

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

TSB-A-94 (2) M
Petroleum
Business Tax
March 22, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M931206A

On December 6, 1993, a Petition for Advisory Opinion was received from Suffolk County Water Authority, 4060 Sunrise Highway, Oakdale, New York 11769.

The issue raised by Petitioner, Suffolk County Water Authority, is whether Petitioner is entitled to a refund of the Supplemental Petroleum Business Tax imposed under Article 1B-a, Section 301-j as a result of tax being paid as a specific component part of the electric bills paid to the Long Island Lighting Company (hereinafter "LILCO").

Petitioner is an Authority of the State of New York, and, as such, is exempt from the Supplemental Petroleum Business Tax as imposed under Section 13-a of the Tax Law.

Petitioner purchased electricity from LILCO, and subsequently paid the invoiced amount for such electricity. Petitioner is not, however, a petroleum business and is not purchasing petroleum products from LILCO.

LILCO is a registered petroleum business and the Supplemental Petroleum Business Tax has been imposed and collected from LILCO on petroleum products purchased and used by it to generate electricity for its customers. LILCO on its invoices shows a separate line accounting of the Supplemental Petroleum Business Tax it paid on petroleum products purchased to generate the electricity.

Section 301-a of the Tax Law provides, in part, that:

Sec. 301-a. Imposition of tax. - - (a) General.- - Notwithstanding any other provision of this chapter, or of any other law, for taxable months commencing on or after the first day of September, nineteen hundred ninety, there is hereby imposed upon every petroleum business for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state, a monthly tax for each or any part of a taxable month equal to the sum of the motor fuel component determined pursuant to subdivision (b) of this section, the automotive-type diesel motor fuel component determined pursuant to paragraph one of subdivision (c) of this section, the nonautomotive-type diesel motor fuel component determined pursuant to paragraph two of subdivision (c) of this section and its residual petroleum product component determined pursuant to subdivision (d) of this section. In no event shall the tax imposed by this article be less than twenty-five dollars for each or any part of the taxable month. (emphasis added)

Section 301-c of the Tax Law provides, in part, that:

Sec. 301-c. Reimbursement.-- A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchase in accordance with subdivision (a) or (b) of this section or used by such purchaser in accordance with subdivision (c) or (d) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

* * *

(b) Sales to New York state and the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner of taxation and finance shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article. (emphasis added)

Section 301-j of the Tax Law provides, in part, that:

Sec. 301-j. Supplemental petroleum and aviation fuel business tax.-- (a) Imposition of tax. In addition to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, for taxable months commencing on or after July first, nineteen hundred ninety-one there is hereby imposed upon every petroleum business subject to tax imposed under section three hundred one-a of this article and every aviation fuel business subject to the tax imposed under section three hundred one-e of this article, a supplemental monthly tax for each or any part of a taxable month at a rate of four and one-half cents per gallon with respect to the products included in each component of the taxes imposed by such sections three hundred one-a and three hundred one-e of this article. Such tax shall be calculated in the same respective manner as the taxes imposed by section three hundred one-a and section three hundred one-e of this article. Except for section three hundred one-d and except as otherwise provided in this section, all the provisions of this article

applicable to the taxes imposed by sections three hundred one-a and tree hundred one-e of this article, shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were respectively imposed by such sections. Provided, however, there shall be exempt from the measure of the supplemental petroleum business tax imposed by this section a sale or use consisting of no more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period to or by a consumer who purchases or uses such fuel for use or consumption directly and exclusively in the production for sale of tangible personal property by farming but only if all of such fuel is delivered on the farm site and is consumed other than on the highways of this state (except for the use of the highway to reach adjacent farmlands) provided, however, a farmer may purchase more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period for such use or consumption exempt from the tax in accordance with prior clearance given by the commissioner of taxation and finance. A subsequent purchaser shall be eligible for reimbursement of the supplemental tax imposed by this section with respect to gallonage of diesel motor fuel, subsequently sold by such purchaser for use or consumption directly and exclusively in the production for sale of tangible personal property by farming under the circumstance described in the preceding sentence, which gallonage has been included in the measure of the supplemental tax imposed by this section on a petroleum business and the entire amount of such tax has been absorbed by such purchaser.

(b) Manufacturing reimbursement (or credit). (1) Amount eligible for reimbursement (or credit). On and after September first, nineteen hundred ninety-one, a manufacturer shall be entitled to a reimbursement of the tax imposed by this section with respect to residual petroleum product and diesel motor fuel (which is not enhanced diesel motor fuel) purchased in this state on and after such date by such manufacturer where the tax imposed by this section with respect to such residual petroleum produce or diesel motor fuel was paid and such manufacturer absorbed such tax in the purchase price of such residual petroleum product or diesel motor fuel and where such residual petroleum product of diesel motor fuel is used or consumed by such manufacturer directly and exclusively in the production of tangible personal property for sale of manufacturing processing or assembly. A credit shall be available to a manufacturer which is registered as a petroleum business for such diesel motor fuel or residual petroleum product so used or consumed directly and exclusively in the production of tangible personal property for sale with respect to gallonage which is imported into the state by such manufacturer where the tax liability under this section is imposed on such manufacturer. (emphasis added)

The Supplemental Petroleum Business Tax is levied on a petroleum business that sells #2 oil for nonresidential purposes. It is not levied on the business's customers and is not required to be passed through to its customers.

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While there is no need for a petroleum business to include the amount of the Supplemental Petroleum Business Tax on a bill or invoice, it is also not precluded as part of its practice to indicate the amount of this tax on bills as part of an itemization of the selling price of the product. The tax is component of the cost of doing business for LILCO.

Accordingly, since the Supplemental Petroleum Business Tax is not a tax on Petitioner as a consumer and Petitioner is neither a petroleum business nor is purchasing petroleum products from LILCO, pursuant to Sections 301-a, 301-c and 301-j of the Tax Law, Petitioner is not entitled to a reimbursement or refund of any Supplemental Petroleum Business Tax paid by LILCO.

DATED: March 22, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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