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SYNOPSIS
Eliminates certain aviation fuel tax exemptions; provides funding for aviation capital projects.

CURRENT VERSION OF TEXT
As reported by the Senate Budget and Appropriations Committee on September 24, 2018, with amendments.

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

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

   2. For the purposes of this act:

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
\[^2\] Senate STR committee amendments adopted September 13, 2018.
\[^1\] Senate SBA committee amendments adopted September 24, 2018.
"Gasoline" means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. "Gasoline" does not include products that have an ASTM octane number of less than 75 as determined by the "motor method," ASTM D2700-92. The term does not include racing gasoline or aviation gasoline, but for administrative purposes does include fuel grade alcohol.

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

a. asphalt;
b. petroleum products sold pursuant to a written contract extending one year or longer to nonprofit entities qualifying under subsection (b) of section 9 of P.L.1966, c.30 (C.54:32B-9) as evidenced by an invoice in form prescribed by subsection b. of section 3 of P.L.1991, c.19 (C.54:15B-10);
c. petroleum products sold to governmental entities qualifying under subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-9) as evidenced by an invoice in form prescribed by subsection b. of section 3 of P.L.1991, c.19 (C.54:15B-10); and
d. polymer grade propylene used in the manufacture of polypropylene.

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

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

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

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

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

Regional air carrier means an air carrier that operates aircraft of 99 seats or fewer.
"Retail price per gallon" means the price charged by retailers in the State for a gallon of the petroleum product dispensed into the fuel tanks of motor vehicles without State or federal tax included.

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

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

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

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

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

(1) autobuses while being operated over the highways of this State in those municipalities to which the operator has paid a monthly franchise tax for the use of the streets therein under the provisions of R.S.48:16-25 and autobuses while being operated over the highways of this State in a regular route bus operation as defined in R.S.48:4-1 and under operating authority conferred pursuant to R.S.48:4-3, or while providing bus service under a contract with the New Jersey Transit Corporation or under a contract with a county for special or rural transportation bus service subject to the jurisdiction of the New Jersey Transit Corporation pursuant to P.L.1979, c.150 (C.27:25-1 et seq.), and autobuses providing commuter bus service which receive or discharge passengers in New Jersey. For the purpose of this paragraph, "commuter bus service" means regularly scheduled passenger service provided by motor vehicles whether within or across the geographical boundaries of New Jersey and utilized by passengers using reduced fare, multiple ride, or commutation tickets and shall not include charter bus operations for the transportation of enrolled children and adults referred to in subsection c. of R.S.48:4-1 and "regular route service" does not mean a regular route in the nature of special bus operation or a casino bus operation;
(2) agricultural tractors not operated on a public highway;
(3) farm machinery;
(4) ambulances;
(5) rural free delivery carriers in the dispatch of their official business;
(6) vehicles that run only on rails or tracks, and such vehicles as run in substitution therefor;
(7) highway motor vehicles that are operated exclusively on private property;
(8) motor boats or motor vessels used exclusively for or in the propagation, planting, preservation and gathering of oysters and clams in the tidal waters of this State;
(9) motor boats or motor vessels used exclusively for commercial fishing;
(10) motor boats or motor vessels, while being used for hire for fishing parties or being used for sightseeing or excursion parties;
(11) fire engines and fire-fighting apparatus;
(12) stationary machinery and vehicles or implements not designed for the use of transporting persons or property on the public highways;
(13) heating and lighting devices;
(14) motor boats or motor vessels used exclusively for Sea Scout training by a duly chartered unit of the Boy Scouts of America; and
(15) emergency vehicles used exclusively by volunteer first-aid or rescue squads.

(cf: P.L.2016, c.57, s.13)

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

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

b. Commencing with the fiscal year beginning July 1, 2019 there shall be annually appropriated \(^2\) from funds held in the Special Transportation Fund, established pursuant to section 21 of P.L.1984, c.73 (C.27:1B-21)\(^2\) an amount equal to the revenues derived from the tax imposed on the receipts from the sale of aviation fuels used by airlines under the "Petroleum Products Gross
Receipts Tax Act \(^{1}\), P.L.1990, c.42 (C.54:15B-1 et seq.) to the Port Authority of New York and New Jersey in support of the capital and operating planning, acquisition, engineering, construction, reconstruction, repair, and rehabilitation costs of extending the PATH train Port Authority Trans-Hudson Corporation rail service to Newark Liberty International Airport, and for the cost of planning, acquisition, engineering, construction, reconstruction, repair, and rehabilitation of capital projects at airports, local airport systems, or other local facilities owned and operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property in the State, as a federally permitted use of revenue derived from the taxation of aviation fuel used by airlines pursuant to federal statute, including, but not limited to, Title 49 of United States Code.\(^2\)

Upon full payment of the cost of extending the PATH train Port Authority Trans-Hudson Corporation rail service to Newark Liberty International Airport, the revenues dedicated pursuant to subsection b. of this section shall be annually appropriated to the Airport Safety Fund in accordance with subsection a. of this section or to the New Jersey Department of Transportation’s Airport Improvement Program, to be issued as grants by the commissioner for airport improvement projects in the State.\(^2\)

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

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