New York State Department of Taxation and Finance

Instructions for Form CT-189

Tax on Importation of Gas Services

CT-189-I
(12/97)

Effective with the quarter beginning December 1, 1996, if the gas services are delivered by a regulated public utility to a gas customer with a valid Form AU-260, *Direct Pay Permit,* the gas customer, including a co-generator, may compute taxable consideration based on the *annual average gas price* on Schedule B. Regulated public utilities will continue to collect and remit the tax as they have always done using Schedule A of the form. Gas importers not using a regulated public utility will use Schedule B and compute the tax based on actual consideration given or contracted to be given.

Section 189 of the Tax Law imposes a tax on *gas importers* who import, or cause to be imported, gas services into this state for their own use or consumption. Gas service is the delivery of gas through mains or pipes. Gas importers include individuals, partnerships, societies, associations, joint stock companies, corporations, estates, receivers, trustees, assignees, referees, and other persons acting in a fiduciary or representative capacity, and the state of New York, its agencies, instrumentalities, public corporations and political subdivisions, including school districts. The tax is computed at the rate of 4.25% of the consideration given (or contracted to be given) by the gas importer for the imported gas services plus applicable surcharges. The tax is computed by one of the methods on Schedule A or Schedule B, and must be filed quarterly.

1 **Schedule A** - If the gas services are delivered into this state by a regulated public utility, the utility must collect the tax from the individual gas importer on a monthly basis unless the importer provides the utility with a valid Form AU-260, *Direct Pay Permit,* or a Form TP-136, *Certification of the Sale and Purchase of Natural Gas Services (exemption certificate).* The public utility must complete Form CT-189, Schedule A, and pay the tax required to be collected to the Tax Department on a quarterly basis. Even public utilities that have not collected any tax for a particular quarter, because no gas services were imported into NYS, must file Form CT-189 to show that no tax is due. When collected by a regulated public utility, the section 189 tax will be administered jointly with sales tax.

2 **Schedule B** - If the gas services are delivered by a regulated public utility to a gas customer, including a co-generator, with a valid Form AU-260, *Direct Pay Permit,* the gas customer must compute the tax on the national average natural gas price as published by the U.S. Department of Energy. If the actual contract consideration is less than the average annual gas price, then actual contract consideration may be used.

If the gas services are delivered by other than a regulated public utility, the tax must be computed based upon the actual consideration given or contracted to be given. For the purposes of Schedule B, a *regulated public utility* includes a utility that is subject to the regulation of any activity supervised by the Public Service Commission, including but not limited to service, securities, safety, rates and charges, records, reports, or accounting.

3 **Schedules C and D** - Schedules C and D are to be used to help compute the tax and MTA surcharge due on Schedule A. If the taxpayer is computing the tax on Schedule B it will not be necessary to use these schedules.

Meter Reading: Determination of Tax Months for Public Utilities — When the importation or delivery of gas services are billed based on meter readings, the following rules apply: the total amount billed as a result of a meter reading should not be split between months, but instead the entire amount must be included in only one tax month depending upon the date of the meter reading; if more than one-half the number of days included in the period covered by the bill falls within a particular month, that month will be considered the tax month and the entire bill based upon the meter reading is subject to section 189 tax for that month (Example: If the meter reading occurs on December 14, then the tax month is considered to be November).

Due Date — Returns to be filed by regulated public utilities and entities with a direct payment permit are due 20 days from the end of the quarter. Returns of importers not using a regulated public utility for delivery and which do not have a direct payment permit are due by the 15th day following the end of the quarter. Tax quarters end on the last day of February, May, August, and November.

Interest — If you do not pay the tax and MTA surcharge due on or before the due date, you must pay interest on the amount of underpayment from the due date to the date paid.

Additional Charges — Additional charges for late filing and late payment are computed on the amount of tax and MTA surcharge required to be shown on the return after deduction of any payment made on or before the due date.

A If you do not file a return when due, add to the tax 5% per month, up to 25% (section 1085(a)(1)(A)).

B If you do not file a return within 60 days of the due date, the addition to tax for item A above cannot be less than the smaller of $100 or 100% of the amount required to be shown as tax (section 1085(a)(1)(B)).

C If you do not pay the tax shown on a return, add to the tax 1/2% per month, up to 25% (section 1085(a)(2)).

D The total of the additional charges in items A and C above may not exceed 5% for any one month except as provided for in item B above (section 1085(a)).

If you think you are not liable for these additional charges, attach a statement to your return explaining the delay in filing, payment, or both (section 1085).

Note: You may have the interest and/or penalty computed for you by calling the Business Tax Information Center at the number listed in the *Need Help?* section.

