

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

TSB-M-87 (1) M
 Miscellaneous Tax
 January 15, 1987

1986 AMENDMENTS TO THE MISCELLANEOUS TAX LAWS

This Technical Service Bureau Memorandum provides a brief summary of the 1986 New York State Law amendments to the Miscellaneous Tax Laws, including, Article 12-A (Motor Fuel Tax), Article 18 (Alcoholic Beverage Tax), Article 20 (Cigarette Tax), Article 21 (Highway Use Tax), and Article 37 (Crimes and Other Offenses, Seizures, and Forfeitures).

Motor Fuel Tax
Article 12-A

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
282-12	276	1	86(9)M	Effective July 14, 1986, defines transporter" and "importing transporter."
282-13	276	1	86(9)M	Effective July 14, 1986, defines "terminal" and "terminal operator."
283-1	276	2	86(9)M	Effective July 14, 1986, provides that only registered distributors may import motor fuel into New York State for use, distribution, storage or sale within the state. In addition a person must be registered as a motor fuel distributor to produce, refine, manufacture, or compound motor fuel within New York State, as well as to sell, transfer, use, or otherwise dispose of motor fuel in New York State.
283-2	276	2	86(9)M	Effective July 14, 1986, adds additional instances where the Tax Commission may refuse to register an applicant as a motor fuel distributor.
283-3,4,5	275	1	86(10)M	Effective July 15, 1986, allows other security to be deposited in lieu of filing surety bonds or depositing other securities.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
283-3	276	2	86(9)M	Effective July 14, 1986 adds "other security acceptable to the Tax Commission" as collateral to secure the payment of any amount due from a distributor under Article 12-A.
283-4	276	2	86(9)M	Effective July 14, 1986, adds additional conditions under which the Tax Commission may cancel or suspend a motor fuel distributor's registration.
283-5	276	2	86(9)M	Effective July 14, 1986, adds that a registration or an application for a registration cannot be cancelled, suspended or refused without the registrant or applicant having an opportunity for a hearing. An application for registration can be refused prior to a hearing if the applicant is given an opportunity for a subsequent hearing. Instances were also added where a registration may be cancelled or suspended prior to an opportunity for a hearing.
283-6(a)	276	2	86(9)M	Effective July 14, 1986, adds that the Tax Commission is not required to register the applicant when the Tax Commission fails to issue a notice of refusal to register within the three month period if the applicant has not filed a bond or other security in the amount fixed by the Tax Commission. Provides for a hearing upon petition where a registration is cancelled or suspended prior to a hearing. Adds instances under subdivision (2) of Section 283 to those acts or omissions which allow the Tax Commission to propose to cancel or suspend a registration or refuse to register an applicant.
283-6(b)(i)	276	2	86(9)M	Effective July 14, 1986, adds notice requirements for the Tax Commission, and hearing and filing requirements for the registrant, with respect to increases in the amount of bonds or other securities required to be filed by registered distributors.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
283-6 (b)(ii)	276	2	86(9)M	Effective July 14, 1986, adds time requirements to the Tax Commission and the registrant with respect to hearing determinations on bonds or other security increases.
283-7	276	2	86(9)M	Effective July 14, 1986, adds that a justice of the supreme court can prohibit other persons from releasing any motor fuel that is illegally imported or sold by an unregistered distributor.
283-9.(a), (b)	276	2	86(9)M	Effective July 14, 1986, provides that a distributor's registration is personal to whom it is granted, gives instances of what constitutes a transfer of registration, and gives the procedure for transferring a registration.
283-10	276	2	86(9)M	Effective July 14, 1986, provides that where Section 283 refers to ownership of more than 107 of the voting stock of an applicant, 25% or more will be substituted as the percentage of ownership, if the applicant, corporation or other person has 4 or fewer shareholders holding voting stock.
283-a-1	276	3	86(9)M	Effective July 14, 1986, provides for the licensing of importing transporters upon their application.
283-a-2	276	3	86(9)M	Effective July 14, 1986, provides for refusing to license an applicant as an importing transporter on substantially the same basis as Section 283(2).
283-a-3	276	3	86(9)M	Effective July 14, 1986, provides the Tax Commission with the authority to require a bond or other security to be filed to obtain a license as an importing transporter and to secure the performance of an importing transporter's duties and obligations. The Tax Commission is also authorized to increase the amount of such bond or other security.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
283-a-4	276	3	86(9)M	Effective July 14, 1986, specifies those actions that may cause the cancellation or suspension of the license of an importing transporter.
283-a-5	276	3	86(9)M	Effective July 14, 1986, provides importing transporters with the opportunity for a hearing to contest the cancellation or suspension of a license or the refusal of an application for a license on the same basis as Section 283(5). However, a license may be cancelled or suspended without a prior hearing, for failure to file a return or report or for failure to pay the tax under Article 12-A and Articles 28 and 29 with respect to motor fuel, within 10 days of the notice and demand, or for failing to maintain the required bond or other security.
283-a-6	276	3	86(9)M	Effective July 14, 1986, provides that subdivisions (6), (8), (9) and (10) of Section 283 of Article 12-A will apply to the provisions of Section 283-a in the same manner and force with respect to importing transporters, except where any provisions of such subdivisions are either inconsistent with or irrelevant to Section 283-a.
283-b-1	276	3	86(9)M	Effective July 14, 1986, provides for the licensing of terminal operators upon their application.
283-b-2	276	3	86(9)M	Effective July 14, 1986, provides for refusing to license an applicant as a terminal operator on substantially the same basis as Section 283(2).
283-b-3	276	3	86(9)M	Effective July 14, 1986, provides the Tax Commission with the authority to require a bond or other security to be filed to obtain a license as a terminal operator and to secure the performance of a terminal operator's duties and responsibilities.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
				The Tax Commission is also authorized to increase the amount of such bond or other security.
283-b-4	276	3	86(9)M	Effective July 14, 1986, specifies those actions that may cause the cancellation or suspension of the license of a terminal operator.
283-b-5	276	3	86(9)M	Effective July 14, 1986, provides terminal operators with the opportunity for a hearing to contest the cancellation or suspension of a license or the refusal of an application for a license, on the same basis as Section 283(5). However, a license may be cancelled or suspended without a prior hearing, for failure to file a return or report or for failure to pay the tax under Article 12-A and Articles 28 and 29 with respect to motor fuel, within 10 days of the notice and demand, or for failing to maintain the required bond or other security.
283-b-6	276	3	86(9)M	Effective July 14, 1986, provides that subdivisions (6), (8), (9) and (10) of Section 283 of Article 12-A will apply to the provisions of Section 283-b in the same manner and force with respect to terminal operators, except where any provisions of such subdivisions are either inconsistent with or irrelevant to Section 283-b.
284-3	276	5	86(10)M	Effective July 14, 1986, repeals Section 284-3.
285-a	276	6	86(10)M	Effective July 14, 1986, repeals old Section 285-a and adds new Section 285-a.
285-a-1	276	6	86(10)M	Effective July 14, 1986, prohibits the purchase of motor fuel, except at retail, without certification that a registered distributor has assumed or

