



Changes in the Taxation and Classification of Diesel Motor Fuel Beginning September 1, 2011

The Tax Law has been amended to treat certain dyed diesel motor fuel as non-highway diesel motor fuel that is exempt or partially exempt from tax.

Introduction

Beginning September 1, 2011, the manner in which diesel motor fuel is classified is redefined for purposes of the diesel motor fuel excise tax (Article 12-A), petroleum business tax (Article 13-A), and sales tax (Article 28).

Also as a result of the Tax Law changes:

- Retailers of heating oil only (ROHOs) become retailers of non-highway diesel motor fuel only (RONDOS).
- Criminal enforcement provisions were amended including allowing police officers or peace officers to seize diesel motor fuel if it is imported by an unregistered distributor.

The terms *enhanced diesel motor fuel* and *unenhanced diesel motor fuel* are obsolete. Accordingly, you no longer need to determine if the fuel is labeled as diesel fuel, No. 1 diesel fuel, No. 2 diesel fuel, or similar designation, or if it is a blended product that it will be used as diesel fuel in a motor vehicle. Also, you no longer need to reference the fuel's sulfur content to determine its taxability.

Instead, based on the new definitions, the taxation of diesel motor fuel depends on whether it is classified as *highway diesel motor fuel* or *non-highway diesel motor fuel*.

- *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 a public highway (except for the use of the public highway by farmers to reach adjacent farmlands), and is dyed diesel motor fuel.

Highway diesel motor fuel is subject to diesel motor fuel excise tax, petroleum business tax, and prepaid sales tax when it is first sold in New York State.

When the fuel is designated for off-highway use and is dyed for federal tax purposes at the terminal, it is considered *non-highway* diesel motor fuel. Non-highway diesel motor fuel is exempt from the diesel motor fuel excise tax and the prepaid sales tax, and either exempt or partially exempt from the petroleum business tax. These exemptions or partial exemptions apply as long as the fuel is **not** used on New York public highways (except by farmers to reach adjacent farmlands), or delivered to a filling station or into a tank equipped with a nozzle capable of fueling a motor vehicle (except for delivery at a farm site).

Definitions

General definitions

The following definitions were amended or added to conform to the changes described above. Unless otherwise noted, these terms apply to the diesel motor fuel excise tax, petroleum business tax, and sales tax.

Diesel motor fuel: No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, crude oil, fuel oil, or other middle distillate. Also, motor fuel suitable for operating a diesel engine (excluding any product specifically designated “No. 4 diesel fuel” and not suitable for operating a motor vehicle engine).

Dyed diesel motor fuel: Diesel motor fuel dyed in accordance with and for the purpose of complying with the provisions of 26 USC § 4082(a) and its regulations, as may be amended in the future.

Public highway: Any public highway, street, avenue, road, public place, public driveway, or any other public way.

Diesel motor fuel distributor is any person, firm, association, or corporation:

- importing or causing to be imported into the state, for use, distribution, storage, or sale within the state, any diesel motor fuel;
- producing, refining, manufacturing, or compounding diesel motor fuel within the state;
- selling or using diesel motor fuel in this state other than (A) a retail sale not in bulk, or (B) the self-use of diesel motor fuel that was the subject of a retail sale to such person; or
- registered by the Tax Department as a distributor of kero-jet fuel under Tax Law section 282-a(2).

Filling station: Any place, location, or station where motor fuel or highway diesel motor fuel is offered for retail sale. This also includes a place where water-white kerosene is sold exclusively for heating in containers of no more than 20 gallons.

Petroleum business tax definitions:

Commercial gallonage is gallonage that:

- is non-highway diesel motor fuel or residual petroleum product;
- is included in the full measure of the non-highway diesel motor fuel component or the residual petroleum product component of the petroleum business tax;
- does not (and will not) qualify (A) for the utility credit or reimbursement, (B) as *manufacturing gallonage*, (C) for the not-for-profit organization exemption, or (D) for the heating exemption or reimbursement; and
- will not be used (has not been used) in the fuel tank connecting with the engine of a vessel.

