

## **Excise Tax and Petroleum Business Tax Exemptions for Certain Alternative Fuels Beginning September 1, 2006**

On June 23, 2006, Governor Pataki signed Chapter 109 of the Laws of 2006 into law. Chapter 109 amends the Tax Law, in part, to provide full or partial exemptions from the excise tax (Article 12-A) and petroleum business tax (Article 13-A) for certain alternative fuels sold in New York State. The affected alternative fuels are E85, B20, compressed natural gas (CNG), and hydrogen (see definitions on page 3).

Chapter 109 also reduces or eliminates the state and local sales and use taxes for these alternative fuels. This memorandum explains the amendments to the excise tax, petroleum business tax, and prepaid sales tax. For complete information on the amendments affecting the state and local sales and use taxes, see TSB-M-06(10)S, *Sales Tax Exemptions and Reductions for Certain Alternative Fuels Beginning September 1, 2006*.

### **Exemption for E85**

Effective September 1, 2006, sales of E85 are exempt from excise tax and petroleum business tax provided the E85 is delivered to and placed in a storage tank of a filling station to be dispensed directly into a motor vehicle for use in the operation of the motor vehicle. This exemption does not apply to the petroleum testing fee.

When E85 is delivered to and placed in a storage tank of a filling station to be dispensed directly into a motor vehicle for use in the operation of the motor vehicle, the seller may exclude the amount of the taxes from the selling price of E85. When E85 is **not** delivered to and placed in a storage tank of a filling station to be dispensed directly into a motor vehicle for use in the operation of the motor vehicle, the seller must include the applicable taxes and provide the purchaser with a properly completed Form FT-935, *Certification of Taxes Paid on Motor Fuel*, or an invoice or other billing document showing that the taxes have been included. A certification is not required for a sale at retail.

A registered distributor of motor fuel may claim a deduction for any exempt sales of E85 on Form PT-101, *Tax on Motor Fuel*. Any other person who paid the taxes to a supplier and delivered the E85 exempt from the taxes to a filling station to be dispensed directly into a motor vehicle for use in the operation of the motor vehicle may file a claim for refund. A claim for refund of excise tax may be filed on Form FT-946/1046, *Motor/Diesel Motor Fuel Tax Refund Application* and a claim for reimbursement of the petroleum business tax may be filed on Form AU-630, *Application for Reimbursement of the Petroleum Business Tax*.

(Tax Law, sections 289-c (1-a) (d) and 301-b (6))

## **Exemption for B20**

Effective September 1, 2006, sales of B20 are partially exempt from the excise tax and petroleum business tax. The exemption is equal to 20% of the applicable taxes. Accordingly, the excise tax for B20 will be computed using 80% of the excise tax rate and the petroleum business tax for B20 will be computed using 80% of the applicable petroleum business tax rate. (See Publication 908, *Fuel Tax Rates*, for the rates that apply.)

The seller may exclude 20% of the amount of the tax or taxes imposed from the selling price with respect to the sale of B20. The seller must give the purchaser a properly completed Form FT-1000, *Certificate of Prepayment or Payment of Taxes on Diesel Motor Fuel*, or an invoice or other billing document showing the taxes being charged on each sale of B20. A certification is not required for a sale at retail.

A registered distributor of diesel motor fuel should report all of the gallons of B20 sold on Form PT-102, *Tax on Diesel Motor Fuel*, multiplied by the reduced tax rate. When B20 is purchased and the taxes have been passed through at the reduced rate, the distributor must reduce the deduction for *Gallons purchased with the taxes included that were sold, used or transferred* by 20% on form PT-102.

Since B20 is enhanced diesel motor fuel, it may not be sold by a retailer of heating oil only.

If B20 is sold in New York State for final consumption on or after September 1, 2006, and the taxes absorbed by the purchaser are greater than the tax computed at 80% of the total excise tax and petroleum business tax, the purchaser may submit a claim for a partial credit or refund of the excise tax and reimbursement of the petroleum business tax. The purchaser must provide documentary proof evidencing the absorption of the entire amount of the taxes imposed. A claim for refund of excise tax may be filed on Form FT-946/1046, *Motor/Diesel Motor Fuel Tax Refund Application* and a claim for reimbursement of the petroleum business tax may be filed on Form AU-630, *Application for Reimbursement of the Petroleum Business Tax*.

(Tax Law, sections 289-c (1-a) (d) and 301-b (7))

## **Exemptions for CNG and hydrogen**

Effective September 1, 2006, sales of CNG or hydrogen suitable for use in the operation of a motor vehicle are exempt from excise tax and petroleum business tax but subject to the petroleum testing fee. A registered distributor of motor fuel should report this information on Form PT-101, *Tax on Motor Fuels*.

The seller may exclude the amount of the tax or taxes imposed from the selling price with respect to the sale of CNG or hydrogen. If CNG or hydrogen are purchased and the excise tax or petroleum business tax are passed through to the purchaser, a claim for refund may be filed. A

claim for refund of excise tax may be filed on Form FT-946/1046, *Motor/Diesel Motor Fuel Tax Refund Application* and a claim for reimbursement of the petroleum business tax may be filed on Form AU-630, *Application for Reimbursement of the Petroleum Business Tax*.

(Tax Law, Sections 289-c (1-a) (d) and 301-b (8))

### **Prepaid Sales Tax**

Effective September 1, 2006, sales of CNG and hydrogen are exempt from the prepaid sales tax on motor fuel and diesel motor fuel imposed by section 1102(a) of the Tax Law. In addition, E85 fuel will be exempt from the prepaid tax provided it is delivered to and placed in a storage tank of a filling station to be dispensed directly into a motor vehicle for use in the operation of the motor vehicle. The exemption from the prepaid sales tax does not apply to sales of B20. Thus, the prepaid sales tax with respect to B20 must be computed at the full amount and may **not** be reduced by 20%.

### **Effective Date**

The exemptions from the excise tax, petroleum business tax and prepaid sales tax described above apply to such fuel sold from September 1, 2006, through August 31, 2011.

### **Definitions**

*B20* means a mixture consisting by volume of 20% biodiesel and the remainder of which is diesel motor fuel.

*Biodiesel* shall mean a diesel motor fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that meets the American Society for Testing and Materials D6751-02a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

*CNG* means fuel comprised primarily of methane, stored in either a gaseous or liquid state, suitable for use and consumption in the engine of a motor vehicle.

*E85* means a mixture consisting by volume of 85% ethanol and the remainder of which is motor fuel.

*Hydrogen* means fuel comprised primarily of molecular hydrogen, stored in either a gaseous or liquid state, suitable for use and consumption in the engine of a motor vehicle.

(Tax Law, Section 282, subdivisions 22-25.)