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
				paid Article 12-A Tax and that such tax is passed through to the purchaser. Without certification both purchaser and seller become jointly and severally liable to pay taxes imposed on such motor fuel.
285-a-2	276	6	86(10)M	Effective July 14, 1986, presumes that all motor fuel (except motor fuel in the fuel tank of a motor vehicle or in small containers) in the State is subject to Article 12-A taxes until the contrary is established. If the motor fuel tax is not accounted for by any person who imports, manufacturers or sells such motor fuel, received or possessed in the State, then that person is responsible for the payment of that tax. It also allows up to 2% maximum loss due to shrinkage, evaporation and handling that a distributor establishes and it allows an adjustment for gallons lost or destroyed due to an accident while motor fuel was being held or transported for sale other than at retail.
285-a-3(a)	276	6	86(10)M	Effective July 14, 1986, requires a certification for each sale of motor fuel, other than a retail sale. The certification is given by the seller to the purchaser. The certification must state: (i) that the seller is a registered distributor and is passing through the tax imposed by Article 12-A which he paid or assumed liability for payment of, or (ii) the seller is passing through the taxes previously assumed or paid by a registered distributor and passed through to him.
285-a-3(b)	276	6	86(10)M	Effective July 14, 1986, adds that if a certificate has been delivered to and accepted in good faith by a purchaser, the seller has the sole burden of proving

