

Sales Tax Treatment of Federal, New York State or Local Excise Tax

The Tax Law defines a receipt from a sale of tangible personal property as the amount of the selling price including any expenses of the seller, even if these expenses are separately stated on the customer's bill. Where the receipts from sales of tangible personal property include excise tax, it is important to understand that the sales tax treatment of excise tax is not based on who is making the imposition, but rather on whether it is imposed upon the seller or the consumer (Regulation section 526.5). This is true regardless of whether the excise tax is imposed by federal, New York State, or local government.

Therefore:

Excise taxes imposed on vendors (manufacturers, importers, etc.), which vendors in turn pass along to their customers are subject to sales tax, since these are an expense to the seller, and thus part of the seller's receipt. (These taxes, whether or not separately stated, are included when computing the sales tax.)

Excise taxes imposed directly on the consumer are not subject to the sales tax since these excise taxes are not an expense to the seller, and thus not part of the seller's receipt. (These taxes, whether or not separately stated, are deducted before computing the sales tax.)

Examples:

<u>Excise Tax</u>	<u>Sales Tax Treatment</u>
The Federal excise tax on cigars, cigarettes, and cigarette papers and tubes	Tax is imposed on <u>seller</u> Part of receipt-subject to tax
The Federal excise tax on gasoline*	Tax is imposed on <u>seller</u> Part of receipt-subject to tax
The State excise tax on gasoline*	Tax is imposed on <u>consumer</u> <u>Not</u> part of receipt-not subject to tax
The Federal excise tax on diesel fuel*	Tax is imposed on <u>consumer</u> <u>Not</u> part of receipt-not subject to tax
The State excise tax on cigarettes	Tax is imposed on <u>consumer</u> <u>Not</u> part of receipt-not subject to tax
The Federal excise tax on tires and tubes	Tax is imposed on <u>seller</u> Part of receipt-subject to tax
The Federal excise tax on communication services (e.g. local and long distance telephone service)	Tax is imposed on <u>consumer</u> <u>Not</u> part of receipt-not subject to tax

*See "NOTE" on page 2

Sales tax computation when excise tax is a tax on a manufacturer or other vendor, not on the consumer:

Price of merchandise	\$21.00 (<u>Price not including</u> excise tax)
Excise tax	+ 1.25
Taxable receipt	\$22.25
Tax	+ 1.56
Total due	<u>\$23.81</u>

Sales tax computation when excise tax is a consumer tax:

Price of merchandise	\$9.05 (<u>Price including</u> excise tax)
Excise tax	- 1.50
Taxable receipt	\$7.55
Tax @ 7%	+ .53
Total before excise tax	\$7.07
Excise tax	+ 1.50
Total due	<u>\$9.58</u>

Federal legislation enacted in 1982 and effective April 1, 1983 repealed the 10% excise tax imposed on trucks, parts and accessories at the manufacturers level and at the same time imposes a 12% excise tax on the retail sale of certain trucks, and on parts and accessories. This federal tax, which is now imposed on the consumer, will be deducted from the price upon which sales tax is computed.

Transitional provisions make allowance for the excise tax that has already been imposed on tangible personal property purchased prior to April 1, 1983 but still held in inventory on or after April 1, 1983 by applying only 2% excise tax on the retail sale of these trucks, parts, etc.

NOTE: The regional average retail sales price, upon which sales tax on gasoline is now computed, has been adjusted to exclude excise taxes imposed directly on the consumer and to include excise taxes imposed directly on the seller.

Also, the federal excise tax imposed on gasoline and diesel fuel increased from 4¢ to 9¢ a gallon effective April 1, 1983.