

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

TSB-A-87 (2) M
Motor Fuel
June 12, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO: M870204A

On February 4, 1987, a Petition for Advisory Opinion was received from BJB Fuel Co., 3 Welkin Gate, Etobicoke, Ontario M9C3L1.

The issue raised is whether Petitioner may purchase gasoline within New York State exclusively for purposes of export to, and distribution in, the Province of Ontario, Canada without payment of the motor fuel tax imposed under Article 12-A of the Tax Law.

Petitioner states that it is engaged in the business of importing gasoline into the Province of Ontario for sale to motor fuel wholesalers and retailers. Petitioner also states that it is duly licensed with the Ontario Ministry of Revenue, Motor Fuels and Tobacco Tax Branch pursuant to the Gasoline Tax Act of 1981 and has been certified by the Ontario Ministry of Consumer and Commercial Relations, Fuels Safety Branch as a distributor/dealer of motor fuel and gasoline in the Province of Ontario.

Sections 284, 284-a and 284-c of the Tax Law impose excise taxes upon gasoline imported into or caused to be imported into New York by a distributor for use, distribution, storage or sale in the state or upon gasoline which is produced, refined, manufactured or compounded by a distributor in the state.

Section 284-b of the Tax Law also authorizes any city in the state having a population of one million or more to enact a similar tax.

Under the Tax Law, a New York distributor must pay the motor fuel tax upon importing gasoline into the state and must pass such tax through to its customers upon selling the gasoline. However, a New York distributor is allowed to sell gasoline tax free and to take a credit or a refund of the amount of tax required to be paid on such gasoline under circumstances where the gasoline is sold within New York State to a purchaser who is a duly registered or licensed distributor of, or dealer in, motor fuel in another state and who will immediately export such fuel to an identified facility in that state for the purpose of selling such gasoline.

While there is no specific provision of the Tax Law allowing tax free purchases by distributors licensed by the provinces of Canada, it is the policy of the Tax Commission to extend the same privileges to distributors duly registered or licensed by the taxing authorities of the provinces of Canada.

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It is noted that the Province of Ontario does not issue licenses to motor fuel distributors in a manner similar to that employed by the State of New York pursuant to the Tax Law. However, the Ontario Ministry of Revenue is authorized to appoint any person who is selling gasoline for resale in Ontario to be a collector under section 6 of the Gasoline Tax Act. The State of New York will recognize a gasoline distributor appointed as a collector under section 6 of the Gasoline Tax Act by the Ministry of Revenue, as a duly licensed distributor for purposes of purchasing gasoline tax free in New York State for immediate export to an identified location in Ontario for the purposes of selling such gasoline. Inasmuch as the Ministry of Revenue does not issue licenses to such collectors, a letter issued by the Ontario Ministry of Revenue, Motor Fuels and Tobacco Tax Branch appointing a distributor as a collector under section 6 of the Gasoline Tax Act will be acceptable as proof of such appointment.

A distributor's right to purchase tax free will terminate if the distributor's appointment as a collector is suspended or revoked.

Accordingly, as long as Petitioner is authorized by the Ministry of Revenue to be a collector under section 6 of the Gasoline Tax Act, it will be recognized by the State of New York as a distributor licensed in the Province of Ontario and will be authorized to purchase gasoline tax free for immediate export to an identified facility in Ontario for the purposes of selling such gasoline.

To effectuate a tax free purchase, Petitioner should furnish to each of its suppliers a copy of the letter of the Ministry of Revenue appointing Petitioner as a collector under section 6 of the Gasoline Tax Act. Additionally, Petitioner must furnish to its supplier a properly completed Statement of Exportation of Motor Fuel By Purchaser (Form FT-936) for each purchase of gasoline.

DATED: June 12, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.