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
				that the tax was assumed or paid by a registered distributor.
285-a-3(c)	276	6	86(10)M	Effective July 14, 1986, makes the seller and purchaser jointly and severally liable for the Article 12-A taxes where a certification is not furnished by the seller at a delivery of motor fuel.
285-a-3(d)	276	6	86(10)M	Effective July 14, 1986, allows the Tax Commission to authorize the delivery of the certification at a time after the delivery of the Law Legislative motor fuel if, due to unusual circumstances, it is not possible for the seller to furnish the certification at the time of delivery.
286-b-1	276	7	86(11)M	Effective July 14, 1986, adds that a person causing the operation of a vessel, motor vehicle or pipeline, which is used to transport motor fuel into, through or within the state, is required to have the operator thereof possess a manifest on the vessel, in the motor vehicle or in the main control building of the pipeline in this state. It also describes the circumstances which give rise to the presumptions that the motor fuel being transported is intended for sale, use, distribution or storage within the state and/or that such motor fuel is being imported or caused to be imported by other than a registered distributor.
288-1(a)	276	8	86(10)M	Effective July 14, 1986, amends the term distributor to include for purposes of this section any other person liable for taxes imposed by this article.
288-a	276	9	86(10)M	Effective July 14, 1986, authorizes the Tax Commission to issue a jeopardy assessment prior to the due date of a return if collection of any tax will be jeopardized by delay. This section

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
				allows the filing of a bond issued by a surety company or the depositing of other security in order to stay the collection of the jeopardy assessment pending a hearing or a proceeding under Article 78 of the CPLR.
289-b-1(e)	276	10	86(10)M	Effective July 14, 1986, amends paragraph 1(e) to provide for a penalty of twice the amount of taxes imposed under Article 12-A on owners of filling stations (whether or not registered as motor fuel distributors) who willfully and knowingly have in their custody, possession or control, (i) motor fuel on which taxes imposed by Article 12-A have not been assumed or paid by a registered distributor, (ii) motor fuel on which taxes imposed by Article 12-A were required to be passed through to such owners and included in their cost of such fuel but had not been passed through and included in their purchase price. It will be presumptive evidence that filling station owners shall willfully and knowingly have in their custody, possession or control untaxed motor fuel where they have not received certifications required by Section 285-a(3) of Article 12-A.
289-c-1(a)	276	11	86(10)M	Effective July 14, 1986, allows any person selling motor fuel to the State of New York, any of its agencies, instrumentalities, public corporations or political subdivisions, the United States and any of its agencies and instrumentalities, or a hospital which is entitled to and has received the exempt status under Section 1116(a)(4) of the Tax Law, for its own use or consumption, and any person selling kerojet fuel to an airline for use in its airplanes, to exclude the amount of

