ASSEMBLY, No. 2935

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:
Assemblyman JAY WEBBER
District 26 (Essex, Morris and Passaic)

SYNOPSIS

Eliminates automatic increases of petroleum products taxes.

CURRENT VERSION OF TEXT

As introduced.

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

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

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

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

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

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

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

Notwithstanding the provisions of subparagraph (a) of this

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) If the actual revenue determined pursuant to paragraph (3) of this subsection exceeds the highway fuel cap amount determined pursuant to paragraph (2) of this subsection, then the highway fuel cap amount for the succeeding year shall be decreased by the amount of the excess in setting the rate pursuant to paragraph (4) of this subsection. If the actual revenue determined pursuant to paragraph (3) of this subsection is less than the highway fuel cap amount determined pursuant to paragraph (2) of this subsection, then the highway fuel cap amount for the succeeding year shall **[**be increased by the amount of the shortfall in setting the rate pursuant to paragraph (4) of this subsection**]** not be adjusted.

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

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

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

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

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

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

other than actions affecting the "Petroleum Products Gross Receipts Tax Act" P.L.1990 c.42 (C.54:14B-1 et seq.), had been impeded.
(cf: P.L.2016, c.57, s.19)

3. This act shall take effect immediately.

STATEMENT

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

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

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