

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

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Article 13A
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Residential Heating Defined for Purposes of Article 13-A

Article 13-A of the Tax Law, the Petroleum Business Tax, imposes a tax on petroleum businesses based on the quantity of taxable products sold or used by the petroleum business during the reporting period. The tax is a cents-per-gallon tax that varies by product. The measure of the tax does not include sales of the following products when made to customers exclusively for residential heating purposes:

- diesel motor fuel (No. 2 heating oil, kerosene, etc.),
and
- residual petroleum products (No. 5 fuel oil, No. 6 fuel oil, etc.).

"Residential purposes" means any use of a structure or part of a structure as a place of abode maintained by or for a person (whether or not owned by the occupant) on other than a temporary or transient basis. It does not mean accommodations in a hotel for any period of less than 90 days (180 days in New York City). A residence includes the housing unit in which one lives, and other structures on the same plot of land that are not for business or other nonresidential use. It may include garages, sheds, swimming pools, greenhouses or any other structures on a single plot of land used exclusively for the pleasure of the residents. Examples of structures that would normally be considered used for residential purposes include, single- and multiple-family housing units, college and boarding school dormitories, long-term care nursing homes, prisons, orphanages, parsonages and convents.

"Nonresidential purposes" means any use other than for residential purposes, as defined above, including **any** use in the conduct of a trade, business or profession, by the owner of the structure or by another person.

If a customer has both residential and nonresidential areas heated by the same heating system, the supplier may allocate the fuel on a percentage basis. The percentage of fuel used for residential purposes is determined by dividing the square footage of the structure or structures used entirely for residential purposes by the total square footage. Common areas used for both residential and nonresidential purposes are not used in the determination.

If the area of a structure used for residential purposes is 75% or more of the total area of the structure, excluding common areas, we deem that the entire structure is used for residential purposes.

If less than 75% of the total area (excluding common areas) is used for residential purposes, the percentage of fuel used for residential purposes is rounded to the nearest 10%.

The fuel determined to be used for residential purposes is exempt from the petroleum business tax, while the fuel used for nonresidential purposes is subject to tax.

If the premise to which the supplier is delivering the fuel oil is a one- or two-family house that is not used to conduct a business, trade or profession, a notation to that effect in the accounting records of the fuel supplier or on a document such as a metered delivery ticket is sufficient to evidence tax exemption. However, for multiple-dwelling and/or multiple-use structures, the customer should complete a Form TP-385, *Certification of Residential Use, Sales Tax Reduction on Energy Purchases*, certifying the percentage of residential use. The customer must give a new certification to the fuel supplier whenever the percentage of residential use changes.

Kerosene is exempt from the petroleum business tax unless it is sold for use in a motor vehicle, used in a motor vehicle, or mixed or blended with any other product to produce a diesel motor fuel, motor fuel or residual petroleum product. Kerosene blended with any other product to produce motor fuel or other petroleum is taxed the same as the product produced. For example, if the seller has mixed kerosene with No. 6 fuel oil to produce No. 4 heating oil (a residual petroleum product) sold for nonresidential use, the entire volume is subject to the petroleum business tax at the residual petroleum product rate.