Manufacturing gallonage: Non-highway diesel motor fuel or residual petroleum product used and consumed directly and exclusively in the production of tangible personal property for sale by manufacturing, processing, or assembly, but only if:

- all the fuel or product is delivered on the manufacturing site, or
- the purchaser causes the fuel or product to be delivered to its manufacturing site.

Manufacturing gallonage may **not** be consumed on the public highways of this state, or delivered to a filling station or into a tank equipped with a nozzle capable of fueling a motor vehicle.

Railroad diesel: Non-highway diesel motor fuel for use and consumption directly and exclusively for operating a locomotive or self-propelled vehicle run only on rails or tracks, but only if either:

- all the fuel is delivered into a storage facility which is not equipped with a nozzle capable of fueling a motor vehicle, and the facility is used only to fuel locomotives or self-propelled vehicles, or
- all the fuel is delivered directly into fuel tanks of locomotives or self-propelled vehicles.

Sales tax definition:

Petroleum products: Motor fuel or diesel motor fuel, **not including** kerosene or propane used for residential purposes. This term replaces the term *automotive fuel* for sales tax purposes only.

Highway use tax and fuel use tax definition:

Automotive fuel: Both diesel motor fuel **and** motor fuel. This term has not changed and still applies for **highway use tax** and **fuel use tax/International Fuel Tax Agreement (IFTA)**.

Registrations

Diesel motor fuel distributors

You must be registered as a diesel motor fuel distributor if you do any of the following:

- import (or cause to be imported) any diesel motor fuel into New York State (other than fuel imported in the tank of a vehicle for its operation);
- produce, refine, manufacture, or compound diesel motor fuel within New York State; or
- sell or use diesel motor fuel in New York State (except diesel motor fuel sold to consumers and delivered directly into the fuel tank of a motor vehicle, boat, or aircraft for its operation).

Retailer of non-highway diesel motor fuel only

If you meet the conditions to register as a distributor, but you only plan to sell non-highway diesel motor fuel to consumers, you may register as a *retailer of non-highway diesel motor fuel only* (RONDO).

If you wish to sell diesel motor fuel for any other purpose, you must first be registered as a **diesel motor fuel distributor**. Also, a RONDO may not make a sale into a bulk storage tank equipped with a nozzle capable of fueling a motor vehicle (for example, service stations, truck stops, and construction sites), except for delivery at a farm site for direct production by farming of tangible personal property for sale.

TSB-M-11(6)M
Petroleum Taxes
TSB-M-11(11)S
Sales Tax
July 29, 2011

- If you **are** currently registered as a *retailer of heating oil only* (ROHO) you will automatically be registered as a RONDO. You will receive your RONDO registration certificate on or before September 1, 2011. Any currently registered ROHOs that do not wish to become registered as RONDOS may cancel their registrations by returning their current ROHO registration certificates (Form TP-129) to:

NYS TAX DEPT
TDAB/FACCTS REGISTRATION AND BOND UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227

- If you **are not** currently registered as a ROHO you may apply for registration as a RONDO.

To apply for a new registration or to change or transfer a current registration, complete Form TP-650, *Application for Registration under Articles 12-A and 13-A*.

End of direct pay permit for dyed diesel motor fuel related to residential heating

Diesel motor fuel distributors no longer need a direct pay permit to buy dyed diesel motor fuel exempt from tax for sales to consumers for use solely as residential or commercial heating oil. Instead, as of September 1, 2011, registered distributors use Form FT-1001, *Exemption Certificate for Non-highway Diesel Motor Fuel Interdistributor Transactions*, to buy non-highway diesel motor fuel exempt from tax.

