

SENATE, No. 436

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Requires Petroleum Products Gross Receipts Tax rate reduction if certain Legislative action is taken that includes increases in other State tax rates and revenue; dedicates revenues from certain sales and use tax increases to "Transportation Trust Fund Account."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** requiring a reduction in the rate of tax imposed upon
 2 certain petroleum products if certain Legislative action is taken
 3 that includes increases in other State tax rates and revenues and
 4 dedicating revenues from certain sales and use tax increases to
 5 transportation purposes, amending P.L.1990, c.42, and
 6 supplementing Title 52 of the Revised Statutes and P.L.1966,
 7 c.30 (C.54:32B-1 et seq.).

8
 9 **BE IT ENACTED** by the Senate and General Assembly of the State
 10 of New Jersey:

11
 12 1. (New section) a. The Legislative Budget and Finance
 13 Officer shall, not later than the seventh day after any Legislative
 14 action which repeals, impairs, or amends section 19 of P.L.2016,
 15 c.57 (C.52:18A-257) and increases the rate of tax imposed pursuant
 16 to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
 17 seq.), make a fiscal estimate to be included in a certification to be
 18 provided to the Director of the Division of Taxation in the
 19 Department of the Treasury of the anticipated amount of State
 20 revenue to be generated as a result of the Legislative action which
 21 increases the rate of tax imposed pursuant to the "Sales and Use
 22 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.). The fiscal estimate
 23 of the increase in State revenue pursuant to the Legislative action
 24 shall be based on the difference in total State revenue collected
 25 from the tax imposed pursuant to the "Sales and Use Tax Act,"
 26 P.L.1966, c.30 (C.54:32B-1 et seq.) during the preceding State
 27 fiscal year and the anticipated total amount of revenue to be
 28 collected attributable to the increased rate of tax during the first full
 29 State fiscal year during which the increased rate of tax is imposed.

30 b. On or before the seventh day after the Legislative Budget
 31 and Finance Officer's fiscal estimate is received by the Director of
 32 the Division of Taxation, the director may contest the fiscal
 33 estimate, in which case the director shall provide any necessary
 34 information to the Legislative Budget and Finance Officer for the
 35 purposes of recalculating the fiscal estimate.

36 c. The Legislative Budget and Finance Officer shall, after
 37 considering all information provided by the Director of the Division
 38 of Taxation pursuant to subsection b. of this section, certify the
 39 estimate to be provided to the director for the purposes of
 40 subparagraph (i) of paragraph (1) of subsection a. of section 3 of
 41 P.L.1990, c.42 (C.54:15B-3) to the director. If the director elects
 42 not to contest the fiscal estimate made pursuant to subsection b. of
 43 this section, the fiscal estimate provided pursuant to subsection a. of
 44 this section shall be certified and used by the director for the
 45 purposes of reducing the cents-per-gallon tax rate pursuant to

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 subparagraph (i) of paragraph (1) of subsection a. of section 3 of
2 P.L.1990, c.42 (C.54:15B-3).

3

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

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

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

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

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

42 Notwithstanding the provisions of subparagraph (a) of this
43 paragraph to the contrary, for the period from the 2016
44 implementation date through December 31, 2016, no rate of tax
45 shall be applied to diesel fuel, blended fuel that contains diesel fuel
46 or is intended for use as diesel fuel, or kerosene, other than aviation
47 grade kerosene; for the period from January 1, 2017 through June
48 30, 2017, the applicable rate for those fuels shall be 70 percent of

1 the rate otherwise determined pursuant to subparagraph (a) of this
2 paragraph, and for July 1, 2017 and thereafter the applicable rate for
3 those fuels determined pursuant to subparagraph (a) of this
4 paragraph.

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

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

19 (g) The cents-per-gallon rate determined pursuant to
20 subparagraph (f) of this paragraph shall not be less than the rate
21 determined for the average price per gallon, without State or federal
22 tax included, of retail sales of number 2 fuel oil in the State on July
23 1, 2016.

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

28 (i) Notwithstanding the provisions of subsection c. of this
29 section to the contrary, on and after the first day of the second
30 month following the certification by the Legislative Budget and
31 Finance Officer pursuant to subsection c. of section 1 of P.L. _____,
32 c. (C. _____) (pending before the Legislature as this bill) to the
33 Director of the Division of Taxation in the Department of the
34 Treasury, the tax imposed pursuant to this paragraph shall be
35 reduced on a cents-per-gallon basis so that the total revenues
36 collected from the tax imposed pursuant to this paragraph are
37 reduced by the amount of the revenue increase as provided in the
38 certified estimate made by the Legislative Budget and Finance
39 Officer.

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

46 (b) In addition to the tax, if any, imposed by paragraph (1) of
47 this subsection, a cents-per-gallon tax is imposed on each
48 company's gross receipts derived from the first sale of petroleum

1 products within this State on diesel fuel, blended fuel that contains
2 diesel fuel or is intended for use as diesel fuel, and kerosene, other
3 than aviation grade kerosene, at the rate of four cents per gallon
4 before July 1, 2017 and at the rate of eight cents per gallon on and
5 after July 1, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25 3. (New section) Following the enactment of P.L. ,
26 c. (pending before the Legislature as this bill), an amount equal to
27 the anticipated amount of State revenue to be generated as a result
28 of any Legislative action which increases the rate of tax imposed
29 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-
30 1 et seq.), shall be appropriated annually by the Legislature to the
31 "Transportation Trust Fund Account," established pursuant to
32 section 20 of P.L.1984, c.73 (C.27:1B-20).

33
34 4. This act shall take effect immediately.

35 36 37 STATEMENT

38
39 This bill requires a reduction in the Petroleum Products Gross
40 Receipts Tax rate upon certain legislative action and is intended to
41 keep the Legislature's promise of lower taxes. Specifically,
42 following any Legislative action which repeals, impairs, or amends
43 section 19 of P.L.2016, c.57, concerning a State tax review council,
44 and increases the sales and use tax rate, the Legislative Budget and
45 Finance Officer is required to, not later than seven days following
46 the Legislative action, provide a fiscal estimate to the Director of
47 the Division of Taxation in the Department of the Treasury of the
48 anticipated amount of State revenue to be generated as a result of

1 the Legislative action which increases the sales and use tax rate.
2 The estimate is to be calculated based on the difference in total
3 State revenue collected from the sales and use tax during the
4 preceding State fiscal year and the anticipated total amount of
5 revenue to be collected attributable to the increased tax rate.

6 The bill permits the director to contest the Legislative Budget
7 and Finance Officer's fiscal estimate within seven days of receiving
8 the fiscal estimate. If the director contests the fiscal estimate, the
9 director must forward any necessary information to the Legislative
10 Budget and Finance Officer for the purposes of recalculating the
11 fiscal estimate. The Legislative Budget and Finance Officer is
12 required to consider all information provided by the director for the
13 purposes of potentially recalculating the fiscal estimate and
14 transmitting the certification to the director. If the director does not
15 contest the estimate, the Legislative Budget and Finance Officer's
16 fiscal estimate is to be certified and transmitted to the director.

17 On and after the first day of the second month following the
18 certification by the Legislative Budget and Finance Officer to the
19 director, the Petroleum Products Gross Receipts Tax is required to
20 be reduced on a cents-per-gallon basis so that the total revenues
21 collected from the tax are reduced by the amount of increased sales
22 and use tax revenue as provided in the certified estimate.

23 Further, the bill requires the Legislature to annually appropriate
24 an amount equal to the anticipated amount of State revenue to be
25 generated as a result of any Legislative action which increases sales
26 and use tax rate to the "Transportation Trust Fund Account."