Application for a Direct Pay Permit

Any co-generation facility defined in section 2.2-a of the Public Service Law or a qualifying facility that is treated as a co-generation facility as defined by section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617) may apply for a direct pay permit.

Any other gas customer, other than a co-generator, may apply for a direct pay permit if all of the following apply:

1 The consumer is an individual (stand alone) customer of the utility transporting the gas and is purchasing gas from at least two suppliers (other than the transporting utility);

2 the sale of gas from any of these suppliers takes place in New York State under a contract with a term of one year or more; and

3 the purchaser's total annual transportation load is at least 100,000 Mcf's of gas.

A direct pay permit should be applied for by submitting Form TP-135 to the following address: TTTB-FACCTS, Registration Unit, Bldg. 8 - 855, W A Harriman Campus, Albany NY 12227. Upon receipt of a properly approved direct pay permit, permit holders must file a copy of the permit with the public utility they use for gas transportation services. They will not be required to pay the tax to the utility and instead will compute their own tax by completing Schedule B.

Exemption Certificate

Blank exemption certificates may be obtained from the New York State Department of Taxation and Finance by calling toll free 1 800 462-8100. They may be used if all of the following conditions are met and stated on the certificate:

1 The sale of gas services takes place in New York State;

2 The sale of gas services is pursuant to a contract of at least one year;

3 The certificate is signed and dated by the seller and purchaser of the gas services;

4 The purchaser (consumer) is purchasing gas from only one seller (other than the transporter-utility);

5 The seller is assuming all liability for any amounts due under section 186-a and, if applicable, section 186 of the Tax Law; and

6 The purchaser and seller are jointly and severally bound by the terms of the certificate.

Line Instructions

Whole Dollar Amounts - You may elect to show amounts in whole dollars rather than dollars and cents. Round an amount from 50 cents through 99 cents to the next higher dollar, and round any amount less than 50 cents to the next lower dollar.

Percentages - When computing percentages, convert decimals into percentages by moving the decimal point two spaces to the right. Percentages should be carried out to two decimal places. For example: 5,000/7,500 = .66666 = 66.67%.

Negative amounts, if any, should be shown in parentheses.

Line A — Make your payment in United States funds. A foreign check or foreign money order will only be accepted if payable through a United States bank or if marked ***Payable in U.S. Funds.***

Schedule A — Collection and Remittance by a Regulated Public Utility

Part I — Computation of Tax

Line 1 — Enter the total number of Mcf's imported by and delivered to a transportation customer in New York State for use in New York State. Complete Schedule C on page 3, and enter the total on this line. Include Mcf's imported by and delivered to transportation customers for which you received a properly completed exemption certificate or direct pay permit. An *Mcf* is one thousand cubic feet of gas.

Line 2 — Enter the total number of Mcf's imported and delivered to transportation customers in New York State that have provided the utility with a valid Form AU-260, *Direct Pay Permit.*

Line 3 — Enter the total number of Mcf's delivered to transportation customers in New York State that have provided the utility with a properly completed Form TP-136, *Exemption Certificate.*

Line 6 — The price used to compute the tax to be collected is set by law. It is the preceding calendar year's annual average of the national average natural gas price per Mcf as published by the U.S. Department of Energy. For the period December 1, 1997, through February 28, 1998, the applicable average annual price is $2.25.

Line 11 — Section 189-a imposes an MTA surcharge of 17% on the tax due on gas service imported into New York State for use in the Metropolitan Commuter Transportation District (MCTD).

Line 13 — A regulated public utility will be given credit for Section 189, 189-a, and 189-b tax paid to New York State but never collected because it became uncollectible. Enter any such credit for bad debts on this line along with any overpayments of section 189 tax from previous quarters.

Line 15 — See *Interest* on Page 1.

Line 16 — See *Additional Charges* on Page 1.

Line 17 — Pay the amount due computed on this line. If this amount is negative because of an excess of credits on line 13, enter this figure in brackets. This amount will be credited to the next period. If you wish to receive a refund, make this election by attaching a written request.

Part II — Computation of Metropolitan Transportation Tax (MTA Surcharge)

Line 18 — Enter the total from page 4, Schedule D. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

Line 19 — Enter the total number of Mcf's imported by and delivered to customers in the MCTD that have provided the utility with a valid Form AU-260, *Direct Pay Permit.*

Line 20 — Enter the total of Mcf's delivered to customers in the MCTD that have provided the utility with a properly completed exemption certificate (Form TP-136).

Line 26 — The surcharge rate of .7225% shown on this line represents the tax rate of 4.25% multiplied by the MTA surcharge rate of 17%.