Tax rates

The current tax rates remain in effect. See Publication 908, *Fuel Tax Rates*, for the current rate structure using the new terminology. The annual petroleum business tax rates will continue to be indexed and adjusted effective January 1 for monthly filers and March 1 for quarterly filers.

TSB-M-11(6)M
 Petroleum Taxes
TSB-M-11(11)S
 Sales Tax
 July 29, 2011

Diesel motor fuel exemptions

The chart below and on the following pages explains exemptions for various taxes due on diesel motor fuel or kerosene. *No* indicates the sale or use is exempt and you do not owe that tax, but you must use the indicated exemption certificate (if any). Be sure to check the footnotes. Abbreviations: DMF: (diesel motor fuel); NHDMF: (non-highway diesel motor fuel); RONDO: (retailer of non-highway diesel motor fuel only); NA: (not applicable).

Exempt or partially exempt sales or uses	DMF excise tax due?	Petroleum business tax due?	Prepaid sales tax due?	State retail sales and use tax due?	Local retail sales and use tax due?	Use this exemption certificate
Interdistributor sales of NHDMF to a DMF registered distributor or a RONDO	No	No	No	NA	NA	FT-1001
Sales to or use of DMF by New York State, its municipalities, or the US government , for own use	No	No	NA	No	No	Government purchase contract, etc.
Sales of NHDMF to an exempt organization described in Tax Law section 1116(a)(4) , for its own use ¹	No	No	NA	No, if used for heating	No, if used for heating	FT-1021-A
Sales of NHDMF to a veterans organization described in Tax Law section 1116(a)(5) , for its own use ¹	No	No	NA	Yes ²	Yes ²	FT-1021-A
Sales of DMF in NYS to a purchaser licensed with the taxing authority of another state or province , for immediate export for sale or use in that state or province	No	No	No	No	No	FT-1003
Sales of NHDMF (other than kerosene) to consumers for residential heating ³	No	No	NA	No	Depends on locality ⁴	None required
Sales of NHDMF to consumers for nonresidential heating ³	No	Yes, at nonresidential heating rate	NA	Yes	Yes	None required

¹ Does not apply to sales of NHDMF involving delivery at a filling station or into a tank equipped with a nozzle capable of fueling a motor vehicle. Also, all deliveries must be made to the organization's premises, and used for the exempt purposes of the organization.

² A refund is available. (Use Form FT-500.)

³ If premises have both residential and nonresidential space but only one fuel storage tank, purchaser must provide seller with Form TP-385.

⁴ See Publication 718-R.

TSB-M-11(6)M
Petroleum Taxes
TSB-M-11(11)S
Sales Tax
 July 29, 2011

Diesel motor fuel exemptions (continued)

Exempt or partially exempt sales or uses	DMF excise tax due?	Petroleum business tax due?	Prepaid sales tax due?	State retail sales and use tax due?	Local retail sales and use tax due?	Use this exemption certificate
Sales of NHDMF to farmers for use directly and exclusively in producing tangible personal property for sale by farming ⁵	No	No	NA	No	No	FT-1004
Sales of NHDMF to farmers for farm production or commercial horse boarding , but not for use directly and exclusively in the production of tangible personal property ⁶	No	Yes, at commercial gallonage rate	NA	No	No	FT-1004
Use of NHDMF by a passenger commuter ferry for mass transportation ⁷	No	No	NA	Yes ⁸	Yes ⁸	None required
Sales of NHDMF for manufacturing, processing, or assembling to produce tangible personal property for sale ⁹	No	No	NA	No	No	FT-1012
Sales of NHDMF for refining, mining, or extracting to produce tangible personal property for sale ¹⁰	No	Yes, at commercial gallonage rate	NA	No	No	FT-1020
Sales of NHDMF for producing gas, electricity, steam, or refrigeration for sale ¹⁰	No	Yes, at commercial gallonage rate	NA	No	No ¹¹	FT-1020

⁵ **Does not** include fuel purchased for use in administration, storage or marketing. Fuel must be delivered to the farm site and may **not** be consumed on public highways except to reach adjacent farmlands.