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
				Article 12- A tax from the selling price. The seller may claim a refund or credit of Article 12-A taxes under rules and regulations prescribed by the Tax Commission.
289-c-3(g)	276	12	86(10)M	Effective July 14, 1986, provides that organizations listed in Section 289-c-1(a), which purchase, use or consume motor fuel or diesel motor fuel in vehicles they own, operate, and use exclusively for their own purposes, or airlines which purchase kerojet fuel for use in their own airplanes, shall be entitled to a reimbursement of taxes included in the purchase price.
289-c-9	276	13	86(10)M	Effective July 14, 1986, provides interest to be paid to any organization described in Section 1116(a)(4) which is eligible under Section 289-c-3 for a refund of motor fuel and diesel motor fuel taxes if a refund check is not issued within 45 days of receipt of a refund application in a form processible by the Department of Tax and Finance.
			<u>Article 37</u>	
1812(d)	276	25	85(8.1)M	Effective December 1, 1986, owners of filling stations who willfully and knowingly have in their custody, possession and control, any motor fuel on which the taxes imposed by Article 12-A of the Tax Law have not been assumed or paid, are guilty of a Class E felony.
1812(g)	276	26	85(8.1)M	Effective December 1, 1986, any person who fails to obey an administrative subpoena is guilty of a misdemeanour.
1812(h)	276	26	85(8.1)M	Effective December 1, 1986, any person who falsely makes or produces a manifest is guilty of a Class E felony.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
1812-b	276	27	85(8.1)M	Effective December 1, 1986, any person who imports or causes motor fuel to be imported into New York for use, distribution, storage, or sale within the state, or who produces, refines, manufactures, or compounds motor fuel in the state, while not registered as a distributor under Section 283 of the Tax Law is guilty of a misdemeanour. That person is guilty of a Class E felony if the amount of such motor fuel within any ninety day period is 2,900 gallons or more. Any person who commits a subsequent violation after having been twice convicted under this section is guilty of a Class E felony.
1812-c	276	27	85(8.1)M	Effective December 1, 1986, any person who is not licensed as a terminal operator but who operates as a terminal operator is guilty of a Class E felony.
1812-d(a)	276	27	85(8.1)M	Effective December 1, 1986, any person who is not licensed as an importing transporter but who operates as an importing transporter is guilty of a misdemeanour.
1812-d(b)	276	27	85(8.1)M	Effective December 1, 1986, any person who offloads 2,900 gallons or more of motor fuel in a thirty day period into a facility located within the state, for use, distribution, storage or sale in the state, while not licensed as an importing transporter is guilty of a Class E felony.
1848(a)	276	29	85(8.1)M	Effective July 14, 1986, authorizes police or peace officers, under certain conditions, to seize and take possession of motor fuel and its means of transportation, from persons who are importing such motor fuel into New York while not registered as distributors under Section 283 of the Tax Law.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
1848(b)	276	29	85(8.1)M	Effective July 14, 1986, authorizes the Department of Taxation and Finance to hold motor fuel and its means of transportation, which is seized pursuant to Section 1848(a), and authorizes the deposit of such seized motor fuel to the credit of the Department, at terminals or storage facilities within the state, or for the sale of such motor fuel by the Department on the open market.
1848(c)	276	29	85(8.1)M	Effective July 14, 1986, adds legal guidelines, under which the Department must move in the Supreme Court in any county to confirm the seizure of motor fuel and property seized under Section 1848(a). Failure by the Department to follow such guidelines can result in the restoration of the seized property to its owners as provided in Section 1848(e) of the Tax Law.
1848(d)(1)	276	29	85(8.1)M	Effective July 14, 1986, adds conditions under which forfeiture actions must be commenced by the Department on seized property to avoid having such property restored to its owners.
1848(d)(2)	276	29	85(8.1)M	Effective July 14, 1986, provides that forfeiture actions on seized property shall be commenced in Supreme Court. The proper venue for trial of an action for forfeiture is in the county in which the seizure occurred.
1848(d)(3)	276	29	85(8.1)M	Effective July 14, 1986, provides that the forfeiture of motor fuel and its means of transportation will be adjudged where the Department proves by clear and convincing evidence that the person importing or causing such motor fuel to be imported was not registered as a motor fuel distributor. All defendants in a forfeiture action shall have the right to trial by jury on any issue of fact.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
1848(d)(4)	276	29	85(8.1)M	Effective July 14, 1986, provides for the dismissal of a forfeiture action in the interest of justice, upon application.
1848(d)(5)	276	29	85(8.1)M	Effective July 14, 1986, provides that a forfeiture action shall be stayed during the pendency of a criminal action which is related to the forfeiture, and provides that under certain conditions the court may order that the forfeiture action proceed despite the pending criminal action.
1848(d)(6)	276	29	85(8.1)M	Effective July 14, 1986, gives limits of what the Department may recover from seized motor fuel and property.
1848(e)	276	29	85(8.1)M	Effective July 14, 1986, provides for the conditions under which seized motor fuel and its transportation must be restored to its owners.
1848(f)	276	29	85(8.1)M	Effective July 14, 1986, allows persons to move in the Supreme Court in any county for the release of their seized property upon their payment of the Department's fees and expenses.
1848(g)	276	29	85(8.1)M	Effective July 14, 1986, allows the Department either to sell seized property at public sale and to deposit and dispose of the net proceeds, or to retain the seized property for its official use.
1848(h)	276	29	85(8.1)M	Effective July 14, 1986, allows the defendants in forfeiture actions to recover all costs and damages, including attorney's fees, if they establish by a preponderance of evidence that the seizure was made without good cause and not in good faith. The suit or action must be commenced within 2 years after the time when the property was seized.

