

ASSEMBLY, No. 3265

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED SEPTEMBER 30, 2010

Sponsored by:

Assemblyman ALEX DECROCE

District 26 (Morris and Passaic)

SYNOPSIS

Amends motor fuel tax act to defer implementation for three months and make technical corrections.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the tax on motor fuels, amending P.L.2010,
2 c.22

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 2 of P.L.2010, c.22 (C.54:39-102) is amended to read
8 as follows:

9 2. For the purposes of P.L.2010, c.22 (C.54:39-101 et al.), the
10 following terms have the following meanings:

11 "Aviation fuel" means aviation gasoline or aviation grade
12 kerosene **【;】** or any other fuel that is used in aircraft.

13 "Aviation fuel dealer" means a person that acquires aviation fuel
14 from a supplier or from another aviation fuel dealer for subsequent
15 sale **【;】** .

16 "Aviation gasoline" means fuel specifically compounded for use
17 in reciprocating aircraft engines **【;】** .

18 "Aviation grade kerosene" means any kerosene type jet fuel
19 covered by ASTM Specification D 1655 or meeting specification
20 MIL-DTL-5624T (Grade JP-5) or MIL-DTL-83133E (Grade JP-8)
21 **【;】** .

22 "Blend stock" means a petroleum product component of motor
23 fuel, such as naphtha, reformat, toluene or kerosene, that can be
24 blended for use in a motor fuel without further processing. The term
25 includes those petroleum products defined by regulations issued
26 pursuant to sections 4081 and 4082 of the federal Internal Revenue
27 Code of 1986 (26 U.S.C. ss. 4081 and 4082), but does not include
28 any substance that:

- 29 a. will be ultimately used for consumer nonmotor fuel use; and
30 b. is sold or removed in fifty-five gallon drum quantities or less
31 at the time of the sale or removal **【;】** .

32 "Blended fuel" means a mixture composed of motor fuel and
33 another liquid, including blend stock other than a de minimis
34 amount of a product such as carburetor detergent or oxidation
35 inhibitor, that can be used as a fuel in a highway vehicle. "Blended
36 fuel" includes but is not limited to gasohol, biodiesel, ethanol,
37 methanol, fuel grade alcohol, diesel fuel enhancers and resulting
38 blends **【;】** .

39 "Blender" means a person that produces blended motor fuel
40 outside the terminal transfer system **【;】** .

41 "Blending" means the mixing of one or more petroleum products,
42 with or without another product, regardless of the original character
43 of the product blended, if the product obtained by the blending is
44 capable of use or otherwise sold for use in the generation of power
45 for the propulsion of a motor vehicle, an airplane, or a motorboat.

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 The term does not include the blending that occurs in the process of
2 refining by the original refiner of crude petroleum or the blending
3 of products known as lubricating oil and greases, or the
4 commingling of products during transportation in a pipeline [;] .

5 "Blocked pump" means a pump that, because of the pump's
6 physical limitations, for example, a short hose, cannot be used to
7 fuel a vehicle, or a pump that is locked by the vendor after each sale
8 and unlocked by the vendor in response to a request by a buyer for
9 undyed kerosene for use other than as a fuel in a diesel-powered
10 highway vehicle or train [;] .

11 "Biodiesel" means any motor fuel or mixture of motor fuels that
12 is derived, in whole or in part, from agricultural products or animal
13 fats, or the wastes of such products or fats, and is advertised as,
14 offered for sale as, suitable for use or used as motor fuel in an
15 internal combustion engine [;] .

16 "Bulk plant" means a bulk fuel storage and distribution facility
17 that is not a terminal within the terminal transfer system and from
18 which fuel may be removed by truck or rail car [;] .

19 "Bulk transfer" means a transfer of motor fuel from one location
20 to another by pipeline tender [or], marine delivery, or any other
21 conveyance within the terminal transfer system [;] and includes a
22 transfer within a terminal.

23 "Consumer" means the ultimate user of fuel [;] .

24 "Delivery" means the placing of fuel into the fuel tank of a motor
25 vehicle or into a bulk fuel storage and distribution facility [;] .

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

33 "Diesel-powered motor vehicle" means a motor vehicle that is
34 propelled by a diesel-powered engine [;] .

35 "Director" means the Director of the Division of Taxation in the
36 Department of the Treasury [;] .

37 "Distributor" means a person who acquires motor fuel from a
38 supplier, permissive supplier or from another distributor for
39 subsequent sale [;] .

40 "Dyed fuel" means dyed diesel fuel or dyed kerosene that is
41 required to be dyed pursuant to United States Environmental
42 Protection Agency rules or is dyed pursuant to Internal Revenue
43 Service rules or pursuant to any other requirements subsequently set
44 by the United States Environmental Protection Agency or Internal
45 Revenue Service including any invisible marker requirements [;] .

46 "Export" means to obtain fuel in this State for sale or other
47 distribution outside of this State. In applying this definition, fuel

1 delivered out-of-State by or for the seller constitutes an export by
2 the seller, and fuel delivered out-of-State by or for the purchaser
3 constitutes an export by the purchaser [;] .

4 "Exporter" means any person, other than a supplier, who
5 purchases fuel in this State for the purpose of transporting or
6 delivering the fuel outside of this State [;] .

7 "Fuel" means:

8 a. a liquid or gaseous substance commonly or commercially
9 known or sold as gasoline, regardless of its classification or use;
10 and

11 b. a liquid or gaseous substance used, offered for sale or sold
12 for use, either alone or when mixed, blended, or compounded,
13 which is capable of generating power for the propulsion of motor
14 vehicles upon the public highways [;] .

15 "Fuel grade alcohol" means a methanol or ethanol with a proof of
16 not less than one hundred ninety degrees (determined without
17 regard to denaturants) and products derived from that methanol and
18 ethanol for blending with motor fuel [;] .

19 "Fuel transportation vehicle" means any vehicle designed for
20 highway use which is also designed or used to transport fuel [;] .

21 "Gasoline" means all products commonly or commercially
22 known or sold as gasoline that are suitable for use as a motor fuel.
23 Gasoline does not include products that have an ASTM octane
24 number of less than seventy-five as determined by the "motor
25 method," ASTM D2700-92. The term does not include racing
26 gasoline or aviation gasoline, but for administrative purposes does
27 include fuel grade alcohol [;] .

28 "General aviation airport" means a civil airport located in this
29 State other than the international airports located in Newark and
30 Atlantic City [;] .

31 "Gross gallons" means the total measured volume of fuel,
32 measured in U.S. gallons, exclusive of any temperature or pressure
33 adjustments [;] .

34 "Import" means to bring fuel into this State by any means of
35 conveyance other than in the fuel supply tank of a motor vehicle. In
36 applying this definition, fuel delivered into this State from out-of-
37 State by or for the seller constitutes an import by the seller, and fuel
38 delivered into this State from out-of-State by or for the purchaser
39 constitutes an import by the purchaser [;] .

40 "Import verification number" means the number assigned by the
41 director with respect to a single fuel transportation vehicle delivery
42 into this State from another state upon request for an assigned
43 number by an importer or the transporter carrying fuel into this
44 State for the account of an importer [;] .

45 "Importer" includes any person who is the importer of record,
46 pursuant to federal customs law, with respect to fuel. If the
47 importer of record is acting as an agent, the person for whom the

1 agent is acting is the importer. If there is no importer of record of
2 fuel imported into this State, the owner of the fuel at the time it is
3 brought into this State from another state or foreign country is the
4 importer [;] .

5 "Invoiced gallons" means the gallons actually billed on an
6 invoice for payment to a supplier which shall be either gross gallons
7 or net gallons on the original manifest or bill of lading [;] .

8 "Kerosene" means the petroleum fraction containing
9 hydrocarbons that are slightly heavier than those found in gasoline
10 and naphtha, with a boiling range of one hundred forty-nine to three
11 hundred degrees Celsius [;] .

12 "Liquefied petroleum gas dealer" means a person who acquires
13 liquefied petroleum gas for subsequent sale to a consumer and
14 delivery into the vehicle fuel supply tank [;] .

15 "Liquid" means any substance that is liquid in excess of sixty
16 degrees Fahrenheit and at a pressure of fourteen and seven-tenths
17 pounds per square inch absolute [;] .

18 "Motor fuel" means gasoline, diesel fuel, kerosene and blended
19 fuel [;] .

20 "Motor vehicle" means an automobile, truck, truck-tractor or any
21 motor bus or self-propelled vehicle not exclusively operated or
22 driven upon fixed rails or tracks. "Motor vehicle" does not include
23 tractor-type, motorized farm implements and equipment but does
24 include motor vehicles of the truck-type, pickup truck-type,
25 automobiles, and other vehicles required to be registered and
26 licensed each year pursuant to the provisions of the motor vehicle
27 license and registration laws of this State. "Motor vehicle" does not
28 include tractors and machinery designed for off-road use but
29 capable of movement on roads at low speeds [;] .

30 "Net gallons" means the total measured volume of fuel,
31 measured in U.S. gallons, when corrected to a temperature of sixty
32 degrees Fahrenheit and a pressure of fourteen and seven-tenths
33 pounds per square inch absolute [;] .

34 "Permissive supplier" means an out-of-State supplier that elects,
35 but is not required, to have a supplier's license pursuant to
36 P.L.2010, c.22 (C.54:39-101 et al.) [;] .

37 "Person" means an individual, a partnership, a limited liability
38 company, a firm, an association, a corporation, estate, trustee,
39 business trust, syndicate, this State, a county, city, municipality,
40 school district or other political subdivision of this State, or any
41 corporation or combination acting as a unit or any receiver
42 appointed by any state or federal court [;] .

43 "Position holder" means the person who holds the inventory
44 position in fuel in a terminal, as reflected on the records of the
45 terminal operator. A person holds the inventory position in fuel
46 when that person has a contract with the terminal operator for the
47 use of storage facilities and terminating services for fuel at the

1 terminal. The term includes a terminal operator who owns fuel in
2 the terminal [;] .

3 "Propel" means operate the drive engine of a motor vehicle,
4 whether the vehicle is in motion or at rest [;] .

5 "Qualified terminal" means a terminal which has been assigned a
6 terminal control number by the federal Internal Revenue Service [;]
7 .

8 "Rack" means a mechanism for delivering fuel from a refinery or
9 terminal into a railroad tank car, a fuel transportation vehicle or
10 other means of transfer outside of the terminal transfer system [;] .

11 "Racing gasoline" means gasoline that contains lead, has an
12 octane rating of 110 or higher, does not have detergent additives,
13 and is not suitable for use as a motor fuel in a motor vehicle used on
14 public highways [;] .

15 "Refiner" means a person that owns, operates, or otherwise
16 controls a refinery [;] .

17 "Refinery" means a facility used to produce fuel from crude oil,
18 unfinished oils, natural gas liquids, or other hydrocarbons and from
19 which fuel may be removed by pipeline, by ship or barge, or at a
20 rack [;] .

21 "Removal" means any physical transfer of fuel from a terminal,
22 manufacturing plant, pipeline, ship or barge, refinery, from customs
23 custody, or from a facility that stores fuel [;] .

24 "Retail dealer" means a person that engages in the business of
25 selling or dispensing motor fuel to the consumer within this State
26 [;] .

