



# Instructions for Form CT-189

## Tax on Importation of Gas Services

# CT-189-I

(8/91)

Section 147 of Chapter 166 of the Laws of 1991 added section 189 to the New York State Tax Law, imposing a tax on *gas importers* who import, or cause to be imported, gas services into this state for their own use. Gas service is the delivery of gas through mains or lines. Gas importers include individuals, partnerships, societies, associations, joint stock companies, corporations, estates, receivers, trustees, assignees, referees, and others 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 4¼%, plus applicable surcharges, of the consideration given (or contracted to be given) by the gas importer for the imported gas services. Compute the tax by one of two methods on either Schedule A or Schedule B of Form CT-189:

- 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. The public utility must complete Schedule A of Form CT-189 and pay the tax required to be collected to the Tax Department on a quarterly basis. Co-generators who have obtained a direct payment certificate are exempt from paying the tax to the public utility; and instead will compute their own tax by completing Schedule B. 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 not delivered by a regulated public utility, or if they are imported by a co-generator with a direct payment certificate, the gas importer must compute the tax on Schedule B of this form and file quarterly.

### Transitional Provisions for Public Utilities

The tax under section 189 is imposed upon the importation of gas services occurring on or after August 1, 1991. When the importation or deliveries are billed based on meter readings, the following transitional rule applies. When a bill is issued based on a meter reading that occurred before August 1, 1991, the section 189 tax does not apply to any charges based on such reading. When a meter is read on or after August 1, 1991, section 189 tax applies to the total amount billed, based on such reading, if more than one-half the number of days included in the period covered by the bill fall on or after August 1, 1991. If more than one-half the number of days in the billing period fall before August 1, 1991, the tax will not apply.

### 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. Taxable quarters end on the last day of February, May, August and November. The first return due will cover the one month period ending August 31, 1991, and must be filed in September 1991.

### Interest

If you do not pay the tax due on or before the due date you must pay interest on the amount of underpayment from the due date to the date paid. You may call the Taxpayer Assistance Bureau for the current rate or to have the interest computed for you.

From inside New York State call 1 800 CALL TAX (1 800 225-5829); from outside New York State call (518) 438-8581.

### Additional Charges

Additional charges for late filing are computed on the amount of tax 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 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 ½% per month up to 25% (section 1085(a)(2)).
- d. The total of the additional charges in a and c may not exceed 5% for any one month except as provided for in b above (section 1085(a)).

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

### Direct Payment Permit for Co-generation Facilities

A co-generation facility defined in section 2.2-a of the Public Service Law or a qualifying facility which 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 obtain a direct payment permit by applying in writing to the following address:

TTTB - FACCTS  
Registration Unit  
Building 8, Room 504  
W. A. Harriman Campus  
Albany, NY 12227

This application should include the legal name and address of the business, federal employer identification number, summary of operations, a complete list of owners, officers, directors and partners, and the name and location of the thermal host.

### Schedule A — Collection and Remittance by a Regulated Public Utility

#### Part I - Computation of Tax and Tax Surcharge

- 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. An Mcf is one thousand cubic feet of gas.
- Line 2** - 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 average natural gas price per Mcf as published by the U.S. Department of Energy. For the period July 1, 1991 - June 30, 1992 the annual average gas price is \$1.72.
- Line 3** - Multiply the total number of Mcf's on line 1 by the average annual gas price on line 2 to arrive at the total amount used for computing the tax to be collected.
- Line 6** - Section 189-b, created by the same law as section 189, imposes a 15% tax surcharge rate on tax due under section 189 for the periods ending August 31, 1991, and November 30, 1991.

- Line 8 -** Section 189-a, created by the same law as section 189, imposes a metropolitan transportation tax 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 10 -** 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 12 -** See Interest on page 1 of instructions.
- Line 13 -** See Additional Charges on page 1 of instructions.
- Line 14 -** Pay the amount due computed at this line. If this amount is negative because of an excess of credits on line 10, 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 Surcharge**

- Line 15 -** Enter the number of Mcf's of gas service imported by and delivered to a transportation customer in the MCTD. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.
- Line 18 -** The surcharge rate of .7225% shown on this line represents the tax rate of 4.25% multiplied by the metropolitan transportation tax surcharge rate of 17%.

**Schedule B - Computation of Tax By Co-generators which have been issued a Direct Payment Permit and Gas Importers Not Using a Regulated Public Utility.**

**Part I - Computation of Tax and Tax Surcharge Due**

- Line 20 -** Enter the actual consideration given or contracted to be given for gas services imported into New York State during the tax period. The actual consideration given or contracted to be given is the price of the gas service less any separately stated delivery charges (which are reasonable).
- Line 21 -** Enter the exemption for co-generators. If you qualify as a co-generation facility see Part II for computation of this exemption.
- Line 25 -** Section 189-a, created by the same law as section 189, imposes a 15% tax surcharge on tax due under section 189 for the tax periods ending August 31, 1991, and November 30, 1991.
- Line 27 -** Section 189-a, created by the same law as section 189, imposes a metropolitan transportation tax 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 29 -** Enter any overpayments of section 189 tax from previous quarters.
- Line 31 -** See Interest on page 1 of instructions.
- Line 32 -** See Additional Charges of page 1 of instructions.
- Line 33 -** Pay the amount due computed at this line. If this amount is negative because of an excess of credits

on line 29, 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 which is a co-generation facility as defined by section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617) and which has been issued a direct payment permit may compute this exemption.

An exemption will be allowed when gas service imported by a qualifying co-generation facility is used to generate electricity or steam which 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 during the period is multiplied by the ratio of the BTU value of steam and of electricity supplied to and used by the host to the total BTU value of all useful steam and electricity produced by the facility during the same period.

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

BTU equivalent values of steam and electricity are those used by the New York State Energy Office, e.g.:

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

\* 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 and any other useful purpose.

After computing the exemption, enter the amount from line 38 on line 21, Part I, to reduce the amount of consideration upon which the tax is imposed.

**Part III - Metropolitan Transportation Tax Surcharge**

- Line 39 -** Enter the total consideration given or contracted to be given for gas services imported into the MCTD. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.
- Line 40 -** Enter the MCTD exemption for co-generators. If you qualify as a co-generation facility, see Part IV for computation of this exemption.
- Line 42 -** The surcharge rate of .7225% shown on this line represents the tax rate of 4.25% multiplied by the metropolitan transportation tax surcharge rate of 17%.

**Part IV - MCTD Exemption for Co-Generation Facilities.**

Only a co-generation facility which qualified for the exemption in Part II may qualify for this exemption in Part IV. The same formula applies as described in Part II, except BTU's of steam and electricity supplied to the thermal host and total useful BTU's are limited to the MCTD. The resulting exemption percentage will be applied only against the computation of the Metropolitan Transportation Tax Surcharge since the statewide exemption computed in Part II has already been applied against the computation of the tax and 15% tax surcharge. After computing this exemption, transfer the amount from line 48, Part IV, to line 40, Part III, to reduce the amount of consideration upon which the Metropolitan Transportation Tax Surcharge is computed.