

SALES OF AUTOMOTIVE FUELS TO OR BY INDIANS

This memorandum reflects Department policy regarding the applicability of New York state taxes, when motor fuel or diesel motor fuel is sold to or by Indians on Indian reservations. Chapter 44 of the Laws of 1985, effective June 1, 1985 amended Articles 12-A, 28 and 29 of the Tax Law and made significant changes in the imposition and administration of taxes imposed on automotive fuel (motor fuel or diesel motor fuel). See TSB-M-85 (7)S and (8)S for detailed information regarding the enactment of Chapter 44.

SALES TO OR BY INDIANS

General -Indian tribes and nations located in New York State and enrolled members of these Indian tribes and nations are exempt from tax on sales made on the reservation when specific conditions are met. The tribes and nations located in New York State are the Cayuga, Oneida, Onondaga, Poospatuck, St. Regis Mohawk, Seneca, Shinnecock, Tonawanda, and Tuscarora.

This memorandum concentrates on the sale of automotive fuels (motor fuel and diesel motor fuel) from retail service stations located on qualified Indian reservations and outlines the conditions and procedures relating to Indian exemption.

All distributors, suppliers and retail vendors (whether Indian or non-Indian) are subject to the rules, regulations and procedures outlined in this memorandum for sales of automotive fuel made on qualified Indian reservations.

Only qualified Indians may make tax exempt purchases on Indian reservations. A "**Qualified Indian**" is one who:

- (a) is an enrolled member of the Cayuga, Oneida, Onondaga, Poospatuck, St. Regis Mohawk, Seneca, Shinnecock, Tonawanda, or Tuscarora tribe or nation;

and

- (b) maintains a permanent residence on the Allegany, Cattaraugus, Oneida, Onondaga, Poospatuck, St. Regis, Shinnecock, Tonawanda or Tuscarora Indian reservation;

and

- (c) takes delivery of the fuel on his reservation of residence;

and

- (d) is only purchasing fuel for his personal use and is not purchasing for resale.

The exemption provided for qualified Indians and Indian tribes and nations is valid only when they are the direct purchasers and payers of record.

CERTIFICATES OF EXEMPTION

General - An exemption certificate must be submitted by the qualified Indian or Indian tribe or nation when making the initial purchase from each vendor. A separate certificate is not necessary for any subsequent purchase from that vendor provided that all conditions stipulated on the exemption form are met at the time of each subsequent purchase.

A properly completed certificate is one on which all information required is entered by the purchaser.

On the exemption document received, the vendor must certify that delivery is made on a qualified reservation and, he must retain the certificate as part of his books and records subject to audit by the Department of Taxation and Finance.

Individual Indian Purchaser - On and after September 1, 1985, Form TP-156.9, Certificate of Sales Tax Exemption for Sales on Reservations to Resident Indians, **cannot be accepted** by vendors making sales to qualified Indian purchasers. This form **has been replaced by Form DTF-801, Certificate of Individual Indian Exemption for Certain Taxes on Property or Services Delivered on a Reservation.**

Form DTF-801 combines the exemption provided to qualified Indian consumers from sales, motor fuel and diesel motor fuel taxes. This new form must be submitted by a qualified Indian purchaser when making the initial purchase from each retail vendor located on the reservation where the Indian resides.

Form DTF-801 must be submitted by qualified Indians for all exempt purchases made on or after September 1, 1985. Certificates (Form TP-156.9) received by a vendor prior to September 1, 1985, must be retained by the vendor to substantiate corresponding exempt sales made to qualified Indian purchasers prior to September 1, 1985. Unused supplies of the Form TP-156.9 are to be destroyed since they are obsolete and cannot be accepted by retail vendors making sales of any type of tangible personal property or services to qualified Indian purchasers after September 1, 1985.

Indian Tribes or Nations - Indian tribes or nations may make tax free purchases of motor fuel **at retail service stations located on the reservation.** However, purchases of motor fuel made by the tribe or nation in bulk or off the reservation **must** be treated in the same manner as sales to other exempt organizations. That is, the Indian tribe or nation must pay the tax on these sales and apply for a refund.

To claim tax exemption on purchases made at retail service stations located on the reservation, Form FT-939, Certificate of Sales Tax and Motor Fuel Tax Exemption for Indian Tribes or Nations, must be properly completed, accompanied by a copy of the nation's valid Exempt Organization Certificate (ST-119) and given to each retail vendor. The vendor must certify that delivery was made at a retail service station located on the reservation.

REFUNDS

If a qualified Indian, tribe or nation pays tax on purchases of motor fuel made at retail service stations on the reservation, they may obtain a refund directly from the Department of Taxation and Finance.

To obtain a refund of taxes paid, a written receipt which indicates that the qualified Indian, tribe or nation is the purchaser and payer of record is needed for substantiation. The receipt must also include the price per gallon, the amount of tax paid per gallon, the number of gallons purchased and the vendor's name and address.

