

Refunds or Credits Allowed to Credit Card Issuers or Fuel Distributors on Credit Card Purchases of Motor Fuel by Exempt Government Entities

Chapter 102 of the Laws of 2008 amended the Tax Law to allow credit card issuers and fuel distributors to apply for refunds or credits of state and local sales taxes (sales tax), excise taxes and petroleum business taxes (excise taxes), on motor fuel and diesel motor fuel (fuel) sold to exempt government entities when certain criteria are met. These new provisions apply to credit card purchases of fuel by government entities occurring on or after December 1, 2008.

Definitions

The following definitions apply to these new refund or credit provisions:

- *Government entity* means the state of New York or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada), or political subdivisions; the United States of America, and any of its agencies and instrumentalities; the United Nations or any international organization of which the United States is a member; or any diplomatic mission or diplomatic personnel who are permitted by the Office of Foreign Missions to purchase fuel exempt from sales and excise tax.
- *Credit card issuer* means a person who finances the exempt purchase of fuel by a government entity by means of a credit or other access card (e.g., debit card) issued to the government entity by that person.
- *Fuel distributor* means any person who is a registered distributor under Article 12-A of the Tax Law and who has a *Certificate of Authority* to collect sales tax.

Criteria

Credit card issuers may apply for a refund, and fuel distributors may apply for a refund or credit, of sales and excise taxes paid on purchases of fuel by government entities and paid for with a credit card or other access card if **all** of the following criteria are met:

- The Tax Department must receive Form FT-505.1, *Government Entity Credit Card Refund or Credit Election*, signed by an authorized representative of the government entity and the credit card issuer or fuel distributor, whichever is applicable, certifying that the credit card issuer or fuel distributor is the only party eligible to receive the refund or credit.
- If the credit card issuer is designated to apply for the refund, it must register for sales tax purposes (if not already registered), obtain a *Certificate of Authority*, and file sales tax returns.

- The sales and excise taxes were actually paid to the Tax Department, and no refund or credit was previously claimed or allowed for those taxes.
- The government entity purchased the fuel for its own use or consumption and it therefore qualifies as an exempt purchase.
- The Tax Department has not issued a notice of ineligibility to the government entity, and to either the credit card issuer or fuel distributor, whichever is applicable (see *Notice of ineligibility to apply for refund or credit* below).
- The credit card issuer or fuel distributor designated to receive the refund or credit (1) must certify that it will not charge or otherwise receive any sales and excise taxes from the government entity making the purchase; and (2) must file a written consent signed by an authorized representative of the government entity stating that no tax will be charged to the government entity by the credit card issuer or fuel distributor and that the government entity will not claim a refund or credit related to its purchases of fuel made by a credit card provided by the issuer. These conditions are included on Form FT-505.1 as part of the consent for filing the election.
- The credit card issuer or fuel distributor must certify that (1) the retail station or other vendor has been repaid the sales and excise taxes it charged to the government entity on its fuel purchases, or (2) it has obtained a written consent from the retail station or other vendor to receive the refund or credit for the sales and excise taxes.
- The credit card issuer or fuel distributor must, upon request by the department, provide detailed transactional and jurisdictional information related to the fuel sales in the form requested by the department.

Notice of ineligibility to apply for refund or credit

The Tax Department will issue a notice of ineligibility if it determines that a refund or credit has been claimed or allowed for fuel that was not purchased for a government entity's own use or consumption. The Tax Department may also issue a notice of ineligibility when it is necessary to ensure proper enforcement of the Tax Law. As of the date specified in the notice, the credit card issuer or fuel distributor will no longer be allowed to claim a refund or credit on purchases of fuel by a government entity. As a result, the sales and excise taxes must be collected from the government entity, which then may apply for a refund or credit of the taxes paid, if eligible.

The parties involved will have the right to dispute the notice of ineligibility by following the steps outlined in the notice. The Tax Department may, in its discretion, cancel or suspend the

notice if the credit card issuer or fuel distributor and the government entity establish to the department's satisfaction that the circumstances leading to the issuance of the notice have been resolved. The department may also withdraw the notice if it is established that the notice was erroneously issued.

Applying for a refund or credit

Credit card issuers may claim a refund of the sales and excise taxes paid on fuel by filing Form FT-505, *Claim for Refund of Taxes Paid on Government Entity Credit Card Purchases of Fuel*, after the end of the sales tax quarter (sales tax quarters end on the last day in May, August, November and February) in which the government entity purchased the fuel. The refund form must be accompanied by any additional documentation required by the form's instructions.

Fuel distributors may apply for a credit of the excise taxes paid on motor fuel by filing Form PT-101, *Tax on Motor Fuels*, and/or excise taxes paid on diesel motor fuel by filing Form PT-102, *Tax on Diesel Motor Fuels*. The credit claimed on Form PT-101 and/or Form PT-102 is carried over to Form PT-100, *Petroleum Business Tax Return* and may result in a refund or credit. These forms may be filed after the end of the month in which the government entity purchased the fuel. Fuel distributors may continue to claim a credit for the prepaid sales tax on Form FT-945/1045, *Report of Sales Tax Prepayment on Motor Fuel/Diesel Motor Fuel* on a monthly basis. Fuel distributors may claim a refund of the additional sales tax (the difference between the retail sales tax repaid to the retail vendor and the prepaid sales tax paid by the distributor) using Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*, after the end of the quarter in which the fuel was purchased by the government entity.

Claims for refunds or credits must be filed within three years from the date the tax was payable to the department. Interest will not be allowed or paid on any refund or credit issued under these provisions.

This legislation has no effect on a government entity's eligibility to apply for a refund of tax it paid on fuel purchases. A government entity not electing to designate a credit card issuer or fuel distributor should file for its own refund of tax paid on fuel purchases using Form FT-504, *Claim for Refund of Taxes Paid on Fuel by a Government Entity*.

Liability of credit card issuer or fuel distributor

The Tax Department may issue an assessment for tax, penalty, and interest to a credit card issuer or fuel distributor for any refund or credit that was allowed or paid which was erroneous, illegal, or unconstitutional. In addition, a penalty equal to the amount of tax refunded or credited, plus applicable interest, may also be imposed on any credit card issuer or fuel distributor that files a refund application or takes a credit knowing that the fuel purchased by the government entity was not for the government entity's own use or consumption. In either

instance, the Tax Department will send the credit card issuer or fuel distributor a notice of determination. The parties involved will have the right to dispute the notice of determination by following the steps outlined in the notice.

Note: A TSB-M is an informational statement of changes to law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.