27 "Supplier" means a person that is:

28 a. registered or required to be registered pursuant to section
29 4101 of the federal Internal Revenue Code of 1986 (26 U.S.C.
30 s.4101) for transactions in fuels in the terminal transfer system; and

31 b. satisfies one or more of the following:

32 (1) is the position holder in a terminal or refinery in this State;

33 (2) imports fuel into this State from a foreign country;

34 (3) acquires fuel from a terminal or refinery in this State from a
35 position holder pursuant to either a two-party exchange or a
36 qualified buy-sell arrangement which is treated as an exchange and
37 appears on the records of the terminal operator; or

38 (4) is the position holder in a terminal or refinery outside this
39 State with respect to fuel which that person imports into this State.
40 A terminal operator shall not be considered a supplier based solely
41 on the fact that the terminal operator handles fuel consigned to it
42 within a terminal.

43 "Supplier" also means a person that produces fuel grade alcohol
44 or alcohol-derivative substances in this State, produces fuel grade
45 alcohol or alcohol-derivative substances for import to this State into
46 a terminal, or acquires upon import by truck, rail car or barge into a
47 terminal, fuel grade alcohol or alcohol-derivative substances.

1 "Supplier" includes a permissive supplier unless the "Motor Fuel
2 Tax Act," P.L.2010, c.22 (C.54:39-101 et seq.) specifically provides
3 otherwise [;] .

4 "Terminal" means a bulk fuel storage and distribution facility:

- 5 a. which is a qualified terminal,
- 6 b. to which fuel is supplied by pipeline or marine vessel, or, for
7 the purposes of fuel grade alcohol, is supplied by truck or railcar,
8 and
- 9 c. from which fuel may be removed at a rack [;] .

10 "Terminal bulk transfer" includes but is not limited to the
11 following:

- 12 a. a boat or barge movement of fuel from a refinery or terminal
13 to a terminal;
- 14 b. a pipeline movement of fuel from a refinery or terminal to a
15 terminal;
- 16 c. a book transfer of product within a terminal between
17 suppliers prior to completion of removal across the rack; and
- 18 d. a two-party exchange within a terminal between licensed
19 suppliers [;] .

20 "Terminal operator" means a person that owns, operates, or
21 otherwise controls a terminal. A terminal operator may own the
22 fuel that is transferred through, or stored in, the terminal [;] .

23 "Terminal transfer system" means the fuel distribution system
24 consisting of refineries, pipelines, vessels, and terminals. Fuel in a
25 refinery, pipeline, vessel, barge or terminal is in the terminal
26 transfer system. Fuel in the fuel supply tank of an engine, or in a
27 tank car, rail car, trailer, truck, or other equipment suitable for
28 ground transportation is not in the terminal transfer system [;] .

29 "Transmix" means the buffer or interface between two different
30 products in a pipeline shipment, or a mix of two or more different
31 products within a refinery or terminal that results in an off-grade
32 mixture [;] .

33 "Transporter" means an operator of a pipeline, barge, railroad or
34 fuel transportation vehicle engaged in the business of transporting
35 fuel [;] .

36 "Two-party exchange" means a transaction in which:

- 37 a. the fuel is transferred from one licensed supplier or licensed
38 permissive supplier to another licensed supplier or licensed
39 permissive supplier;
- 40 b. the transaction includes a transfer from the person that holds
41 the original inventory position for fuel in the terminal as reflected
42 on the records of the terminal operator;
- 43 c. the exchange transaction is simultaneous with removal from
44 the terminal by the receiving exchange partner; and
- 45 d. the terminal operator in its books and records treats the
46 receiving exchange party as the supplier which removes the product

1 across a terminal rack for purposes of reporting such events to this
2 State [;] .

3 "Ultimate vendor - blocked pumps" means a person that sells
4 clear kerosene at a retail site through a blocked pump and who is
5 registered with both the Division of Taxation in the Department of
6 the Treasury and the federal Internal Revenue Service as an
7 ultimate vendor - blocked pumps [;] .

8 "Undyed diesel fuel" means diesel fuel that is not subject to the
9 federal Environmental Protection Agency dyeing requirements, or
10 has not been dyed in accordance with federal Internal Revenue
11 Service fuel dyeing provisions [;] .

12 "Undyed kerosene" means kerosene that is not subject to the
13 federal Environmental Protection Agency dyeing requirements, or
14 has not been dyed in accordance with federal Internal Revenue
15 Service fuel dyeing provisions [;] . and

16 "Vehicle fuel supply tank" means any receptacle on a motor
17 vehicle from which fuel is supplied to propel the motor vehicle.

18 (cf: P.L.2010, c.22, s.2)

19

20 2. Section 3 of P.L.2010, c.22 (C.54:39-103) is amended to
21 read as follows:

22 3. a. A tax is imposed on fuel used or consumed in this State as
23 follows:

24 (1) Motor fuel:

25 (a) at the rate of 10.5 cents per gallon for:

26 gasoline and

27 blended fuel that contains gasoline or that is intended for use
28 as gasoline;

29 (b) at the rate of 13.5 cents per gallon for:

30 diesel fuel,

31 blended fuel that contains diesel fuel or that is intended for
32 use as diesel fuel, and

33 kerosene [other than aviation grade kerosene];

34 (2) Liquefied Petroleum Gas:

35 at the rate of one-half of the tax imposed under subsection a.
36 of this section on gasoline, or 5.25 cents per gallon;

37 (3) Aviation gasoline:

38 at the rate of 10.5 cents per gallon.

39 b. In addition to the tax, if any, imposed pursuant to subsection
40 a. of this section a tax is imposed on aviation fuel [distributed] for
41 distribution to a general aviation airport at the rate of 2 cents per
42 gallon.

43 c. The taxes imposed by this section are imposed on the
44 consumer, but shall be precollected pursuant to the terms of the
45 "Motor Fuel Tax Act," P.L.2010, c.22 (C.54:39-101 et seq.), for the
46 facility and convenience of the consumer.

47 (cf: P.L.2010, c.22, s.3)

1 3. Section 4 of P.L.2010, c.22 (C.54:39-104) is amended to
2 read as follows:

3 4. a. The tax imposed by section 3 of P.L.2010, c.22 (C.54:39-
4 103) on the use of motor fuel and aviation **【gasoline】 fuel** shall be
5 measured by invoiced gallons of fuel removed, other than by a bulk
6 transfer:

7 (1) From the terminal transfer system within this State;

8 (2) From the terminal transfer system outside this State for
9 delivery to a location in this State as represented on the shipping
10 papers, provided that the supplier imports the motor fuel or aviation
11 **【gasoline】 fuel** for the account of the supplier, or the supplier has
12 made a tax precollection election pursuant to section 18 of
13 P.L.2010, c.22 (C.54:39-118); and

14 (3) Upon sale in a terminal or refinery in this State to a person
15 not holding a supplier's or permissive supplier's license.

16 b. Except as provided in paragraph (2) of subsection a. of this
17 section, the tax imposed by section 3 of P.L.2010, c.22 (C.54:39-
18 103) on the use of motor fuel and aviation **【gasoline】 fuel** which is
19 imported into this State, other than by a bulk transfer, is **【payable】**
20 due at the time the product is imported into the State, which tax
21 shall be paid within three business days from the date that the
22 import verification number is assigned or within three business days
23 from the date that the motor fuel or aviation fuel entered this State,
24 whichever is sooner, and shall be measured by invoiced gallons
25 received outside this State at a refinery, terminal or at a bulk plant
26 for delivery to a destination in this State.

27 c. The tax imposed by section 3 of P.L.2010, c.22 (C.54:39-
28 103) on blended fuel made in this State is payable by the blender at
29 the point the blended fuel is made in this State outside of the
30 terminal transfer system. The tax imposed by section 3 of
31 P.L.2010, c.22 (C.54:39-103) on blended fuel imported into this
32 State is payable by the importer of that blended fuel, provided the
33 tax imposed by section 3 of P.L.2010, c.22 (C.54:39-103) has not
34 already been paid to a permissive supplier through a precollection
35 agreement. The number of gallons of blended fuel on which the tax
36 shall be imposed shall be equal to the difference between the
37 number of gallons of blended fuel made and the number of gallons
38 of motor fuel that was previously taxed by section 3 of P.L.2010,
39 c.22 (C.54:39-103) and used to make the blended fuel.

40 d. The tax imposed on aviation fuel by subsection b. of section
41 3 of P.L.2010, c.22 (C.54:39-103) is payable by the person
42 purchasing or acquiring the aviation fuel within this State and shall
43 be precollected by the aviation fuel dealer or supplier making the
44 sale. A person, whether or not licensed under P.L.2010, c.22
45 (C.54:39-101 et al.), who uses, acquires for use, sells or delivers for
46 use in motor vehicles any aviation fuel taxable pursuant to
47 P.L.2010, c.22 (C.54:39-101 et al.) shall be liable for the tax
48 imposed by subsection a. of section 3 of P.L.2010, c.22 (C.54:39-

1 103) as if the aviation fuel were gasoline or kerosene defined as
2 motor fuel.

3 e. The tax imposed by section 3 of P.L.2010, c.22 (C.54:39-
4 103) on liquefied petroleum gas is payable by the person purchasing
5 or acquiring the liquefied petroleum gas within this State for use in
6 a motor vehicle and shall be precollected by the liquefied petroleum
7 gas dealer making the sale. A person, whether or not licensed under
8 P.L.2010, c.22 (C.54:39-101 et al.), who uses, acquires for use, sells
9 or delivers for use in motor vehicles any liquefied petroleum gas
10 taxable pursuant to P.L.2010, c.22 (C.54:39-101 et al.) shall be
11 liable for the tax imposed by subsection a. of section 3 of P.L.2010,
12 c.22 (C.54:39-103) along with applicable penalties.
13 (cf: P.L.2010, c.22, s.4)

14
15 4. Section 5 of P.L.2010, c.22 (C.54:39-105) is amended to
16 read as follows:

17 5. a. A supplier, permissive supplier, importer, exporter,
18 blender, distributor, liquefied petroleum gas dealer, or aviation fuel
19 dealer shall keep a record of all fuel received, sold or used which
20 shall include the name of the purchaser, the number of gallons used
21 or sold and the date of the use or sale. A supplier, permissive
22 supplier, importer, exporter, blender, distributor, liquefied
23 petroleum gas dealer, or aviation fuel dealer shall also deliver with
24 each consignment of fuel to a purchaser within this State a written
25 statement containing the date and number of gallons delivered and
26 the names of the purchaser and seller, and that statement shall show
27 a separate charge for the tax imposed by section 3 of P.L.2010, c.22
28 (C.54:39-103) on each gallon; provided however, that a statement
29 shall not be required to be delivered by the supplier, permissive
30 supplier, importer, exporter, blender, distributor, liquefied
31 petroleum gas dealer, or aviation fuel dealer if a sale of fuel is made
32 at a service station and the fuel is delivered directly into a vehicle
33 fuel supply tank. The records and written statements shall be
34 preserved by a supplier, permissive supplier, importer, exporter,
35 blender, distributor, liquefied petroleum gas dealer, or aviation fuel
36 dealer and the purchaser respectively, for a period of a minimum of
37 four years and shall be offered for inspection at the request of the
38 director.

39 b. A supplier, permissive supplier, importer, exporter, blender,
40 distributor, liquefied petroleum gas dealer, or aviation fuel dealer
41 shall take a physical inventory of fuel on hand on the first or last
42 day of each month and shall have the record of that inventory and of
43 all other matters enumerated in this section available at all times for
44 inspection by the director. Upon demand by the director each
45 supplier, permissive supplier, importer, exporter, blender,
46 distributor, liquefied petroleum gas dealer, and aviation fuel dealer
47 shall furnish a statement under oath reflecting the contents of any
48 records required to be kept by this section.