Schedule B — Computation and Payment of Tax by Importers Who Have Obtained a Direct Payment Permit (including Co-Generators) or by Importers not using a Regulated Public Utility

Part I — Computation of Tax

Line 31 — The price used to compute the tax is set by law. It is the preceding year's annual average of the national average natural gas price per Mcf as published by the U.S. Department of Energy. For the period December 1, 1997, through February 28, 1998, the applicable average annual price is $2.25.

Line 33 — If the gas services are delivered by a regulated public utility, enter the lesser of the amount on line 32 or actual consideration paid during the quarter. If the gas services are not delivered by a regulated public utility, enter the actual consideration paid during the quarter. For the purposes of Schedule B, a regulated public utility includes a utility that is subject to the regulation of any activity supervised by the Public Service Commission, including but not limited to services, securities, safety, rates and charges, records, reports, or accounting.

Line 35 — Enter the exemption for co-generators. If you qualify as a co-generation facility see Part II below for computation of this exemption.

Line 39 — Section 189-a imposes an MTA surcharge of 17% on the tax due on the portion of gas service imported into New York State for consumption or use in the Metropolitan Commuter Transportation District (MCTD).

Line 41 — Enter any overpayments of section 189 tax from previous quarters.

Line 43 — See *Interest* on Page 1.

Line 44 — See *Additional Charges* on Page 1.

Line 45 — Pay the amount due computed on this line. If this amount is negative because of an excess of credits on line 41, enter this figure in brackets. This amount will be credited to the next period. If you wish to receive a refund, make this election by attaching a written request.

Part II — Exemption for Co-Generation Facilities

A co-generation facility defined in section 2.2-a of the Public Service Law or a qualifying facility that is a co-generation facility as defined by section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617) and has been issued a direct pay permit may compute this exemption.

A co-generation exemption will be allowed when gas service imported by a qualifying co-generation facility is used to generate electricity and/or steam that is supplied and used by a thermal energy host located at or near the project site.

To determine the consideration for natural gas to be exempted, the total consideration for natural gas used by the facility for co-generation during the period is multiplied by the ratio of the BTU value of steam and electricity supplied to and used by the host, to the total BTU useful value of all energy (steam, electricity, heat, etc.) produced by the facility for sale or self use.

$$\frac{\text{BTUs of steam and electricity supplied to and used by thermal host}}{\text{Total useful BTUs produced by the facility}} = \text{Exemption percentage}$$

BTU equivalent values of steam and electricity are computed as follows:

1 kilowatt hour = 3,412 BTUs
1 pound of low pressure steam = 1,000 BTUs

Note: For additional steam BTU value equivalents, use ASME or NBS/NRC steam tables.

Total useful steam and electricity produced by a facility includes that produced for the host, an electric utility or any other useful purpose.

Part III — Computation of Metropolitan Transportation Tax (MTA Surcharge)

Line 49 — Enter the total Mcf's delivered into the MCTD during the tax period. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

Line 54 — If the gas services are delivered by a regulated public utility, enter the lesser of the amount of line 53 or actual consideration paid during the quarter. If the gas services are not delivered by a regulated public utility, enter the actual consideration paid during the quarter. For the purposes of Schedule B, a *regulated public utility* includes a utility that is subject to the regulation of any activity supervised by the Public Service Commission, including but not limited to service, securities, safety, rates and charges, records, reports, or accounting.

Line 56 — Enter the MCTD exemption for co-generators. If you qualify as a co-generation facility, see Part IV below for computation of this exemption.

Line 58 — The surcharge rate of .7225% shown on this line represents the tax rate of 4.25% multiplied by the MTA surcharge rate of 17%.

Part IV — Exemption for Co-Generation Facilities Within The MCTD

Only a co-generation facility that qualified for the exemption in Part II may qualify for this exemption in Part IV. The same formula applies as described in Part II above. The resulting exemption percentage will be applied only against the computation of the MTA surcharge since the statewide exemption computed in Part II has already been applied against the computation of the tax and state tax surcharge.

Privacy Notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions and forms, is found in Articles 8, 9, 9-A, 13, 19, 27, 32, 33 and 33-A of the Tax Law and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer corporate tax liabilities under the Tax Law, for certain tax refund offsets, and for any other purpose authorized by law.

Failure to provide the required information may result in civil or criminal penalties, or both, under the Tax Law.

This information will be maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and Canada, call (518) 485-6800.

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday. **For business tax information and forms,** call the Business Tax Information Center at 1 800 972-1233. **For general information,** call toll free 1 800 225-5829. **To order forms and publications,** call toll free 1 800 462-8100. **From areas outside the U.S. and Canada,** call (518) 485-6800.

Fax-on-Demand Forms Ordering System - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

Internet Access - http://www.tax.state.ny.us
Access our website for forms, publications, and information.

Hotline for the Hearing and Speech Impaired - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information numbers listed above.

Mailing Address - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.