

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

TSB-M-90
(12) Corporation Tax
(7) Miscellaneous Tax
September 13, 1990

1990 Legislation

Article 13-A Tax on Petroleum Businesses

Chapter 190 of the Laws of 1990 restructured the Article 13-A tax on petroleum businesses. On September 1, 1990 the annual tax measured by gross receipts or- consideration (tax imposed by section 301 of the Tax Law on petroleum businesses) is changed to a monthly tax computed on a cents-per-gallon basis (tax imposed by section 301-a on a petroleum business and section 301-e of the Tax Law on an aviation fuel business).

The amendment increases the tax rate imposed by section BO1 from 2.75% to 7.2% for the period beginning June 1, 1990 and ending August 31, 1990. A tax surcharge of 15% of the tax rate is imposed by section 301-f for the period.

Tax years beginning before September 1, 1990 but ending after August 31, 1990 are brought to a close as of August 31, 1990. A final report or an application for extension of time to file the report for the tax imposed by section 301 is due on November 15, 1990. Form CT-13-A, (1989/1990) Tax Return for Petroleum Businesses Taxable under Article 13-A, must be used for tax years ending on or after June 1, 1990 and before September], 1990.

The add-back of the gross receipts tax for New York State Corporate Franchise Tax, Personal Income Tax, and other taxes is eliminated for gross receipts tax for periods on and after June 1, 1990.

The restructured petroleum business tax applicable on and after September 1, 1990 changes the product tax base, exempts sales to certain governmental organizations and provides for joint administration with the motor fuel and diesel motor fuel excise taxes (Article 12-A).

The term "petroleum business" means every corporation and every unincorporated business:

1. importing motor fuel or causing motor fuel to be imported into the state for use, distribution, storage or sale in the state; or producing, refining, manufacturing or compounding motor fuel in the state.

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2. importing diesel motor fuel or causing diesel motor fuel to be imported into the state for use, distribution, storage or sale in the state; producing, refining, manufacturing or compounding diesel motor fuel within the state; engaging in the enhancement of diesel motor fuel within the state; making a sale or use of diesel motor fuel in the state, other than a retail sale not in bulk or self-use of diesel motor fuel which has been the subject of a retail sale to such corporation or unincorporated business; or registered as a distributor of kero-jet fuel only.
3. importing residual petroleum product or causing residual petroleum product to be imported into the state for use, distribution, storage or sale in the state; producing, refining, manufacturing or compounding residual petroleum product in the state; or making a sale or use of residual petroleum product in the state other than a self-use of residual petroleum product which has been the subject of a retail sale to such corporation or unincorporated business.

Motor fuel or diesel motor fuel brought into this state in the ordinary fuel tank connected with the engine of a motor vehicle, or recreational motor boat propelled by the use of such fuel, and used only in the operation thereof is not deemed imported within the meaning of Article 13-A.

The term "diesel motor fuel" means kerosene, crude oil, fuel oil or other middle distillate and also motor fuel suitable for use in the operation of an engine of the diesel type, excluding, however, any product specifically designated "No. 4 Diesel fuel" and not suitable as a fuel used in the operation of a motor vehicle engine.

The term "enhanced diesel motor fuel" means the combined or blended product which has resulted from the act of enhancement (the mixing of fuel oil or other middle distillate with kerosene or any other substance or additive such as cetane improver, to improve or enhance such products' performance in the operation of a motor vehicle diesel engine) and any product specifically designated "Diesel fuel", "No. 1 Diesel fuel" or "No. 2 Diesel fuel" or any like industry designation commonly used to refer to fuel used in the operation of motor vehicle diesel engines.

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Enhancement does not include the production of fuel oil by the addition of a substance to No. 2 fuel oil for the purpose of lowering the cloud point or pour point of such product to that of generally accepted industry standards for No. 2 fuel oil and such resulting product is invoiced and sold, in good faith, by the producer as No. 2 fuel oil.

The term "nonautomotive type diesel motor fuel" means diesel motor fuel qualifying for the heating or production exemption from the Diesel Motor Fuel excise tax.