1 c. Each supplier, permissive supplier, importer, exporter,
2 blender, distributor, liquefied petroleum gas dealer, or aviation fuel
3 dealer shall, on or before the 22nd day of each month, render a
4 report to the director, in the form and manner prescribed by the
5 director, stating the number of gallons of fuel sold or used in this
6 State by that person during the preceding calendar month. Upon
7 application to the director, the period within which a report must be
8 made may be extended up to an additional 10 days, if deemed
9 advisable by the director. A tax at the rate imposed by section 3 of
10 P.L.2010, c.22 (C.54:39-103) shall be paid by each supplier,
11 permissive supplier, importer, exporter, blender, distributor,
12 liquefied petroleum gas dealer, or aviation fuel dealer, on the
13 number of gallons of fuel sold or used in this State by that person
14 during the preceding calendar month and not exempted from
15 taxation, the payment to accompany the filing of the report. The
16 report shall contain further information as the director may
17 prescribe or determine.

18 d. If a supplier, permissive supplier, importer, exporter,
19 blender, distributor, liquefied petroleum gas dealer, or aviation fuel
20 dealer shall fail, neglect or refuse to file the report within the time
21 prescribed by this section, the director shall note that failure,
22 neglect or refusal upon the director's records, and may estimate the
23 sales, distribution and use of that supplier, permissive supplier,
24 importer, exporter, blender, distributor, liquefied petroleum gas
25 dealer, or aviation fuel dealer, assessing the tax thereon, and adding
26 to that assessed tax a penalty of 20% thereof for failure, neglect or
27 refusal to report, and that estimate shall be prima facie evidence of
28 the true amount of tax due to the director from the supplier,
29 permissive supplier, importer, exporter, blender, distributor,
30 liquefied petroleum gas dealer, or aviation fuel dealer; provided that
31 if a good and sufficient cause or reason is shown for a delinquency,
32 the director may remit or waive the payment of the whole or any
33 part of the penalty, as allowed by the State Uniform Tax Procedure
34 Law, R.S.54:48-1 et seq. Reports required by this section,
35 exclusive of schedules, itemized statements and other supporting
36 evidence annexed to those reports, shall at all reasonable times be
37 open to the public, notwithstanding any provision of R.S.54:50-8 to
38 the contrary.

39 (cf: P.L.2010, c.22, s.5)

40

41 5. Section 6 of P.L.2010, c.22 (C.54:39-106) is amended to
42 read as follows:

43 6. a. Each supplier, permissive supplier, importer, exporter,
44 blender, distributor, liquefied petroleum gas dealer, or aviation fuel
45 dealer who sells aviation fuel for distribution to general aviation
46 airports shall, on or before the 22nd day of each month, render a
47 report to the director, stating the number of gallons of aviation
48 **[gasoline] fuel**, sold in this State by that person for distribution to

1 general aviation airports during the preceding month. In addition to
2 the provisions of section 4 of P.L.2010, c.22 (C.54:39-104) and
3 except as otherwise provided in section 12 of P.L.2010, c.22
4 (C.54:39-112), the tax of 2 cents per gallon as imposed by
5 subsection b. of section 3 of P.L.2010, c.22 (C.54:39-103) on each
6 gallon of aviation **[gasoline]** fuel so reported shall be paid by each
7 supplier, permissive supplier, importer, exporter, blender,
8 distributor, liquefied petroleum gas dealer, or aviation fuel dealer,
9 the payment to accompany the filing of the report.

10 b. Each supplier, permissive supplier, importer, exporter,
11 blender, distributor, liquefied petroleum gas dealer, or aviation fuel
12 dealer who sells **[turbine fuels]** aviation grade kerosene for
13 distribution to general aviation airports shall, on or before the 22nd
14 day of each month, render a report to the director, stating the
15 number of gallons of aviation grade kerosene sold by that person for
16 distribution to general aviation airports during the preceding month.
17 Except as otherwise provided by section 12 of P.L.2010, c.22
18 (C.54:39-112), the tax of 2 cents per gallon imposed under
19 subsection b. of section 3 of P.L.2010, c.22 (C.54:39-103) on each
20 gallon of aviation grade kerosene so reported shall be paid by each
21 supplier, permissive supplier, importer, exporter, blender,
22 distributor, liquefied petroleum gas dealer, or aviation fuel dealer,
23 the payment to accompany the filing of the report.

24 c. If a supplier, permissive supplier, importer, exporter,
25 blender, distributor, liquefied petroleum gas dealer, or aviation fuel
26 dealer shall fail, neglect or refuse to file the report within the time
27 prescribed by this section, the director shall note such failure,
28 neglect or refusal upon the director's records, and may estimate the
29 sales, distribution and use of that supplier, permissive supplier,
30 importer, exporter, blender, distributor, liquefied petroleum gas
31 dealer, or aviation fuel dealer, assessing the tax thereon, and adding
32 to that assessed tax a penalty of 20% thereof for failure, neglect or
33 refusal to report, and that estimate shall be prima facie evidence of
34 the true amount of tax due to the director from the supplier,
35 permissive supplier, importer, exporter, blender, distributor,
36 liquefied petroleum gas dealer, or aviation fuel dealer provided that
37 if a good and sufficient cause or reason is shown for a delinquency,
38 the director may remit or waive the payment of the whole or any
39 part of the penalty, as allowed by the State Uniform Tax Procedure
40 Law, R.S.54:48-1 et seq. Reports required by this section,
41 exclusive of schedules, itemized statements and other supporting
42 evidence annexed to those reports, shall at all reasonable times be
43 open to the public, notwithstanding any provision of R.S.54:50-8 to
44 the contrary.

45 d. The monthly filing provisions of this section
46 notwithstanding, the director may require payments of tax liability
47 at intervals and based upon those classifications as the director may
48 prescribe by regulation. In prescribing those other periods to be

1 covered by the return or intervals or classifications for payment of
2 tax liability, the director may take into account the dollar volume of
3 tax involved and the need for assuring the prompt and orderly
4 collection of the taxes imposed.

5 e. The refund provisions of section 12 of P.L.2010, c.22
6 (C.54:39-112) shall not apply to amounts paid pursuant to this
7 section. However, a user of general aviation aircraft shall be
8 allowed a refund or credit of the tax imposed by subsection a. of
9 section 3 of P.L.2010, c.22 (C.54:39-103), provided the user
10 complies with the provisions of section 12 of P.L.2010, c.22
11 (C.54:39-112).

12 (cf: P.L.2010, c.22, s.6)

13
14 6. Section 7 of P.L.2010, c.22 (C.54:39-107) is amended to
15 read as follows:

16 7. a. (1) Transporter reports shall cover monthly periods and
17 shall be submitted within 30 days after the close of the month
18 covered by the reports. The transporter reports shall show all
19 quantities of each type of motor fuel delivered at points in the State
20 or from points inside the State to points outside of the State during
21 the month, giving the name and address of the consignor, the name
22 and address of the consignee, place at which delivered, the date of
23 shipment, the date of delivery, the numbers and initials of the car if
24 shipped by rail, the name of the boat or barge, if shipped by water,
25 or if delivery by other means, the method of delivery and the
26 number of gallons in each shipment.

27 (2) The director shall have the right at any time during normal
28 business hours to inspect the books of a transporter to determine if
29 the requirements of this section are being properly complied with.

30 (3) Each person engaged in the business of hauling, transporting
31 or delivering fuel shall, before entering upon the highways or
32 waterways of this State with any conveyance used therein, apply to
33 the director for the registration of a fuel conveyance on forms as the
34 director shall prescribe. Upon receipt of an application, [the
35 director shall issue] a license certificate and license plate shall be
36 issued for each conveyance which shall show the license number
37 assigned and which shall be displayed on the conveyance at all
38 times in such a manner as the director may regulate. An annual
39 license fee of \$50 shall be paid for the licensing of each such
40 conveyance. Nothing in this section shall in any manner relieve or
41 discharge persons obtaining licenses pursuant to this section from
42 complying with provisions of other laws.

43 (4) A person coming into this State in a motor vehicle may
44 transport in the vehicle fuel supply tank, for the propulsion thereof,
45 fuel without paying the tax, securing the license, or making any
46 report required under P.L.2010, c.22 (C.54:39-101 et al.).

47 b. (1) The driver of a conveyance shall have in the driver's
48 possession at all times while hauling, distributing or transporting

1 fuel, a delivery ticket or other form approved by the director, which
2 shall show the true names of the consignor and consignee and such
3 information as the director may prescribe by regulation. The
4 director or any police officer may stop a conveyance to determine if
5 the provisions of this section are being complied with.

6 (2) The person in charge of any barge, tanker or other vessel in
7 which fuel is being transported, or of a tank truck, truck tractor,
8 semitrailer, trailer, or other vehicle used in transporting fuels other
9 than fuel being transported for use in operating the engine which
10 propels the vessel or vehicle, shall have in that person's possession
11 an invoice, bill of sale or other evidence showing the name and
12 address of the consignor or person from whom that fuel was
13 received by the person in charge and the name and address of the
14 consignee or person to whom the person in charge is to make
15 delivery of the fuel, together with the number of gallons to be
16 delivered to that person, and shall at the request of the director
17 produce that invoice, bill of sale or other record evidence for
18 inspection.

19 c. [(1) A barge, tanker, or other vessel so used for the
20 transportation of fuel shall be plainly and visibly marked on both
21 sides thereof and above the water line with the word "gasoline," or
22 other name of the fuel being transported, in letters at least eight
23 inches high and of corresponding appropriate width. An owner or
24 lessee violating the provisions of this paragraph shall be guilty of a
25 crime of the fourth degree.

26 (2) A tank truck, truck tractor, semitrailer, or trailer used in
27 transporting fuels shall affix to the rear of the truck or trailers a sign
28 which shall indicate in letters not less than four inches high and of
29 corresponding appropriate width, the type of fuel being transported.
30 An owner or lessee violating the provisions of this section shall be
31 punished by imprisonment for not more than six months, or by a
32 fine of not more than \$500, or by both.

33 d.] The license [cards] certificates issued for the operation over
34 the highways or waterways of this State of any conveyance used for
35 the transportation or hauling of fuels may be suspended or revoked
36 upon reasonable grounds by the director in the same manner as
37 other licenses may be suspended or revoked by the director under
38 the provisions of P.L.2010, c.22 (C.54:39-101 et al.).
39 (cf: P.L.2010, c.22, s.7)

40
41 7. Section 8 of P.L.2010, c.22 (C.54:39-108) is amended to
42 read as follows:

43 8. a. A retail dealer, an aviation fuel dealer and a liquefied
44 petroleum gas dealer shall, before engaging in the retail sale of fuel,
45 apply to the director for a license for each establishment operated
46 by that person. A license fee of \$150 shall be paid for the issuance
47 of a retail license, which shall be valid for a three-year period
48 commencing on April 1 and expiring on March 31 of the third

1 succeeding year, and the director shall supply a license plate or
2 suitable substitute containing the number assigned to the licensee,
3 and words denoting whether the license is a retail dealer's license,
4 an aviation fuel dealer's license or a liquefied petroleum gas dealer's
5 license, which the licensee shall publicly display at each
6 establishment in the manner as the director shall prescribe. No
7 applicant shall continue in business after the end of the 14th day
8 following the date of application unless the license applied for has
9 been procured and is publicly displayed at the establishment being
10 operated.

