "Commercial Consumer - Certificate of Taxability - Article 13-A" for its purchases from Article 13-A Taxpayers where title passes to the airline outside New York State. If the delivery is made where the seller is not required to report the sale to New York as a New York sale pursuant to the destination rules under Article 9-A, which are applicable to Article 13-A, the purchaser may not issue a Certificate of Consumption and the seller may not accept such Certificate for such transaction. The airline will then be taxable only on that portion of fuel consumed or deemed to be consumed within New York State as determined herein. Where title passes to the airline within New York State, 100% of such purchases from Article 13-A Taxpayers will be taxable to the Article 13-A selling petroleum business, even though portions of the fuel may be used outside New York State. A Certificate of Consumption may not be given in this transaction since title passed inside New York State.

When petroleum is purchased by a consuming airline from an Article 13-A taxpayer, and title to the petroleum passes to the purchaser within New York State, a "Certificate of Consumption" cannot be given for this type of transaction and the seller will be responsible for the gross receipts tax on its sale to the airline. Such tax will presumably be passed on to the purchasing airline as an increase in the price of the petroleum. At the same time, the consuming airline will be taxed as an Article 13-A consuming taxpayer on the portion of petroleum imported or caused to be imported into this State for consumption by it in this State, which is consumed or deemed to have been consumed in this State. Realizing that petroleum is fungible and that the aircraft may be fueled with petroleum purchased in New York State as well as imported petroleum, the following formula will be used for computing an airline's tax liability on its Article 13-A tax returns.

a = petroleum deemed consumed in New York per Section 303(c)(3)
b = petroleum imported for consumption other than in fuel tanks
c = petroleum imported for consumption in fuel tanks
d = petroleum purchased in New York that was not imported nor caused to be imported
t = petroleum subject to Consumption Tax

$$t = a \times \frac{b + c}{b + c + d}$$

t cannot exceed b + c

Application of the above formula is illustrated in the following example.

During its current taxable year a consuming airline purchased 60,000 gallons of fuel from sources outside New York State with title to the fuel passing outside New York State. Certificate(s) of Consumption were properly given. The airline also purchased 30,000 gallons of fuel from Article 13-A taxpayers with title passing to the airline within New York State. Certificates of Consumption cannot be given for the in-state purchase(s). The aircraft imported into New York State a total of 25,000 gallons in its fuel tanks. The airline had 40 flights during the year where the flight or a leg of a flight originated in New York and was destined to a point outside New York State. There were no intra-state flights. The fuel deemed consumed for this type of aircraft was 1,000 gallons per take-off. The total fuel subject to the consumption tax is calculated as follows:

a = 40,000 gallons (40 flights x 1,000 gallons per take-off)
b = 60,000 gallons
c = 25,000 gallons
d = 30,000 gallons

$$t = a \times \frac{b + c}{b + c + d}$$

$$t = 40{,}000 \times \frac{60{,}000 + 25{,}000}{60{,}000 + 25{,}000 + 30{,}000}$$

t = 40,000 x 73.913%
t = 29,565 gallons consumed and subject to the Consumption Tax

Trucking and Omnibus Exclusion

Special rules have been developed for any corporation and unincorporated business engaged in trucking or omnibus operations that is taxable under Article 13-A, and operates both within and without New York State. Where such consuming taxpayer's activities involve consumption of petroleum for trips (1) originating within this State and terminating outside the State or (2) originating within this State, traversing another State and then returning the petroleum subject to the Consumption Tax shall be calculated in accordance with the following formula. Where a trip is totally intra-state, such fuel consumed is deemed to be 100% taxable.

a = petroleum deemed consumed in New York (From MT-903 Section II, line 5)
b = petroleum imported for consumption other than in fuel tanks
c = petroleum purchased in New York that was not imported nor caused to be imported
t = petroleum subject to the Consumption Tax

$$t = a \times \frac{b}{b+c}$$

t cannot exceed b

Application of the above formula is illustrated in Example A, below.

NOTE: Petroleum imported or caused to be imported does not include petroleum brought into this State in the ordinary fuel tank of a motor vehicle.

Example A-Allocation of Fuel Consumed

During its taxable period a trucking company purchased 50,000 gallons of petroleum from an Article 13-A taxpayer, title having passed to the trucking company at the seller's New Jersey terminal. The petroleum was shipped (in the seller's trucks) to the trucking company's terminal located in New York State. The purchaser (trucking company) gave the Article 13-A seller a properly executed Certificate of Consumption along with a "Commercial Consumer - Certificate of Taxability Article 13-A", thus permitting the seller to reduce its taxable gross receipts for that sale. The trucking company also purchased 100,000 gallons of petroleum from Article 13-A taxpayers with title having passed inside New York State. No Certificates were given for those sales. The total fuel subject to the Consumption Tax is calculated as follows (based on amounts required to be shown on Form MT-903, Section II, line 5, columns (a) and (b) of 36,000 gallons).