⁶ Includes fuel purchased for use in administration, storage, or marketing. Fuel must be delivered to the farm site and may not be consumed on public highways except to reach adjacent farmlands.

⁷ On Form PT-350, do not include working days providing mass transportation.

⁸ A refund is available. (Use Form FT-500).

⁹ Fuel must be delivered to manufacturing site by the seller or the purchaser, and may not be consumed on public highways or delivered at a filling station or into a tank equipped with a nozzle capable of fueling a motor vehicle.

¹⁰ Fuel may not be consumed on public highways, used in a fuel tank connected with a vessel's engine, or delivered at a filling station or into a tank equipped with a nozzle capable of fueling a motor vehicle.

¹¹ Subject to New York City local sales and use tax.

TSB-M-11(6)M
Petroleum Taxes
TSB-M-11(11)S
Sales Tax
 July 29, 2011

Diesel motor fuel exemptions (continued)

Exempt or partially exempt sales or uses	DMF excise tax due?	Petroleum business tax due?	Prepaid sales tax due?	State retail sales and use tax due?	Local retail sales and use tax due?	Use this exemption certificate
Sales of NHDMF to operate locomotives or other railroad self-propelled vehicles ¹²	No	Yes, at railroad diesel rate	NA	Yes	Yes	PT-303
Sales of undyed kerosene	Yes	No ¹³	Yes	Yes ¹⁴	Yes ¹⁴	FT-1001
Sales of kerosene that is NHDMF	No	No ¹³	No	No	No	Depends on use.
Sales of water-white kerosene in containers of 20 gallons or less, to a consumer for heating only ^{15, 16}	No	No	NA	No	Depends on locality	None required
Sales of water-white kerosene to a filling station or other retail vendor that sells the kerosene for heating only in containers of 20 gallons or less ¹⁶	No	No	No	NA	NA	FT-1020
All other sales of NHDMF not used on public highways, and not delivered to a filling station or tank equipped to dispense fuel into a motor vehicle (except for delivery at a farm site)	No	Yes	No	Yes	Yes	None required
All sales of DMF not covered by any of the above	Yes	Yes	Yes	Yes	Yes	NA

¹² Fuel must be delivered directly into the locomotive's fuel tank, or to a facility used only to fuel locomotives, and must not be equipped to fuel motor vehicles.

¹³ A sale of kerosene is exempt from petroleum business tax unless (1) blended or mixed with DMF or residual petroleum product or (2) sold or used as fuel to operate a motor vehicle.

¹⁴ A refund is available if undyed kerosene is used for a nontaxable purpose (use Form FT-500).

¹⁵ Sellers must maintain a log with the name and address of the consumer, date sold, sales price, and amount of any local sales tax collected.

¹⁶ This exemption applies to **dyed** kerosene that (1) is delivered to a filling station for sale to consumers in containers of 20 gallons or less, and (2) otherwise meets the appropriate standards for K-1 kerosene. This exemption does not apply to kerosene that is (1) undyed (2) blended or mixed with any other product constituting diesel motor fuel, motor fuel, or residual petroleum product, or (3) sold or used as fuel to operate a motor vehicle.

Refunds, reimbursements, or credits for taxes paid on diesel motor fuel

Use the form indicated in the chart below and on the following pages to claim a refund, reimbursement, or credit of taxes included in the price paid for the fuel as shown on the invoice. Be sure to check the footnotes. Abbreviations: DMF: (diesel motor fuel); RONDO: (retailer of non-highway diesel motor fuel only); NHDMF: (non-highway diesel motor fuel); HDMF: (highway diesel motor fuel); NA: (not applicable).

