

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

TSB-M-82(28.1)S
Sales Tax
February 10, 1983

This memorandum is an addition to, and should be attached to TSB-M-82(28)S, dated October 26, 1982.

1982 Legislation
Additional Information For Sellers and Purchasers of
Automotive Fuel

Chapter 930 of the Laws of 1982 has been enacted effective March 1, 1983. (See the exception for information returns required under section 1136(a) of the tax law, page 5.)

The major changes and additions relating to the imposition and collection of sales tax on automotive fuel include:

1. A change in the method of computing sales tax on motor fuel and diesel motor fuel, eliminating the use of the statewide average retail mark-up and basing the computation on the use of a regional average retail sales price.

Diesel motor fuel distributors will now collect sales tax based on the regional average retail sales price, and not on the actual selling price of the diesel motor fuel.

2. The addition of a definition of, and requirements for a commercial account purchaser who, as such, will be allowed to pay sales tax based on actual selling price of fuel purchased for self use.

3. The establishment of 9 pricing regions in the state for the purpose of establishing regional average retail sales prices for the four types of fuel presently available (leaded, unleaded, premium and diesel).

Section 1101(b)(4) - DEFINITION OF A RETAIL SALE

Expands the definition of "retail sale" to include the transfer of automotive fuel by a distributor: 1) into his own motor vehicle, or 2) into a container from which he transfers automotive fuel into his own motor vehicle(s) or into other motor vehicles under his control, but not including such fuel as will be subsequently resold by the distributor.

Note: Distributors of automotive fuel who are purchasing their fuel tax free and who use some of the fuel they purchase to power their own vehicles, may compute their taxes owed to the Department based upon actual purchase price or manufacturing price, pursuant to sections 1110 and 1111(a) of the Tax Law.

Section 1111(d) - BASIS FOR TAX

Establishes the use of a regional average retail sales price in determining the tax to be collected on each gallon of automotive fuel sold. (See exception for commercial account purchasers under section 1111(e)(6), pages 3 and 4.)

Section 1111(e)(1) - COMPUTATION OF TAX

1. Provides that the sales tax a distributor collects on the sale of automotive fuel from a purchaser other than an Automotive Fuel Carrier (hereinafter known as an AFC) is determined by applying the appropriate tax rate to the regional average retail sales price prevailing in the region where delivery occurs. (The regional average retail sales price eliminates the use of the statewide average retail mark-up.)

2. Provides that the sales tax collected by a distributor from an AFC, on the sale of automotive fuel is computed based on the highest current combined state and local rate within New York State, times the highest regional average retail sales price in the state for the type of fuel being purchased, unless the AFC presents an automotive fuel certificate which indicates that a different tax rate and/or regional average retail sales price should be used.

Where a distributor cannot determine the status of his customer, and his customer fails to provide any type of certification, the sales tax is computed as provided in number two above.

The use of these formulas begins March 1, 1983, and continues for all subsequent periods.

Section 1111(e)(2) - DIVISION OF STATE INTO REGIONS

Requires the Tax Commission, after consultation with the Commissioner of Energy, to prescribe the number of regions, not to exceed nine, into which the state should be divided for purposes of establishing regional average retail sales prices, beginning March 1, 1983. The Tax Commission has determined that the following nine regions are necessary.

<u>Region</u>	<u>Counties</u>
01 (Long Island)	Nassau, Suffolk
02 (New York City)	Bronx, Kings (Brooklyn), Richmond, (Staten Island), Queens, New York (Manhattan)
03 (Suburban)	Westchester, Rockland, Putnam
04 (Lower Hudson)	Greene, Columbia, Sullivan, Ulster, Dutchess, Orange
05 (Capital District)	Fulton, Saratoga, Washington, Montgomery, Schenectady, Schoharie, Albany, Rensselaer
06 (North Country)	Clinton, Franklin, St. Lawrence, Jefferson, Lewis, Hamilton, Warren, Essex
07 (Southern Tier)	Delaware, Broome, Chenango, Tioga, Tompkins, Chemung, Schuyler, Steuben, Allegany, Cattaraugus, Chautauqua

<u>Region</u>	<u>Counties</u>
08 (Central Tier)	Oswego, Oneida, Cayuga, Onondaga, Madison, Cortland, Herkimer, Otsego
09 (Western Tier)	Niagara, Orleans, Monroe, Wayne, Erie, Yates, Genesee, Wyoming, Livingston, Ontario, Seneca

Section 1111(e)(3) - MAXIMUM TAX TO BE COMPUTED

Provides that, on sales made after March 1, 1983, no purchaser other than an AFC will be required to pay a distributor sales tax computed at: 1) a price that is greater than the regional average retail sales price for the type of fuel for the region in which the sale occurs, 2) a rate higher than the rate in effect at the point of delivery.

As of March 1, 1983, each price region will have four regional average retail sales prices: one for each of the following four types of fuel: leaded, unleaded, premium and diesel.

Section 1111(e)(4) - TAX ON CONSUMER

Clarifies that although the tax is paid to the distributor, it will be considered paid for the account of the user or consumer.

Section 1111(e)(5) - REGIONAL AVERAGE RETAIL SALES PRICE

Substitutes the words "regional average retail sales price" for the words "statewide average retail mark-up", which will no longer be used in the computation of sales tax.

The regional average retail sales price which the law prescribes, is the price to be used in the computation of sales tax due on sales of motor fuel and diesel motor fuel made beginning March 1, 1983 and thereafter, except for sales made to commercial account purchasers (See section 1111(e)(6)).

Section 1111(e)(6) - COMMERCIAL ACCOUNT PURCHASERS

Beginning March 1, 1983, a distributor is allowed, upon receipt of proper certification, to collect sales tax on the actual selling price of automotive fuel rather than on the regional average retail sales price when he makes sales to a commercial account purchaser, as defined below.