11 b. A retail dealer, liquefied petroleum gas dealer and an
12 aviation fuel dealer shall keep a daily record showing the total
13 amount of fuels sold on each business day, daily dispensing pump
14 totalizer readings, and monthly physical inventories, such records to
15 be preserved for a period of a minimum of four years, and to be
16 open for inspection by the director at all times.

17 (cf: P.L.2010, c.22, s.8)

18

19 8. Section 9 of P.L.2010, c.22 (C.54:39-109) is amended to
20 read as follows:

21 9. a. A person shall, before engaging in the business of a
22 terminal operator, obtain a terminal operator's license from the
23 director, for which a license fee of \$450 shall be paid.

24 b. A terminal operator shall, on or before the **[last]** 25th day of
25 each month, render a report to the director, in such form as the
26 director may prescribe, stating the quantities of fuel received at the
27 terminal in the State or sold from it during the preceding month.

28 At the discretion of the director, a terminal operator's report as
29 submitted under the federal ExSTARS reporting system may be
30 accepted in lieu of the terminal operator's report required under this
31 subsection.

32 c. The director shall have the right at any time during normal
33 business hours to inspect the books of a terminal operator to
34 determine if the requirements of this act are being properly
35 observed.

36 d. The director may require those returns to be filed, in the
37 form and manner, and at the intervals, that the director may
38 prescribe by regulation.

39 (cf: P.L.2010, c.22, s.9)

40

41 9. Section 10 of P.L.2010, c.22 (C.54:39-110) is amended to
42 read as follows:

43 10. a. Except as otherwise provided in this act, all fuel delivered
44 in this State in a vehicle fuel supply tank is presumed to be used or
45 consumed on the highways in this State in producing or generating
46 power for propelling motor vehicles.

47 b. Subject to proof of exemption pursuant to section **[13]** 12 of
48 P.L.2010, c.22 (**[C.54:39-113]** C.54:39-112), all motor fuel is

presumed to be used or consumed on the highways of this State to propel motor vehicles if the fuel is:

- (1) removed from a terminal in this State; or
 - (2) imported into this State other than by a bulk transfer within the terminal transfer system; or
 - (3) delivered into a consumer's bulk storage tank from which motor vehicles can be fueled.
- (cf: P.L.2010, c.22, s.10)

10. Section 11 of P.L.2010, c.22 (C.54:39-111) is amended to read as follows:

11. a. An excise tax at the applicable rate determined pursuant to section 3 of P.L.2010, c.22 (C.54:39-103) is imposed for a calendar year on unaccounted-for **[fuel]** losses at a terminal that exceed one-half of one percent of the total number of net gallons removed from the terminal during the calendar year by a system transfer or at a rack. To determine liability for the excise tax, the terminal operator shall determine the terminal loss as the difference between:

- (1) the total amount of all **[fuel in]** inventory at the applicable terminal at the beginning of the year plus the total amount of all fuel received at the terminal during the year; and
- (2) the total amount of all **[fuel in]** inventory at the terminal at the end of the year plus the total amount **[of all fuel]** removed from the terminal during the year.

b. The terminal operator whose fuel is unaccounted for is liable for the tax imposed by this section. Fuel received by a terminal operator and not shown on a report as having been removed from the terminal is presumed to be unaccounted for if not part of the physical inventory of the terminal. A terminal operator may provide documentation to substantiate otherwise unaccountable losses and at the discretion of the director may be relieved of all or a portion of the tax liability.

c. The tax at the applicable rate determined pursuant to section 3 of P.L.2010, c.22 (C.54:39-103) shall be reported, and the tax shall be due and payable, on or before the 22nd day of the second month following the end of the year.

(cf: P.L.2010, c.22, s.11)

11. Section 12 of P.L.2010, c.22 (C.54:39-112) is amended to read as follows:

12. a. Fuel used for the following purposes is exempt from the tax imposed by the "Motor Fuels Tax Act," P.L.2010, c.22 (C.54:39-101 et seq.), and a refund of the tax imposed by subsection a. of section 3 of P.L.2010, c.22 (C.54:39-103) may be claimed by the consumer providing proof the tax has been paid and no refund has been previously issued:

- (1) Buses while being operated over the highways of this State in those municipalities to which the operator has paid a

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

1 passenger automobiles and motor vehicles of less than 5,000 pounds
2 gross weight.

3 b. Subject to the procedural requirements and conditions set
4 out in the "Motor Fuels Tax Act," P.L.2010, c.22 (C.54:39-101 et
5 seq.), the following uses are exempt from the tax imposed by
6 section 3 of P.L.2010, c.22 (C.54:39-103) on fuel, and a deduction
7 or a refund may be claimed by the supplier, permissive supplier or
8 licensed distributor:

9 (1) fuel for which proof of export, satisfactory to the director, is
10 available and is either:

11 (a) removed by a licensed supplier for immediate export to a
12 state in which the supplier has a valid license;

13 (b) removed from a terminal by a licensed **【exporter】** distributor
14 for immediate export as evidenced by the terminal issued shipping
15 papers; or

16 (c) acquired by a licensed distributor and which the tax imposed
17 by P.L.2010, c.22 (C.54:39-101 et al.) has previously been paid or
18 accrued either as a result of being stored outside of the **【bulk】**
19 terminal transfer system immediately prior to loading or as a
20 diversion across state boundaries properly reported in conformity
21 with P.L.2010, c.22 (C.54:39-101 et al.) and was subsequently
22 exported from this State on behalf of the distributor.

23 The exemption pursuant to subparagraphs (a) and (b) of this
24 paragraph shall be claimed by a deduction on the report of the
25 supplier which is otherwise responsible for remitting the tax upon
26 removal of the product from a terminal or refinery in this State. The
27 exemption pursuant to subparagraph (c) of this paragraph shall be
28 claimed by the distributor, upon a refund application made to the
29 director within six months of the licensed distributor's acquisition of
30 the fuel;

31 (2) undyed kerosene sold to a licensed ultimate vendor - blocked
32 pumps; if the licensed ultimate vendor - blocked pumps does not
33 sell the kerosene through dispensers that have been designed and
34 constructed to prevent delivery directly from the dispenser into a
35 motor vehicle fuel supply tank, the ultimate vendor - blocked
36 pumps shall be responsible for the tax imposed by section 3 of
37 P.L.2010, c.22 (C.54:39-103) at the diesel fuel rate. Exempt use of
38 undyed kerosene shall be governed by rules and regulations of the
39 director. If rules or regulations are not promulgated by the director,
40 then the exempt use of undyed kerosene shall be governed by rules
41 and regulations of the Internal Revenue Service. An ultimate
42 vendor-blocked pumps who obtained undyed kerosene upon which
43 the tax levied by section 3 of P.L.2010, c.22 (C.54:39-103) had
44 been paid and makes sales qualifying pursuant to this subsection
45 may apply for a refund of the tax pursuant to an application, as
46 provided by section 14 of P.L.2010, c.22 (C.54:39-114), to the
47 director provided the ultimate vendor-blocked pumps did not charge
48 that tax to the consumer;

- 1 (3) fuel sold to the United States or any agency or
- 2 instrumentality thereof, and to the State of New Jersey and its
- 3 political subdivisions, departments and agencies;
- 4 (4) aviation fuel sold to a licensed aviation fuel dealer;
- 5 (5) liquefied petroleum gas except when **【sold by a liquefied**
- 6 **petroleum gas dealer to someone who is not licensed as a liquefied**
- 7 **petroleum gas dealer】** delivered to the tank of a highway vehicle;
- 8 (6) motor fuel on which tax has been paid under this act that is
- 9 later contaminated **【with dyed fuel】** in a manner making it
- 10 unsuitable for taxable use. This credit or refund is limited to the
- 11 remaining portion of taxed fuel in the contaminated mixture and is
- 12 conditioned upon submitting to the director adequate documentation
- 13 that the contaminated mixture was subsequently used in an exempt
- 14 manner;
- 15 (7) fuel on which tax has been paid pursuant to P.L.2010, c.22
- 16 (C.54:39-101 et al.) that is either subsequently delivered back into
- 17 the terminal transfer system for further distribution or delivered to a
- 18 refinery for further processing;
- 19 (8) fuel on which tax has been previously imposed and paid
- 20 pursuant to section 3 of P.L.2010, c.22 (C.54:39-103) and which is
- 21 either subsequently exported, sold or distributed in this State in a
- 22 manner which would result in a second tax being owed. If there is a
- 23 second taxable distribution or sale, the party responsible for
- 24 remittance of the second tax shall be the party eligible for claiming
- 25 the refund or deduction;
- 26 (9) Fuel grade alcohol or biodiesel when sold to a licensed
- 27 supplier and delivered to a qualified terminal.
- 28 (cf: P.L.2010, c.22, s.12)
- 29
- 30 12. Section 13 of P.L.2010, c.22 (C.54:39-113) is amended to
- 31 read as follows:
- 32 13. The exemption under section 12 of P.L.2010, c.22 (C.54:39-
- 33 112) for sales of fuel sold for use by the United States or any
- 34 agency or instrumentality thereof and fuel sold for use by the
- 35 Government of this State, or of any political subdivision of this
- 36 State or to any department or agency of any of those governments
- 37 for official use of those governments in motor vehicles, motor
- 38 boats, or other implements owned or leased by this State or any
- 39 political subdivision or agency thereof, or to fuels sold at retail to
- 40 diplomatic missions and diplomatic personnel under a program
- 41 administered by the director and predicated upon the United States
- 42 Department of State, Office of Foreign Missions (or its successor
- 43 office), national tax exemption program shall be claimed as follows:
- 44 a. The seller shall obtain from the purchasing entity a
- 45 certificate in such form as the director may by regulation prescribe
- 46 signed by the purchasing entity listed in this section setting forth:
- 47 (1) The name and address of the purchasing entity;

1 (2) The quantity of each type of fuel, or if the certificate is for
2 all the fuel purchased by the purchasing entity, the certificate shall
3 be for a period as the director may by regulation prescribe, but not
4 to exceed four years;

5 (3) The exempt use of the fuel;

6 (4) The name and address of the seller from whom the fuel was
7 purchased;

8 (5) The federal employer identification number of the
9 purchasing entity; and

10 (6) A statement that the purchasing entity understands that the
11 fraudulent use of the certificate to obtain fuel without paying the tax
12 levied pursuant to P.L.2010, c.22 (C.54:39-101 et al.) shall result in
13 the purchaser paying the tax, with penalties and interest, as well as
14 such other penalties provided by P.L.2010, c.22 (C.54:39-101 et
15 al.);

16 b. The seller, having obtained from the purchasing entity the
17 certificate, which the seller shall retain for a period of not less than
18 four years, shall be eligible for a deduction or to claim a refund of
19 any taxes paid pursuant to P.L.2010, c.22 (C.54:39-101 et al.); and

20 c. If the sale of fuel to the purchasing entity occurs at a fixed
21 retail pump available to the general public, the seller, having made
22 the sale to the purchasing entity without the tax, may apply for a
23 refund from the director by submitting the application and
24 supporting documentation as the director shall reasonably prescribe.
25 However, if the purchase is charged to a fleet or government fueling
26 credit card, or to an oil company credit card issued to the
27 purchasing entity, the party extending the credit shall be deemed the
28 seller and may bill the purchasing entity without the tax and seek a
29 refund, or use the provisions of this section.

