

**SENATE, No. 2892**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED AUGUST 27, 2018

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**SYNOPSIS**

Eliminates certain aviation fuel tax exemptions to qualifying airlines; provides funding for PATH train extension to Newark Liberty International Airport and airport improvements.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/14/2018)**

1 AN ACT concerning the taxation of aviation fuels used by  
2 qualifying airlines, appropriating aviation fuel tax revenues for  
3 aviation purposes, and amending P.L.1990, c.42, P.L.1991,  
4 c.181, and P.L.1995, c.108.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8

9 1. Section 2 of P.L.1990, c.42 (C.54:15B-2) is amended to read  
10 as follows:

11 2. For the purposes of this act:

12 "Aviation fuel" means aviation gasoline or aviation grade  
13 kerosene or any other fuel that is used in aircraft.

14 "Aviation gasoline" means fuel specifically compounded for use  
15 in reciprocating aircraft engines.

16 "Aviation grade kerosene" means any kerosene type jet fuel  
17 covered by ASTM Specification D 1655 or meeting specification  
18 MIL-DTL-5624T (Grade JP-5) or MIL-DTL-83133E (Grade JP-8).

19 "Blended fuel" means a mixture composed of gasoline, diesel  
20 fuel, kerosene or blended fuel and another liquid, including blend  
21 stock other than a de minimis amount of a product such as  
22 carburetor detergent or oxidation inhibitor, that can be used as a  
23 fuel in a highway vehicle. "Blended fuel" includes but is not  
24 limited to gasohol, biobased liquid fuel, biodiesel fuel, ethanol,  
25 methanol, fuel grade alcohol, diesel fuel enhancers and resulting  
26 blends.

27 "Company" includes a corporation, partnership, limited  
28 partnership, limited liability company, association, individual, or  
29 any fiduciary thereof.

30 "Diesel fuel" means a liquid that is commonly or commercially  
31 known or sold as a fuel that is suitable for use in a diesel-powered  
32 highway vehicle. A liquid meets this requirement if, without  
33 further processing or blending, the liquid has practical and  
34 commercial fitness for use in the propulsion engine of a diesel-  
35 powered highway vehicle. "Diesel fuel" includes biobased liquid  
36 fuel, biodiesel fuel, and number 1 and number 2 diesel.

37 "Director" means the Director of the Division of Taxation in the  
38 Department of the Treasury.

39 "First sale of petroleum products within this State" means the  
40 initial sale of a petroleum product delivered to a location in this  
41 State. A "first sale of petroleum products within this State" does  
42 not include a book or exchange transfer of petroleum products if  
43 such products are intended to be sold in the ordinary course of  
44 business.

45 "Gasoline" means all products commonly or commercially  
46 known or sold as gasoline that are suitable for use as a motor fuel.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Gasoline" does not include products that have an ASTM octane  
2 number of less than 75 as determined by the "motor method,"  
3 ASTM D2700-92. The term does not include racing gasoline or  
4 aviation gasoline, but for administrative purposes does include fuel  
5 grade alcohol.

6 "Gross receipts" means all consideration derived from the first  
7 sale of petroleum products within this State except sales of:

8 a. asphalt;

9 b. petroleum products sold pursuant to a written contract  
10 extending one year or longer to nonprofit entities qualifying under  
11 subsection (b) of section 9 of P.L.1966, c.30 (C.54:32B-9) as  
12 evidenced by an invoice in form prescribed by subsection b. of  
13 section 3 of P.L.1991, c.19 (C.54:15B-10);

14 c. petroleum products sold to governmental entities qualifying  
15 under subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-9) as  
16 evidenced by an invoice in form prescribed by subsection b. of  
17 section 3 of P.L.1991, c.19 (C.54:15B-10); and

18 d. polymer grade propylene used in the manufacture of  
19 polypropylene.

20 "Highway fuel" means gasoline, blended fuel that contains  
21 gasoline or is intended for use as gasoline, liquefied petroleum gas,  
22 and diesel fuel, blended fuel that contains diesel fuel or is intended  
23 for use as diesel fuel, and kerosene, other than aviation grade  
24 kerosene.

25 "Kerosene" means the petroleum fraction containing  
26 hydrocarbons that are slightly heavier than those found in gasoline  
27 and naphtha, with a boiling range of 149 to 300 degrees Celsius.