Who may qualify	Diesel motor fuel excise tax	Petroleum business tax	Prepaid sales tax	State / local retail sales and use tax
Any person buying DMF and using it for anything other than operating a motor vehicle on public highways, or a recreational motor boat on public waterways	Refund (FT-946/1046)	NA	NA	NA
DMF distributors who purchased HDMF and sold it as NHDMF without including taxes	Reimbursement or credit (PT-102)	Reimbursement or credit (PT-102)	Credit (FT-945/1045)	NA
State, local, and U.S. government entities buying DMF	Refund (FT-504)	Refund (FT-504)	NA	Refund (FT-504)
DMF distributors who bought DMF and sold it to a government entity without including taxes	Reimbursement or credit (PT-102)	Reimbursement or credit (PT-102)	Refund (FT-1010)	NA
RONDOs that bought NHDMF and sold it to a government entity without including taxes	Reimbursement or credit (PT-106 or PT-201)	Reimbursement or credit (PT-106 or PT-201)	Refund (FT-1010)	NA
Retail vendors who bought DMF and sold it to a government entity without including taxes	Refund (FT-946/1046)	Refund (AU-630)	Refund (FT-1007 or FT-1010)	NA
Organizations exempt under 1116(a)(4) that bought NHDMF for their own use in a related business activity ^A	Refund (FT-946/1046)	Refund (AU-630)	NA	Refund (FT-500)
Veterans' organizations exempt under 1116(a)(5) that bought NHDMF for their own use in a related business activity ^A	NA ^B	Refund (AU-630)	NA	Refund (FT-500)
Consumers who bought NHDMF and used it for residential heating ^C	Refund (FT-946/1046)	Refund (AU-630)	NA	Refund (FT-500)
Consumers who bought NHDMF and used it for nonresidential heating ^C	Refund (FT-946/1046)	Partial refund (AU-630)	NA	NA

^A Fuel may not be used on public highways, delivered to a filling station, or into a tank equipped with a nozzle capable of fueling a motor vehicle.

^B There is no specific excise tax exemption for veterans' organizations, but if DMF is not used to operate a motor vehicle on the public highways, the organization may file Form FT-946/1046 for a refund of any excise tax paid.

^C Fuel may not be used on public highways, or delivered to a filling station, or into a tank equipped with a nozzle capable of fueling a motor vehicle. The supplier must deliver the fuel into a tank attached to the heater.

TSB-M-11(6)M
Petroleum Taxes
TSB-M-11(11)S
Sales Tax
 July 29, 2011

Refunds, reimbursements, or credits for taxes paid on diesel motor fuel (continued)

Who may qualify	Diesel motor fuel excise tax	Petroleum business tax	Prepaid sales tax	State / local retail sales and use tax
Retail vendors who sold NHDMF to consumers in containers of less than 10 gallons for residential heating	Refund (FT-946/1046)	Refund (AU-630)	NA	NA
Farmers who bought NHDMF for use directly and exclusively in producing tangible personal property for sale by farming ^D	Refund (FT-946/1046)	Refund (AU-630)	NA	Refund (FT-500)
Farmers who bought NHDMF for farm production or commercial horse boarding , but not for use directly and exclusively in the production of tangible personal property ^E	Refund (FT-946/1046)	Partial refund for the difference between the full non-highway rate and the commercial gallonage rate (AU-630)	NA	Refund (FT-500)
Commercial fishermen who bought DMF for operating a commercial fishing vessel harvesting fish for sale	Refund (AU-631)	Refund (AU-631)	NA	Refund (AU-631)
Commercial vessel operators who bought DMF ^F	Refund (FT-946/1046)	Refund for fuel used outside N.Y. waters (PT-350) Refund for difference between the non-highway rate and the highway rate for purchase of NHDMF (PT-350)	NA	Refund (FT-500) ^G
Passenger commuter ferry operators who bought NHDMF to provide mass transportation	Refund (FT-946/1046)	Refund (AU-630)	NA	Refund (FT-500) ^H

^D **Does not** include fuel purchased for use in administration, storage, or marketing. Fuel must be delivered to the farm site by the supplier, and must not be consumed on public highways except to reach adjacent farmlands.

