



# Important Notice

**N-93-30**  
(11/93)

## Notice To All Sellers and Transporters of Diesel Motor Fuel Regarding Impact of Federal Clean Air Act on New York Fuel Taxes

Effective October 1, 1993, the Environmental Protection Agency (EPA) requires that only clear, low-sulfur diesel fuel be used for automotive purposes. The EPA also mandates that high-sulfur diesel motor fuel be dyed. Inquiries have been received regarding the treatment of clear, low-sulfur diesel motor fuel and dyed high-sulfur diesel motor fuel for purposes of New York State taxes. There has been no change to the New York State Tax Law with regard to the taxation of diesel motor fuel (enhanced diesel product and unenhanced diesel product).

The New York State diesel motor fuel tax (Tax Law, Article 12-A) contains a category of diesel product that is taxed the first time it is sold in this state. This category of product is *enhanced diesel motor fuel* (Tax Law section 282(16)). It is defined as the product that results from the blending of kerosene or any other substance, such as a cetane enhancer, with middle distillate to improve the middle distillate's performance in the operation of a motor vehicle engine of the diesel type (however, the blending of kerosene with middle distillate solely for the purpose of improving the flow rate in cold weather does not result in enhanced diesel motor fuel provided the resulting product is invoiced and sold, in good faith, as No. 2 fuel oil). *Enhanced diesel motor fuel* is further defined as any product specifically identified as *diesel fuel, No. 1 diesel fuel* or *No. 2 diesel fuel*, or by any other term which is commonly used by industry to refer to automotive diesel fuel (e.g., *highway diesel*) as distinguished from *fuel oil*.

The taxation of *enhanced diesel motor fuel* is different from the taxation of No. 2 fuel oil. Generally, No. 2 fuel oil may be sold between registered distributors free of the diesel motor fuel excise tax, the petroleum business tax and the prepaid sales tax, while enhanced diesel motor fuel may not be sold free of tax.

When the product being sold is a blended diesel motor fuel product or is identified as *automotive diesel* by the seller, the excise, petroleum business and prepaid sales taxes attach the first time it is sold. Unlike product sold as No. 2 heating oil, there is no tax-free sale of enhanced diesel motor fuel to a person registered with the Tax Department as a distributor of diesel motor fuel.

When suppliers add an enhancement package to middle distillate or blend other additives with clear middle distillate to improve its performance as a motor fuel, they create enhanced diesel motor fuel. It is not the presence of clear product **alone** that creates the tax classification of enhanced diesel motor fuel: it is the actual **enhancement** of the product. Similarly, on any sale of clear middle distillate where the invoice identifies the product as *automotive diesel, highway diesel, diesel fuel* or like category, the correct classification of the product for New York State tax purposes is *enhanced diesel motor fuel*.

The fact that fuel is dyed does not automatically exempt the fuel from New York State taxes. Fuel sold for use in off-highway equipment is subject to the state excise tax. Fuel sold for use in production of tangible personal property that is **not** for sale is also subject to the state excise tax. The state excise tax may be refunded to persons who use the fuel off-highway. Where the state excise tax is required to be charged, the petroleum business tax applies at the automotive rate, and sales tax is also imposed.

Specific sanctions are imposed by Article 37 of the Tax Law to curtail the diversion of heating oil to the automotive market. The misuse of an interdistributor certificate, or of any other certificate, or the mislabeling of diesel product on invoices and manifests gives rise to criminal penalties.

### Need Help?

**For forms or publications**, call toll free (from New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073.

**For information**, call the Business Tax Information Center toll free (from the continental U.S. only) 1 800 972-1233. You can also call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

**Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.**

**Persons with Disabilities** - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for disabled persons, please call the information and assistance numbers listed above.

**Hotline for the Hearing and Speech Impaired** - If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling our toll-free hotline 1 800 634-2110 (within New York State). Hours of operation are from 9:00 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

**If you need to write**, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.