The term "automotive-type diesel motor fuel" means diesel motor fuel which is not nonautomotive-type diesel motor fuel.

The term "motor fuel" means gasoline, benzol or other product, except kerosene and crude oil, which is suitable for use in the operation of a motor vehicle engine. If kerosene or crude oil is compounded or mixed with any other product or products, and the resulting compound or mixture is suitable for use in the operation of any such motor vehicle engine, such resulting compound or mixture in its entirety is motor fuel.

The term, "residual petroleum product" means the topped crude of refinery operations which includes "No. 5 and No. 6 Fuel oils" and "bunker C" fuel oil and, the product specifically designated "No. 4 Diesel fuel" and not suitable as a fuel used in the operation of a motor vehicle engine.

The term "taxable month" means a calendar month or any part of a month that a petroleum business is subject to tax under Article 13-A.

The term "use" as applied to motor fuel, diesel motor fuel and residual petroleum product means the exercise of any right or power over such petroleum product by any person, whether or not a purchaser, including, but not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage or any consumption of such petroleum product.

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IMPOSITION OF TAX Section 301-a

Section 301-a of the Tax Law imposes a tax, for taxable months beginning on or after September 1, 1990, on every petroleum business for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state.

The monthly tax under this section is the sum of the:

1. motor fuel component;
2. automotive-type diesel motor fuel component;
3. nonautomotive-type diesel motor fuel component;
- A. residual petroleum product component.

In no event is the tax less than the minimum monthly tax of \$85.

The motor fuel component is determined by multiplying the motor fuel and automotive-type diesel motor fuel rate times the number of gallons of motor fuel:

1. imported or caused to be imported into this state by the petroleum business for use, distribution, storage or sale in the state; or
2. produced, refined, manufactured or compounded in the state by the petroleum business during the taxable month.

The automotive-type diesel motor fuel component is determined by multiplying the motor fuel and automotive-type diesel motor fuel rate times the number of gallons of automotive-type diesel motor fuel:

1. sold or used by the petroleum business in this state during the taxable month; and
2. for any gallonage not previously subject to tax, delivered to a filling station or into the fuel tank of a motor vehicle, whichever occurs first.

The nonautomotive-type diesel motor fuel component is determined by multiplying the nonautomotive-type diesel motor fuel rate times the number of gallons of nonautomotive-type diesel motor fuel sold or used in this state by the petroleum business during the taxable month.

The residual petroleum product component is determined by multiplying the residual petroleum product rate times the number of gallons of residual petroleum product sold or used in this state by the petroleum business during the taxable month.

The tax does not apply to any gallonage that does not come to rest in New York State within the meaning of federal decisional law interpreting the U.S. constitution, nor is any gallonage included in the measure of this tax more than once.

A tax surcharge of 15% of the rate is imposed for taxable months beginning on and after September 1, 1990 and before June 1, 1992. A tax surcharge of 10% of the then current rate is imposed for taxable months beginning on or after June 1, 1992 and before June 1, 1993. The tax surcharge is computed on a per gallon basis and rounded to the nearest hundredth cent per gallon.

The tax rates for taxable months beginning on or after September 1, 1990 are shown below:

	Rate per gallon	Rate per gallon including 15% tax surcharge
Motor fuel and automotive-type diesel motor fuel	\$.055	\$.0633
Nonautomotive-type diesel motor fuel	.050	.0575
Residual petroleum product	.040	.0460

An indexing method will be used to periodically adjust the rates of tax to reflect changes in petroleum prices. The rate adjustment calculation will use the monthly producer price index for refined petroleum products published by the United States Department of Labor, Bureau of Labor Statistics as a basis for the adjustment. The new rates will be rounded to the nearest one-tenth of a cent. The rates will first be adjusted on April 1, 1991. The rates will next be adjusted on January 1, 1992 and then annually on the first day of January.

A special provision applies to motor fuel in this state on September 1, 1990 imposing a tax, on all persons holding motor fuel which has not been included in the measure of the gross receipts tax or the cents-per-gallon basis monthly tax, on the first sale or use in this state of any and all such motor fuel at the rate in effect at the time of sale or use. Motor fuel subject to this provision and commingled with other motor fuel is deemed sold or used before any other commingled motor fuel held by a person.