28 "Petroleum products" means refined products made from crude  
29 petroleum and its fractionation products, through straight  
30 distillation of crude oil or through redistillation of unfinished  
31 derivatives, but shall not mean the products commonly known as  
32 number 2 heating oil, number 4 heating oil, number 6 heating oil,  
33 kerosene and propane gas to be used exclusively for residential use.

34 "Qualifying airline" means any person or business authorized by  
35 the Federal Aviation Administration or appropriate agency of the  
36 United States to operate as an air carrier under an air carrier  
37 operating certificate and which has more than 8 million enplaned  
38 passengers per year in New Jersey, or any regional air carrier under  
39 contract with such a person or business.

40 "Quarterly period" means a period of three calendar months  
41 commencing on the first day of January, April, July or October and  
42 ending on the last day of March, June, September or December,  
43 respectively.

44 "Regional air carrier" means an air carrier that operates aircraft  
45 of 99 seats or fewer.

46 "Retail price per gallon" means the price charged by retailers in  
47 the State for a gallon of the petroleum product dispensed into the  
48 fuel tanks of motor vehicles without State or federal tax included.

1 "Unleaded regular gasoline" means gasoline of the octane rating  
2 equal to the lowest octane rated gasoline offered for sale at a  
3 majority of the gasoline retailers in the State.

4 "2016 implementation date" means the later of November 1,  
5 2016 or the 15th day after the date of enactment of P.L.2016, c.57.  
6 (cf: P.L.2016, c.57, s.12)

7

8 2. Section 7 of P.L.1991, c.181 (C.54:15B-2.1) is amended to  
9 read as follows:

10 7. a. "Gross receipts," as otherwise defined by section 2 of  
11 P.L.1990, c.42 (C.54:15B-2), shall not include receipts from sales  
12 of petroleum products used by marine vessels engaged in interstate  
13 or foreign commerce and receipts from sales of aviation fuels used  
14 by common carriers in interstate or foreign commerce **【other than】** ,  
15 but shall include the "burnout" portion used by common carriers  
16 and the entire receipts from the sales of aviation fuels used by or  
17 delivered to a qualifying airline, even if the qualifying airline is a  
18 common carrier, which both shall be taxable pursuant to rules  
19 promulgated by the director.

20 b. Highway fuel used for the following purposes is exempt  
21 from the tax imposed by section 3 of P.L.1990, c.42 (C.54:15B-3),  
22 and a refund of the tax imposed by that section may be claimed by  
23 the consumer providing proof the tax has been paid and no refund  
24 has been previously issued:

25 (1) autobuses while being operated over the highways of this  
26 State in those municipalities to which the operator has paid a  
27 monthly franchise tax for the use of the streets therein under the  
28 provisions of R.S.48:16-25 and autobuses while being operated over  
29 the highways of this State in a regular route bus operation as  
30 defined in R.S.48:4-1 and under operating authority conferred  
31 pursuant to R.S.48:4-3, or while providing bus service under a  
32 contract with the New Jersey Transit Corporation or under a  
33 contract with a county for special or rural transportation bus service  
34 subject to the jurisdiction of the New Jersey Transit Corporation  
35 pursuant to P.L.1979, c.150 (C.27:25-1 et seq.), and autobuses  
36 providing commuter bus service which receive or discharge  
37 passengers in New Jersey. For the purpose of this paragraph  
38 "commuter bus service" means regularly scheduled passenger  
39 service provided by motor vehicles whether within or across the  
40 geographical boundaries of New Jersey and utilized by passengers  
41 using reduced fare, multiple ride, or commutation tickets and shall  
42 not include charter bus operations for the transportation of enrolled  
43 children and adults referred to in subsection c. of R.S.48:4-1 and  
44 "regular route service" does not mean a regular route in the nature  
45 of special bus operation or a casino bus operation;

46 (2) agricultural tractors not operated on a public highway;

47 (3) farm machinery;

48 (4) ambulances;

- 1 (5) rural free delivery carriers in the dispatch of their official  
2 business;
  - 3 (6) vehicles that run only on rails or tracks, and such vehicles as  
4 run in substitution therefor;
  - 5 (7) highway motor vehicles that are operated exclusively on  
6 private property;
  - 7 (8) motor boats or motor vessels used exclusively for or in the  
8 propagation, planting, preservation and gathering of oysters and  
9 clams in the tidal waters of this State;
  - 10 (9) motor boats or motor vessels used exclusively for  
11 commercial fishing;
  - 12 (10) motor boats or motor vessels, while being used for hire for  
13 fishing parties or being used for sightseeing or excursion parties;
  - 14 (11) fire engines and fire-fighting apparatus;
  - 15 (12) stationary machinery and vehicles or implements not  
16 designed for the use of transporting persons or property on the  
17 public highways;
  - 18 (13) heating and lighting devices;
  - 19 (14) motor boats or motor vessels used exclusively for Sea Scout  
20 training by a duly chartered unit of the Boy Scouts of America; and
  - 21 (15) emergency vehicles used exclusively by volunteer first-aid  
22 or rescue squads.
- 23 (cf: P.L.2016, c.57, s.13)
- 24