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>
<u>Alcoholic Beverage Tax</u>				
<u>Article 18</u>				
422	275	2	-----	Effective July 29, 1986, allows other security to be deposited in lieu of filing surety bonds or depositing other securities.
423	275	3	-----	Effective July 29, 1986, allows the Tax Commission to cancel a registration if other security is not deposited (in lieu of filing a bond).
431-3	275	4	-----	Effective July 29, 1986, allows the Tax Commission to notify the State Liquor Authority and request the revocation or suspension of any licenses for failure to deposit other security (in lieu of filing a bond).
<u>Cigarette Tax</u>				
<u>Article 20</u>				
472-1	275	5	-----	Effective July 29, 1986, allows other security to be deposited in lieu of filing a surety bond.
481-3	275	6	-----	Effective July 29, 1986, adds that a certificate filed by the Tax Commission to the effect that other security has not been deposited (in lieu of filing a bond) will be considered prime facie evidence of that fact.
<u>Highway Use Tax</u>				
<u>Article 21</u>				
509-4	275	7	-----	Effective July 29, 1986, allows other security to be deposited in lieu of filing a surety bond or depositing other securities.
511-4	275	8	-----	Effective July 29, 1986, allows the Tax Commission to notify the Department of Motor Vehicles and to request suspension of all registration plates of all motor vehicles, trailers, semitrailer,

<u>Law Section</u>	<u>Chapter</u>	<u>Legislative Bill Section</u>	<u>TSB-M</u>	<u>Brief Summary</u>														
				dollies or other devices for failure to deposit other security (in lieu of filing a bond or depositing other securities).														
512-a	411	1	85(8.1)M	Effective July 21, 1986, deletes any reference to criminal proceedings.														
			<u>Article 37</u>															
1815(a)	411	12	85(8.1)M	Effective November 1, 1986, renumbers the following subdivisions: <table border="0"> <thead> <tr> <th><u>Old Subdivision</u></th> <th><u>New Subdivision</u></th> </tr> </thead> <tbody> <tr> <td>1815(a)(1)</td> <td>1815(a)(1)(A)</td> </tr> <tr> <td>1815(a)(2)</td> <td>1815(a)(1)(B)</td> </tr> <tr> <td>1815(a)(3)</td> <td>1815(a)(1)(C)</td> </tr> <tr> <td>1815(a)(4)</td> <td>1815(a)(1)(D)</td> </tr> <tr> <td>1815(a)(5)</td> <td>1815(a)(1)(E)</td> </tr> <tr> <td>1815(a)(6)</td> <td>1815(a)(1)(F)</td> </tr> </tbody> </table>	<u>Old Subdivision</u>	<u>New Subdivision</u>	1815(a)(1)	1815(a)(1)(A)	1815(a)(2)	1815(a)(1)(B)	1815(a)(3)	1815(a)(1)(C)	1815(a)(4)	1815(a)(1)(D)	1815(a)(5)	1815(a)(1)(E)	1815(a)(6)	1815(a)(1)(F)
<u>Old Subdivision</u>	<u>New Subdivision</u>																	
1815(a)(1)	1815(a)(1)(A)																	
1815(a)(2)	1815(a)(1)(B)																	
1815(a)(3)	1815(a)(1)(C)																	
1815(a)(4)	1815(a)(1)(D)																	
1815(a)(5)	1815(a)(1)(E)																	
1815(a)(6)	1815(a)(1)(F)																	
1815(b)	411	12	85(8.1)M	Effective November 1, 1986, adds Class E felony provisions for persons who file or cause to be filed any return, affidavit or statement required or permitted by Article 21, which is willfully false or fraudulent, or for persons who fail to file a return with intent to evade tax.														
1815(c)	411	12	85(8.1)M	Effective November 1, 1986, allows official weigh slips or tickets to be admissible evidence before any court in any violation proceeding or criminal proceeding.														