

ASSEMBLY, No. 4940

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 9, 2020

Sponsored by:

Assemblyman ROBERT AUTH

District 39 (Bergen and Passaic)

Assemblyman GERARD SCHARFENBERGER

District 13 (Monmouth)

SYNOPSIS

Eliminates Treasurer's authority to annually adjust petroleum products gross receipts tax.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/12/2020)

1 AN ACT eliminating the Treasurer's authority to annually adjust the
2 petroleum products gross receipts tax, amending P.L.1990, c.42
3 and P.L.2016, c.57.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 3 of P.L.1990, c.42 (C.54:15B-3) is amended to read
9 as follows:

10 3. a. (1) (a) There is imposed on each company which is
11 engaged in the refining or distribution, or both, of petroleum
12 products other than highway fuel and aviation fuel and which
13 distributes such products in this State a tax at the rate of seven
14 percent of its gross receipts derived from the first sale of petroleum
15 products within this State and there is imposed on each company
16 which is engaged in the refining or distribution, or both, of highway
17 fuel a tax at the rate of 12.85 percent, as adjusted pursuant to
18 subsection c. of this section, of its gross receipts derived from the
19 first sale of those products within this State.

20 (b) The applicable tax rate for gasoline, blended fuel that
21 contains gasoline or is intended for use as gasoline, and liquefied
22 petroleum gas, which are taxed as a highway fuel pursuant to
23 subparagraph (a) of this paragraph, shall be converted to a cents-
24 per-gallon rate, rounded to the nearest tenth of a cent, and adjusted
25 quarterly by the director, effective on July 1, October 1, January 1,
26 and April 1, based on the average retail price per gallon of unleaded
27 regular gasoline in the State, as determined in the most recent
28 survey of the retail price per gallon of gasoline that includes a
29 Statewide representative random sample conducted by the Board of
30 Public Utilities, Office of the Economist, or its successor.

31 (c) The cents-per-gallon rate determined pursuant to
32 subparagraph (b) of this paragraph shall not be less than the rate
33 determined for the average retail price per gallon of unleaded
34 gasoline in the State on July 1, 2016.

35 (d) The applicable tax rate for diesel fuel, blended fuel that
36 contains diesel fuel or is intended for use as diesel fuel, and
37 kerosene, other than aviation grade kerosene, which are taxed as a
38 highway fuel pursuant to subparagraph (a) of this paragraph, shall
39 be converted to a cents-per-gallon rate, rounded to the nearest tenth
40 of a cent, and adjusted quarterly by the director, effective on July 1,
41 October 1, January 1, and April 1, based on the average retail price
42 per gallon of number 2 diesel in the State, as determined in the most
43 recent survey of retail diesel fuel prices that includes a Statewide
44 representative random sample conducted by the Board of Public
45 Utilities, Office of the Economist, or its successor.

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 Notwithstanding the provisions of subparagraph (a) of this
2 paragraph to the contrary, for the period from the 2016
3 implementation date through December 31, 2016, no rate of tax
4 shall be applied to diesel fuel, blended fuel that contains diesel fuel
5 or is intended for use as diesel fuel, or kerosene, other than aviation
6 grade kerosene; for the period from January 1, 2017 through June
7 30, 2017, the applicable rate for those fuels shall be 70 percent of
8 the rate otherwise determined pursuant to subparagraph (a) of this
9 paragraph, and for July 1, 2017 and thereafter the applicable rate for
10 those fuels determined pursuant to subparagraph (a) of this
11 paragraph.

12 (e) The cents-per-gallon rate determined pursuant to
13 subparagraph (d) of this paragraph shall not be less than the rate
14 determined for the average retail price per gallon of number 2
15 diesel in the State on July 1, 2016.

16 (f) The applicable tax rate for fuel oil determined pursuant to
17 subparagraph (a) of this paragraph shall be converted to a cents-per-
18 gallon rate, rounded to the nearest tenth of a cent, and adjusted
19 quarterly by the director, effective on July 1, October 1, January 1,
20 and April 1, to reflect the average price per gallon, without State or
21 federal tax included, of retail sales of number 2 fuel oil in the State,
22 as determined in the most recent survey of retail diesel fuel prices
23 that included a Statewide representative random sample conducted
24 by the Board of Public Utilities, Office of the Economist, or its
25 successor.

