

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

TSB-M-85 (8.2)M
Diesel Motor Fuel Tax
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Subject: Diesel Motor Fuel Tax Law Changes (Criminal Penalties)

Chapter 261 of the New York State Laws of 1988 made amendments to Article 37, Crimes and Other Offenses, Seizures and Forfeitures, effective September 1, 1988. This memorandum summarizes the Article 37 amendments made by Chapter 261 relating to the excise tax on diesel motor fuel.

Criminal Penalties with Respect to Article 12-A,
Diesel Motor Fuel Tax

The following violations became misdemeanors effective September 1, 1988:

- a) Any person who willfully issues an exempt transaction certificate (or similar document prescribed by the Commissioner) or interdistributor sale certificate, in order to claim exemption from the diesel motor fuel excise tax, that the person does not believe to be true and correct as to any material matter shall, in addition to any other penalty provided by law, be guilty of a misdemeanor (section 1812(c)(4) of the Tax Law).
- b) Any person who willfully accepts an exempt transaction certificate (or similar document prescribed by the Commissioner) or interdistributor sale certificate, with respect to claiming an exemption from the diesel motor fuel tax, that the person does not believe to be true and correct as to any material matter shall, in addition to any other penalty provided by law, be guilty of a misdemeanor (section 1812(c)(5) of the Tax Law).
- c) Any person not registered as a distributor of diesel motor fuel who engages in the enhancement of diesel motor fuel within New York State, makes a sale or use of diesel motor fuel within the state (other than a retail sale not in bulk or the self-use of diesel motor fuel that has been the subject of a retail sale), imports or causes diesel motor fuel to be imported into the state or produces, refines, manufacturers or compounds diesel motor fuel within the state shall be guilty of a misdemeanor (section 1812-a(a) of the Tax Law).
- d) Any person registered as a Retailer of Heating Oil Only who delivers diesel motor fuel to a filling station, other than for heating such station, or into a repository equipped with a hose or other apparatus by which diesel motor fuel can be dispensed into the fuel tank of a motor vehicle (other than on the registrant's own premises for his own exclusive use in motor vehicles operated by the registrant to distribute diesel motor fuel for heating or production purposes) shall be guilty of a misdemeanor (section 1812-a(b) of the Tax Law).

The following violations became felonies effective September 1, 1988:

- e) Any owner of a filling station who willfully and knowingly has in his custody, possession or control, any diesel motor fuel on which the diesel motor fuel excise taxes have not been
 - (i) assumed or paid by a registered distributor (i.e., such owner has knowledge of the requirement that such taxes be paid and where, to his knowledge, such taxes have not been assumed or paid by a registered distributor of diesel motor fuel); or
 - (ii) included in the cost to him of the fuel where the tax was required to have been passed through to him and included in his cost (i.e., such owner has knowledge of the requirement that such taxes be passed through and where to his knowledge, such taxes have not been so included);

shall, in either case, be guilty of a Class E Felony (section 1812(d) of the Tax Law).

- f) If, within any 90-day period, 2,900 gallons or more of diesel motor fuel are enhanced, sold or used (other than a retail sale not in bulk or the self-use of diesel motor fuel that has been the subject of a retail sale) within the state or are imported or caused to be imported by any person not registered as a distributor of diesel motor fuel, then such person shall be guilty of a Class E Felony (section 1812-a(a) of the Tax Law).
- g) If, within any 90-day period, a person registered as a Retailer of Heating Oil Only delivers 1,000 gallons or more of diesel motor fuel to a filling station other than for the sole purpose of heating or into a repository equipped with a hose or other apparatus by which diesel motor fuel can be dispensed into the fuel tank of a motor vehicle (other than on the registrant's own premises for his own exclusive use in motor vehicles operated by the registrant to distribute diesel motor fuel for heating or production purposes, or a combination of both, then such person shall be guilty of a Class E Felony (section 1812-a(b) of the Tax Law).
- h) Any person who has twice been convicted under section 1812-a shall be guilty of a class E Felony for any subsequent violation of such section regardless of the amount of diesel motor fuel involved in such violation (section 1812-a(c) of the Tax Law).