EXEMPTIONS

Products exempt from tax under section 301-a include the following:

1. Kerosene sold or used by a 12-A distributor of diesel motor fuel except for: kerosene that has been blended or mixed with any other product constituting diesel motor fuel, motor fuel or residual petroleum product or that is used as fuel to operate a motor vehicle or sold to a consumer for use as fuel to operate a motor vehicle.
2. Kero-jet fuel sold by a 12-A diesel motor fuel distributor to a consumer for use exclusively as jet aircraft fuel or to a 12-A "distributor of kero-jet fuel only" that makes only retail sales and delivers kero-jet fuel directly into the fuel tank of an airplane; used by a 12-A distributor exclusively as jet aircraft fuel; or sold at retail by a 12-A "distributor of kero-jet fuel only" and delivered directly into the fuel tank of an airplane. (Kero-jet fuel is subject to tax under section 301-e at a reduced rate.)
3. Residual petroleum product sold or used by a petroleum business exclusively as bunker fuel for vessels.
4. Crude oil and liquefied petroleum gases such as butane, ethane or propane.

Exports of motor fuel and enhanced diesel motor fuel are exempt from tax under section 301-a where immediately exported to an identified facility outside the state by a purchaser licensed in the other state and evidentiary requirements are complied with.

Other exemptions from the section 301-a tax are provided for the following:

1. Sales by a petroleum business to New York State and its political subdivisions or to the United States government and its instrumentalities of motor fuel, enhanced diesel motor fuel, unenhanced diesel motor fuel and residual petroleum product for its own use or consumption are exempt from tax under section 301-a.

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2. Sales to consumers for residential heating by a petroleum business are exempt from the tax under section 301-a for: unenhanced diesel motor fuel and residual petroleum product exclusively for residential heating purposes; enhanced diesel motor fuel exclusively for residential heating purposes provided the fuel is delivered into a storage tank attached to a heating unit and used exclusively for residential heating where the storage tank is not equipped to dispense the fuel into the fuel tank of a motor vehicle (a certificate is required for deliveries exceeding 4,500 gallons).
3. Sales of residual petroleum product between registered residual petroleum product businesses are exempt from the tax under section 301-a.
4. Sales of unenhanced diesel motor fuel between registered distributors of diesel motor fuel except retail sales or sales that involve deliveries at filling stations or into repositories equipped to dispense fuel into the fuel tank of a motor vehicle, are exempt from the tax under section 301-a.

REIMBURSEMENT

A subsequent purchaser is eligible for reimbursement of the tax previously imposed pursuant to Article 13-A which was included in the cost of petroleum purchased where such fuel is subsequently sold by the purchaser for the following purposes and the tax is not included in the selling price:

1. Diesel motor fuel used for residential heating purposes, [sold by a purchaser for heating purposes] where:
 - a. such fuel is delivered into a tank attached to heating unit which has no hose or other apparatus to dispense fuel into motor vehicles;
 - b. Article 13-A tax has been paid and absorbed by purchaser; and
 - c. purchaser has documentation that Article 13-A tax was paid and absorbed. A certificate is required for sales over 4,500 gallons of enhanced diesel motor fuel.

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2. Sales of motor fuel and diesel motor fuel to New York State and its agencies, instrumentalities and political subdivisions and the federal government, and its agencies and instrumentalities where:
 - a. the purchase was exclusively for- the organization's own use;
 - b. the Article 13-A tax was paid and absorbed by purchaser; and
 - c. the purchaser has documentation that Article 13-A tax was paid and absorbed.

UTILITY CREDIT

Gallorage eligible for credit. An electric corporation subject to Department of Public Service supervision is entitled to a credit against the section 301-a (Article 13 A) tax imposed and the section 186-a (Article 9) tax imposed on an electric corporation where:

1. Residual petroleum product or diesel motor fuel (not enhanced diesel motor fuel) is imported by such electric corporation which is a petroleum business and such residual petroleum product or diesel motor fuel is used to produce electricity;
2. Residual petroleum product or diesel motor fuel (not enhanced diesel motor fuel) purchased by an electric corporation with the Article 13-A tax paid and absorbed by the electric corporation where such residual petroleum product or diesel motor fuel is used to produce electricity.