26 (g) The cents-per-gallon rate determined pursuant to
27 subparagraph (f) of this paragraph shall not be less than the rate
28 determined for the average price per gallon, without State or
29 federal tax included, of retail sales of number 2 fuel oil in the State
30 on July 1, 2016.

31 (h) On and after the 10th day following a certification by the
32 review council pursuant to subsection c. of section 19 of
33 P.L.2016, c.57 (C.52:18A-257), no tax shall be imposed pursuant to
34 this paragraph.

35 (2) (a) In addition to the tax, if any, imposed by paragraph (1)
36 of this subsection, a cents-per-gallon tax is imposed on each
37 company's gross receipts derived from the first sale of petroleum
38 products within this State on gasoline, blended fuel that contains
39 gasoline or that is intended for use as gasoline, liquefied petroleum
40 gas, and aviation fuel at the rate of four cents per gallon; and

41 (b) In addition to the tax, if any, imposed by paragraph (1) of
42 this subsection, a cents-per-gallon tax is imposed on each
43 company's gross receipts derived from the first sale of petroleum
44 products within this State on diesel fuel, blended fuel that contains
45 diesel fuel or is intended for use as diesel fuel, and kerosene, other
46 than aviation grade kerosene, at the rate of four cents per gallon
47 before July 1, 2017 and at the rate of eight cents per gallon on and
48 after July 1, 2017.

1 b. There is imposed on each company that imports or causes to
2 be imported, other than by a company subject to and having paid
3 the tax on those imported petroleum products that have generated
4 gross receipts taxable under subsection a. of this section, petroleum
5 products for use or consumption by it within this State a tax at the
6 rate or rates, determined pursuant to subsection a. of this section, on
7 the consideration given or contracted to be given and the gallonage
8 for such petroleum products if the consideration given or contracted
9 to be given for all such deliveries made during a quarterly period
10 exceeds \$5,000.

11 c. (1) For State fiscal years 2018 through **[2026]** 2021, the
12 rate of tax imposed on highway fuel pursuant to subsection a. of
13 this section shall be adjusted annually so that the total revenue
14 derived from highway fuel shall not exceed the highway fuel cap
15 amount.

16 (2) The State Treasurer shall, on or before December 31, 2016,
17 determine the highway fuel cap amount as the sum of:

18 (a) the taxes collected for State Fiscal Year 2016 pursuant to
19 paragraphs (1) and (2) of subsection a. of section 3 of
20 P.L.2010, c.22 (C.54:39-103) on highway fuel,

21 (b) the amount derived from taxing the gallonage of highway
22 fuel subject to motor fuel tax in State Fiscal Year 2016 at the rate of
23 four cents per gallon, and

24 (c) the amount that would have been derived from taxing the
25 gallonage of highway fuel subject to motor fuel tax in State Fiscal
26 Year 2016 at the rate of 23 cents per gallon.

27 (3) On or before August 15 of each State Fiscal Year following
28 State Fiscal Year 2017, the State Treasurer and the Legislative
29 Budget and Finance Officer shall determine the total revenue
30 derived from:

31 (a) the taxes collected for the prior State Fiscal Year pursuant to
32 paragraphs (1) and (2) of subsection a. of section 3 of
33 P.L.2010, c.22 (C.54:39-103) on highway fuel,

34 (b) the revenue that would be derived from imposing the tax
35 pursuant to paragraph (2) of subsection a. of this section on
36 highway fuel at the rate of four cents per gallon, and

37 (c) the revenue derived from the taxation of highway fuel
38 pursuant to paragraph (1) of subsection a. of this section.

39 (4) Upon consideration of the result of the determination
40 pursuant to paragraph (3) of this subsection, and consultation with
41 the Legislative Budget and Finance Officer, the State Treasurer
42 shall determine the rate of tax to be imposed on highway fuel
43 pursuant to subsection a. of this section that will result in revenue
44 from:

45 (a) the taxes collected on highway fuel for the current State
46 Fiscal Year pursuant to paragraphs (1) and (2) of subsection a. of
47 section 3 of P.L.2010, c.22 (C.54:39-103),

1 (b) the revenue derived from the tax imposed pursuant to
2 paragraph (2) of subsection a. of this section on highway fuel at the
3 rate of four cents per gallon for the current State Fiscal Year, and

4 (c) the revenue derived from the taxation of highway fuel
5 pursuant to paragraph (1) of subsection a. of this section equaling
6 the highway fuel cap amount determined pursuant to paragraph (2)
7 of this subsection, as adjusted pursuant to paragraph (5) of this
8 subsection; and that rate shall take effect on October 1 of that year.

