

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

TSB-M-79 (6)M  
Motor Fuel Tax  
August 20, 1979

Subject: Tax and Refund Status of Farmers  
Motor Fuel Tax and Diesel Motor Fuel Tax

The following information is based on the Motor Fuel Tax Law and explains the responsibility of farmers who use motor fuel or diesel motor fuel and the refund privileges available to them. Since the imposition of the taxes on motor fuel and diesel motor fuel differ, separate explanations are presented.

MOTOR FUEL

Definition

Motor Fuel means gasoline, benzol or any other product suitable for use in the operation of a motor vehicle engine (except diesel motor fuel).

Rate of Tax

\$.08 per gallon - all motor fuel except leaded gasoline purchased in New York City

\$.09 per gallon - leaded gasoline purchased in New York City

Taxability

A farmer is not exempt from the requirements of the New York State Motor Fuel Tax Law. All motor fuel purchased by him must have the motor fuel tax included in the purchase price.

Refundability

A farmer is entitled to a refund of the motor fuel tax paid on motor fuel consumed in any manner other than the operation of a motor vehicle on the highways of this State or the operation of a pleasure or recreational motorboat. For example, the tax paid on motor fuel used in the following types of vehicles or equipment is refundable:

1. tractors used exclusively for agricultural purposes
2. farm machinery or equipment
3. motor vehicles operating off highways

As stated above, the tax paid on motor fuel used in the operation of a motor vehicle on the highways of this State or in the operation of a pleasure or recreational motorboat is not refundable.

#### How to Obtain a Refund

1. A refund claim must be filed on either of the following forms dependent on the rate of tax paid:

TP-164.10 (MT-390.24)	Motor Fuel Tax Refund Application	.08 gal
TP-164.11 (MT-390.24NY)	Motor Fuel Tax Refund Application	.09 gal (NYC)

2. Substantiation of the tax payments must be submitted with such claim. This includes sales invoices, delivery tickets or monthly statements signed by the dealer, showing name and address of dealer, name and address of claimant, date of purchase (month, day and year), number of gallons purchased and the fact that the motor fuel tax was included in the purchase price. If possible, monthly statements should be presented instead of numerous sales invoices or delivery tickets. After the claim has been paid, the evidence of purchase will be returned provided a stamped addressed envelope with sufficient postage attached is forwarded to this office.
3. The refund will be paid only after the tax has been collected. The State does not collect the tax until the month following that in which it was paid by the purchaser. It follows that refunds for the month of March cannot be made until the Department has received the tax due the State from the distributor late in April, and similarly for the succeeding months.
4. Each claim must include at least a full calendar month, however, two or more complete months may be included on the same claim.
5. Each claim must be filed within two years from the date of the earliest purchase listed on the claim.

6. A claim for refund of tax paid on motor fuel used for non-taxable purposes should be based upon the following records which (including the original records) must be preserved for three years and be produced at any time for audit by the Department.
  1. A record of all purchases of motor fuel by the claimant and a record of the manner in which all motor fuel was used.
  2. Where a storage tank, drum, or other container is used, the claimant shall in addition keep a record of the quantity of motor fuel put into the storage tank, drum, or other container and also a record of all withdrawals therefrom both for taxable and non-taxable use.

If a transcript or a summary of the record is attached to the refund claim, it will be helpful in auditing the claim and will eliminate letters of inquiry.

If it is necessary that the claim be filed on inventory basis, the opening and closing inventories may be listed in column four of the refund claim.

### DIESEL MOTOR FUEL

#### Definition

Diesel Motor Fuel means kerosene, crude oil, fuel oil and motor fuel commonly used in the operation of an engine of the diesel type.

#### Rate of tax

\$.10 per gallon

#### Taxability

Diesel motor fuel is not taxable until it is actually delivered into the fuel tank of a motor vehicle. If it is delivered into a bulk storage tank, no tax is due at that time. Taxability is determined through the usage of the fuel. For example:

1. If diesel motor fuel is delivered into the bulk storage tank of a farmer to be used exclusively for farm purposes and not used in the operation of a motor vehicle on the public highways of the State, no registration is necessary and no tax is due.
2. If diesel motor fuel is delivered into the bulk storage tank of a farmer to be used only in the operation of a motor vehicle on the public highways of New York State, the farmer must register with this Department as a Diesel Motor Fuel distributor (bulk user), file periodic tax returns and remit tax due at \$.10 per gallon on the fuel used in the motor vehicle on the public highways of the State.
3. If diesel motor fuel is delivered into the bulk storage tank of a farmer to be used both for farm purposes and in the operation of a motor vehicle on the public highways of this State, the farmer must register with this Department as a Diesel Motor Fuel Distributor (bulk user), file periodic tax returns and remit tax due at \$.10 per gallon only on the diesel motor fuel used in the motor vehicle on the public highways of the State.
4. If a farmer purchases diesel motor fuel at a retail service station and the fuel is put into some sort of a container and not delivered directly into the fuel tank of a motor vehicle, the purchase may be made tax free. The invoice or delivery ticket reflecting the sale must contain the statement "not to be used in the operation of a motor vehicle". One copy of the invoice or delivery ticket is given to the purchaser and a copy retained by the vendor. The vendor's copy must be signed by the purchaser.
5. If a farmer does not have bulk storage and purchases diesel motor fuel at a retail service station which is delivered directly into the fuel tank of a motor vehicle, the \$.10 diesel motor fuel tax must be included in the purchase price. The farmer must be registered with the Department as a Diesel Motor Fuel Distributor (truck operator) and file an annual information report reflecting the names and addresses of the vendors from whom the tax paid fuel was purchased and the number of gallons purchased from each vendor.

### Refundability

1. If a farmer purchases diesel motor fuel at a retail service station with the tax included in the purchase price and uses the fuel for farm purposes and not in the operation of a motor vehicle on the public highways of this State, he may apply for a refund.
2. Since no tax is imposed on diesel motor fuel delivered into the bulk storage tank of a farmer, such gallonage should not be included on any refund claims to be submitted. If the fuel is used for farm purposes only, no tax is due. Since no tax has been paid, no further action is necessary. If all or part of the fuel is used in the operation of a motor vehicle on the public highways of this State, tax at \$. 10 per gallon is due which must be reported on the periodic tax returns to be filed.

### How to apply for a refund

1. A refund of diesel motor fuel tax must be filed on form TP-164.4 (MT-390.5), Diesel Motor Fuel Tax Refund Application.
2. Substantiation of the tax payments must be submitted with each claim. This includes sales invoices, delivery tickets or monthly statements signed by the dealer, showing name and address of dealer, name and address of claimant, date of purchase (month, day and year), number of gallons purchased and the fact that the diesel motor fuel tax was included in the purchase price. If possible, monthly statements should be presented instead of numerous sales invoices or delivery tickets. After the claim has been paid, the evidence of purchase will be returned provided a stamped addressed envelope with sufficient postage attached is forwarded to this office.
3. The refund will be paid only after the tax has been collected. The State does not collect the tax until the month following that in which the tax was paid by the purchaser. It follows that refunds for the month of March cannot be made until the Department has received the tax due that State from the distributor late in April and similarly for the succeeding months.

4. Each claim must include at least a complete calendar month; however, two or more complete months may be included on the same claim.
5. A refund claim should be presented within six months from the date of the first purchase in respect of which a refund is requested. In no case will a refund be made by the Department in respect of purchases made more than two years prior to the date of filing the claim.
6. A claim for refund of tax paid on diesel motor fuel used for non-taxable purposes should be supported by a work sheet showing date of use, make and type of vehicle, gallons used and a brief description of actual use. One copy should be attached to the claim and another copy retained and preserved for three years and be produced at any time for audit by the Department.

#### Records

If a farmer is required to register as a Diesel Motor Fuel Distributor (bulk use) as explained in items 2 and 3 under Taxability, he must keep full and accurate records showing in detail his physical inventory at the beginning and close of each month or quarterly period, purchases and all diesel motor fuel used by him both in the operation of a motor vehicle or otherwise.

If a farmer is required to register as a Diesel Motor Fuel Distributor (truck operator) as explained in item 5 under Taxability, he must keep a full and accurate record of all his retail purchases, including a delivery ticket or invoice with reference to each such purchase, showing the following:

1. name and address of seller
2. date of sale
3. name and address of purchaser
4. in case the purchaser is a carrier subject to the NYS Highway Use Tax (truck mileage tax) the number of his highway use permit
5. other number of gallons
6. the amount of the New York Diesel motor fuel tax included in the purchase price.

This memorandum applies to refunds of motor fuel tax and diesel motor fuel tax only. Claims for refund of sales and use tax must be filed with The Department of Taxation and Finance, Central Office Audit Bureau, Sales Tax Refund Unit, State Campus, Albany, New York 12227.