30 (cf: P.L.2010, c.22, s.13)

31
32 13. Section 14 of P.L.2010, c.22 (C.54:39-114) is amended to
33 read as follows:

34 14. a. To claim a refund in accordance with section 12 of
35 P.L.2010, c.22 (C.54:39-112), a person shall present to the director
36 a statement containing a written verification that the claim is made
37 under penalties of perjury and listing the total amount of fuel
38 purchased and used for exempt purposes. A claim shall not be
39 transferred or assigned and shall be filed not more than four years
40 after the date the fuel was imported, removed or sold if the claimant
41 is a supplier, importer, exporter or distributor. If the claim is filed
42 by the consumer, the consumer shall file the claim within six
43 months of the date of purchase. The claim statement shall be
44 supported by the original sales slip, invoice or other documentation
45 as approved by the director and shall include the following
46 information:

47 (1) Date of sale;

48 (2) Name and address of purchaser;

- 1 (3) Name and address of seller;
- 2 (4) Number of gallons purchased and base price per gallon;
- 3 (5) Number of gallons purchased and charged New Jersey fuel
- 4 tax, as a separate item; and
- 5 (6) Number of gallons purchased and charged sales tax, if
- 6 applicable, as a separate item[; and
- 7 (7) Marked "paid" by the seller].
- 8 b. If the original sales slip or invoice is lost or destroyed, a
- 9 statement to that effect shall accompany the claim for refund, and
- 10 the claim statement shall also set forth the serial number of the
- 11 invoice. If the director finds the claim is otherwise regular, the
- 12 director may allow such claim for refund.
- 13 c. The director may make any investigation necessary before
- 14 refunding the fuel tax to a person and may investigate a refund after
- 15 the refund has been issued and within the period in which a
- 16 deficiency may be assessed pursuant to R.S.54:49-6.
- 17 d. In the case of a refund payable to a supplier pursuant to
- 18 section 12 of P.L.2010, c.22 (C.54:39-112), the supplier may claim
- 19 a credit in lieu of the refund for a period not to exceed four years
- 20 from the date the fuel was imported, removed or sold.
- 21 e. To establish the validity of claims filed, the claimant shall
- 22 maintain and preserve for a period of at least four years such fuel
- 23 consumption records as may be prescribed by the director. The
- 24 director may require a claimant to furnish such additional proof of
- 25 the validity of a claim as the director may determine, and may
- 26 examine the books and records of the claimant for such purpose.
- 27 Failure of the claimant to maintain and preserve such records,
- 28 furnish such additional proof or to accede to the demand for such
- 29 examination by the director shall constitute a waiver of all rights to
- 30 the claim or claims questioned and such subsequent claims as the
- 31 director may determine.
- 32 f. Motor fuel tax that has been paid more than once with
- 33 respect to the same gallon of fuel shall be refunded by the director
- 34 to the person who last paid the tax after the subsequent taxable
- 35 event upon submitting proof satisfactory to the director.
- 36 g. Fuel tax that has otherwise been erroneously paid by a
- 37 person shall be refunded by the director upon proof shown
- 38 satisfactory to the director.
- 39 h. A refund granted pursuant to section 12 of P.L.2010, c.22
- 40 (C.54:39-112) to a person for fuel used in aircraft, shall be paid
- 41 from the moneys deposited in the Airport Safety Fund established
- 42 by section 4 of P.L.1983, c.264 (C.6:1-92). Those refunds shall be
- 43 granted on an annual basis.
- 44 i. Upon approval by the director of an application, a warrant
- 45 shall be drawn upon the State Treasurer for the amount of the claim
- 46 in favor of the claimant and the warrant shall be paid from the tax
- 47 collected on fuel.

1 j. If the State or any political subdivision of the State
2 heretofore shall have been reimbursed and repaid for the tax paid on
3 fuel used for operating or propelling motor vehicles, motor boats or
4 other implements, whether owned or leased by the State or any
5 political subdivision of the State, the State or that political
6 subdivision shall be entitled to retain such reimbursement and
7 repayment, and further claim therefor shall not be required.

8 k. If fuel is sold to a person who claims to be allowed a refund
9 of the tax imposed by the "Motor Fuel Tax Act," P.L.2010, c.22
10 (C.54:39-101 et seq.) the seller of that fuel shall furnish the
11 purchaser with an invoice, or invoices, in conformity with the
12 requirements of this section.

13 (cf: P.L.2010, c.22, s.14)

14
15 14. Section 16 of P.L.2010, c.22 (C.54:39-116) is amended to
16 read as follows:

17 16. Except as otherwise provided by the "Motor Fuel Tax Act,"
18 P.L.2010, c.22 (C.54:39-101 et seq.), the tax imposed by section 3
19 of P.L.2010, c.22 (C.54:39-103) on fuel imported from another state
20 shall be precollected on behalf of the consumers and remitted to the
21 director by the:

22 a. Importer who has imported the nonexempt fuel. The
23 precollection shall be made and remitted when the tax return is due.
24 If the importer was not subject to a precollection agreement with
25 the supplier or permissive supplier, the precollection shall be
26 remitted in the manner specified by the director; or

27 b. Importer who has imported the nonexempt fuel which is
28 subject to a precollection agreement with the supplier or permissive
29 supplier. If the importer is a licensed distributor, the precollection
30 shall be made and remitted to the supplier or permissive supplier no
31 later than two business days prior to the date on which the tax is
32 required to be remitted by the supplier or permissive supplier
33 pursuant to section 19 of P.L.2010, c.22 (C.54:39-119). The
34 importer shall remit the tax to the supplier or permissive supplier,
35 acting as trustee who shall remit to the director on behalf of the
36 distributor under the same terms as a supplier payment pursuant to
37 section 19 of P.L.2010, c.22 (C.54:39-119); or

38 c. **【Unlicensed importer】** Importer at the time the fuel is
39 entered into this State. However, if the supplier of the fuel, as
40 shown on the records of the terminal operator, has made a blanket
41 election to precollect tax in accordance with section 18 of P.L.2010,
42 c.22 (C.54:39-118), then the importer shall remit the tax to the
43 supplier, acting as trustee, who shall remit to the director on behalf
44 of the importer under the same terms as a supplier payment
45 pursuant to section 19 of P.L.2010, c.22 (C.54:39-119), and no
46 import verification number shall be required.

47 (cf: P.L.2010, c.22, s.16)

1 15. Section 19 of P.L.2010, c.22 (C.54:39-119) is amended to
2 read as follows:

3 19. a. The tax imposed by section 3 of P.L.2010, c.22 (C.54:39-
4 103), measured by fuel removed from a terminal or refinery in this
5 State, other than a terminal bulk transfer, shall be precollected and
6 remitted on behalf of the consumers to the State by the
7 **【transporter】** person removing the fuel from the facility through the
8 supplier or permissive supplier of the fuel, as shown in the records
9 of the terminal operator, acting as a trustee.

10 b. The supplier, permissive supplier and each reseller shall list
11 the amount of tax as a separate line item on all invoices or billings.

12 c. All tax to be paid by a supplier or permissive supplier with
13 respect to gallons removed on the account of the supplier or
14 permissive supplier during a calendar month shall be due and
15 payable on or before the 22nd day of the following month unless
16 that day falls upon a weekend or State holiday in which case the
17 liability shall be due the next succeeding business day.

18 d. A supplier or permissive supplier shall remit any late taxes
19 remitted to the supplier or permissive supplier by a licensed
20 distributor and shall notify the director within the twenty business
21 day limit provided by section 24 of P.L.2010, c.22 (C.54:39-124) of
22 any late remittances if that supplier or permissive supplier has
23 previously given notice to the director that the tax amount was not
24 received pursuant to section 24 of P.L.2010, c.22 (C.54:39-124).

25 e. The remittance of all amounts of tax due shall be paid on the
26 basis of the amount invoiced.

27 (cf: P.L.2010, c.22, s.19)

28

29 16. Section 21 of P.L.2010, c.22 (C.54:39-121) is amended to
30 read as follows:

31 21. A licensed distributor who removes fuel from a terminal or
32 refinery **【operated by a supplier or permissive supplier and】** who
33 remits the tax through the supplier or permissive supplier, acting as
34 a trustee, may make an election as to the timing of the remittance.
35 At the election of a licensed distributor, which notice shall be
36 evidenced by a written statement from the director as to the
37 purchaser's eligibility status as determined pursuant to section 22 of
38 P.L.2010, c.22 (C.54:39-122), the supplier or permissive supplier
39 shall not require a payment of motor fuel tax on fuel transportation
40 vehicle loads from the licensed distributor sooner than two business
41 days prior to the date on which the tax is required to be remitted by
42 the supplier pursuant to section 19 of P.L.2010, c.22 (C.54:39-119).
43 This election shall be subject to a condition that the remittances by
44 the licensed distributor of tax due the supplier or permissive
45 supplier shall be paid by electronic funds transfer.

46 (cf: P.L.2010, c.22, s.21)

1 17. Section 22 of P.L.2010, c.22 (C.54:39-122) is amended to
2 read as follows:

3 22. a. A purchaser desiring to make an election under section 21
4 of P.L.2010, c.22 (C.54:39-121) shall present evidence to the
5 director that:

6 (1) The applicant was a licensee in good standing under
7 R.S.54:39-1 et seq. as to which the applicant remitted tax to the
8 director; or

9 (2) The applicant meets the financial responsibility and bonding
10 requirements imposed by P.L.2010, c.22 (C.54:39-101 et al.), which
11 bond shall conform to the specific requirements of this section.

12 b. The director shall require a purchaser who pays the tax to a
13 supplier to file with the director a surety bond payable to the State,
14 upon which the purchaser is the obligor, or other financial security,
15 in an amount satisfactory to the director, calculated based on three
16 times the potential monthly tax payments for gasoline and diesel
17 fuel separately. The director shall require that the bond indemnify
18 the director against the tax credits claimed by the suppliers pursuant
19 to section 23 of P.L.2010, c.22 (C.54:39-123).

20 c. A purchaser desiring to make an election in accordance with
21 section 21 of P.L.2010, c.22 (C.54:39-121) shall not be subject to
22 the provisions of subsection b. of this section if the purchaser holds
23 a valid distributor's license and meets the bonding requirements
24 according to the law on the day prior to **【October 1, 2010】** January
25 1, 2011. On and after **【October 1, 2010】** January 1, 2011 each
26 purchaser holding a valid distributor's license issued prior to
27 **【October 1, 2010】** January 1, 2011, may elect to become an eligible
28 purchaser. An eligible purchaser shall have the option to provide
29 bonding as provided for distributors in section 34 of P.L.2010, c.22
30 (C.54:39-134).

31 d. The director may **【rescind】** revoke a purchaser's eligibility
32 and election to defer fuel tax remittances for the purchaser's failure
33 to make timely tax-deferred payment of tax to a supplier pursuant to
34 section 21 of P.L.2010, c.22 (C.54:39-121), after five days' notice
35 of and hearing on such proposed revocation or suspension
36 conducted pursuant to the "Administrative Procedure Act,"
37 P.L.1968, c.410 (C.52:14B-1 et seq.). The revocation shall be
38 implemented by sending written notice to all suppliers and
39 publishing notice of the revocation on the website of the Division of
40 Taxation in the Department of the Treasury. As a condition of
41 restoring a purchaser's eligibility, the director may require further
42 assurance of the financial responsibility of the purchaser, including
43 an increase in the amount of the bond or any other action that the
44 director may reasonably require to ensure remittance of the tax
45 imposed by P.L.2010, c.22 (C.54:39-101 et al.).

46 **【The refusal】** An applicant may request a hearing on the denial
47 of an application **【or the cancellation of eligibility shall be an action**

1 of the director subject to review pursuant to R.S.54:51A-14;
2 provided however that, notwithstanding any other provision of law
3 to the contrary, appeal shall not act as a stay] pursuant to the
4 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
5 seq.).