9 (5) If the actual revenue determined pursuant to paragraph (3) of
10 this subsection exceeds the highway fuel cap amount determined
11 pursuant to paragraph (2) of this subsection, then the highway fuel
12 cap amount for the succeeding year shall be decreased by the
13 amount of the excess in setting the rate pursuant to paragraph (4) of
14 this subsection. If the actual revenue determined pursuant to
15 paragraph (3) of this subsection is less than the highway fuel cap
16 amount determined pursuant to paragraph (2) of this subsection,
17 then the highway fuel cap amount for the succeeding year shall be
18 increased by the amount of the shortfall in setting the rate pursuant
19 to paragraph (4) of this subsection.

20 (cf: P.L.2016, c.57, s.14)

21
22 2. Section 19 of P.L.2016, c.57 (C.52:18A-257) is amended to
23 read as follows:

24 19. a. The State Treasurer, and the Legislative Budget and
25 Finance Officer, together with a third public member who shall be
26 jointly selected thereby, shall constitute the review council.

27 b. The review council shall, on or before January 15, 2020,
28 provide the Governor and the Legislature with an advisory report of
29 their consensus estimate of the increase or decrease in State
30 revenues pursuant to each section of P.L.2016, c.57 (C.54:15B-13 et
31 al.), and pursuant to **[this act]** P.L.2016, c.57 as a whole, during
32 the preceding three State fiscal years, including a comparison of
33 those estimates to the legislative fiscal estimate or fiscal note
34 published contemporaneous with the enactment of **[this act]**
35 P.L.2016, c.57 prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et
36 seq.).

37 c. The review council shall conduct an ongoing review of the
38 application of each section of P.L.2016, c.57 (C.54:15B-13 et al.).

39 The review council shall, not later than five days after any
40 Legislative action that halts, delays, or reverses the implementation
41 of those sections as scheduled on the date of enactment of
42 P.L.2016, c.57 (C.54:15B-13 et al.), other than actions affecting the
43 “Petroleum Products Gross Receipts Tax Act,” P.L.1990, c.42
44 (C.54:15B-1 et seq.), certify for the purposes of subparagraph (h) of
45 paragraph (1) of subsection a. of section 3 of P.L.1990, c.42
46 (C.54:15B-3) to the Director of the Division of Taxation that the
47 scheduled implementation of P.L.2016, c.57 (C.54:15B-13 et al.),

1 other than actions affecting the “Petroleum Products Gross Receipts
2 Tax Act,” P.L.1990, c.42 (C.54:15B-1 et seq.), had been impeded.
3 (cf: P.L.2016, c.57, s.19)
4

5 3. This act shall take effect immediately.
6
7

8 STATEMENT
9

10 This bill eliminates the Treasurer’s authority to annually adjust
11 petroleum products gross receipts tax after State Fiscal Year 2021.
12 Instead, the Legislature will be required to pass a law to change the
13 petroleum products gross receipts tax.

14 Currently, and through State Fiscal Year 2026, the rate of tax
15 imposed on petroleum products is adjusted annually by the State
16 Treasurer, after collaborating with the Legislative Budget and
17 Finance Officer, to meet the “highway fuel cap amount.” The
18 highway fuel cap amount is approximately \$2 billion and is based
19 on the amount equivalent to 2016 fuel sales as if taxed at certain
20 rates. If the amount of revenue in a year exceeds the cap amount,
21 the following year’s tax rate is decreased. However, if the revenue
22 in a year is less than the cap amount, the tax rate is increased in the
23 following year to meet the shortfall. Under this bill, the Treasurer’s
24 authority to adjust the gas tax is removed, and only the Legislature
25 will be able to change the tax rate of the petroleum products gross
26 receipts tax.