

[First Reprint]

ASSEMBLY, No. 4392

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 13, 2018

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Co-Sponsored by:

Assemblywomen Jimenez, Vainieri Huttle, Reynolds-Jackson, Quijano,

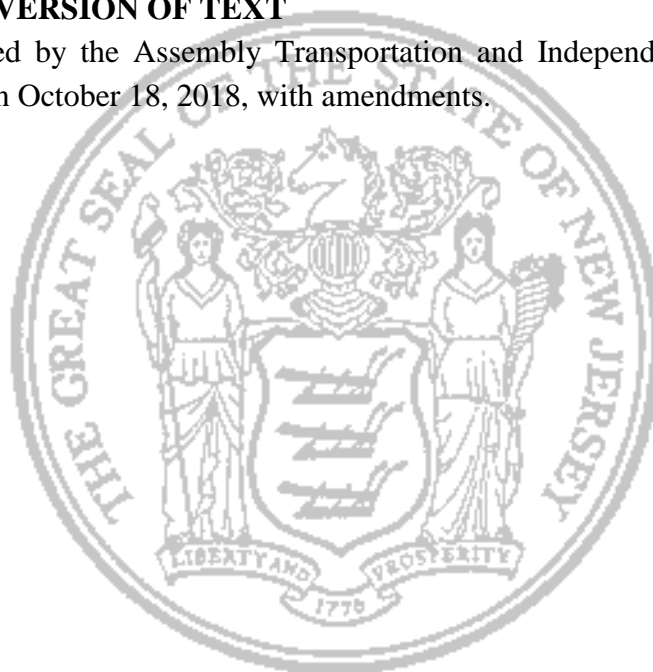
Assemblyman Mejia, Assemblywomen Sumter and Speight

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Transportation and Independent Authorities Committee on October 18, 2018, with amendments.



(Sponsorship Updated As Of: 12/11/2018)

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

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

8
9 1. Section 2 of P.L.1990, c.42 (C.54:15B-2) is amended to read
10 as follows:

11 2. For the purposes of this act:

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

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

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

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

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

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

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

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

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATR committee amendments adopted October 18, 2018.

1 "Gasoline" means all products commonly or commercially
2 known or sold as gasoline that are suitable for use as a motor fuel.
3 "Gasoline" does not include products that have an ASTM octane
4 number of less than 75 as determined by the "motor method,"
5 ASTM D2700-92. The term does not include racing gasoline or
6 aviation gasoline, but for administrative purposes does include fuel
7 grade alcohol.

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

10 a. asphalt;

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

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

20 d. polymer grade propylene used in the manufacture of
21 polypropylene.

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

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

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

36 ¹["Qualifying airline" means any person or business authorized
37 by the Federal Aviation Administration or appropriate agency of the
38 United States to operate as an air carrier under an air carrier
39 operating certificate and which has more than 8 million enplaned
40 passengers per year in New Jersey, or any regional air carrier under
41 contract with such a person or business.]¹

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

46 ¹["Regional air carrier" means an air carrier that operates
47 aircraft of 99 seats or fewer.]¹

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

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

7 "2016 implementation date" means the later of November 1,
8 2016 or the 15th day after the date of enactment of P.L.2016, c.57.
9 (cf: P.L.2016, c.57, s.12)

10
11 2. Section 7 of P.L.1991, c.181 (C.54:15B-2.1) is amended to
12 read as follows:

13 7. a. "Gross receipts," as otherwise defined by section 2 of
14 P.L.1990, c.42 (C.54:15B-2), shall not include receipts from sales
15 of petroleum products used by marine vessels engaged in interstate
16 or foreign commerce and receipts from sales of aviation fuels used
17 by common carriers in interstate or foreign commerce **[other than]**
18 **'[, but shall include the "burnout" portion used by common carriers**
19 **and the entire receipts from the sales of aviation fuels used by or**
20 **delivered to a qualifying airline, even if the qualifying airline is a**
21 **common carrier, which both shall be taxable pursuant to rules**
22 **promulgated by the director] provided that the aviation fuels are**
23 **consumed by a commercial airline at an airport in the State with**
24 **fewer than 20,000 scheduled commercial passenger flights per**
25 **year**¹.

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

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

- 1 children and adults referred to in subsection c. of R.S.48:4-1 and
2 "regular route service" does not mean a regular route in the nature
3 of special bus operation or a casino bus operation;
- 4 (2) agricultural tractors not operated on a public highway;
- 5 (3) farm machinery;
- 6 (4) ambulances;
- 7 (5) rural free delivery carriers in the dispatch of their official
8 business;
- 9 (6) vehicles that run only on rails or tracks, and such vehicles as
10 run in substitution therefor;
- 11 (7) highway motor vehicles that are operated exclusively on
12 private property;
- 13 (8) motor boats or motor vessels used exclusively for or in the
14 propagation, planting, preservation and gathering of oysters and
15 clams in the tidal waters of this State;
- 16 (9) motor boats or motor vessels used exclusively for
17 commercial fishing;
- 18 (10) motor boats or motor vessels, while being used for hire for
19 fishing parties or being used for sightseeing or excursion parties;
- 20 (11) fire engines and fire-fighting apparatus;
- 21 (12) stationary machinery and vehicles or implements not
22 designed for the use of transporting persons or property on the
23 public highways;
- 24 (13) heating and lighting devices;
- 25 (14) motor boats or motor vessels used exclusively for Sea Scout
26 training by a duly chartered unit of the Boy Scouts of America; and
- 27 (15) emergency vehicles used exclusively by volunteer first-aid
28 or rescue squads.
- 29 (cf: P.L.2016, c.57, s.13)

30
31 3. Section 15 of P.L.1995, c.108 (C.27:1B-21.8) is amended to
32 read as follows:

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

46 b. Commencing with the fiscal year beginning July 1, 2019
47 there shall be annually appropriated ¹from funds held in the Special
48 Transportation Fund, established pursuant to section 21 of

1 P.L.1984, c.73 (C.27:1B-21)¹ an amount equal to the revenues
2 derived from the tax imposed on the receipts from the sale of
3 aviation fuels used by airlines under the “Petroleum Products Gross
4 Receipts Tax Act ^{1, 1}” P.L.1990, c.42 (C.54:15B-1 et seq.) to the
5 Port Authority of New York and New Jersey in support of the
6 ¹【capital and operating】 planning, acquisition, engineering,
7 construction, reconstruction, repair, and rehabilitation¹ costs of
8 extending ¹【the PATH train】 Port Authority Trans-Hudson
9 Corporation rail service¹ to Newark Liberty International Airport ¹,
10 and for the cost of planning, acquisition, engineering, construction,
11 reconstruction, repair, and rehabilitation of capital projects at
12 airports, local airport systems, or other local facilities owned and
13 operated by the airport owner or operator and directly and
14 substantially related to the air transportation of passengers or
15 property in the State, as a federally permitted use of revenue
16 derived from the taxation of aviation fuel used by airlines pursuant
17 to federal statute, including, but not limited to, Title 49 of United
18 States Code¹.

19 ¹【c. Upon full payment of the cost of extending the PATH train
20 to Newark Liberty International Airport, the revenues dedicated
21 pursuant to subsection b. of this section shall be annually
22 appropriated to the Airport Safety Fund in accordance with
23 subsection a. of this section or to the New Jersey Department of
24 Transportation’s Airport Improvement Program, to be issued as
25 grants by the commissioner to airport improvement projects in the
26 State.】¹

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

28

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