a = 36,000 gallons
b = 50,000 gallons
c = 100,000 gallons

$$t = a \times \frac{b}{b+c}$$

$$t = 36{,}000 \times \frac{50{,}000}{50{,}000 + 100{,}000}$$

t = 36,000 x 33.333%

t = 12,000 gallons consumed and subject to the Consumption Tax

Example B-No Allocation of Fuel Consumed

Assume the same facts as in Example A above, except that all titles to the petroleum passed to the purchaser within New York State. In this instance, no Certificate of Consumption may be given. The seller (supplier) is responsible for tax on the full 150,000 gallons of petroleum. Petroleum consumed by the trucking company may not be allocated within and without New York State, since, by virtue of this transaction, the trucking company does not become an Article 13-A taxpayer. Title passed within the State and the purchaser is not deemed to have imported or caused the importation of the petroleum. The tax was imposed on the seller, and not the buyer, although the seller may pass the cost of the tax on to the buyer. Since the buyer did not pay the tax, he would have no claim for allocation.

NOTE: In the case of allocation of fuel deemed to have been consumed in New York State, figures from MT-903, Section II, line 5 should be used if the Article 13-A taxable period coincides with the period(s) for which the MT-903 is being filed. If the taxable periods do not coincide, fuel deemed to have been consumed in New York State must be computed in the same manner as in Section II of the MT-903, which is as follows:

a Total miles traveled in New York State
divided by
b Total miles traveled everywhere
c Result of a ÷ b
times
d Fuel used in operations everywhere
equals
e Fuel used in New York State (whole gallons only) (c x d)

Bunker Fuel Exclusion

Under Article 13-A, as amended, bunker fuel sold in New York is subject to tax. However, where the operator of the vessels imports or causes the petroleum (or bunkering fuel) to be imported into this State for consumption within this State, such petroleum may be allocated within and without New York State. In order to qualify for an allocation on its own Article 13-A tax returns, title to such petroleum must pass outside New York State and the petroleum must be delivered into New York State, or purchased from a Non-Article 13-A taxpayer, even if title is passing within New York State.

The purchaser must give to a Article 13-A seller a properly executed Certificate of Consumption along with a "Commercial Consumer - Certificate of Taxability Article 13A". The Article 13-A taxpayer may now reduce its taxable gross receipts by the amount(s) attributable to the Certificate(s) of Consumption" and the purchaser, now an Article 13-A Taxpayer, may allocate the fuel consumed. The operator of a vessel who is now a petroleum business is liable for the Gross Receipts Tax on all petroleum consumed in the operation of all its vessels in New York

State territorial waters and may only reduce its tax base for Article 13-A by allocating to outside New York State the portion of his gallonage which he imported or caused to be imported. He may not allocate any petroleum he did not import or cause to be imported.

NOTE: Fuel in the fuel tanks of the vessel is considered to be imported fuel. Fuel consumed in New York waters must be substantiated by the appropriate consumption records.

Double Exclusion

Under Section 303(d) of Article 13-A there are no double exclusions allowed. When any receipt is excluded from gross receipts from sales of petroleum pursuant to any one paragraph of Subdivision (b) of this Section, such exlcusion is not allowed as an exclusion covered by any other paragraph of this Subdivision. For example, a Certificate of Consumption and an Export Certificate may not be accepted for the same sale of petroleum. Further, under this Section, where any consideration given or contracted to be given for petroleum is excluded pursuant to any one paragraph of Subdivision (c) of Section 303, such consideration shall not be allowed as an exclusion pursuant to any other paragraph of this Subdivision. For example, an exclusion for residential use and an exclusion for commerical consumption cannot be taken on the same purchase of petroleum.

Declaration and Payments of Estimated Tax

If a petroleum business, taxable under Article 13-A of the Tax Law, as amended, determines or can reasonably expect that the tax under Article 13-A will exceed $1,000 for the taxable period, then it must file a declaration of estimated tax on form CT-400.1 and pay the estimated tax shown to be due thereon.

The declaration and payments of estimated tax made under Article 13-A shall be subject to the provisions as set forth in Sections 197-a and 197-b of Article 9, with the following exception. Taxpayers having a fiscal period ending on April 30, 1984, May 31, 1984, June 30, 1984, July 31, 1984 or August 31, 1984 shall not be required to file a declaration of estimated tax on form CT-400.1 and pay any estimated tax thereon for those, and for only those taxable years. This exception applies to only those taxpayers who became subject to the Consumption Tax under Article 13-A, as amended, effective 4/1/84. (Chapters 67 and 68 of the Laws of 1984).

Taxpayers whose first return covers a period of less than twelve months will be required to compute the mandatory 25% installment due on account of the subsequent taxable year on an annualized basis, as illustrated in TSB-M-83(22)C. Thus, annualization is required where the preceeding year's tax was based on a period of less than twelve (12) months.

Except as indicated in this memorandum, text, terminology, tax computation, administration of the Article and so forth will remain the same as outlined in TSB-M-83(22)C previously issued on August 5, 1983. TSB-M-83(22)C outlines procedures for declarations and payments of estimated tax as well as penalties that may be imposed for false or fraudulent certificates or reports applicable to Article 13-A.