The credit is determined by multiplying the gallonage eligible for the credit by the credit rate per gallon.

Residual petroleum product	\$.0298 per gallon
Diesel motor fuel	\$.03 per gallon

Credit rates are adjusted and published in the same manner as the rates of the components of the petroleum business tax and rounded to nearest one-hundredth of a cent. A credit is also allowed against the tax surcharge.

The utility credit is first applied to the utility's Article 13-A liability for the period in which the credit arose. Any remaining credit may then be applied to subsequent Article 13-A liabilities or to the utility's corporation tax liability under Section 186-a of Article 9 for the calendar year in which the credit arose.

IMPOSITION OF TAX Section 301-e (Aviation Fuel Business)

Tax is imposed under section 301-e for taxable months beginning on or after September 1, 1990 on every aviation fuel business for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state.

The monthly tax under this section is the sum of:

1. the aviation gasoline component; and
2. the kero-jet fuel component.

In no event is the tax less than the minimum monthly tax of \$25.

The aviation gasoline component is determined by multiplying the aviation gasoline rate times the number of gallons of aviation gasoline:

1. imported or caused to be imported into this state by an aviation fuel business for use, distribution, storage or sale in the state or produced, refined, manufactured or compounded in the state; or
2. imported in the fuel tanks of aircraft by an aviation fuel business.

The kero-jet fuel component is determined by multiplying the kero-jet fuel rate times the number of gallons of kero-jet fuel:

1. imported or caused to be into this state and consumed in this state by an aviation fuel business in the operation of its aircraft;
2. for any gallonage not previously subject to tax which is sold to any person that is not registered as an aviation fuel business or which is consumed in this state by an aviation fuel business in the operation of its aircraft; and
3. imported in the fuel tanks of aircraft by an aviation fuel business and consumed in this state.

The tax rates for taxable months beginning on or after September 1, 1990 are shown below:

	Rate per gallon	Rate per gallon including 15% tax surcharge
Aviation gasoline rate	\$.055	\$.0633
Kero-jet fuel rate	.019	.019

The rates will be adjusted at the same time and manner as the rates of the components of the petroleum business tax.

A tax surcharge is imposed on the aviation gasoline fuel rate for the same periods and at the same rates as the tax surcharge on the rates of the components of the petroleum business tax. The tax surcharge is not imposed on the kero-jet fuel rate.

The term "aviation fuel business" means a corporation or incorporated business:

1. importing or causing aviation gasoline or kero-jet fuel to be imported (including the importation in aircraft fuel tanks) into the state for use, distribution, storage or sale in the state;
2. producing, refining, manufacturing or compounding aviation gasoline or kero-jet fuel in the state;
3. selling or using kero-jet fuel in the state, other than a retail sale not in bulk or self-use of kero-jet fuel which has been subject to a retail sale to such corporation or unincorporated business; or
4. registered as a distributor of kero-jet fuel only.

Kero-jet fuel and aviation gasoline consumed in this state mean:

1. All fuel consumed in a flight that originates and terminates in New York;
2. All fuel consumed during the takeoff of a flight originating in New York and terminating outside New York; and
3. none of the fuel consumed in a flight, that only terminates in New York or that originates and terminates outside New York

Aviation fuel means aviation gasoline and kero-jet fuel, however, kero-jet fuel does not include military jet fuel. Military jet fuel is a naphtha based aviation fuel refined and used solely for propelling military jet airplanes of the United States Armed Forces.

A reimbursement may be claimed by an aviation fuel business for the restructured petroleum business tax absorbed by the aviation fuel business for aviation gasoline purchased in New York that is consumed in the operation of its aircraft outside New York. A credit may be claimed by an aviation fuel business which is an airline in computing the restructured petroleum business tax for gallonage of aviation gasoline imported into New York and consumed in the operation of its aircraft outside New York.