

ASSEMBLY, No. 2683

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Morris and Passaic)

SYNOPSIS

Eliminates automatic increases of petroleum products taxes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning automatic increases of certain petroleum
2 products taxes, amending P.L.1990, c.42 and P.L.2016, c.57.

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

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

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

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

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

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

45 Notwithstanding the provisions of subparagraph (a) of this
46 paragraph to the contrary, for the period from the 2016

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

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

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

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

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

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

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

47 b. There is imposed on each company that imports or causes to
48 be imported, other than by a company subject to and having paid

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (5) If the actual revenue determined pursuant to paragraph (3) of
7 this subsection exceeds the highway fuel cap amount determined
8 pursuant to paragraph (2) of this subsection, then the highway fuel
9 cap amount for the succeeding year shall be decreased by the
10 amount of the excess in setting the rate pursuant to paragraph (4) of
11 this subsection. If the actual revenue determined pursuant to
12 paragraph (3) of this subsection is less than the highway fuel cap
13 amount determined pursuant to paragraph (2) of this subsection,
14 then the highway fuel cap amount for the succeeding year shall **be**
15 increased by the amount of the shortfall in setting the rate pursuant
16 to paragraph (4) of this subsection **not be adjusted**.

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

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

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

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

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

35 The review council shall, not later than five days after any
36 Legislative action that halts, delays, or reverses the implementation
37 of those sections as scheduled on the date of enactment of
38 P.L.2016, c.57 (C.54:15B-13 et al.), other than actions affecting the
39 “Petroleum Products Gross Receipts Tax Act” P.L.1990 c.42
40 (C.54:14B-1 et seq.), certify for the purposes of subparagraph (h) of
41 paragraph (1) of subsection a. of section 3 of P.L.1990, c.42
42 (C.54:15B-3) to the Director of the Division of Taxation that the
43 scheduled implementation of P.L.2016, c.57 (C.54:15B-13 et al.),
44 other than actions affecting the “Petroleum Products Gross Receipts
45 Tax Act” P.L.1990 c.42 (C.54:14B-1 et seq.), had been impeded.

46 (cf: P.L.2016, c.57, s.19)

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48 3. This act shall take effect immediately.

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STATEMENT

This bill eliminates the automatic increases of the petroleum products gross receipts tax.

Currently, and through the year 2026, the rate of tax imposed on petroleum products is adjusted annually by the State Treasurer, in consultation with the Legislative Budget and Finance Officer, to meet the “highway fuel cap amount.” The highway fuel cap amount is roughly \$2 billion, and based on the amount equivalent to 2016 fuel sales as if taxed at certain rates. If the amount of revenue in a year exceeds the cap amount, the following year’s tax rate is decreased. Conversely, if revenue in a year is less than the cap amount, the tax rate is increased the following year to meet the shortfall. Under this bill, the authority to increase the adjustable part of the tax rate is eliminated, but the authority to decrease the rate remains intact.

The bill also makes amendments to avoid triggering the complete cessation of certain fuel tax collections. This is necessary because P.L.2016, c.57, the act that created the automatic adjustments, contains a provision that requires the cessation of collections if the implementation of any section of that act were reversed or stopped by Legislative action. Included in that act are sections related to income, estate, and sales taxes. The provision is therefore amended to apply only to sections not affecting the petroleum products gross receipts tax.