

CHAPTER 101

AN ACT concerning the definition of certain fuels and amending P.L.2010, c.22.

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

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

C.54:39-102 Definitions relative to taxation of motor fuel.

2. For the purposes of P.L.2010, c.22 (C.54:39-101 et al.):

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

"Aviation fuel dealer" means a person that acquires aviation fuel from a supplier or from another aviation fuel dealer for subsequent sale.

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

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

"Biobased liquid fuel" means a liquid fuel that is derived principally from renewable biomass and meets the specifications or quality certification standards for use in residential, commercial, or industrial heating applications established under ASTM D6751, or the appropriate successor standard, as the case may be.

"Biodiesel fuel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matters which meet the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency under section 211 of the Clean Air Act, 42 U.S.C. s.7545, and the requirements of ASTM D6751.

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

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

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

"Blender" means a person that produces blended motor fuel outside the terminal transfer system.

"Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use or otherwise sold for use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include the blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil and greases, or the commingling of products during transportation in a pipeline.

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

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

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

"Consumer" means the ultimate user of fuel.

"Delivery" means the placing of fuel into the fuel tank of a motor vehicle or into a bulk fuel storage and distribution facility.

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

"Diesel-powered motor vehicle" means a motor vehicle that is propelled by a diesel-powered engine.

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

"Distributor" means a person who acquires motor fuel from a supplier, permissive supplier or from another distributor for subsequent sale.

"Dyed fuel" means dyed diesel fuel or dyed kerosene that is required to be dyed pursuant to United States Environmental Protection Agency rules or is dyed pursuant to Internal Revenue Service rules or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or Internal Revenue Service including any invisible marker requirements.

"Export" means to obtain fuel in this State for sale or other distribution outside of this State. In applying this definition, fuel delivered out-of-State by or for the seller constitutes an export by the seller, and fuel delivered out-of-State by or for the purchaser constitutes an export by the purchaser.

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

"Fuel" means:

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

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

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

"Fuel transportation vehicle" means any vehicle designed for highway use which is also designed or used to transport fuel.

"Gasoline" means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. Gasoline does not include products that have an ASTM octane number of less than seventy-five as determined by the "motor method," ASTM

D2700-92. The term does not include racing gasoline or aviation gasoline, but for administrative purposes does include fuel grade alcohol.

"General aviation airport" means a civil airport located in this State other than the international airports located in Newark and Atlantic City.

"Gross gallons" means the total measured volume of fuel, measured in U.S. gallons, exclusive of any temperature or pressure adjustments.

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

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

"Importer" includes any person who is the importer of record, pursuant to federal customs law, with respect to fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record of fuel imported into this State, the owner of the fuel at the time it is brought into this State from another state or foreign country is the importer.

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

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

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

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

"Motor fuel" means gasoline, diesel fuel, kerosene and blended fuel.

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

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

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

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

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

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

"Qualified terminal" means a terminal which has been assigned a terminal control number by the federal Internal Revenue Service.

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

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

"Refiner" means a person that owns, operates, or otherwise controls a refinery.

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

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

"Renewable biomass" means a material, including crops and crop residues, trees and tree residues, organic portions of municipal solid waste, organic portions of construction and demolition debris, grease trap waste, and algae, that can be used for fuel but does not have a petroleum or other fossil fuel base.

"Retail dealer" means a person that engages in the business of selling or dispensing motor fuel to the consumer within this State.

"Supplier" means a person that is:

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

b. satisfies one or more of the following:

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

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

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

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

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

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

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

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

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

- a. a boat or barge movement of fuel from a refinery or terminal to a terminal;
- b. a pipeline movement of fuel from a refinery or terminal to a terminal;
- c. a book transfer of product within a terminal between suppliers prior to completion of removal across the rack; and
- d. a two-party exchange within a terminal between licensed suppliers.

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

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

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

"Transporter" means an operator of a pipeline, barge, railroad or fuel transportation vehicle engaged in the business of transporting fuel.

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

- a. the fuel is transferred from one licensed supplier or licensed permissive supplier to another licensed supplier or licensed permissive supplier;
- b. the transaction includes a transfer from the person that holds the original inventory position for fuel in the terminal as reflected on the records of the terminal operator;
- c. the exchange transaction is simultaneous with removal from the terminal by the receiving exchange partner; and
- d. the terminal operator in its books and records treats the receiving exchange party as the supplier which removes the product across a terminal rack for purposes of reporting such events to this State.

