

Tax Law Amendments Related to Sales of Dyed Diesel Motor Fuel

On July 26, 2006, Governor Pataki signed Chapter 302 of the Laws of 2006. Chapter 302 amends the Tax Law, in part, to establish a direct pay permit for certain distributors that purchase dyed diesel motor fuel, and to provide an exemption from the petroleum business tax for certain exempt organizations that purchase dyed diesel motor fuel.

Definition of *dyed diesel motor fuel*

Dyed diesel motor fuel means diesel motor fuel which is **enhanced** diesel motor fuel and which has been dyed in accordance with and for the purpose of complying with the provisions of 26 USC §4082(a) and the regulations thereunder, as may be amended from time to time.

Example: Fuel labeled *Low sulfur Diesel fuel* is considered to be enhanced diesel motor fuel since it is a designation commonly used to refer to fuel used in the operation of a motor vehicle engine of the diesel type (Tax Law, section 282(16)). A distributor purchases the *Low sulfur Diesel fuel* for resale as heating fuel or for off-road use. The fuel is dyed at the rack when it is delivered to the distributor. This fuel is an example of *dyed diesel motor fuel*.

Direct pay permit

Beginning December 1, 2006, a registered distributor that has been issued a direct pay permit may purchase *dyed diesel motor fuel* without the petroleum business tax, diesel motor fuel excise tax, and prepaid sales tax (the applicable taxes). The holder of the direct pay permit will pay any tax liability directly to the Tax Department. The direct pay permit may only be used for the first and second purchases that take place within New York State. The following terms and conditions apply:

Sales from the importer to the *first purchaser*

The applicable taxes will not apply to the sale of dyed diesel motor fuel from the importer to the first purchaser, provided:

- the importer and first purchaser are each registered under Article 12-A of the Tax Law as a full diesel motor fuel distributor,
- the importer has imported the enhanced diesel motor fuel, which is the subject of the sale, into the state and has dyed such fuel to comply with the provisions of 26 USC § 4082(a) and the related regulations,
- the first purchaser is the holder of a currently valid direct pay permit, and

- the first purchaser is primarily engaged in the retail heating oil business and (except as provided below) the dyed diesel motor fuel will be sold by the first purchaser in a retail sale to a consumer for use solely as residential or commercial heating oil.

Sales from the *first purchaser* to the *second purchaser*

The applicable taxes will not apply to the sale of dyed diesel motor fuel from the first purchaser to the second purchaser, provided:

- the second purchaser is registered under Article 12-A of the Tax Law as a full diesel motor fuel distributor, is primarily engaged in the retail heating oil business, and is the holder of a currently valid direct pay permit,
- the sale to the second purchaser is the first and only sale of the fuel by the first purchaser,
- in order to identify the origin of the dyed diesel motor fuel which is sold to the second purchaser, the first purchaser must attach to the invoice a copy of the invoice given by the importer on the sale to the first purchaser, and
- the second purchaser must certify that the dyed diesel motor fuel will be sold by the second purchaser in a retail sale to a consumer for use solely as residential or commercial heating oil.

Certification and invoice requirements

The first or second purchaser (as the case may be) must give the seller a properly completed Form FT-1001, *Exemption Certificate for Diesel Motor Fuel Interdistributor Transactions*, prior to or concurrently with the sale of the dyed diesel motor fuel. The FT-1001 must indicate the intended use for the dyed diesel motor fuel to qualify for exemption, and must state that the purchaser has been issued a direct pay permit which is currently valid.

Limitation on use of direct pay permit

A direct pay permit may not be used for any dyed diesel motor fuel that is delivered into a repository equipped with a hose or other apparatus capable of being used to dispense fuel into the fuel tank of a motor vehicle.

Application for direct pay permit

A distributor of diesel motor fuel may apply for a direct pay permit by filing a properly completed Form TP-650, *Application for Registration under Articles 12-A and 13-A*. An additional bond may be required to cover the potential tax liability with respect to the dyed diesel motor fuel.

A direct pay permit cannot be granted to a retailer of heating oil only (ROHO). However, a ROHO may apply for registration as a full distributor and then apply for a direct pay permit.

Exempt organizations

Beginning December 1, 2006, an exempt organization may purchase dyed diesel motor fuel from any registered distributor of diesel motor fuel exempt from the petroleum business tax. (A direct pay permit is not required.) To qualify for the exemption, the dyed diesel motor fuel must be used and consumed exclusively by the exempt organization and may not be consumed on the highways of New York State. However, the exemption does not apply to any dyed diesel motor fuel that is delivered to a filling station or into a repository equipped with a hose or other apparatus capable of being used to dispense fuel into the fuel tank of a motor vehicle.

To claim the exemption, the exempt organization must give the distributor a properly completed Form FT-1021-A, *Certification of Purchases of Unenhanced Diesel Motor Fuel, Residual Petroleum Product, or Dyed Diesel Motor Fuel by Certain Exempt Organizations*.

Unenhanced diesel motor fuel that is dyed

The amendments for sales of dyed diesel motor fuel discussed above do not affect the treatment of **unenhanced** diesel motor fuel that is dyed. A distributor of diesel motor fuel or a ROHO may purchase unenhanced diesel motor fuel from another distributor of diesel motor fuel without payment of the excise tax, petroleum business tax, and prepaid sales tax. A direct pay permit is not required. However, the purchaser must provide a properly completed form FT-1001 to the seller.

In addition, a distributor of diesel motor fuel or a ROHO may sell unenhanced diesel motor fuel to an exempt organization exempt from the petroleum business tax, provided the exempt organization gives the distributor a properly completed Form FT-1021-A. See the instructions for Form FT-1021-A for information regarding other exemptions that may apply.