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## Motor Fuel and Diesel Motor Fuel Used in Production

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### Introduction

This bulletin describes the sales tax exemptions and refunds available for the purchase of different types of fuel used in production. Fuel includes:

- motor fuel,
- highway diesel motor fuel, and
- non-highway diesel motor fuel.

Different rules apply to the exemption or refund available for purchases of each type of fuel.

### Qualifying uses

Producing tangible personal property generally involves one or more of the following activities:

- manufacturing
- processing
- generating
- assembling
- refining
- mining
- extraction

These activities can generally be broken down into three phases:

- *Administration* - which includes sales promotion, accounting, purchasing, maintenance, receiving and testing of raw materials, and clerical work.
- *Production* - which includes the production line, starting with the handling and storage of raw materials at the plant site, and continuing through the last step of production where the goods are packaged and ready for sale.
- *Distribution* - which includes everything that takes place after the goods are packaged and ready for sale, including storage, loading on trucks for shipment, and the display and sale of the finished product.

To qualify for the exemption or refund, the fuel must be used *directly* and *exclusively* (100%) in the *production* phase.

To qualify as being used *directly* in production, fuel must be used or consumed during the production phase to:

- operate exempt production machinery or equipment; or
- create conditions necessary for production; or
- perform an actual part of the production process.

Exempt production machinery or equipment is machinery or equipment that:

- acts upon or changes material to form the product to be sold;
- has an active and necessary role in the production of the product;
- is used in handling, storage, or conveying materials or product produced through the production line; or
- is used to package the product for sale.

Fuel used in the *administration* or *distribution* phases does not qualify for the exemption. Therefore, fuel **does not** qualify for the exemption if it is used or consumed in:

- the lighting of buildings;
- the heating and cooling of buildings; <sup>1</sup>
- the preparation of food and drink subject to tax imposed by section 1105(d) of the Tax Law; or
- the storage of tangible personal property.

### Motor fuel and highway diesel motor fuel

*Motor fuel* includes:

- gasoline
- compressed natural gas (CNG)
- liquefied natural gas (LNG)
- liquefied petroleum gas (LPG)

*Highway diesel motor fuel* includes any diesel motor fuel that is not non-highway diesel motor fuel, as defined below.

Motor fuel and highway diesel motor fuel **cannot** be purchased without the payment of sales tax. However, the sales tax paid on fuel used directly and exclusively in production is eligible for a refund using [Form FT-500](#), *Application for Refund of Sales Tax Paid on Petroleum Products*.

**Example:** *A manufacturing firm uses an LPG-powered forklift to transport product within the production line. The manufacturer must pay sales tax on the purchase of the LPG, but can claim a refund of the sales tax paid.*

**Example:** *A dump truck is used within a gravel pit to move rock between different size crushers located at the gravel pit. Sales tax must be paid on the diesel motor fuel used to operate the dump truck, but the manufacturer is eligible for a refund of the sales tax paid.*

### Non-highway diesel motor fuel

*Non-highway diesel motor fuel* includes dyed diesel motor fuel that is designated for use other than on a public highway. Dyed diesel motor fuel is 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.

Non-highway diesel motor fuel that will be used directly and exclusively in production can be purchased without paying sales tax by using either:

- [Form FT-1012](#), *Manufacturing Certification for Non-Highway Diesel Motor Fuel and Residual Petroleum Product*, or

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<sup>1</sup> Fuel used for heating and cooling will qualify for the exemption only if it can be shown that it is used exclusively to create certain conditions that are necessary for production. General heating and cooling maintained in the range for employee comfort, or for dual purposes, does not qualify for the exemption.

- [Form FT-1020](#), *Exemption Certificate for Certain Taxes Imposed on Diesel Motor Fuel and Propane*.

In order to qualify for the exemption, non-highway diesel motor fuel cannot be delivered into a storage tank equipped to dispense fuel into the fuel tank of a motor vehicle or otherwise used on the highways of this state.

**Example:** *An ice cream manufacturer purchases non-highway diesel motor fuel for use in a back-up generator to power a flash freezer used in production. The manufacturer may purchase the fuel exempt from sales tax.*

*However, any non-highway diesel motor fuel used in a generator to operate freezers storing product that is already packaged and ready for sale **does not qualify** for the exemption because it is not used to operate production equipment.*

**Example:** *A logging company purchases non-highway diesel motor fuel to operate its skidder used to extract logs from the woods. These logs will later be transported by truck and sold to a saw mill. The non-highway diesel motor fuel used to operate the skidders is used in extracting tangible personal property for sale and can be purchased exempt from sales tax.*

### **Fuel used to produce gas, electricity, refrigeration, and steam for sale**

Fuel used to produce gas, electricity, refrigeration, and steam for sale is exempt from the New York state sales and use taxes and from local taxes **outside** New York City. However, the fuel is subject to New York City's local sales tax rate when used or consumed **in** New York City.

### **Other types of utilities**

See Tax Bulletin [Utilities Used in Production \(TB-ST-917\)](#) for information on the following types of utilities used in production:

- gas (natural gas, propane, etc.);
- electricity;
- coal;
- refrigeration;
- steam;
- wood (including wood pellets and other compressed wood products); and
- gas, electric, refrigeration, and steam services.

### **Farm production**

The production exemption available for farm production is more expansive than the general production exemption. Fuel only has to be used *predominantly* (more than 50% of the time) - and not *directly* - in farm production to qualify for the exemption. See Tax Bulletin [Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#) for more information.

**Note:** A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**References and other useful information**

**Tax Law:** Sections 1115(c)(1), 1115(j) and 1120

**Regulations:** Sections 528.13, 561.2, and 561.10

**Memos:** [TSB-M-11\(11\)S](#), *Changes in the Taxation and Classification of Diesel Motor Fuel Beginning September 1, 2011*

**Publications:** [Publication 852](#), *Sales Tax Information for: Manufacturers, Processors, Generators, Assemblers, Refiners, Miners and Extractors*

**Bulletins:**

[Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#)  
[Utilities Used in Production \(TB-ST-917\)](#)