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

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

"Undyed kerosene" means kerosene that is not subject to the federal Environmental Protection Agency dyeing requirements, or has not been dyed in accordance with federal Internal Revenue Service fuel dyeing provisions.

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

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

C.54:39-112 Exemptions from tax.

12. a. Fuel used for the following purposes is exempt from the tax imposed by the "Motor Fuel 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 monthly franchise tax for the use of the streets therein under the provisions of R.S.48:16-25 and buses while being operated over the highways of this State in a regular route bus operation as defined in R.S.48:4-1 and under operating authority conferred pursuant to R.S.48:4-3, or while providing bus service under a contract with the New Jersey Transit Corporation or under a contract with a county for special or rural transportation bus service subject to the jurisdiction of the New Jersey Transit Corporation pursuant to P.L.1979, c.150 (C.27:25-1 et seq.), and buses providing commuter bus service which receive or discharge passengers in New Jersey. For the purpose of this paragraph "commuter bus service" means regularly scheduled passenger service provided by motor vehicles whether within or across the geographical boundaries of New Jersey and utilized by passengers using reduced fare, multiple ride or commutation tickets and shall not include charter bus operations for the transportation of enrolled children and adults referred to in subsection c. of R.S.48:4-1 and "regular route service" does not mean a regular route in the nature of special bus operation or a casino bus operation,

- (2) agricultural tractors not operated on a public highway,
- (3) farm machinery,
- (4) aircraft,
- (5) ambulances,
- (6) rural free delivery carriers in the dispatch of their official business,
- (7) vehicles that run only on rails or tracks, and such vehicles as run in substitution therefor,
- (8) highway motor vehicles that are operated exclusively on private property,
- (9) motor boats or motor vessels used exclusively for or in the propagation, planting, preservation and gathering of oysters and clams in the tidal waters of this State,
- (10) motor boats or motor vessels used exclusively for commercial fishing,
- (11) motor boats or motor vessels, while being used for hire for fishing parties or being used for sightseeing or excursion parties,
- (12) cleaning,
- (13) fire engines and fire-fighting apparatus,
- (14) stationary machinery and vehicles or implements not designed for the use of transporting persons or property on the public highways,
- (15) heating and lighting devices,
- (16) motor boats or motor vessels used exclusively for Sea Scout training by a duly chartered unit of the Boy Scouts of America,
- (17) emergency vehicles used exclusively by volunteer first-aid or rescue squads, and
- (18) three cents per gallon, the difference between the rate of tax on diesel fuel and the rate of tax on gasoline, for diesel fuel used by passenger automobiles and motor vehicles of less than 5,000 pounds gross weight.

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

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

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

(b) removed from a terminal by a licensed distributor for immediate export as evidenced by the terminal issued shipping papers; or

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

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

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

(3) fuel sold to the United States or any agency or instrumentality thereof, and to the State of New Jersey and its political subdivisions, departments and agencies;

(4) aviation fuel sold to a licensed aviation fuel dealer;

(5) liquefied petroleum gas except when delivered to the tank of a highway vehicle;

(6) motor fuel on which tax has been paid under this act that is later contaminated in a manner making it unsuitable for taxable use. This credit or refund is limited to the remaining portion of taxed fuel in the contaminated mixture and is conditioned upon submitting to the director adequate documentation that the contaminated mixture was subsequently used in an exempt manner;

(7) fuel on which tax has been paid pursuant to P.L.2010, c.22 (C.54:39-101 et al.) that is either subsequently delivered back into the terminal transfer system for further distribution or delivered to a refinery for further processing;

(8) fuel on which tax has been previously imposed and paid pursuant to section 3 of P.L.2010, c.22 (C.54:39-103) and which is either subsequently exported, sold or distributed in this State in a manner which would result in a second tax being owed. If there is a second taxable distribution or sale, the party responsible for remittance of the second tax shall be the party eligible for claiming the refund or deduction;

(9) Fuel grade alcohol, biobased liquid fuel, or biodiesel fuel when sold to a licensed supplier and delivered to a qualified terminal.

3. This act shall take effect immediately.

Approved August 10, 2015.