

Treatment of Nonroad, Locomotive & Marine Diesel Fuel under Articles 12-A, 13-A, and 28 of the Tax Law

Federal Environmental Protection Agency (EPA) regulations will soon go into effect regarding the standards, uses and labeling for nonroad, locomotive, and marine (NRLM) diesel fuel. Questions have arisen concerning the effect, if any, regarding the way this fuel is treated under the excise, petroleum business and sales taxes imposed by Articles 12-A, 13-A, and 28, respectively, of the Tax Law.

Beginning June 1, 2007, EPA regulations will require (over a phase-in period) all NRLM diesel fuel to contain a sulfur content no greater than 500 parts per million (ppm). EPA regulations also provide that distributors must accurately and clearly designate this fuel as *500 ppm sulfur NRLM diesel fuel*. High sulfur diesel fuel oil with a sulfur level above 500 ppm (also known as heating oil or #2 fuel oil) may not be used or designated as NRLM.

The Tax Department has determined that diesel fuel designated as *500 ppm sulfur NRLM diesel fuel* or similar designations (e.g., 500 ppm dyed low sulfur nonroad diesel fuel) is **unenanced** diesel motor fuel for the purposes of Articles 12-A, 13-A and 28 of the Tax Law. As a result, as long as such fuel is **not** delivered to a filling station or into a storage tank or other repository equipped with a nozzle or similar apparatus capable of dispensing the fuel into the tank of a motor vehicle, the following provisions apply:

- A registered distributor may sell *500 ppm sulfur NRLM diesel fuel* or other unenanced diesel motor fuel to other registered distributors and retailers of heating oil only (ROHOs) without passing through the excise tax, petroleum business tax, and prepaid sales tax. Form FT-1001, *Exemption Certificate of Diesel Motor Fuel Interdistributor Transactions*, must be received from the purchaser.
- A registered distributor or ROHO may sell *500 ppm sulfur NRLM diesel fuel* or other unenanced diesel motor fuel for use directly and exclusively in the production, for sale, of tangible personal property by manufacturing, processing, or assembly exempt from excise tax, petroleum business tax and sales tax. Form FT-1012, *Manufacturing Certification for Diesel Motor Fuel and Residual Petroleum Product*, must be received from the purchaser.
- A registered distributor or ROHO may sell *500 ppm sulfur NRLM diesel fuel* or other unenanced diesel motor fuel for use directly and exclusively in the production, for sale, of tangible personal property by refining, mining, or extracting exempt from excise tax and sales tax. Form FT-1020, *Exemption Certificate for Certain Taxes Imposed on Diesel Motor Fuel and Propane*, must be received from the purchaser.

- A registered distributor or ROHO may sell *500 ppm sulfur NRLM diesel fuel* or other unenhanced diesel motor fuel for use directly and exclusively in the production, for sale, of gas, electricity, refrigeration, or steam exempt from excise tax and sales tax. Form FT-1020, *Exemption Certificate for Certain Taxes Imposed on Diesel Motor Fuel and Propane*, must be received from the purchaser.
- A registered distributor or ROHO may sell *500 ppm sulfur NRLM diesel fuel* or other unenhanced diesel motor fuel to exempt organizations qualified under section 1116(a)(4) of the Tax Law for nonresidential heating purposes exempt from excise tax, petroleum business tax and sales tax. Form FT-1021-A, *Certification for Purchases of Unenhanced Diesel Motor Fuel, Residual Petroleum Product, or Dyed Diesel Motor Fuel, By Certain Exempt Organizations*, must be received from the purchaser.
- A registered distributor or ROHO may sell *500 ppm sulfur NRLM diesel fuel* or other unenhanced diesel motor fuel to exempt organizations qualified under section 1116(a)(5) of the Tax Law for nonresidential heating purposes exempt from excise tax and petroleum business tax. Form FT-1021-A, *Certification for Purchases of Unenhanced Diesel Motor Fuel, Residual Petroleum Product, or Dyed Diesel Motor Fuel, By Certain Exempt Organizations*, must be received from the purchaser.

Enhanced diesel motor fuel

EPA regulations also provide that 500 ppm (maximum) sulfur diesel fuel that is not NRLM diesel fuel must be designated as either *#1D 500 ppm sulfur motor vehicle diesel fuel* or *#2D 500 ppm sulfur motor vehicle diesel fuel*. These designations or any other designation that indicates the fuel is intended for use in a motor vehicle engine of the diesel type will require that the fuel be treated as **enhanced** diesel motor fuel. As such, the provisions outlined above do not apply.

NOTE: A TSB-M is an informational statement 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.