



Exemption for Interdistributor Sales of Highway Diesel Motor Fuel

This memorandum explains amendments made to the excise tax, petroleum business tax, and prepaid sales tax affecting registered distributors of diesel motor fuel and terminal operators storing diesel motor fuel.

Chapter 59 of the Laws of 2013 (Part W) amended the Tax Law to allow an exemption for certain interdistributor sales of highway diesel motor fuel. Prior to the amendment, the interdistributor exemption applied only to sales of non-highway diesel motor fuel¹ and qualified biodiesel. (See TSB-M 11(6)M, (11)S, *Changes in the Taxation and Classification of Diesel Motor Fuel Beginning September 1, 2011*.)

Effective August 1, 2013, sales of previously untaxed highway diesel motor fuel by a person registered as a distributor of diesel motor fuel to another person registered as a distributor of diesel motor fuel are exempt from the excise tax (Article 12-A), petroleum business tax (Article 13-A), and prepaid sales tax (Article 28) if the fuel is:

- delivered by pipeline, railcar, barge, tanker or other vessel to a terminal of a licensed/registered operator, or
- sold within a diesel fuel terminal where it was delivered.

Exemption Certificate

Form FT-1001, *Exemption Certificate for Diesel Motor Fuel Interdistributor Transactions*, is being expanded to allow registered distributors of diesel motor fuel to claim the interdistributor exemption for highway diesel motor fuel, effective August 1, 2013.

The excise tax, petroleum business tax, and prepaid sales tax must be passed through to the purchaser if any of the following occur:

- Form FT-1001 is not provided.
- The highway diesel motor fuel is removed from a terminal (other than by pipeline, barge, tanker or other vessel).
- The highway diesel motor fuel is delivered to a filling station or into the fuel tank of a motor vehicle.

¹ *Highway diesel motor fuel* is any diesel motor fuel that is **not** non-highway diesel motor fuel. *Non-highway diesel motor fuel* is any diesel motor fuel designated for use other than on the public highway (except for the use of the public highway by farmers to reach adjacent farmlands), and is dyed diesel motor fuel.

Terminal operators

Effective August 1, 2013, any person who has the use or control, or the right to use or control, a **diesel motor fuel storage facility** with a storage capacity of 50,000 gallons or more (other than a facility where fuel is stored solely for retail sale at the facility or for the person's own use or consumption) must be licensed/registered as a terminal operator. To apply for a terminal operator license/registration, complete Form TP-650, *Application for Registration under Articles 12-A and 13-A*.

Prior to the amendments, only persons who had the use or control, or the right to use or control, a **motor fuel storage facility** with a storage capacity of 50,000 gallons or more (other than a facility where motor fuel is stored solely for retail sale at the facility or for the person's own use or consumption) were required to be licensed/registered as terminal operators.

Every terminal operator must keep records of inventory and file the monthly information returns, Form FT-941, *Terminal Operator's Monthly Report of Diesel Motor Fuel and Motor Fuel Inventory* and Form FT-941.1, *Terminal Operator's Individual Account Reconciliation*, to report the diesel motor fuel and motor fuel stored at the facility.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.