^E Includes fuel purchased for use in administration, storage, or marketing. Fuel must be delivered to the farm site by the supplier, and must not be consumed on public highways except to reach adjacent farmlands.

^F Operators who paid the full NHDMF business tax rate may apply for a refund of the difference between the non-highway rate and the highway rate using Form PT-350.

^G Only if the operator is primarily engaged in interstate or foreign commerce.

^H Only if the ferry has a seating capacity of more than 20 and provides local transit service in New York State (based on the percentage of local transit service).

TSB-M-11(6)M
Petroleum Taxes
TSB-M-11(11)S
Sales Tax
 July 29, 2011

Refunds, reimbursements, or credits for taxes paid on diesel motor fuel (continued)

Who may qualify	Diesel motor fuel excise tax	Petroleum business tax	Prepaid sales tax	State / local retail sales and use tax
Consumers who used NHDMF as commercial gallage	Refund (FT-946/1046)	Partial refund (AU-473) ^I	NA	Refund (FT-500)
Electric corporations who used NHDMF to produce electricity	Refund (FT-946/1046)	Partial refund (PT-105) ^J	NA	Refund (FT-500)
Consumers who bought NHDMF and used it exclusively in the production of tangible personal property by mining and extracting	Refund (FT-946/1046)	Refund (AU-630)	NA	Refund (FT-500)
DMF distributors who bought NHDMF and sold it to consumers as manufacturing gallage	Reimbursement or credit (PT-102)	Reimbursement or credit (PT-102)	Credit (Schedule FR)	NA
RONDOs who bought NHDMF and sold it to consumers as manufacturing gallage	Reimbursement or credit (PT-106 or PT-201)	Reimbursement or credit (PT-106 or PT-201)	Credit (Schedule FR)	NA
DMF distributors who bought NHDMF and sold it to consumers as railroad gallage	Reimbursement or credit (PT-102)	Partial refund (PT-102)	NA	NA
RONDOs who bought NHDMF and sold it to consumers as railroad gallage	Reimbursement or credit (PT-106 or PT-201)	Partial refund (PT-106 or PT-201)	NA	NA
Omnibus carriers engaged in local transit who bought DMF	Refund (FT-1006)	Refund (FT-400/401)	NA	Refund (FT-500)
Omnibus carriers transporting school children under contract who bought DMF	Partial refund (FT-1006)	Refund (FT-400/401)	NA	NA
Nonpublic school operators who bought DMF	Refund (FT-946/1046)	Refund (FT-400/401)	NA	Refund (FT-500) ^K
Taxicab licensees who bought DMF	Partial refund (FT-1011)	NA	NA	NA
Hospitals, voluntary ambulance services, fire companies, and volunteer rescue squads who bought DMF	Refund (FT-946/1046)	NA	NA	Refund (FT-500)

^I Purchasers who paid the full NHDMF business tax rate may apply for a refund of the difference between the non-highway rate and the commercial gallage rate using Form AU-473.

^J Only if the user is an electric corporation subject to rate regulation by the Department of Public Service, and the electric corporation used NHDMF to produce electricity.

^K Only if the nonpublic school is an exempt organization described in Tax Law section 1116(a)(4).

Criminal penalties, seizure, and forfeiture

Effective September 1, 2011, the criminal sanctions, seizure, and forfeiture provisions regarding diesel motor fuel have been amended as follows:

Criminal penalties for filling station owners

In addition to other violations, a criminal penalty now applies to an owner of a filling station possessing dyed diesel motor fuel. Accordingly, any owner of a filling station is guilty of a **class E felony** if the owner *willfully and knowingly* has in his or her custody, possession, or under control any motor fuel or diesel motor fuel that is any of the following:

- Fuel on which the excise tax was not assumed or paid by a registered distributor, provided the owner knew of the requirement that the tax be paid, and knew the tax was not assumed or paid by the distributor.
- Fuel on which the required excise taxes were not passed through and included in the owner's cost of the fuel, when those taxes were to have been passed through and included in the cost, provided the owner knew of the requirement that these taxes be passed through, and knew the taxes were not included.
- Fuel that is dyed diesel motor fuel (except for water-white kerosene), provided the owner knew of the requirement that this type of fuel may not be in the owner's custody, possession, or control.