25 3. Section 15 of P.L.1995, c.108 (C.27:1B-21.8) is amended to  
26 read as follows:

27 15. a. Each year a nonlapsing sum of money shall be  
28 appropriated from funds held in the Special Transportation Fund,  
29 established pursuant to section 21 of P.L.1984, c.73 (C.27:1B-21),  
30 and credited to the Airport Safety Fund, established in the General  
31 Fund pursuant to section 4 of P.L.1983, c.264 (C.6:1-92), for use  
32 for any purpose pursuant to the "New Jersey Airport Safety,  
33 Security and Improvement Act," P.L.1983, c.264 (C.6:1-89 et al.)  
34 and that sum shall be included in the annual report of projects  
35 prepared pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22).  
36 Funds so appropriated shall no longer be subject to the provisions  
37 and limitations of chapter 1B of Title 27 of the Revised Statutes,  
38 but instead shall be subject to the provisions and limitations of  
39 P.L.1983, c.264 (C.6:1-89 et al.).

40 b. Commencing with the fiscal year beginning July 1, 2019  
41 there shall be annually appropriated an amount equal to the  
42 revenues derived from the tax imposed on the receipts from the sale  
43 of aviation fuels used by airlines under the "Petroleum Products  
44 Gross Receipts Tax Act" P.L.1990, c.42 (C.54:15B-1 et seq.) to the  
45 Port Authority of New York and New Jersey in support of the  
46 capital and operating costs of extending the PATH train to Newark  
47 Liberty International Airport.

48 c. Upon full payment of the cost of extending the PATH train  
49 to Newark Liberty International Airport, the revenues dedicated

1 pursuant to subsection b. of this section shall be annually  
2 appropriated to the Airport Safety Fund in accordance with  
3 subsection a. of this section or to the New Jersey Department of  
4 Transportation's Airport Improvement Program, to be issued as  
5 grants by the commissioner to airport improvement projects in the  
6 State.

7 (cf: P.L.2010, c.38, s.5)

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9 4. This act shall take effect 90 days following enactment.

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#### STATEMENT

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14 This bill provides funding needed to complete the Port Authority  
15 Trans-Hudson (PATH) train extension to the Newark Liberty  
16 International Airport station and to create a new station in the South  
17 Ward community of Newark. According to the Port Authority of  
18 New York and New Jersey's 2017 Capital Plan, the PATH  
19 extension requires at least \$700 million in grants or other funding to  
20 supplement the \$1 billion maximum amount the PANYNJ has  
21 allotted in its own capital plan. Since the PATH extension competes  
22 with other priority transit developments, such as the Gateway and  
23 Bus Terminal projects, for both PANYNJ funding as well as federal  
24 grants, new sources of funding are needed to support this project.  
25 The PATH extension to Newark Liberty International Airport will  
26 significantly benefit qualifying airlines at the airport. Once the  
27 PATH extension has been paid for, the additional revenue is to be  
28 appropriated in the form of grants for airport safety or improvement  
29 projects.

30 Airlines currently receive a special tax break from the State of  
31 New Jersey Petroleum Products Gross Receipts Tax on their use of  
32 jet fuel in that fuel consumption is only taxed for that portion that is  
33 used in "burnout," during taxiing and take-off. The elimination of  
34 this tax break for qualifying airlines could generate valuable  
35 revenue to complete the PATH extension.

36 According to the Federal Aviation Administration's Policy and  
37 Procedures Concerning the Use of Proceeds From Taxes on  
38 Aviation Fuel, revenue from jet fuel taxes must be go towards  
39 funding airport-related projects.

40 The passage of this bill accomplishes three significant goals: it  
41 eliminates a tax break on qualifying air carriers' fuel consumption  
42 while remaining competitive with other hub-airport states; it funds a  
43 much-needed transportation infrastructure project without  
44 competing for funding with other crucial projects; and it brings  
45 New Jersey into compliance with federal regulations regarding jet  
46 fuel tax proceeds.