6 e. The director shall publish a list of licensed distributors and
7 make it available to all suppliers on at least a quarterly basis. The
8 director may, at the director's discretion, provide more timely
9 publication via the website of the Division of Taxation in the
10 Department of the Treasury.

11 (cf: P.L.2010, c.22, s.22.)

12
13 18. Section 23 of P.L.2010, c.22 (C.54:39-123) is amended to
14 read as follows:

15 23. A supplier has a fiduciary duty to remit to the director the
16 amount of tax imposed by P.L.2010, c.22 (C.54:39-101 et al.) paid
17 to the supplier, in its role as a trustee, by any purchaser, importer,
18 exporter or licensed distributor. In computing the amount of tax
19 due, the supplier shall be allowed a credit against the tax payable in
20 the amount of tax paid by the supplier that was accrued and
21 remitted to a state, but not received from a licensed distributor. The
22 director may recover any unpaid tax directly from the purchaser,
23 importer, exporter or licensed distributor.

24 (cf: P.L.2010, c.22, s.23)

25
26 19. Section 28 of P.L.2010, c.22 (C.54:39-128) is amended to
27 read as follows:

28 28. a. An applicant for a supplier's, distributor's or terminal
29 operator's license issued pursuant to P.L.2010, c.22 (C.54:39-101 et
30 al.) shall apply in the form and manner as the director shall
31 prescribe by regulation. The application shall be subscribed to by
32 the applicant and shall provide such information as the director may
33 require, including the applicant's federal identification number.

34 b. A license issued pursuant to P.L.2010, c.22 (C.54:39-101 et
35 al.) shall be issued for a three-year period, or the unexpired portion
36 thereof, commencing on April 1 and ending on the third succeeding
37 March 31 and shall be void thereafter, and that license may be
38 suspended, revoked or cancelled by the director. A license fee of
39 \$450 shall be paid for the issuance of that license.

40 c. The director shall investigate each applicant for a license
41 issued pursuant to P.L.2010, c.22 (C.54:39-101 et al.). A license
42 shall not be issued if the director determines that any one of the
43 following conditions exists:

44 (1) The application is not filed in good faith;

45 (2) The applicant is not the real party in interest;

46 (3) The license of the real party in interest has been revoked for
47 cause;

1 (4) The applicant managed, operated, owned or controlled,
2 directly or indirectly, a business which held a license issued
3 pursuant to P.L.2010, c.22 (C.54:39-101 et al.) which business is
4 indebted to this State for any tax, penalties or interest accruing
5 hereunder;

6 (5) The applicant is managed, operated or controlled, directly or
7 indirectly, by a person who held a license issued pursuant to
8 P.L.2010, c.22 (C.54:39-101 et al.) who is indebted to this State for
9 any tax, penalties, or interest accruing hereunder;

10 (6) The applicant is managed, operated, owned, or controlled,
11 directly or indirectly, by a person who managed, operated, owned or
12 controlled, directly or indirectly, a business that held a license
13 issued pursuant to P.L.2010, c.22 (C.54:39-101 et al.) and which is
14 indebted to this State for any tax, penalties, or interest accruing
15 hereunder;

16 (7) Any good cause as the director may determine; or

17 (8) With respect to a distributor's license, the applicant
18 intending to export is not licensed in the intended specific state or
19 states of destination.

20 d. A person shall not be entitled to hold a license if it shall
21 appear to the director that an officer, director or employee of that
22 person has been convicted of violating any of the provisions of
23 P.L.2010, c.22 (C.54:39-101 et al.) or of R.S.54:39-1 et seq. or if a
24 license issued pursuant to the provisions of P.L.2010, c.22
25 (C.54:39-101 et al.) or of R.S.54:39-1 et seq. and held by an officer,
26 director or employee of that person has been revoked by the director
27 for cause.

28 e. Applicants, including corporate officers, partners, members
29 and individuals, for a license issued by the director may be required
30 to submit their fingerprints to the director at the time of application.
31 Officers of a "publicly traded corporation," as that term is defined
32 by section 39 of P.L.1977, c.110 (C.5:12-39), and its subsidiaries
33 shall be exempt from this fingerprinting requirement. Persons,
34 other than applicants for a distributor's license, who possessed
35 licenses issued pursuant to R.S.54:39-1 et seq. continuously for
36 three years prior to **[October 1, 2010]** January 1, 2011, shall also
37 be exempt from this provision. Fingerprints required by this section
38 shall be submitted on forms prescribed by the director. The director
39 may forward to the Federal Bureau of Investigation or any other
40 agency for processing all fingerprints submitted by license
41 applicants. The receiving agency shall issue its findings to the
42 director. The director or another State agency may maintain a file
43 of fingerprints.

44 (cf: P.L.2010, c.22, s.28)

45
46 20. Section 33 of P.L.2010, c.22 (C.54:39-133) is amended to
47 read as follows:

1 33. a. A person other than a supplier desiring to export fuel to a
2 destination outside of this State shall first obtain a distributor's
3 license. Issuance of a distributor's license shall be conditioned upon
4 the applicant holding an appropriate license to import the fuel into
5 the destination state or states.

6 b. A person desiring to deliver dyed fuel or undyed fuel into
7 this State on the person's own behalf, for the person's own account,
8 or for resale to a purchaser in this State, from another state in a fuel
9 transportation vehicle or in a pipeline or barge shipment into
10 storage facilities other than a qualified terminal, shall first make
11 application for and obtain a distributor's license.

12 c. A person desiring to import fuel to a destination in this State
13 from another state, and who has not entered into an agreement to
14 remit the tax imposed by section 3 of P.L.2010, c.22 (C.54:39-103)
15 to the supplier or permissive supplier as trustee with respect to the
16 imports shall do the following:

17 (1) apply for and obtain a distributor's license; and

18 (2) comply with the payment requirements of section **[12]** 16 of
19 P.L.2010, c.22 (C.**[54:39-112]** 54:39-116).

20 d. A person blending any motor fuel for sale shall apply for and
21 obtain a distributor's license.

22 e. A distributor's license is a prerequisite to making the
23 election permitted in section 21 of P.L.2010, c.22 (C.54:39-121).
24 (cf: P.L.2010, c.22, s.33)

25
26 21. Section 35 of P.L.2010, c.22 (C.54:39-135) is amended to
27 read as follows:

28 35. a. If the license applicant and bond are approved, the
29 director shall issue a license for the applicant's principal place of
30 business and the applicant shall make copies for each other business
31 location.

32 b. A license is valid until suspended, revoked for cause,
33 cancelled or the license expires.

34 c. A license is not transferable to another person or to another
35 place of business. For purposes of this section, a transfer of a
36 majority interest in a business association, including corporations,
37 partnerships, trusts, joint ventures and any other business
38 association, shall be deemed to be a transfer of any license held by
39 the business association to another person. Any change in
40 ownership of a business association, other than a "publicly traded
41 corporation," as that term is defined by section 39 of P.L.1977,
42 c.110 (C.5:12-39), shall be reported to the director.

43 d. A license shall be preserved and conspicuously displayed at
44 the principal place of business for which it is issued.

45 e. A person licensed under P.L.2010, c.22 (C.54:39-101 et al.)
46 shall display the person's conveyance number on the back of any
47 conveyance of fuel.

1 f. Upon the discontinuance, sale, transfer or change of
2 ownership of the business, the license shall be immediately
3 surrendered to the director. Any relocation of the business shall be
4 immediately reported to the director.

5 g. If a person licensed to do business pursuant to P.L.2010,
6 c.22 (C.54:39-101 et al.) discontinues, sells, or transfers the
7 business, the licensee shall immediately notify the director in
8 writing of the discontinuance, sale, or transfer. The notice shall
9 give the date of discontinuance, sale, or transfer and if the business
10 is sold or transferred, the name and address of the purchaser or
11 transferee. The licensee shall be liable for all taxes, interest, and
12 penalties that accrue or may be owing and any criminal liability for
13 misuse of the license that occurs prior to cancellation of the license.

14 h. The director shall publish without charge a list of updates of
15 all licensees, by category.

16 i. A licensee shall maintain and keep for a **【period】** minimum
17 of four years records of all transactions by which fuel is received,
18 used, sold, delivered, or otherwise disposed of, together with
19 invoices, bills of lading, and other pertinent records and papers as
20 may be required by the director for reasonable administration of
21 P.L.2010, c.22 (C.54:39-101 et al.).

22 (cf: P.L.2010, c.22, s.35)

23
24 22. Section 39 of P.L.2010, c.22 (C.54:39-139) is amended to
25 read as follows:

26 39. a. A person transporting fuel in a fuel transportation vehicle
27 upon the public highways of this State shall:

28 (1) Carry on board the shipping document issued by the terminal
29 operator or the bulk plant operator of the facility where the fuel was
30 obtained, whether within or without this State. The shipping paper
31 shall set out on its face the state of destination of the fuel
32 transported in the vehicle as represented to the terminal operator at
33 the time the fuel transportation vehicle was loaded;

34 (2) Show, and permit duplication of, the shipping document by a
35 law enforcement officer or the director, upon request, when
36 transporting, holding or off-loading the fuel described in the
37 shipping document;

38 (3) Provide a copy of the shipping document to the distributor or
39 other person who controls the facility to which the fuel is delivered;
40 and

41 (4) Meet such other conditions as the director may require for
42 the enforcement of P.L.2010, c.22 (C.54:39-101 et al.).

43 b. A person transporting fuel in fuel transportation vehicles
44 upon the public highways of this State shall provide the original or
45 a copy of the terminal-issued shipping document accompanying the
46 shipment to the operator of the retail outlet, bulk plant or bulk end
47 user bulk storage facility to which delivery of the shipment was
48 made. However, a delivery ticket created by the person

1 transporting the fuel may be provided in lieu of the terminal-issued
2 shipping paper for deliveries into bulk end user bulk storage.

3 c. The operator of a fuel retail outlet, bulk plant or bulk end
4 user bulk storage facility shall receive, examine, and retain for a
5 period of 30 days at the delivery location the terminal-issued
6 shipping document received from the transporter for every shipment
7 of fuel that is delivered to that location with record retention of the
8 shipping paper **[of three]** for a minimum of four years required off-
9 site. If the delivery location is an unattended location, the operator
10 may retain the shipping documents at the normal billing address of
11 the operator.

12 d. A retail dealer, liquefied petroleum gas dealer, aviation fuel
13 dealer, bulk plant operator, wholesale distributor or bulk end user
14 shall not knowingly accept delivery of fuel into bulk storage
15 facilities in this State if that delivery is not accompanied by a
16 shipping paper issued by the terminal operator, or bulk plant
17 operator as provided by regulations, that sets out on its face this
18 State as the state of destination of the fuel.

19 e. A person who knowingly violates or knowingly aids and
20 abets another to violate this section shall be jointly and severally
21 liable for the tax on the fuel transported or delivered.

22 f. A person owning or operating a motor vehicle in violation of
23 this section and sections 42 and 43 of P.L.2010, c.22 (C.54:39-142
24 and C.54:39-143) is guilty of a crime of the fourth degree for the
25 first offense. For the second and each subsequent offense, a violator
26 is guilty of a crime of the third degree.