Criminal penalties for RONDOS and anyone not registered as a distributor

A RONDO is guilty of a **misdemeanor** if that RONDO delivers non-highway diesel motor fuel to a filling station (except for water-white kerosene), or into a tank equipped to dispense fuel into the fuel tank of a motor vehicle.

A RONDO is guilty of a **class E felony** if that RONDO, in a 90-day period, delivers a total of 1,000 gallons or more of non-highway diesel motor fuel to a filling station (except for water-white kerosene), or into a tank equipped to dispense fuel into the fuel tank of a motor vehicle (or a combination of both filling stations and tanks).

Anyone who is not registered as a diesel motor fuel distributor is guilty of a **misdemeanor** if that person:

- sells or uses diesel motor fuel in NYS (other than a retail sale not in bulk or the self-use of diesel motor fuel that was purchased in a retail sale),

TSB-M-11(6)M
Petroleum Taxes
TSB-M-11(11)S
Sales Tax
July 29, 2011

- imports diesel motor fuel or causes diesel motor fuel to be imported into NYS, or
- refines, manufactures, or compounds diesel motor fuel in NYS.

Anyone who is not registered as a diesel motor fuel distributor is guilty of a **class E felony** if that person, in a 90-day period:

- sells or uses 2,900 gallons or more of diesel motor fuel in NYS (other than a retail sale not in bulk or the self-use of diesel motor fuel that was purchased in a retail sale),
- imports 2,900 gallons or more of diesel motor fuel or causes 2,900 gallons or more of diesel motor fuel to be imported into NYS, or
- refines, manufactures, or compounds 2,900 gallons or more of diesel motor fuel in NYS.

A RONDO or anyone who is not registered as a diesel motor fuel distributor who is convicted twice will be guilty of a **class E felony** for any subsequent violation, regardless of the amount of fuel involved.

Seizure

In addition to seizing motor fuel, police officers and peace officers are now authorized to seize and take possession of diesel motor fuel, whenever the officer discovers that the person who is importing fuel or causing fuel to be imported for use, distribution, storage, or sale in New York State **is not** a registered diesel motor fuel distributor or RONDO. The officer is also authorized to seize the vehicle or other means used to transport the fuel.

The Tax Department will hold and safely keep the seized fuel, as well as any vehicle or other means of transportation.

Within five business days after the seizure, the Tax Department must move in Supreme Court in any county to confirm the seizure on such notice as the court directs to the owners of the property. If the Tax Department fails to do so, the department must restore the seized property to its owners. On a motion for an order confirming the seizure, the Tax Department must show, by affidavit and any other written evidence submitted, that there is a cause of action for forfeiture and that there are grounds for confirmation of the seizure. If the court determines that there is a substantial probability that the Tax Department will prevail on the issue of forfeiture, it will grant an application for an order confirming the seizure.

TSB-M-11(6)M
Petroleum Taxes
TSB-M-11(11)S
Sales Tax
July 29, 2011

Seized fuel may be deposited to the credit of the Tax Department at a terminal or other storage facility within New York State, or the Tax Department may sell the fuel on the open market.

Forfeiture

The courts will order a forfeiture of motor fuel or diesel motor fuel (plus the vehicle or other means used to transport the fuel) if the Tax Department proves, by clear and convincing evidence, that the person importing or causing the fuel to be imported was not a registered distributor or RONDO. All defendants in a forfeiture action have the right to trial by jury on any issue of fact.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or 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.