Commercial Account Purchaser - any purchaser:

- 1) who owns, rents, leases, or otherwise maintains bulk storage having a capacity totalling at least 550 gallons, and
- 2) who purchases and has delivered into such bulk storage more than 12,000 gallons of automotive fuel annually, to be used or consumed solely by such purchaser in motor vehicles owned, operated, or otherwise directed and controlled by such purchaser in the furtherance of purchaser's business activities, and

- 3) who does not resell any such automotive fuel.

A purchaser qualifies as a commercial account only with respect to purchases of automotive fuel delivered into the bulk storage tanks owned, rented, leased, or otherwise maintained by the purchaser prior to the dispensing of such fuel into the ordinary fuel tank of the purchaser's motor vehicles in which such fuel is consumed.

If a purchaser can qualify as a commercial account, he must file an "Application for a Commercial Account Certificate", form PR-122.1, with the Department of Taxation and Finance, to receive permission to pay tax on his automotive fuel purchases based on the actual selling price rather than on the regional average retail sales price. Upon approval of the application, a Commercial Account Certificate, form PR-122, will be issued by the Department of Taxation and Finance. A copy of this certificate must be filed with each supplier.

Section 1119(a) - REFUND OR CREDIT ALLOWED AN AFC

Allows an AFC to file for a refund or credit of any sales tax he paid to a distributor on fuel the AFC later resold to a purchaser (including a commercial account purchaser) who was qualified to pay less tax than the AFC was required to pay to his distributor.

The AFC's refund is limited to any sales tax he paid in excess of what would have been paid if he had made the retail sale computing tax on the appropriate regional average retail sales price, and/or at the rate appropriate to that sale.

Section 1132(h) - DISTRIBUTORS' PURCHASES FROM OTHER DISTRIBUTORS

Gives the Tax Commission the authority to allow a distributor to purchase automotive fuel from another distributor without payment of tax, if, in the Tax Commission's judgment, the distributor making the purchase will keep proper records, file timely returns and timely collect and remit any tax due. For this purpose, distributors should use a Certificate for Sales Tax Exemption on Purchases of Certain Fuels, form TP-146.4.

Section 1132(i) - COMMERCIAL ACCOUNT CERTIFICATE (PR-122)

As of March 1, 1983, the Tax Commission must provide, by regulation, for a certificate, a copy of which must be furnished by a commercial account purchaser to his distributor when making a purchase for self use (not for resale) in order to be eligible to pay tax based on actual purchase price rather than regional average retail sales price. Commercial account purchasers will have to make application to the Tax Commission for permission to use such a certificate on form PR-122.1, Application for Commercial Account Certificate.

Section 1134(a)(1) - MANDATORY REGISTRATION

Makes registration as a sales tax vendor mandatory for persons selling automotive fuel, even if they are not distributors; e.g. retail service station operators, wholesalers, etc. Although these vendors collect no sales tax on sales of automotive fuel, they must file a periodic sales and use tax return and a Schedule C (form ST-100.6).

Section 1134(c)(1) - AUTOMOTIVE FUEL CERTIFICATE (PR-121)

Allows an AFC to file for an automotive fuel certificate, which permits the distributor to collect sales tax at a rate that is less than the highest current combined state and local rate within New York State, applied to a price that is less than the highest regional average retail sales price for the type of fuel for any region in the state.

Section 1135(c) - RECORDKEEPING FOR NON-DISTRIBUTORS

Requires every person other than a distributor, who sells automotive fuel, to also keep records as prescribed by the Tax Commission. These records must include the following information concerning the purchase:

1. The number of gallons of automotive fuel purchased,
2. the price paid to the distributor,
3. the rate of tax and amount of tax paid to the distributor, and
4. the regional average retail sales price that applies to the purchase, together with any additional information the Tax Commission may require.

These records must also show the following information concerning any subsequent resale:

1. The number of gallons sold,
2. the price collected from the buyer,
3. the rate of tax and amount of tax included in the price, and
4. the regional average retail sales price that applies to that sale, together with any additional information the Tax Commission may require.

Section 1135(d) - RECORDKEEPING FOR DISTRIBUTORS

Provides that every distributor's records must show, in addition to all other information required, the regional average retail sales price that applies to each sale of automotive fuel.

Section 1136(a) - INFORMATION RETURNS (SCHEDULE "C")

Persons who are required to register because they sell automotive fuel even though they are not distributors, must file a quarterly information return, form ST-100.6 (Schedule C). Distributors who sell motor fuel through their own metered pumps must also file Schedule C.

The first of such quarterly returns required to be filed covers the quarter that began September 1, 1982 and ended November 30, 1982, and must be filed by February 20, 1983. Subsequent returns are due the 20th of the month following the end of the quarter covered. (December 1 - February 28 is due March 20, etc.)

The returns of any vendor selling automotive fuel, including distributors, shall show the number of gallons of automotive fuel sold and any additional information required by the Tax Commission to enable them to certify the amount of taxes, penalty and interest payable to local jurisdictions.

Section 1142(11) - POWERS OF THE TAX COMMISSION

Empowers the Tax Commission to provide, by regulation, for the joint administration in whole or in part, of state and local taxes imposed by Articles 28, 29 and 12-A on sales of automotive fuel. This includes joint reporting, assessment, collection, determination, and refund of such taxes.

The law states further that for this purpose, the regulations shall prescribe that any of the Commission's functions under these articles, and any returns, forms, statements, documents or information to be submitted to the Commission under said articles, and any books and records to be kept, any registration required and any payment of taxes shall be on a joint basis with respect to the taxes imposed by these articles.