27 g. The director shall impose a civil penalty of \$500 on a person
28 transporting fuel for the first occurrence of transporting fuel without
29 adequate shipping papers annotated as required under this section
30 and sections 42 and 43 of P.L.2010, c.22 (C.54:39-142 and C.54:39-
31 143). Each of that person's subsequent occurrences described in
32 this subsection is subject to a civil penalty of up to \$5,000.
33 (cf: P.L.2010, c.22, s.39)
34

35 23. Section 41 of P.L.2010, c.22 (C.54:39-141) is amended to
36 read as follows:

37 41. a. A person shall not sell, use, deliver, or store in this State,
38 or import for sale, use, delivery or storage in this State, fuel as to
39 which the tax imposed by section 3 of P.L.2010, c.22 (C.54:39-103)
40 has not been previously paid to or accrued by either a licensed
41 supplier, or permissive supplier, at the time of removal from a
42 terminal, or a licensed distributor provided all the conditions of
43 section 43 of P.L.2010, c.22 (C.54:39-143) applicable to lawful
44 import by the distributor shall have been met.

45 b. The provisions of subsection a. of this section shall not
46 apply to:

- 1 (1) A supplier with respect to fuel held within the terminal
- 2 transfer system in this State which was manufactured in this State
- 3 or imported into this State in a bulk transfer;
- 4 (2) A consumer with respect to fuel placed in the vehicle fuel
- 5 supply tank of that person's motor vehicle outside of this State;
- 6 (3) Dyed fuel, dyed in accordance with P.L.2010, c.22 (C.54:39-
- 7 101 et al.);
- 8 (4) Fuel in the process of exportation by a supplier or a
- 9 distributor in accordance with the shipping papers required by
- 10 section 39 of P.L.2010, c.22 (C.54:39-139) and with a statement
- 11 meeting the requirements of section 42 of P.L.2010, c.22 (C.54:39-
- 12 142) shown on the shipping papers;
- 13 (5) Kerosene used in aircraft subject to the conditions and
- 14 exceptions in subsection a. of section 12 of P.L.2010, c.22
- 15 (C.54:39-112);
- 16 (6) Fuel in possession of a consumer as to which a refund has
- 17 been issued;
- 18 (7) Government and other exempt fuel under paragraphs (3) and
- 19 (4) of subsection b. of section 12 of P.L.2010, c.22 (C.54:39-112);
- 20 or
- 21 (8) A distributor who has met the conditions of section **[43]** 21
- 22 of P.L.2010, c.22 (C.**[54:39-143]** 54:39-121).
- 23 (cf: P.L.2010, c.22, s.41)
- 24
- 25 24. Section 42 of P.L.2010, c.22 (C.54:39-142) is amended to
- 26 read as follows:
- 27 42. a. Except as provided in subsection c. of this section, a
- 28 person shall not operate a fuel transportation vehicle that is engaged
- 29 in the shipment of fuel on the public highways of this State without
- 30 having on board a terminal-issued shipping paper bearing, in
- 31 addition to the requirements of subsection a. of section 38 of
- 32 P.L.2010, c.22 (C.54:39-138), a notation indicating that, with
- 33 respect to diesel fuel acquired under claim of exempt use, a
- 34 statement indicating the fuel is "DYED DIESEL FUEL,
- 35 NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE"
- 36 for the load or the appropriate portion of the load. With respect to
- 37 kerosene acquired under claim of exempt use, a statement shall
- 38 indicate the fuel is "DYED KEROSENE, NONTAXABLE USE
- 39 ONLY, PENALTY FOR TAXABLE USE" for the load or the
- 40 appropriate portion of the load.
- 41 b. A person is in violation of subsection a. of this section upon
- 42 boarding the vehicle with a shipping paper which does not meet the
- 43 requirements set forth in this section.
- 44 c. (1) The director may in the director's discretion provide an
- 45 advance notification procedure with respect to documentation for
- 46 imported fuel as to which the importer is unable to obtain terminal-
- 47 issued shipping papers which comply with this section.

1 (2) Compliance with relevant federal standards shall satisfy the
2 requirements of subsection a. of this section.

3 d. Any person who knowingly violates any part of this section
4 is guilty of a crime of the fourth degree.

5 e. The director, the Office of Weights and Measures of the
6 Division of Consumer Affairs in the Department of Law and Public
7 Safety, and the Superintendent of State Police [.] and [its officers]
8 the members of the State Police shall have full authority in
9 enforcing the provisions of this section.

10 (cf: P.L.2010, c.22, s.42)

11
12 25. Section 43 of P.L.2010, c.22 (C.54:39-143) is amended to
13 read as follows:

14 43. a. If a distributor acquires fuel destined for this State which
15 has neither been dyed in accordance with the Internal Revenue
16 Code and the regulations issued thereunder, nor tax paid to or
17 accrued by the supplier at the time of removal from the out-of-State
18 terminal, a licensed distributor and transporter operating on behalf
19 of the [licensed] importer shall meet all of the following conditions
20 prior to entering fuel onto the highways of this State by loaded fuel
21 transportation vehicle:

22 (1) The terminal origin and the name and address of the
23 importer shall also be set out prominently on the face of each copy
24 of the terminal-issued shipping paper;

25 (2) The terminal-issued shipping paper data otherwise required
26 by P.L.2010, c.22 (C.54:39-101 et al.), shall be present; and

27 (3) All tax imposed by P.L.2010, c.22 (C.54:39-101 et al.) with
28 respect to previously requested import verification number activity
29 on the account of the distributor or the transporter shall [have
30 been] be timely precollected or remitted.

31 b. A person who knowingly violates or knowingly aids and
32 abets another to violate this section is guilty of a crime of the fourth
33 degree, provided that a first offense related to a good faith belief
34 that the distributor could import under the conditions will be
35 punishable only by a fine not to exceed \$1,000.

36 c. The director, the Office of Weights and Measures of the
37 Division of Consumer Affairs in the Department of Law and Public
38 Safety, and the Superintendent of State Police and the members of
39 the State Police shall have full authority in enforcing the provisions
40 of this section.

41 (cf: P.L.2010, c.22, s.43)

42
43 26. Section 44 of P.L.2010, c.22 (C.54:39-144) is amended to
44 read as follows:

45 44. a. A person shall not operate or maintain a motor vehicle on
46 any public highway in this State with dyed fuel contained in the
47 vehicle fuel supply tank except for uses of dyed fuel on the highway
48 which are lawful under the federal Internal Revenue Code and the

1 regulations thereunder unless otherwise prohibited by P.L.2010,
2 c.22 (C.54:39-101 et al.).

3 b. A person shall not sell or hold for sale dyed fuel for any use
4 that the person knows or has reason to know is a taxable use of the
5 dyed fuel.

6 c. A person shall not use or hold for use any dyed fuel for a
7 taxable use when the person knows or has reason to know that the
8 fuel is dyed fuel.

9 d. A person shall not willfully, with intent to evade tax, alter or
10 attempt to alter the strength or composition of any dye or marker in
11 any dyed fuel.

12 e. A person who knowingly violates or knowingly aids and
13 abets another to violate the provisions of this section with the intent
14 to evade the tax imposed by P.L.2010, c.22 (C.54:39-101 et al.) is
15 guilty of a crime of the fourth degree.

16 f. A person, and an officer, employee, or agent of that person
17 or entity who willfully participates in any act in violation of this
18 section shall be jointly and severally liable with the person for the
19 tax and penalty which shall be the same as imposed pursuant to
20 section 6715 of the federal Internal Revenue Code of 1986 (26
21 U.S.C. s.6715).

22 g. A person or business entity, and each officer, employee, or
23 agent of the entity who willfully participates in any act in violation
24 of this section shall be jointly and severally liable with the entity for
25 the tax and penalty, which shall be the same as that imposed
26 pursuant to section 6715 of the federal Internal Revenue Code of
27 1986 (26 U.S.C. s.6715).

28 h. The director, the Office of Weights and Measures of the
29 Division of Consumer Affairs in the Department of Law and Public
30 Safety, and the Superintendent of State Police and the members of
31 the State Police shall have full authority in enforcing the provisions
32 of this section.

33 (cf: P.L.2010, c.22, s.44)

34

35 27. Section 50 of P.L.2010, c.22 is amended to read as follows:

36 50. a. There is levied a tax on fuel held in storage as of the close
37 of the business day preceding **【October 1, 2010】** January 1, 2011.
38 For the purpose of this section, "close of the business day" means
39 the time at which the last transaction has occurred for that day. The
40 tax on fuel shall be the tax rate specified by subsection a. of section
41 3 of P.L. , c. (C.)(pending before the Legislature as this bill)
42 for the type of fuel, multiplied by the gallons in storage of that type
43 of fuel as of the close of business day preceding **【October 1, 2010】**
44 January 1, 2011.

45 b. Persons in possession of fuel in storage as of the close of the
46 business day immediately preceding**【October 1, 2010】** January 1,
47 2011 shall:

1 (1) take an inventory at the close of the business day
2 immediately preceding **【October 1, 2010】** January 1, 2011;

3 (2) report the gallons listed in paragraph (1) of this subsection
4 on forms provided by the director, not later than **【October 1, 2010】**
5 January 1, 2011; and

6 (3) Remit the tax levied under this section no later than **【April**
7 **1, 2011】** July 1, 2011.

8 c. If tax due pursuant to subsection b. of this section is paid to
9 the director on or before **【October 31, 2010】** January 31, 2011, the
10 person remitting the tax may deduct from that person's tax liability
11 10% of the tax liability otherwise due.

12 d. In determining the amount of tax due under this section, a
13 person may exclude the amount of fuel in dead storage in each
14 storage tank. For the purposes of this section, "dead storage" means
15 the amount of fuel that cannot be pumped out of a fuel storage tank
16 because the motor fuel is below the mouth of the draw pipe. The
17 amount of motor fuel in dead storage is 200 gallons for a tank with
18 a capacity of less than 10,000 gallons and 400 gallons for a tank
19 with a capacity of 10,000 gallons or more.

20 (cf: P.L.2010, c.22, s.50)

21
22 28. Section 51 of P.L.2010, c.22 is amended to read as follows:

23 51. a. A person who is licensed as a distributor pursuant to
24 R.S.54:39-17 prior to **【October 1, 2010】** January 1, 2011 shall be
25 deemed a supplier licensed pursuant to the "Motor Fuel Tax Act,"
26 P.L.2010, c.22 (C.54:39-101 et seq.) as of **【October 1, 2010】**
27 January 1, 2011 and subject to P.L.2010, c.22 (C.54:39-101 et al.)
28 regarding licensed suppliers unless the person licensed as a
29 distributor pursuant to R.S.54:39-17 provides notice prior to
30 **【October 1, 2010】** January 1, 2011 that the person does not desire the
31 status of licensee as a supplier pursuant to P.L.2010, c.22 (C.54:39-
32 101 et al.). A person who is licensed as a distributor pursuant to
33 R.S.54:39-17 prior to **【October 1, 2010】** January 1, 2011 who
34 declines licensure pursuant to the "Motor Fuel Tax Act," P.L.2010,
35 c.22 (C.54:39-101 et seq.) shall be deemed to have terminated its
36 license as of the end of **【September 30, 2010】** December 31, 2010,
37 shall cease in-State activities covered by P.L.2010, c.22 (C.54:39-101
38 et al.), and shall be subject to final report requirements of section 27
39 of P.L.2010, c.22 (C.54:39-127). If no notice is received by the
40 director prior to **【October 1, 2010】** January 1, 2011 declining
41 licensure, then that shall be deemed acceptance of the new license and
42 responsibilities pursuant to the "Motor Fuel Tax Act," P.L.2010, c.22
43 (C.54:39-101 et seq.), and the person may continue in operation
44 except as provided by subsection f. of this section.