Refund claims for motor fuel tax must be made within two years of the date of purchase, while refund claims for sales tax must be filed within three years from the date the tax was payable to the Tax Commission. Preferably, claims should be filed for not less than one full calendar month; two or more complete months may be included on a single application.

If claims for refunds of both sales tax and motor fuel tax are being filed at the same time for the same period and identical gallons, only one set of invoices and other substantiating documents are required; however, two claim forms (FT-948, Application for Refund of Sales Tax on Motor Fuel Purchased at Retail and FT-946, Motor Fuel Tax Refund Application) must be filed. Attach invoices and other substantiating documents to the motor fuel refund application and mail both forms in one envelope.

INFORMATION FOR RETAIL VENDORS OF MOTOR FUEL (GASOLINE) LOCATED ON INDIAN RESERVATIONS

Retail vendors (whether Indian or non-Indian) located on a qualified reservation are subject to all of the requirements of the Tax Law relating to vendors. **Indian vendors are not exempt** from paying the applicable sales and motor fuel taxes to their suppliers when purchasing motor fuel for resale. A qualified Indian purchaser is exempt from payment of these taxes only when making purchases for his personal use and not for resale.

A retail vendor who does not pass through the taxes paid when making exempt sales of motor fuel to Indian tribes or nations or to qualified Indian purchasers may claim a credit for taxes paid to his supplier on his sales tax return and motor fuel tax return (if he is a registered 12-A distributor) or apply to the Department of Taxation and Finance for a refund of either or both sales and motor fuel taxes.

Form FT-950, Application for Refund of Prepaid Sales Tax on Motor Fuel Sold by Retail Service Stations, and Form FT-946, Motor Fuel Tax Refund Application, should be used to claim the appropriate refund.

Refund claims for motor fuel tax must be made within two years of the date of purchase while refund claims for sales tax must be filed within three years from the date the tax was payable to the Tax Commission. Preferably, claims should be filed for not less than one full calendar month; two or more complete months may be included on a single application.

If claims for refunds of both sales tax and motor fuel tax are being filed at the same time for the same period and identical gallons, only one set of invoices and other substantiating documents are required; however, two claim forms (FT-950, Application for Refund of Prepaid Sales Tax on Motor Fuel Sold by Retail Service Stations, and FT-946, Motor Fuel Tax Refund Application) must be filed. Attach invoices and other substantiating documents to the motor fuel refund application and mail both forms in one envelope.

The following conditions must be met in order to establish that each sale to an Indian consumer is exempt:

1. the purchase must have been made by a "qualified Indian" or Indian tribe or nation;
2. the purchaser must have submitted to the retail vendor a properly completed DTF-801, Certificate of Individual Indian Exemption for Sales, Motor Fuel and Diesel Motor Fuel Taxes, or Form FT-939, Certificate of Sales Tax and Motor Fuel Tax Exemption for Indian Tribes or Nations;

3. the retail vendor must certify on the exemption document that delivery was made on the qualified reservation where the Indian resides.

Every vendor accepting an exemption certificate must maintain a method of associating sales made to exempt purchasers with the certificate on file. Every vendor must also comply with all other recordkeeping requirements. Books and records are subject to audit by the Department of Taxation and Finance.

INFORMATION FOR VENDORS OF DIESEL MOTOR FUEL LOCATED ON INDIAN RESERVATIONS

If a qualified Indian purchases diesel motor fuel for his own personal use (whether in bulk or not) and takes delivery on the reservation where he resides, he may purchase such fuel without the payment of sales or diesel motor fuel taxes by issuing Form DTF-801. The Indian tribe or nation substantiates its exemption by submitting a properly completed ST-119.1, Exempt Organization Certification.

However, if individual Indians or Indian tribes or nations purchase diesel motor fuel in bulk and resell any of the fuel, they are required to register as diesel motor fuel distributors and to collect and remit the applicable sales and diesel motor fuel taxes. They are subject to all rules and regulations concerning sales of diesel motor fuel.

All retail vendors (both Indian and non-Indian) may purchase diesel motor fuel for sale without payment of sales or diesel motor fuel taxes by issuing FT-938, Certificate for Certain Purchases of Fuel. However, any retail vendor of diesel motor fuel (whether Indian or non-Indian; located on or off the reservation) is a distributor required to be registered and subject to all of the requirements of the Tax Law relating to distributors. Therefore, an Indian retail vendor of diesel motor fuel who is located on a reservation is required to register as a distributor of diesel motor fuel. He must also collect and remit all sales and diesel motor fuel taxes on taxable sales, maintain the required documents relating to exempt sales and maintain proper books and records which are subject to audit.

TAXPAYER ASSISTANCE BUREAU ADDRESS AND PHONE NUMBERS

Write - New York State Department of Taxation and Finance
Taxpayer Assistance Bureau
W. A. Harriman Campus
Albany, New York 12227

Call, from New York State (toll free) -

For forms and publications 1-800-462-8100

For information 1-800-342-3536

Call, from outside New York State -

For forms and publications 1-518-438-1073

For information 1-518-438-8581