

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

TSB-A-84(31)S
Sales Tax
October 15, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S821012D

On October 12, 1982 a Petition for Advisory Opinion was received from Amos Post Incorporated, P.O. Box 351, Catskill, New York 12414.

Petitioner inquires as to: (1) the correct method of computing the sales tax on the sale of gasoline by a motor fuel distributor registered under Article 12-A of the Tax Law, when such sales are made through his own retail outlets, and (2) the point at which the tax liability is incurred.

Section 1105(a) of the Tax Law imposes a sales tax on "the receipts from every retail sale of tangible personal property" Section 1101(b)(4)(ii) of the Tax Law provides that "a sale of automotive fuel by a distributor is deemed to be a retail sale" The term "distributor" refers to distributors for purposes of Article Twelve-A of the Tax Law, "excluding persons who are not required pursuant to section two hundred eighty-two-a to pay the tax imposed thereby." Tax Law, § 1101(b)(4)(ii)(B)

Section 1111(e)(1) of the Tax Law provides for the computation of tax. As originally enacted by L.1982, c.454, effective September 1, 1982, it provided that the tax was to be "based on the price paid to a distributor by a purchaser, which shall include (i) any charge by the distributor to the purchaser for any tax imposed by the United States pursuant to chapter thirty-two of the Internal Revenue code, and (ii) the statewide average retail mark-up" No statutory exception was created for distributors selling through their own retail outlets. See Technical Services Bureau Memorandum, TSB-M-82(28)S, p. 3. Petitioner's contention that, as of the time its Petition was received, in October, 1982, it was entitled to base its computation of tax on its purchase price, rather than its selling price, is untenable.

It is to be noted that Section 1111(e)(1) of the Tax Law was amended by L.1982, c. 930, to provide that the tax is generally to be based on the "regional average retail sales price for the region in which the sale occurs" Such provision was made applicable to quarterly periods beginning March 1, 1983.

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As to Petitioner's second query, the tax becomes due at the time the fuel is pumped into the tank of the customer, and is to be collected by Petitioner at the time its price is collected. Tax Law, §1132(a); 20 NYCRR 525.2, 532.1(a)(2).

DATED: July 10, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.