45 Notice may be given to a person who is licensed as a distributor
46 pursuant to R.S.54:39-17 prior to **【October 1, 2010】** January 1,
47 2011 that the person will not be granted a license pursuant to the

1 “Motor Fuel Tax Act,” P.L.2010, c.22 (C.54:39-101 et seq.). A
2 person given that notice shall cease activities covered by the license on
3 or before **【October 1, 2010】** January 1, 2011, shall be deemed to
4 have terminated its license as of the end of **【September 30, 2010】**
5 December 31, 2010, and shall be subject to final report
6 requirements of section 27 of P.L.2010, c.22 (C.54:39-127).

7 b. A person who is licensed as a retail dealer pursuant to
8 R.S.54:39-30 prior to **【October 1, 2010】** January 1, 2011 shall be
9 deemed a retail dealer licensed pursuant to the “Motor Fuel Tax
10 Act,” P.L.2010, c.22 (C.54:39-101 et seq.) as of **【October 1, 2010】**
11 January 1, 2011 and subject to P.L.2010, c.22 (C.54:39-101 et al.)
12 regarding retail dealers unless the person licensed as a retail dealer
13 pursuant to R.S.54:39-30 provides notice prior to **【October 1, 2010】**
14 January 1, 2011 that the person does not desire the status of licensee
15 as a retail dealer pursuant to P.L.2010, c.22 (C.54:39-101 et al.). A
16 person who is licensed as a retail dealer pursuant to R.S.54:39-30
17 prior to **【October 1, 2010】** January 1, 2011 who declines licensure
18 pursuant to the “Motor Fuel Tax Act,” P.L.2010, c.22 (C.54:39-101
19 et seq.) shall be deemed to have terminated its license as of the end
20 of **【September 30, 2010】** December 31, 2010, and shall cease in-
21 State activities covered by P.L.2010, c.22 (C.54:39-101 et al.). If no
22 notice is received by the director prior to **【October 1, 2010】** January
23 1, 2011 declining licensure, then that shall be deemed acceptance of
24 the new license and responsibilities pursuant to the “Motor Fuel Tax
25 Act,” P.L.2010, c.22 (C.54:39-101 et seq.), and the person may
26 continue in operation except as provided by subsection f. of this
27 section.

28 Notice may be given to a person who is licensed as a retail dealer
29 pursuant to R.S.54:39-30 prior to **【October 1, 2010】** January 1,
30 2011 that the person will not be granted a license pursuant to the
31 “Motor Fuel Tax Act,” P.L.2010, c.22 (C.54:39-101 et seq.). A
32 person given that notice shall cease activities covered by the license on
33 or before **【October 1, 2010】** January 1, 2011, shall be deemed to
34 have terminated its license as of the end of **【September 30, 2010】**
35 December 31, 2010, and shall be subject to final report
36 requirements of section 27 of P.L.2010, c.22 (C.54:39-127).

37 c. A person who is licensed as an importer, exporter,
38 wholesaler, or jobber pursuant to R.S.54:39-1 et seq. prior to
39 **【October 1, 2010】** January 1, 2011 shall be deemed a distributor
40 licensed pursuant to the “Motor Fuel Tax Act,” P.L.2010, c.22
41 (C.54:39-101 et seq.) as of **【October 1, 2010】** January 1, 2011 and
42 subject to P.L.2010, c.22 (C.54:39-101 et al.) regarding licensed
43 **【suppliers】** distributors unless the person licensed as an importer,
44 exporter, wholesaler, or jobber pursuant to R.S.54:39-1 et seq.
45 provides notice prior to **【October 1, 2010】** January 1, 2011 that the
46 person does not desire the status of licensee as a distributor pursuant to

1 P.L.2010, c.22 (C.54:39-101 et al.). A person who is licensed as an
2 importer, exporter, wholesaler, or jobber pursuant to R.S.54:39-1 et
3 seq. prior to **【October 1, 2010】** January 1, 2011 who declines
4 licensure pursuant to the “Motor Fuel Tax Act,” P.L.2010, c.22
5 (C.54:39-101 et seq.) shall be deemed to have terminated its license
6 as of the end of **【September 30, 2010】** December 31, 2010, shall
7 cease in-State activities covered by P.L.2010, c.22 (C.54:39-101 et
8 al.), and shall be subject to final report requirements of section 27
9 of P.L.2010, c.22 (C.54:39-127). If no notice is received by the
10 director prior to **【October 1, 2010】** January 1, 2011 declining
11 licensure, then that shall be deemed acceptance of the new license and
12 responsibilities pursuant to the “Motor Fuel Tax Act,” P.L.2010, c.22
13 (C.54:39-101 et seq.), and the person may continue in operation
14 except as provided by subsection f. of this section.

15 Notice may be given to a person who is licensed as an importer,
16 exporter, wholesaler, or jobber pursuant to R.S.54:39-1 et seq. prior
17 to **【October 1, 2010】** January 1, 2011 that the person will not be
18 granted a license pursuant to the “Motor Fuel Tax Act,” P.L.2010,
19 c.22 (C.54:39-101 et seq.). A person given that notice shall cease
20 activities covered by the license on or before **【October 1, 2010】**
21 January 1, 2011, shall be deemed to have terminated its license as of
22 **【September 30, 2010】** December 31, 2010, and shall be subject to
23 final report requirements of section 27 of P.L.2010, c.22 (C.54:39-
24 127).

25 d. A person engaged in the business of hauling, transporting or
26 delivering fuel who is a motor fuel transport licensee pursuant to
27 R.S.54:39-1 et seq. or who has registered a conveyance for
28 transporting fuel pursuant to R.S.54:39-41 prior to **【October 1,**
29 **2010】** January 1, 2011 shall be deemed a transporter and the
30 conveyance shall be deemed registered as a fuel conveyance
31 pursuant to the “Motor Fuel Tax Act,” P.L.2010, c.22 (C.54:39-101
32 et seq.) as of **【October 1, 2010】** January 1, 2011 and subject to
33 P.L.2010, c.22 (C.54:39-101 et al.) regarding transporters and fuel
34 conveyances unless the motor fuel transport licensee or person
35 having a registered conveyance provides notice prior to **【October 1,**
36 **2010】** January 1, 2011 that the person does not desire the status of
37 transporter or does not desire to have a registered fuel conveyance
38 pursuant to P.L.2010, c.22 (C.54:39-101 et al.). A person who is a
39 motor fuel transport licensee or who has a conveyance registered
40 pursuant to R.S.54:39-41 prior to **【October 1, 2010】** January 1,
41 2011 who declines status pursuant to the “Motor Fuel Tax Act,”
42 P.L.2010, c.22 (C.54:39-101 et seq.) shall be deemed to have
43 terminated its motor fuel transport license and its conveyance
44 registration, as applicable, as of the end of **【September 30, 2010】**
45 December 31, 2010, and shall cease in-State activities covered by
46 P.L.2010, c.22 (C.54:39-101 et al.). If no notice is received by the
47 director prior to **【October 1, 2010】** January 1, 2011 declining

1 licensure, or registration as applicable, then that shall be deemed
2 acceptance of the new license, or registration as applicable, and
3 acceptance of transporter responsibilities pursuant to the “Motor Fuel
4 Tax Act,” P.L.2010, c.22 (C.54:39-101 et seq.)

5 Notice may be given to a person who is engaged in the business of
6 hauling, transporting or delivering fuel who is a motor fuel
7 transport licensee pursuant to R.S.54:39-1 or who has registered a
8 conveyance for transporting fuel pursuant to R.S.54:39-41 that the
9 person will not be granted a license pursuant to the “Motor Fuel Tax
10 Act,” P.L.2010, c.22 (C.54:39-101 et seq.). A person given that
11 notice shall cease activities covered by the license on or before
12 January 1, 2011 and, shall be deemed to have terminated its license
13 as of December 31, 2010 and shall be subject to final report
14 requirements of section 27 of P.L.2010, c.22 (C.54:39-127).

15 e. All other persons licensed pursuant to R.S.54:39-1 et seq.
16 shall apply to the director for an appropriate license, as determined
17 by the director and subject to such rules as the director may
18 prescribe, pursuant to this section on or before **【October 1, 2010】**
19 January 1, 2011 or cease activities requiring a license under this
20 section. If a person accepts a new license and responsibilities that
21 license entails pursuant to the “Motor Fuel Tax Act,” P.L.2010, c.22
22 (C.54:39-101 et seq.), the person may continue in operation except
23 as provided by subsection f. of this section.

24 f. A person required to file a bond or other surety with the
25 director pursuant to the “Motor Fuel Tax Act,” P.L.2010, c.22
26 (C.54:39-101 et seq.) shall have until **【October 31, 2010】** January
27 31, 2011, to establish, reestablish or transfer that surety to the
28 person’s new license status pursuant to P.L.2010, c.22 (C.54:39-101
29 et al.). A person who does not meet those bonding requirements by
30 **【October 31, 2010】** January 31, 2011 shall cease activities covered
31 by the license on **【October 31, 2010】** January 31, 2011.

32 g. Licenses issued pursuant to R.S.54:39-1 et seq. and not
33 continued pursuant to this section shall be invalid as of **【October 1,**
34 **2010】** January 1, 2011. Licenses accepted pursuant to this section
35 in place of the license issued pursuant to R.S.54:39-1 et seq. shall
36 be valid until the expiration date of the license originally issued
37 pursuant to R.S.54:39-1 et seq.

38 (cf: P.L.2010, c.22, s.51)

39
40 29. Section 57 of P.L.2010, c.22 is amended to read as follows:

41 57. This act shall take effect immediately, provided however
42 that sections 1 through 27, 29 through 49, and 53 through 56 shall
43 remain inoperative until **【October 1, 2010】** January 1, 2011.

44 (cf: P.L.2010, c.22, s.57)

45
46 30. This act shall take effect immediately.

STATEMENT

This bill amends the “Motor Fuel Tax Act,” P.L.2010, c.22, to make a number of technical amendments that will allow more effective implementation of the new taxation system and to postpone the effective date of the new law for three months to allow time for necessary re-licensing and other administrative issues.

P.L.2010, c. 22 changed the point of taxation of diesel fuel from the retail level to the level in the petroleum distribution chain at which it is removed from the bulk fuel storage and distribution system of refineries, pipelines, ships and barges, at a terminal. That law also changed the point of taxation of gasoline from the distributor level to the terminal level. The new motor fuel tax exploits the federal dyed fuel regulations implemented since the 1990s to make this shift in the point of taxation with the effect of decreasing the number of taxpayers and decreasing the volume of paperwork in administering the tax.

This bill, in addition to making a number of purely technical corrections to legal reference, eliminates some internal conflicts and inconsistencies in references to licensing requirements and licensing fees.

The amendments assure that heating oil dealers are not required to be licensed as motor fuel tax dealers. Heating oil is not a commercially viable motor fuel, and absent these amendments approximately 500 heating oil dealers would be required to be licensed as distributors, defeating one of the simplification goals of the original legislation.

The amendments also clarify that fuel transporters are not among those required to precollect the motor fuel tax, which would otherwise conflict with other provisions of the law, also conflicting with the simplification goals of the original legislation.

The amendments correct an error in the original act which exempted aviation grade kerosene as a taxable fuel. It is clear in the original act that aviation *gasoline* is a taxable fuel product, taxable on its initial importation and sale in the State, that becomes exempt based on its use for powering aircraft. The amendments provide this same consistent treatment for aviation grade kerosene, which is exempt from motor fuel taxation if used in aircraft.